



Local Division Munich

UPC_CFI_508/2023

Decision by default
of the Court of First Instance of the Unified Patent Court
delivered on January 9th 2025

APPLICANT

air up group GmbH, Friedenstrasse 22a, 81671 Munich, Germany

Represented by: Jan Boesing, BARDEHLE PAGENBERG Partnerschaft mbB

Defendant

Guangzhou Aiyun Yanwu Technology Co., Ltd., A09-3, No.9, Chentian Dashigang S.,
Road, Huangshi Street, Baiyun District, Guangzhou, China

PATENT AT ISSUE

EP 3 655 341

DECIDING JUDGES

Presiding judge

Matthias Zigann

Judge-rapporteur

Tobias Pichlmaier

Legally qualified judge

Pierluigi Perrotti

LANGUAGE OF THE PROCEEDINGS:

English

DECISION ISSUED ON:

January 9th 2025

Facts

Applicant alleges infringement of claim 1 and dependent claims 2, 4 and 10 of EP 3 655 341 (patent at issue) by Defendant.

The patent at issue is protecting a drinking device for retronasal reception of an aroma substance.

Claim 1 of the patent at issue reads:

A drinking device for retronasal reception of an aroma substance, comprising: - a storage container (12) for drinking liquid; - at least one aroma container (20) through which air can flow; and - a transport channel (18) for drinking liquid running from the storage container (12) to a mouth end (28) of the drinking device (10); and - an air channel (22) for transport of aromatised air running from at least one of the at least one aroma container (20) to the transport channel (18) for drinking liquid; characterised in that the air channel (22) comprises a chamber (87) which is arranged between a dismountable head part (14) of the drinking device (10) and the transport channel (18) for drinking liquid and which is preferably annular.

Claimant is the registered proprietor of the patent at issue.

The Defendant is a Chinese company which, through its website offers a drinking system comprising a drinking bottle with a mouthpiece and aroma pods.





The authorized representatives of the Applicant successfully carried out a test order of the offers and contested products to an address in Germany.

Applicant therefore requests the following decision:

A. The Defendant is ordered to cease and desist from

in the territory of the UPC Member States, namely Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Sweden,

offering, placing on the market, using, importing or storing for those purposes

a drinking device for retronasal reception of an aroma substance, comprising:

a storage container (12) for drinking liquid;

at least one aroma container (20) through which air can flow;

and

a transport channel (18) for drinking liquid running from the storage container (12) to a mouth end (28) of the drinking device (10); and

an air channel (22) for transport of aromatised air running from at least one of the at least one aroma container (20) to the transport channel (18) for drinking liquid;

characterised in that

the air channel (22) comprises a chamber (87) which is arranged between a dismountable head part (14) of the drinking device (10) and the transport channel (18) for drinking liquid and which is preferably annular,

(claim 1 of EP 3 655 341)

in particular, if

this drinking device further comprises a throttling device and/or sealing device, preferably in a mouthpiece (16) comprising the mouth end (28), wherein preferably the mouthpiece (16) is movable from a sealing position to a non-sealing position,

(claim 2 of EP 3 655 341)

in particular, if

this drinking device is characterised in that one of the at least one, preferably removable, aroma container (20) comprises the sealing device, wherein the aroma container (20) is movable from a sealing position to a non-sealing position,

(claim 4 of EP 3 655 341)

in particular, if

this drinking device is characterised in that the air channel (22) has a minimum cross-sectional area between 0.2 mm² and 4.9 mm².

(claim 10 of EP 3 655 341)

- B. In the event of any infringement of the order according to request A., the Defendant shall pay to the court a penalty payment (if need be, repeatedly) of up to EUR 100,000 for each day of infringement.
- C. The Defendant is ordered to pay the costs of the proceedings.
- D. The orders are immediately effective and immediately enforceable.

With regard to further details of Applicant's application, reference is made to the written submissions.

The application was served to the defendant in accordance with Rule 275.2 RoP (App_64018/2024). Within the letter of service, defendant was informed that a decision by default may be issued, if within the time limit foreseen by the Court defendant fails to take a step. Defendant did not respond.

Applicant further requests:

- I. A decision by default granting requests A.-D. in the request for preliminary injunction of December 27, 2023, is issued against Defendant.
- II. The decision according to item I. is published on the Court's website with the names of the parties and the file number, so that the decision can be found under the decisions published on the website.
- III. The steps ordered under item II. to bring the decision by default in the proceedings ACT_597609/2023 to the attention of the Defendant constitute good service pursuant to R. 275.2 RoP.
- IV. The order according to item III. is published on the Court's website with the names of the parties and the file number, so that the order can be found under the decisions published on the website.

Reasons

The application is admissible and well-founded. As a result of defendant's default, a decision by default is to be issued in accordance with the application (Statute of the Unified Patent Court Art. 37, Rule 355 RoP).

I. Validity of the patent at issue

The patent at issue is in force. According to the case law of the European Court of Justice (Case C-44/21), filed European patents enjoy a presumption of validity from the date of publication of their grant. The Court has no reason to assume that the patent could be invalid.

Thus, the patent at issue enjoys the full scope of the protection guaranteed, inter alia, by Directive 2004/48.

II. Subject matter of the patent at issue

The patent at issue describes the problem that fluctuations in the pressure and flow conditions in the transporting channel occur at the end of the drinking process. These fluctuations can lead to drinking fluid getting into the air channel and/or the aroma container. This can lead to unwanted dilution of the fragrance-emitting substance or to the occurrence of hygiene problems.

According to the patent at issue, the object of the invention is to propose a drinking device which allows the user to have an improved taste experience ([0008]).

III. Patent Claim

For achieving this object, the patent at issue suggests a drinking device comprising the following features:

- 1 A drinking device for retronasal reception of an aroma substance, comprising:
 - 1.1 a storage container (12) for drinking liquid;
 - 1.2 at least one aroma container (20) through which air can flow; and

- 1.3 a transport channel (18) for drinking liquid running from the storage container (12) to a mouth end (28) of the drinking device (10); and
 - 1.4 an air channel (22) for transport of aromatised air running from at least one of the at least one aroma container (20) to the transport channel (18) for drinking liquid;
- characterised in that
- 1.5 the air channel (22) comprises a chamber (87) which is arranged between a dismountable head part (14) of the drinking device (10) and the transport channel (18) for drinking liquid and which is preferably annular.

Figure 1 of the patent at issue illustrates a drinking device with features 1 to 1.4:

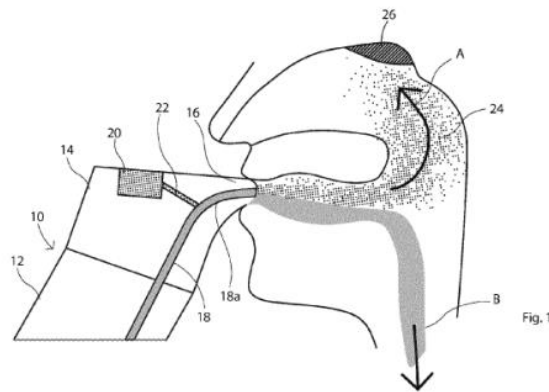


Fig. 1: Fig. 1 of EP341

Feature 1.5 is shown in Figure 33b:

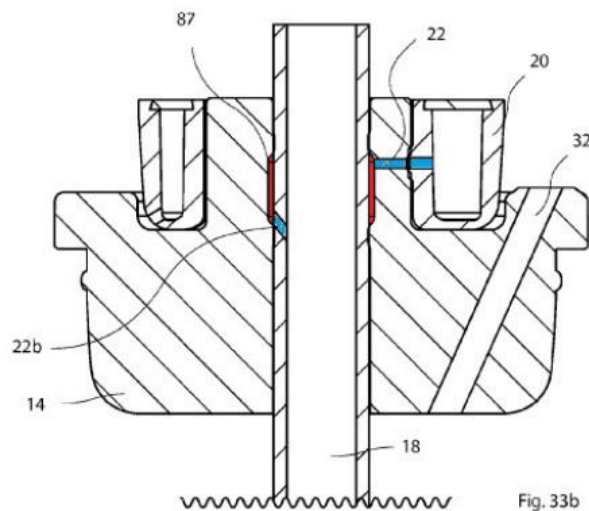


Fig. 2: Fig. 33b of EP341

IV. Infringement

By selling their drinking bottle with a mouthpiece and aroma pods (“contested product”), defendants are infringing independent claim 1 and dependent claims 2, 4 and 10 of the patent at issue.

1. The contested product is a drinking device for retronasal reception of an aroma substance. The contested product comprises a *storage container* for drinking liquid. The contested product comprises an *aroma container* (referred to as “Flavor Pod” by the defendant) through which air can flow:



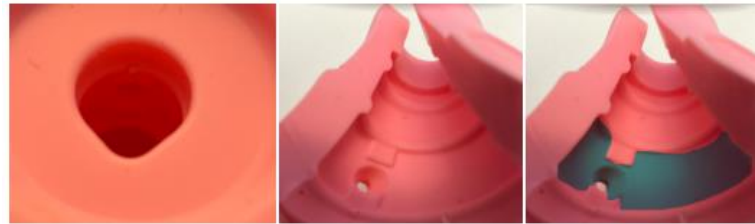
Furthermore, the contested product comprises a *transport channel* for drinking liquid running from the storage container to a mouth end of the drinking device:



The contested product also comprises an air channel for transport of aromatized air running from the aroma container to the transport channel:

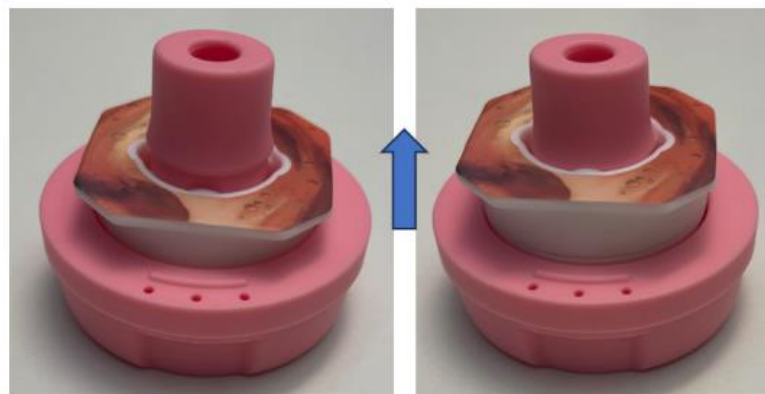


Finally, the air channel of the contested product comprises an annular chamber which is arranged between a dismountable head part of the drinking device and the transport channel:



2. The contested product also infringes dependent claim 2.

The contested product comprises a sealing device for the air channel. In the sealing position, the holes in the mouthpiece and in the aroma container are not aligned. Thus, the air channel between the aroma container and the transport channel is interrupted and thus sealed:

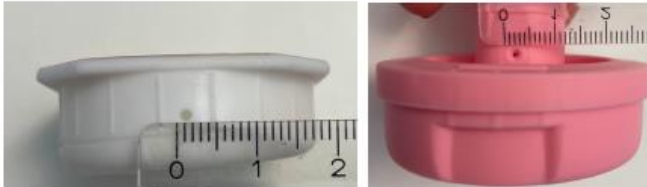


3. The contested product also infringes dependent claim 4.

In the contested product, the aroma container is movable from a sealing position to a non-sealing position, as well as removable, and interacts with the mouthpiece to seal and un-seal the air channel. In the sealing position of the mouthpiece of the contested product, the holes in the mouthpiece and in the aroma container are not aligned. Thus, the air channel between the aroma container and the transport channel is interrupted and thus sealed. To “unseal” the infringing device, the aroma container can be pulled up. This aligns the holes in the mouthpiece and in the aroma container and thus opens the air channel, so that aromatized

air can flow from the aroma container through the mouthpiece (with the air chamber) into the transport channel.

4. The contested product furthermore infringes dependent claim 10, because the air channel has a minimum diameter of ca. 1 mm:



V. Necessity and proportionality

The requested order on provisional measures is necessary and proportionate.

The application was filed without undue delay (R. 211.4 RoP). It has only been a few weeks since the Applicant first obtained reliable knowledge of the facts of the infringement when receiving the test purchase on November 27th 2023.

The infringing activities of the Defendant are capable of causing considerable and long-term damage to the Applicant by directly reducing the Applicant's market shares.

Since the Defendant reacted dismissive to the Applicant's pre-litigation warning, the Applicant is urgently dependent on the requested preliminary injunction. The behavior shown by the Defendant in their response to the warning letter does not suggest that defendant will refrain from further acts of infringement in the future.

VI. Enforcement

The enforceability of the decision follows from Rule 355.4 RoP.

VII. Service

A decision on the service of this decision will be taken separately.

For these reasons, the Munich Local Division of the UPC (Panel 1), composed of the presiding judge Dr. Zigann, the legally qualified judges Pichlmaier and Perrotti by means of a decision by default rules as follows:

Order

I. The Defendant is ordered to cease and desist from

in the territory of the UPC Member States, namely Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Sweden,

offering, placing on the market, using, importing or storing for those purposes

a drinking device for retronasal reception of an aroma substance, comprising:

a storage container (12) for drinking liquid;

at least one aroma container (20) through which air can flow;

and

a transport channel (18) for drinking liquid running from the storage container (12) to a mouth end (28) of the drinking device (10); and

an air channel (22) for transport of aromatised air running from at least one of the at least one aroma container (20) to the transport channel (18) for drinking liquid;

characterised in that

the air channel (22) comprises a chamber (87) which is arranged between a dismountable head part (14) of the drinking device (10) and the transport channel (18) for drinking liquid and which is preferably annular,

(claim 1 of EP 3 655 341)

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this drinking device further comprises a throttling device and/or sealing device, preferably in a mouthpiece (16) comprising the mouth end (28), wherein preferably the mouthpiece (16) is movable from a sealing position to a non-sealing position,

(claim 2 of EP 3 655 341)

in particular, if

this drinking device is characterised in that one of the at least one, preferably removable, aroma container (20) comprises the sealing device, wherein the aroma container (20) is movable from a sealing position to a non-sealing position,

(claim 4 of EP 3 655 341)

in particular, if

this drinking device is characterised in that the air channel (22) has a minimum cross-sectional area between 0.2 mm² and 4.9 mm².

(claim 10 of EP 3 655 341)

- II. In the event of any infringement of this order according to I., the Defendant shall pay to the court a penalty payment (if need be, repeatedly) of up to EUR 100,000 for each day of infringement.
- III. The Defendant is ordered to pay the costs of the proceedings.
- IV. The orders are immediately effective and immediately enforceable.
- V. Court's registry is instructed to publish this order on the Court's website with the names of the parties and the file number, so that the decision can be found under the decisions published on the website.

Dr. Zigann Presiding Judge	
Pichlmaier Judge-Rapporteur	
Perrotti Legally qualified judge	
Clerk	

INFORMATION ON THE APPEAL

Defendant may lodge an Application to set aside that decision within one month of service of the decision (Rule 356.1 RoP)

INFORMATION ON THE DECISION

Procedure number: UPC_CFI_508/2023

Number of the related request: ACT_597609/2023

Type of request: request for provisional measures