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**Datasheet for the decision
of 16 December 2025**

Case Number: T 1851/23 - 3.2.04

Application Number: 11772975.6

Publication Number: 2632311

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Language of the proceedings: EN

Title of invention:

BEVERAGE MACHINE FOR DIFFERENT SPATIAL ENVIRONMENTS

Patent Proprietor:

Société des Produits Nestlé S.A.

Opponent:

Koninklijke Douwe Egberts BV

Headword:

Relevant legal provisions:

EPC Art. 123(2), 54, 56, 111(1)
RPBA 2020 Art. 11

Keyword:

Inventive step - as maintained no - common general knowledge
Remittal - special reasons for remittal

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Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1851/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 16 December 2025

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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
31 August 2023 concerning maintenance of the
European Patent No. 2632311 in amended form.

Composition of the Board:

Chairman A. Pieracci
Members: J. Wright
M. Millet

Summary of Facts and Submissions

- I. The appeals were filed by the proprietor and the opponent against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 11, the patent in suit met the requirements of the EPC.

In particular, the opposition division decided that the subject-matter of this request involved an inventive step.

- II. Amongst other things, the opposition division decided that the subject-matter of claim 1 of auxiliary request 7 lacked novelty and that claim 1 of auxiliary requests 8, 9 and 10 added subject matter extending beyond the application as filed.

- III. The Board issued a communication on 21 November 2025 setting out its opinion on the relevant matters in preparation for oral proceedings. Oral proceedings before the Board were held on 16 December 2025.

- IV. The appellant-patent proprietor requested as its main request that the decision under appeal be set aside and that the patent be maintained according to request 1, in the alternative that the patent be maintained according to one of auxiliary requests 1', 2, 2', 3, 3', 4, 4', 5, 5', 5a, 5a', 6, 6', 7, 8, 9, 10, 10a, 11 (as maintained), 12 or 12', all refiled or filed for the first time (5a, 5a', 10a) with the proprietor's grounds of appeal.

The appellant-opponent requested that the decision under appeal be set aside and that the European patent be revoked.

V. Claim 1 of request 1, 1', 2, 2' and 7 reads as follows:

"A beverage preparation machine (1) comprising:
- a body (2) having one or more outer faces (21,22) and a beverage outlet for delivering a beverage over a beverage dispensing area (27); and
- a module (3) operatively connected to the body adjacent to one of said one or more outer faces, the module (3) having a dedicated sub-function comprising supplying an ingredient to the body (2) and/or collecting waste material from the body (2), the module being movable into a plurality of different operative connection positions and the module being in position for carrying out the dedicated sub-function when in said operative connection positions,
wherein the module is movable into a plurality of different operative connection positions along said one or more outer faces of the body,
wherein the module (3) is operatively connected to the body (2) by a rigid connection device (10) comprising a pivotable bearing element (13) assembled to the body (2) and a connector (11) for plugging the module (3) to the connection device (10),
wherein the module (3) is rotatably movable around said body (2), wherein the rigid connection device (10) includes a communication channel (15) extending from the body (2) to the module (3),
wherein the communication channel (15) is configured to guide a liquid between the module (3) and the body (2), and wherein the rigid connection device (10) further comprises an arm (12) extending between the pivotable bearing element (13) and the connector (11)".

Claim 1 of auxiliary request 3, 3' and 8 reads as request 1 except that at the end of the claim the following wording is added: ", and wherein the arm (12) between the pivotable bearing element (13) and the connector (11) slenderly projects from the pivotable bearing element (13) to the connector (11)."

Claim 1 of auxiliary request 4, 4' and 9 reads as request 1 except that at the end of the claim the following wording is added: "and wherein the arm (12) between the pivotable bearing element (13) and the connector (11) forms a narrow extension from the pivotable bearing element (13) to the connector (11)".

Claim 1 of auxiliary request 5, 5' and 10 reads as for request 1 except that at the end of the claim the following wording is added: "and wherein the module (3) is wider than the arm (12)."

Claim 1 of auxiliary request 5A, 5A' and 10A reads as for claim 1 of auxiliary request 5 except that at the end of the claim, the following wording is added: "and the connector (11)."

Claim 1 of auxiliary requests 6, 6' and 11 reads as for claim 1 of request 1 except that at the end of the claim the following wording is added: "and wherein the channel (15) is connected to the body (2) by a rigid connector with a bearing."

Claim 1 of auxiliary request 12 reads as follows:

"A beverage preparation machine (1) comprising:

- a body (2) having one or more outer faces (21,22) and a beverage outlet for delivering a beverage over a beverage dispensing area (27); and
- a first module (3) operatively connected to the body adjacent to one of said one or more outer faces, the first module (3) having a dedicated sub-function comprising supplying an ingredient to the body (2) and/or collecting waste material from the body (2), the first module being movable into a plurality of different operative connection positions and the first module being in position for carrying out the dedicated sub-function when in said operative connection positions,

wherein the first module is movable into a plurality of different operative connection positions along said one or more outer faces of the body,

wherein the beverage preparation machine (1) further comprises a second module operatively connected to the body adjacent to one of said one or more outer faces, the second module being movable into a plurality of different operative connection positions,

wherein the second module is movable into a plurality of different operative connection positions along said one or more outer faces of the body,

wherein each the module (3) is operatively connected to the body (2) by a dedicated rigid connection device (10) or a rigid connection device operatively connects the first and the second module to the body."

Claim 1 of auxiliary request 12' reads as follows:

"A beverage preparation machine (1) comprising:

- a body (2) having outer faces and a beverage outlet for delivering a beverage over a beverage dispensing area (27), wherein the outer faces of the body are side

faces, namely a front face (24), a rear face (22) and lateral faces (21); and

- a first module (3) operatively connected to the body adjacent to one of said outer faces, the first module (3) having a dedicated sub-function comprising supplying an ingredient to the body (2) and/or collecting waste material from the body (2), the first module being movable into a plurality of different operative connection positions and the first module being in position for carrying out the dedicated sub-function when in said operative connection positions,

wherein the first module is movable into a plurality of different operative connection positions along said outer faces of the body,

wherein the beverage preparation machine (1) further comprises a second module operatively connected to the body adjacent to one of said outer faces, the second module being movable into a plurality of different operative connection positions, wherein the second module is movable into a plurality of different operative connection positions along said outer faces of the body,

wherein each module (3) is operatively connected to the body (2) by a dedicated rigid connection device (10) or a rigid connection device operatively connects the first and the second module to the body,

wherein the modules are connected adjacent different outer faces of the body, namely adjacent a lateral face (21) and adjacent the rear face (22) of the body, and

wherein each module is adjacent to the outer face which the module contacts or is closest of all the outer faces next to which the module may be in operative connection".

VI. In the present decision, reference is made to the following documents:

D1: WO 2007/017849 A2

Annex 1, filed by the proprietor on 10 January 2024, Merriam Webster online dictionary citation for "Arm"

VII. The parties' arguments relevant for the decision are set out in the following reasons for the decision.

Reasons for the Decision

1. The appeals are admissible.

2. Request 1 (main request) and auxiliary requests 1', 2, 2' and 7, claim 1, novelty with respect to D1

2.1 The opposition division considered this issue in its decision in the context of auxiliary request 7 (see reasons, part 4). It found D1 to disclose all features of claim 1 (excepting its optional "collecting waste material" feature).

2.2 In section 4.1, the opposition division wrote the following:

"4.1 D1 discloses all the technical features of claim 1 (see figures 3-11): A beverage preparation machine (10) comprising: - a body (12) having one or more outer faces and a beverage outlet (18) for delivering a beverage over a beverage dispensing area (above tray 22); and - a module (reservoir 14) operatively connected to the body adjacent to one of said one or more outer faces, the module (14) having a dedicated sub-function comprising supplying an ingredient to the

body (see page 6, last line: "a tube (...) to transfer liquid from reservoir 14 to the brewing unit") ~~and/or collecting waste material from the body~~, the module (14) being movable into a plurality of different operative connection positions and the module being in position for carrying out the dedicated subfunction when in said operative connection positions (see page 6, first and second paragraph), wherein the module is movable into a plurality of different operative connection positions along said one or more outer faces of the body (see figures 3 and 5), wherein the module (14) is operatively connected to the body (12) by a rigid connection device (16) comprising a pivotable bearing element (26) assembled to the body (see last paragraph of page 7) and a connector (T-shaped platform comprising the inlet 44, positioned on top of the base 48) for plugging the module (14) to the connection device (see second paragraph of page 7), wherein the module is rotatably movable around said body (see figures 3 and 5), wherein the rigid connection device includes a communication channel (34) extending from the body to the module, wherein the communication channel (34) is configured to guide a liquid between the module and the body (see last paragraph of page 6), and wherein the rigid connection device further comprises an arm (base 48, on which the cradle 42 and the T-shaped connector are supported) extending between the pivotable bearing element (26) and the connector (T-shaped element comprising the inlet 44)".

With regard to this last (arm) feature, the opposition considered (see reasons, section 4.3):

"In this regard, the opposition division considers that at least a portion of the back section 48 extends between the ring-shaped portion of the collar 26 and

the T-shaped connector. Said at least portion of the back section 48 is narrower in width than the diameter of the ring-shaped portion of the collar 26 and serves to connect and support the module and the connector. Said at least portion of the back section 48 is hence considered as an arm, in particular taking into account that "arm" is a very broad term. Neither does the opposition division agree that an element is required to be "slender" in order to qualify as an "arm". In this respect, the opposition division notes that the element considered as "arm" in the patent (the element 12 extending between the bearing element 13 and the connector 11, shown in figure 1) would not normally be considered as slender, in view of the depicted width and length of said arm 12.

Regarding the procedures in English speaking countries, the opposition division is emancipated with respect to decisions taken in front of a different authority. Therefore, a conclusion that differs from the one arrived at other jurisdictions is possible. The argument is not convincing."

- 2.3 In appeal, the appellant-proprietor disputed only the opposition division's finding that D1's machine disclosed the "arm" claim feature. It argued that considering whether D1 disclosed an arm was an inadmissible application of hindsight. Moreover, that an arm had to be slender, which was not the case with the part of D1 identified by the opposition division as an arm. Furthermore, even if D1 did disclose an arm it would not be one extending between the pivotable bearing element and the connector as claimed. It furthermore disagreed that the opposition division had been right to not follow patent jurisdictions of

English speaking countries that found that D1 does not disclose an arm.

2.4 The Board does not find the appellant-proprietor's arguments convincing.

2.4.1 In assessing novelty of claim 1, the Board must examine whether D1 directly and unambiguously discloses the features of the claim. This necessarily requires reading D1 with knowledge of what is claimed. Therefore the appellant-proprietor's argument that examining D1 to see if it discloses an arm might be an inadmissible application of hind-sight because the term "arm" is in the claim but not in D1, is moot.

2.4.2 The appellant-proprietor's argument that an "arm" is implicitly something slender hinges on its Merriam Webster dictionary definition of an arm (annex 1, entry 2d: a slender part of a structure, machine, or an instrument projecting from a main part, axis, or fulcrum).

The Board is not convinced that the Merriam Webster definition sets out the skilled person's broadest understanding of the term "arm". In this regard, the Board refers to the Oxford English dictionary (OED), which is generally accepted as a good reference for the English language. According to the OED on-line, entry II.10.a, which, as with the Merriam Webster reference relates to a machine, an arm is: "A projecting or terminal part of a structure, object, or machine; (in later use chiefly) spec, a mechanical part which resembles an arm in shape or size; a part which projects from a machine or piece of technical apparatus".

The Board interprets the terms of the claim giving them their broadest definition, which is the part of the above OED definition before the first semi-colon. What comes after that is a more limited sub-sense of the broad definition. Therefore, the appellant-proprietor's argument that the OED definition requires the skilled person to read "arm" in the patent as limited to something that "resembles an arm in shape or size" is moot.

- 2.4.3 In the present context of a beverage machine, this means that an "arm" is a projecting part of the machine, without limitation of slenderness or narrowness.
- 2.5 The Board also agrees with the opponent (reply to appeal, page 11, point 5.1.27) that, in the present case the skilled person may well consult the description of the patent as its "own dictionary" to understand the meaning of an "arm" (cf. published patent specification, paragraph [0040] and published application, page 11, lines 24 to 27). This reference forms part of the description of figures 1 to 3. The word arm bears the reference 12, which can only be seen in figure 1. Nothing in the word's context points to arm 12 being something slender. Indeed its physical appearance is not described. Moreover, whether or not the skilled person might see the width and length dimensions of arm 12 in figure 1 as having any significance in the patent, the Board doubts that they would consider it slender. Rather, element 12 appears to be roughly as long as it is wide.
- 2.6 Turning to the disclosure of D1, the appellant-proprietor has argued with reference to D1, figure 6, that the opposition division was wrong to find that

part of the element 48, referred to in D1 as a "back section", is an arm as claimed.

- 2.6.1 The Board disagrees. As the skilled person reads the term "arm" in its broadest sense, no requirement of slenderness or narrowness is implied. Therefore, whether the skilled person would consider D1's "back section 48" to be too wide and short to be slender has no relevance to the present discussion.

The Board agrees with the opposition division that the part of the rigid back section 48 that extends from the pivotable bearing part 26 is a projection therefrom and thus constitutes an "arm". Moreover, as best seen in figure 6, this arm extends from the collar portion 26 to a connector (T-shaped connector 44), thus the arm extends between the pivotable bearing element 26 and the connector 44. Whether the skilled person might not consider other projections from a beverage making machine to be arms, such as a flexible power cable, is irrelevant to the present discussion and can be left undecided.

- 2.6.2 It is true that D1, page 8, lines 4 to 7 discloses the part referenced 48 in figure 6 as a "back section 48 of [the pivotable bearing element's] collar portion 26" and thus forms a single piece with D1's pivotable bearing element 26. However, the Board is not convinced by the appellant-proprietor's argument that this might exclude part of the back section 48 from being an arm as claimed. The argument suggests that the whole of the back section 48 cannot comprise an arm as claimed because it is part of the bearing element from which the claim requires the arm to extend. As the proprietor has put it, interpreting the back section 48 to be an

arm would require the impossibility of the arm extending from itself.

The Board, however, agrees with the opposition division (see impugned decision, reasons, point 4.3) that only the portion of the back section 48 that extends from the ring-shaped portion of the collar 26 is an arm as claimed. In this regard, D1's *arm* does not need to have its own reference sign in order to qualify as an arm: Novelty is assessed based on what is disclosed rather than how it might be labelled in drawings, and the part of back section 48 which projects from the bearing part directly and unambiguously presents a structural element that meets the broad definition of an arm. Moreover, nothing in the claim suggests that the claimed *arm* may not be part of a larger part which comprises the bearing element. On the contrary, according to the claim, the *rigid connection device 10* comprises both the pivotable bearing element 13 and the arm, so both make up parts of the connection device.

2.6.3 The Board is also not convinced that the part of the back section 48 which extends from the collar 26 cannot be an arm because it stretches over a substantial portion of the circumference of the collar 26. Given that this part extends from the collar 26 and that the term *arm* does not imply narrowness or slenderness, the extension in question is an arm.

2.6.4 Moreover, by specifying the arm as extending between the pivotable bearing element and the connector, the claim defines a spatial and structural relationship between these three elements in which the arm spans the separation between the pivotable bearing element and the connector and thus indirectly joins them. In the Board's view, this does not mean that the arm must end

at the connector. Thus, the fact that in D1 the part of the back section 48 which extends from the collar 26 also extends beyond the connector 44 (cf. figure 6) to form a base for the module 14 (cf. figure 1), does not mean that it cannot be an arm as claimed.

2.6.5 For all these reasons, the appellant-proprietor's arguments have not convinced the Board that the opposition division erred in considering D1 to disclose a beverage machine with an arm as defined in the last claim feature. Since this was the only claim feature disputed by the appellant-proprietor as not being disclosed by D1, the Board concurs with the opposition division's finding that D1 takes away novelty of the subject matter of claim 1.

3. Auxiliary requests 3, 3' and 8, claim 1 added subject matter

3.1 Compared to request 1, claim 1 adds that the arm "slenderly projects from the pivotable bearing element". The opposition division considered this matter in the context of auxiliary request 8 (see the impugned decision, reasons section 5 starting on page 18). It found there to be no literal basis for the feature in the application as filed and that the skilled person would also not identify it in figure 1.

3.2 In its appeal grounds (see IV 1, starting on page 27, in particular point 1.2), the proprietor argued that the feature had an original basis since it merely recited the established dictionary definition of an "arm" according to the Merriam Webster dictionary (annexe 1), and including a dictionary definition would be allowable according to established jurisprudence. Moreover, figure 1 of the application as filed shows a

slender arm 12 which provides an additional basis for the amendment.

- 3.3 The Board agrees with the opposition division that there is no literal basis for the feature. The published application as filed only mentions the arm once (see page 9, lines 25 to 28), stating that: "Connection device 10 has a pivotable bearing element 13 assembled to body 2, a connector 11 for module 3 and an arm 12 extending therebetween." As the Board has already explained in its discussion of novelty of request 1, the skilled person reads the claim giving terms their broadest meaning. In the present context, using the broadest dictionary definition (Cf. OED), an arm is simply a projecting part, without any requirement of slenderness or narrowness.

Whether or not, according to certain jurisprudence, it might sometimes be allowable to amend a claim by including the dictionary definition of an originally disclosed feature would not justify amending the originally disclosed feature of an *arm* by adding its Merriam Webster dictionary definition because this is narrower than its most general definition (cf. OED).

- 3.4 Moreover, as the Board explained in point 8.1 of its communication, penultimate paragraph: "As to the idea that figure 1 of the patent application might disclose that arm 12 "slenderly projects" from the pivotable bearing, the Board believes that the presence of such a feature would, at most, be discernible only to an eye that was seeking to confirm but not discover it for the first time, i.e. an eye that was privy to the present discussion. The Board does not believe that a skilled person, approaching figure 1 and corresponding text (application as filed, page 11, lines 25 to 28 - an arm

12) for the first time and without knowledge of present claim 1 nor that D1 had been cited against it, would directly and unambiguously identify that element 12 "slenderly projects".

- 3.4.1 Neither in written proceedings nor at the oral proceedings did the appellant-proprietor explain why the Board might have been wrong in this regard, other than to argue that the "slenderly projects" feature is not to be construed as defining a characteristic of the arm itself but rather as defining that the arm is considerably less wide than the pivotable bearing element, as can be derived from figure 1 of the application as published.

The Board does not find this convincing. The word *slender*, and its conjugate *slenderly*, is normally used to describe an object that is narrow relative to its length, that is one that has a high aspect ratio. The Board sees no reason as to why the skilled person might construe the word differently in the present case. In particular, in its claim context the word *slenderly* syntactically modifies the arm's projection. In so doing, it characterises how the arm itself extends rather than introducing a comparison of the arm's width relative to that of the pivotable bearing element.

- 3.5 The Board concludes that the amendment to claim 1 (slenderly projects) finds neither basis in the description of the application as filed in conjunction with the dictionary definition of an "arm", nor in figure 1. Therefore, the Board agrees with the finding of the opposition division (see the impugned decision, reasons, section 5) that the amendment adds subject matter extending beyond the application as filed.

4. Auxiliary requests 4, 4' and 9, claim 1 added subject matter

Claim 1 adds to request 1 that "the arm (12) between the pivotable bearing element (13) and the connector (11) forms a narrow extension from the pivotable bearing element (13) to the connector (11)". In its communication (see section 9) the Board commented on this claim as follows:

"9. Auxiliary requests 4, and 9, claim 1, extension of subject matter, Article 123(2)EPC

9.1 Claim 1 is similar to claim 1 of auxiliary request 8, but replaces the term "slenderly projects" with "forms a narrow extension",

9.2 The opposition division considered this claim in the context of auxiliary request 9 (see impugned decision, section 6, starting on page 19). It found that there was no original basis for this feature, in particular neither in the term "arm" nor in figure 1. In the Board's view, the considerations boil down to similar ones applicable to the feature slenderly projects that has been discussed above [subject matter added]. The Board considers that "narrow extension" is not derivable from the word "arm", which is more general. Nor would the skilled person recognise the feature in figure 1 were they to have no knowledge of the present discussion. Therefore, the Board is of the opinion that claim 1 of these requests adds subject matter extending beyond the application as filed. Therefore, the requests fail".

- 4.1 Having reviewed this part of the communication, the Board saw no reason as to why it might have been wrong,

and notes that it equally applies to auxiliary request 4'. The appellant-proprietor did not comment on this aspect of the Board's communication in its written submissions of 4 December 2025, other than making a general reference to its earlier written submissions (see page 1, point 1). At the oral proceedings before the Board, the appellant-proprietor only additionally commented that the amendment "[arm] forms a narrow extension" emphasised that the arm was much narrower than the pivotable bearing element as could be seen in figure 1 and was moreover based on the dictionary definition of "slender". The Board finds neither of these additional arguments convincing.

- 4.1.1 Firstly, the adjective "narrow" in the added feature modifies the noun *extension*, and the extension is explicitly the part of the arm *between* the pivotable bearing element and the connector. It thus defines only a high aspect ratio of the arm itself. In other words, the Board sees no syntactic construction in the feature which might support the appellant-proprietor's view that it defines a comparison of the arm's width to that of the pivotable bearing element. Therefore, the argument that the amendment emphasises this is moot.
- 4.1.2 As to the alleged basis for the amendment being found in a dictionary definition of "slender", as the Board has confirmed the opposition division's finding that there is no basis for the feature defining the arm as "slenderly" projecting in claim 1 of auxiliary request 8 amongst others, there is likewise no basis in the application as filed for amending the claim by adding a dictionary definition of its conjugate "slender".
- 4.2 The Board concludes that the appellant-proprietor's arguments have not convinced the Board that the

opposition division was wrong to find that claim 1 of auxiliary request 9, which is the same as that of auxiliary requests 4 and 4', adds subject matter extending beyond the application as filed.

5. Auxiliary requests 5, 5' and 10

Claim 1 of these requests adds to that of request 1 the feature that "the module (3) is wider than the arm (12)".

5.1 Neither in opposition proceedings nor in appeal has it been disputed that there is no literal or implicit basis for the amendment in the description or claims of the application. Rather, the amendment is said to be disclosed in the drawings of the application as filed, notably by comparing figure 1 (which shows the arm 12 without a module) and figures 2 and 3 (which show a module 3 mounted on the arm).

5.2 The opposition division examined this claim in the context of auxiliary request 10 (see the impugned decision, section 7). The opposition division considered (reasons 7.2) that the feature was, as such, disclosed in figures 1 to 3 in an inextricable functional and structural relationship with numerous other features of this only one depicted embodiment. Extracting just the one relative dimension would, the opposition division found, constitute an unallowable intermediate generalisation. Thus it found claim 1 to add subject matter extending beyond the application as filed.

5.3 In its appeal grounds (starting page 31, section VIII "Request 5", section 1), the proprietor argued that the feature is derived from figures 1 to 3 of the

application as filed because these are only schematic and thus cannot disclose a specific width ratio of the arm and module, but rather illustrate a general principle that the module should be wider than the arm.

- 5.4 The Board does not find this convincing. Although Figures 1 to 3 show schematic drawings of a particular beverage preparation machine (see application as filed, page 7, lines 28 to 31), the Board agrees with the opponent that they provide a more or less realistic spatial depiction of the machine's components in a physically recognisable form, including the arm 12 and the module 3.
- 5.5 It is common ground that the drawings show sufficient spatial and dimensional detail for the skilled person to be able to compare the particular shapes and sizes of the machine's components and thus observe that the machine's module 3 (figures 2 and 3) is wider than its arm 12 (figure 1). Rather than the drawings being so imprecise that this is the only dimensional information they convey, the Board considers that the skilled person would also be able to make a rough estimate of the relative widths of the module and arm, taking into account their context in the drawings (cf. decision reasons 7.2): "For example [the drawings show] the cylindrical shape of the module, the length of the arm with respect to the module, and the shape of the connector 11 and its relative dimensions with respect to the arm 12". Whatever estimate of the relative widths of the module and arm the skilled person might arrive at, or indeed for the length of the arm relative to the module, no such limitations have been claimed. Therefore, the amended feature introduces new subject matter that is more general than what is directly and unambiguously disclosed in the drawings.

- 5.6 In this regard, the appellant-proprietor has argued that although the claim defines an open ended range of module width to arm width, whereby the former is greater than the latter by any amount, the skilled person would dismiss as impossible the idea that the module's width could be say 20 times the width of the arm. Rather, so the appellant-proprietor argued, from the drawings the skilled person would see that there was a practical limit to the module width to arm width ratio of perhaps 2 or 3 times, otherwise the module would not be able to fit [without interfering with the body of the machine], and they would read the claim accordingly.
- 5.7 In the Board's view, the skilled person does not construe claim 1's unambiguous "module is wider than the arm" feature as implicitly including such a limitation merely because it may be discernable from the drawings. Moreover, this practical limit the proprietor sees as being disclosed, however approximately, in the drawings is a result of the length of the arm shown in figure 1 creating a physical limit to the space available for the module to fit between the connector 11 and the outer face of the body 2. This only goes to confirm that the opposition division was correct in considering that the relative width of the arm and module is only originally disclosed inextricably linked to, amongst other things, the length of the arm with respect to the module. However this has also not been claimed.
- 5.8 For all these reasons, the claim adds subject matter extending beyond the application as filed.

6. Auxiliary requests 5A, 5A' and 10A

Claim 1 of these requests adds to that of request 1 the feature that "the module (3) is wider than the arm (12) and the connector (11)".

Claim 1 of of these requests thus contains the same (module wider than the arm) feature as auxiliary request 10 amongst others. As explained above for the latter request, the relative width of the arm and module generalises what is disclosed in the original drawings. It is also only originally disclosed inextricably linked to, amongst other things, the length of the arm with respect to the module. However, this has not been claimed. Therefore, without prejudice to the question of admittance, claim 1 of auxiliary requests 5A, 5A' and 10A adds subject matter extending beyond the application as filed for the same reasons as auxiliary request 10.

7. Auxiliary requests 6, 6' and 11, claim 1, novelty

7.1 The opposition division found (see the impugned decision, reasons 8.1) that the subject matter of claim 1 (in the context of auxiliary request 11) was new with respect to D1. In its communication in preparation for oral proceedings (see section 11), the Board set out its preliminary opinion on this matter, explaining that it agreed with the opposition division's finding. The Board wrote the following:

"11. Auxiliary requests 6, 6' and 11, claim 1, novelty with respect to D1

11.1 Claim 1 of these requests adds to claim 1 of the main request (request 1) a last claim feature which reads: "wherein the channel (11) is connected to the body (1) by a rigid connector (17) with a bearing (17)."

11.2 For the reasons already explained, the Board agrees with the opposition division's finding that D1 discloses all the features of claim 1 of the main request (request 1). The opposition division considered that the last feature of present claim I was however not disclosed in D1. In particular, it found that in D1, the [liquid guiding] communication channel (cf. sentence bridging pages 6 and 7 with figure 6, reference 34) was a flexible tube 34 that extended between the connector 44 at a first extremity and an element in the body at its second extremity (not shown in the figures). The division considered (decision, reasons 8.1.2.1) that D1 was silent as to how or where the connection took place.

11.3 The appellant-opponent's argument (appeal grounds page 7, sections 5.16 to 5.21) that D1 discloses that the channel is connected to the body by a rigid connector with a bearing is not convincing. Rather, the Board agrees with the opposition division that, with D1's *channel* being the flexible tube 34, the channel cannot be the gap 52 between the legs 50a, 50b through which the flexible tube 34 passes (cf. figure 9). Therefore, the opponent's argument that the gap 52 is the channel and that this would be connected rigidly via the bearing 26 is moot. Therefore, the opponent has not convinced the Board that the opposition division was wrong to find (decision II, 8.1.1) that the subject matter of claim 1 of auxiliary request 11 is new with respect to D1 because it does not disclose the last

claim feature (rigid fluid connection with a bearing). Since the claim is the same for auxiliary requests 6 and 6', the Board's opinion (subject matter is novel) is the same.

11.4 That said, before looking at inventive step, the Board finds it expedient to explore exactly what D1 does disclose with regard to how the channel is connected to the brewing unit body. The tube 34 is configured to guide a liquid between the reservoir [module] and the brewing unit [body]. In this regard, the appellant-opponent (appeal grounds, bottom of page 6) has pointed to the paragraph in D1 that bridges pages 6 and 7. The bridging sentence of that paragraph (describing figure 6) states: "Moreover, collar portion 26 may comprise an opening [...] through which a tube 34 may extend to transfer liquid from reservoir 14 to the brewing unit."

11.5 Whilst the Board agrees with the opposition division (decision grounds, 8.1.2.1) that D1 is silent as to *where* a connection takes place (it cannot be seen from the figures), because D1's flexible tube 34 extends to and transfers liquid to the brewing unit, it must be connected to it. Therefore, contrary to the opposition division's finding (D1 silent on *how* the connection takes place), the Board agrees with the opponent that D1 discloses a flexible connector".

7.2 Neither in writing nor at the oral proceedings did the parties comment on this aspect of the Board's communication. Having reviewed it again, the Board saw no reason to deviation from its preliminary opinion. Therefore, the Board confirms the opposition division's finding that D1 does not disclose the claim feature that *the channel is connected to the body by a rigid*

connector with a bearing. Moreover, the Board holds that D1 discloses that the channel is connected to the body by a *flexible connector*.

8. Auxiliary requests 6, 6' and 11, claim 1, inventive step starting from D1 with the skilled person's general knowledge

The opposition division considered this claim in the context of auxiliary request 11 (see the impugned decision, reasons, section 9). It found that the subject matter of claim 1 involved an inventive step. The appellant-opponent has challenged this in appeal and the Board finds this challenge convincing.

- 8.1 Technical effect of the differing feature (channel connected to body with rigid connector with a bearing) and the objective technical problem
- 8.1.1 Based on the differing feature, the opposition division considered the objective technical problem to be: the provision of a connection means for connecting the channel to the body (see impugned decision, reasons, 9.1.2). As the Board considers it implicit that D1 discloses a connection means (albeit not the one claimed), the problem of providing a connection means is already solved by D1. Thus, the Board agrees with the appellant-opponent (cf. its appeal grounds, pages 7 and 8, sections 6.2 and 6.3) that this is not a suitable formulation for the objective technical problem.
- 8.1.2 According to established jurisprudence (see CLB, I.D. 4.2.2) "an objective definition of the problem to be solved by the invention should normally start from the problem described in the application/contested patent.

Only if examination shows that the problem disclosed was not solved or if inappropriate prior art was used to define the problem, is it necessary to investigate which other problem objectively exists".

- 8.1.3 In the present case, the differing feature is mentioned only once in the description (see published specification, end of paragraph [0026]). There, no particular effect, advantage or associated problem is mentioned. Moreover, although D1 (which discloses a flexible tube connector) is not mentioned in the patent, the idea of joining the fluid channel to the body using a rigid connector with a bearing is juxtaposed in paragraph [0026], last two sentences, with a flexible tube connector: "The channel may be connected to the body by a flexible connector, such as a flexible cable and/or a flexible tube. The channel can be connected to the body by a rigid electric and/or fluid connection with a bearing."
- 8.1.4 Nothing in this text suggests the one or the other connector might have an advantage over the other. Rather, being described in separate sentences without comparison or comment they are merely presented as equivalent alternatives. In other words, the technical effect of a rigid fluid connection with a bearing is that it provides an alternative to a flexible connection.
- 8.1.5 In this regard, the Board is not convinced by the proprietor's argument that the skilled person would come to a different conclusion in the light of D1. The proprietor has pointed to D1, figure 6 and page 8, lines 17 to 22 and page 9, first two lines and argued (see for example its letter of 4 December 2025, page 5) that the tube 34 will be "pulled and twisted" when

moving the cradle 42 leading to inner tensions within the tube material "which will likely result in twisting of the tube 34 around its longitudinal axis. Since the (flexible) tube 34 and the (flexible) cable 20 of D1 are arranged side-by-side and shifted in position each time that the cradle 42 is moved (see Figs. 6 and 11 of D1), the tube 34 may become entangled with the cable 20. The tension on and/or tangling of the tube 34 may lead [to] interference with rotation or liquid communication through the tube 34."

8.1.6 The Board notes that the differing feature (channel is connected to the body by a rigid connector with a bearing) pertains only to how the channel is *connected* to the body. D1 does not show or describe what happens at the point of connection of the flexible tube to the body. Whether or not there is tension in D1's tube remote from this connection point where the channel enters the body or whether or not it might twist there as D1's cradle 42 is moved therefore does not demonstrate that having the channel flexibly connected to the body is inferior to a rigid connection with a bearing. By the same token, the claim defines a communication channel configured to guide a liquid between the module and the body but is silent as to whether there is additionally an electrical cable. Therefore, whether or not D1's flexible tube 34 might become entangled with its electrical cable 20 (cf. figure 6) is likewise irrelevant for the consideration of any advantage of the claimed rigid connector with a bearing for the liquid channel compared to a flexible connector.

8.1.7 Similarly, the further advantages explained by the proprietor, namely a space-saving design with a smaller slit through which the liquid channel may leave the arm

and a slimmer design of the arm are not disclosed in the specification and based only on what D1 shows about how its flexible tube communication channel enters the body from the arm, as shown in figure 6. As what can be seen there is not concerned with how the fluid channel connects to the body, it cannot demonstrate a disadvantage of a flexible connector for the fluid channel to the body compared to a rigid connector with a bearing.

8.1.8 For these reasons, contrary to the proprietor's opinion, the Board is not convinced that the objective technical problem solved by the differing feature is one of a more reliable liquid connection, providing a space saving machine or a slimmer arm. Rather, the claimed rigid connector with a bearing is merely an alternative to D1's flexible connector. In the light of the above, the Board agrees with the appellant-opponent (see its appeal grounds, page 8, section 6.6) that the objective technical problem can be formulated as: To provide an alternative connection to a flexible connection between the communication channel and the body, while permitting pivoting between the two components.

8.2 Obviousness of the differing feature

8.2.1 It is common ground that the skilled person would know of a rigid connection with a bearing for a fluid connection from their general knowledge. The opposition division's found this to be so when considering the matter of sufficiency of disclosure (decision, reasons, point 3.2.1 : such connections are "well known in the related art", so that the skilled person would be able to carry out the invention of claim 12 of the main request. This has been acknowledged by the proprietor

(see its reply to the appeal, page 3, second and third paragraphs): "the skilled person is well aware of how such bearing may be provided as part of such liquid connection" and "We note that the Opponent has not challenged the Division's finding that liquid connections with a bearing are known and may be implemented by those skilled in the art".

8.2.2 The proprietor has pointed out with reference to the CLB I.D.8.3.1 that, although the skilled person's level of skill is the same for both Art. 56 and Art. 83 EPC, the two starting points differ; for inventive step purposes, the skilled person knows only the prior art; for sufficiency of disclosure, they know the prior art and the disclosed invention. The proprietor has argued that, although if instructed to do so after having read the patent, the skilled person would be able to *implement* a rigid fluid conductor with a bearing, it would not be *obvious* when starting from D1 and without knowledge of the patent to arrive at such a connector because no proof that this belongs to common general knowledge in the field of coffee machines has been provided and no other document has been provided which demonstrates such connections to be known in the context of a coffee machine.

8.2.3 The Board does not find the proprietor's arguments convincing. It is common ground that the skilled person, namely a mechanical engineer with expertise in beverage preparation machines such as coffee machines, knows of liquid connections with a bearing and how to implement them - it belongs to their general knowledge for the purpose of assessing sufficiency of disclosure. Since the same skilled person must be considered when assessing inventive step (albeit without prior knowledge of the patent), it behoves no evidence to

prove this to also belong to their general knowledge for the purpose of assessing inventive step. Likewise they do not need to discover this knowledge from prior art.

8.2.4 Turning to the objective technical problem, the skilled person's eye is focussed on finding an alternative to the flexible connection for a fluid communication channel to a body of a beverage preparation machine (as known from D1). Therefore, the Board holds that the skilled person would immediately recognise a rigid connection with a bearing from their general knowledge as offering just such an alternative to a flexible connection. They would therefore modify D1's coffee machine by providing such a connection, as a matter of obviousness and so arrive at the subject matter of claim 1.

8.3 Therefore, the subject matter of claim 1 lacks inventive step starting from D1 with the skilled person's general knowledge.

9. Auxiliary requests 12 and 12' and remittal

9.1 In its communication in preparation for oral proceedings (see sections 15 and 16), the Board discussed these issues. It wrote the following:

"15. Auxiliary requests 12 and 12'

15.1 The Board understands from the opponent's reply of 14 May 2024 to the proprietor's appeal (page 2, section 20), that the opponent's objections to auxiliary request 12 are the novelty and inventive step objections it raised in the same letter (see sections 5.4, 6.3) against claim 12 of auxiliary request 1. By

the same token, its objections against auxiliary request 12' are the novelty and inventive step objections it raised in the same letter (see sections 7.1 and 7.2) against claim 12 of auxiliary request 1'.

15.2 The sole independent claim 1 of these requests develop[s] the idea of a beverage preparation machine with first and a second modules. Although they featured in claim sets considered by the opposition division (main request, claim 12 and auxiliary request 1', claim 12) the only issue considered by the opposition division in its decision for those requests was the matter of whether their claim sets, with their multiple independent claims, were allowable under Rule 80 EPC. The opposition division decided this was not the case (decision - sections 1.4.3 and 2) and so did not examine any other substantive issues.

16. Remittal

16.1 According to Article 11 RPBA, first sentence, the Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so.

16.2 In accordance with established jurisprudence (see CLBA, V.A.9.3.2 a): Since the main purpose of appeal proceedings is to give a losing party an opportunity to challenge a decision on its merits, remittal in accordance with Art. 111(1) EPC has generally been considered by the boards where essential questions regarding the patentability of the claimed subject-matter have not yet been examined and decided on by the department of first instance.

16.3 The Board is aware that this case has already been considered by two opposition divisions and by this Board in a different composition. Nevertheless, the subject matter of the independent claims of these requests is different from that already considered by the opposition division for higher ranking requests, and thus the novelty and inventive step issues raised by the opponent are also different.

16.4 Nor are these issues a straightforward development of what has already been considered in the impugned decision and upon which the Board has based its preliminary opinion. In particular, the claimed subject matter removes certain features and adds new ones compared to what has been examined hitherto, thus taking the invention in a different direction. Moreover, further and different prior art is cited for novelty and inventive step by the opponent. This shifts the factual and evidential framework of examination. In other words it is a fresh case. The Board considers this to be a special reason for remitting the case to the opposition division for further prosecution. Should the Board decide otherwise, the requests may need to be considered in substance".

9.2 Neither in writing nor at the oral proceedings did the parties comment on these aspects of the communication, other than to voice that they did not object to the proposed remittal of the case. Having reviewed these aspects at the oral proceedings, the Board saw no reason to deviate from its preliminary opinion.

10. Since the Board found that the patent could not be maintained according to any of the auxiliary requests up to and including the one found allowable by the opposition division (auxiliary request 11), the decision under appeal must be set aside. Since the Board found there to be special reasons for it not dealing with the proprietor's lower ranked requests (auxiliary requests 12 and 12'), the Board must remit the case to the opposition division.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated