



Local Division Munich

UPC_CFI_509/2023

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 3 897 305

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 EP 3 897 305 (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 the retronasal perception of an aroma substance, comprising:

- a storage container (12) for drinking liquid;
- a head part (14), which can be fastened on the storage container and has a mouth end (28);
- an exchangeable aroma container (20), through which air can flow and which can be fastened on the head part (14); and
- a drinking straw (66), which is fixed in the head part (14), said drinking straw comprising:
 - a transport channel (18) for drinking liquid, said transport channel extending from the storage container (12) towards the mouth end (28) of the head part (14); and
 - an air channel (22) for transporting aromatized air, said air channel extending from the aroma container (20) towards the mouth end (28) of the head part (14);

characterized in that the aroma container (20) through which air can flow has an essentially annular aroma chamber (48) comprising a carrier substance that contains a fluid with an aromatizing substance.

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.



Manufacturer Info
 Bottle & Pod Manufacturer: Guangzhou Aiyun Yanwu Technology Co.,Ltd
 Address: A09-3, No.9, Chentian Dashigang S.Road, Huangshi Street, Baiyun District, Guangzhou, China
 Tel: +86-4000835388
 Email: andy.long@joy-fit.cn,
 UK Website: <https://joy-fit.cn/>
 US Website: <https://joyfit.cn/>



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
- I. a drinking device for the retronasal reception of an aroma substance, comprising:
- a storage container (12) for drinking liquid;
- a head part (14), which can be fastened on the storage container and has a mouth and (28) an exchangeable aroma container (20), through which air can flow and which can be fastened on the head part (14); and
- a drinking straw (66), which is fixed in the head part (14), said drinking straw comprising:
- a transport channel (18) for drinking liquid, said transport channel extending from the storage container (12) towards the mouth end (28) of the head part (14); and
- an air channel (22) for transporting aromatized air, said air channel extending from the aroma container (20) towards the mouth end (28) of the head part (14);
- characterized in that
- the aroma container through which air can flow has an essentially annular aroma chamber (48) comprising a carrier substance that contains a fluid with an aromatizing substance.,

(claim 1 of EP 3 897 305)

in particular, if

the exchangeable aroma container (20) can be moved, in relation to the head part (14), in an axial direction from a sealing position to a non-sealing position,

(claim 2 of EP 3 897 305)

in particular, if

this drinking device is further comprising a lid (40) which can preferably be screwed onto the head part (14) of the drinking device and preferably has a receiving means (46) for attaching a carrying strap (45),

(claim 6 of EP 3 897 305)

in particular, if

this drinking device is characterized in that the head part (14) has an air chamber (82) in connection with the air channel (22);

(claim 7 of EP 3 897 305)

- II. an aroma container for a drinking device according to claim 1 (request A.I.), wherein:

the aroma container (48) is enclosed by a wall which comprises an interior circumferential surface (52), an exterior circumferential surface (50) as well as a top side (54) and a lower side (56); wherein

the interior circumferential surface (52) has a non-circular cross-section and is shaped in such a way that the aroma container (20) can only be put in a single rotational direction onto a component shaped complementarily to the interior circumferential surface (52) and can be shifted in an axial direction essentially perpendicular to the top side (54) in relation to the component;

at least one first opening (58) for air to flow in; and

at least one second opening (60) for air to flow out,

(claim 8 of EP 3 897 305)

in particular, if

this aroma container is characterized in that the at least one second opening (60) for air to flow out is arranged in the interior circumferential surface (52).

(claim 10 of EP 3 897 305)

- 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. 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_597615/2023 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 increasing need to ingest drinking liquids which on the one hand have a pleasant taste, but on the other hand prevent health risks or contain high quantities of calories ([0002]). Popular aromatized water still contains these disadvantages ([0003]). The disadvantages are also not solved by solutions such as adding flavouring aroma to the beverage just before it is consumed.

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 (Claim 1):

- 1 A drinking device for retronasal reception of an aroma substance, comprising:
 - 1.1 a storage container (12) for drinking liquid;
 - 1.2 a head part (14), which can be fastened on the storage container and has a mouth end (28);
 - 1.3 an exchangeable aroma container (20), through which air can flow and which can be fastened on the head part (14);
 and
 - 1.4 a drinking straw (66), which is fixed in the head part (14), said drinking straw comprising:
 - 1.5 a transport channel (18) for drinking liquid, said transport channel extending from the storage container (12) towards the mouth end (28) of the head part (14); and
 - 1.6 an air channel (22) for transporting aromatized air, said air channel extending from the aroma container (20) towards the mouth end (28) of the head part (14);
 characterized in that
 - 1.7 the aroma container (20) through which air can flow has an essentially annular aroma chamber (48) comprising a carrier substance that contains a fluid with an aromatizing substance.

Figure 1 of the patent at issue illustrates a drinking device with features 1 to 1.6:

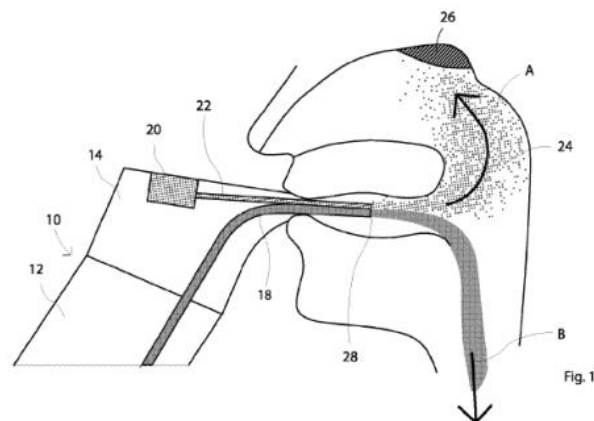


Fig. 1: Fig. 1 of EP305

Feature 1.7 is shown in Figure 6:

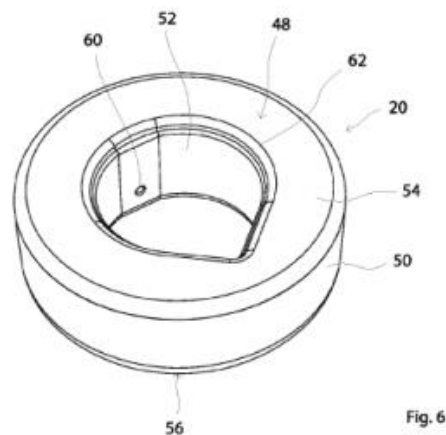


Fig. 2: Fig. 6 of EP'305

Claim 8 can be structured as follows:

8. An aroma container for a drinking device according to one of the preceding claims for the retronasal perception of an aroma substance, wherein:
 - 8.1 the aroma chamber (48) is enclosed by a wall which comprises an interior circumferential surface (52), an exterior circumferential surface (50) as well as a top side (54) and a lower side (56); wherein
 - 8.2 the interior circumferential surface (52) has a non-circular cross-section and is shaped in such a way that the aroma container (20) can only be put in a single rotational direction onto a component shaped complementarily to the interior circumferential surface (52) and can be shifted in an axial direction essentially perpendicular to the top side (54) in relation to the component;
 - 8.3 at least one first opening (58) for air to flow in; and
 - 8.4 at least one second opening (60) for air to flow out.

IV. Infringement

By selling the contested drinking bottle with a mouthpiece and aroma pods (“contested product”), defendant is infringing 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 a head part, which can be fastened on the storage container and has a mouth end:



The contested product comprises an exchangeable aroma container, through which air can flow and which can be fastened on the head part (referred to as “Flavor Pod” by the defendant):



When using the infringing product, the aroma container is fastened on the head part:



Furthermore, the contested product comprises a drinking straw, which is fixed in the head part:



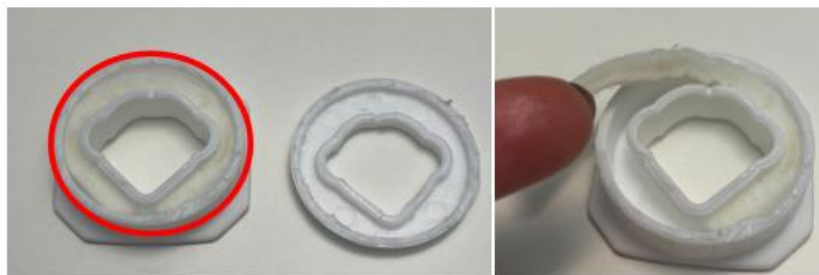
The contested product also comprises a transport channel for drinking liquid, said transport channel extending from the storage container towards the mouth end of the head part:



The contested product also comprises an air channel for transporting aromatized air, said air channel extending from the aroma container towards the mouth end of the head part:



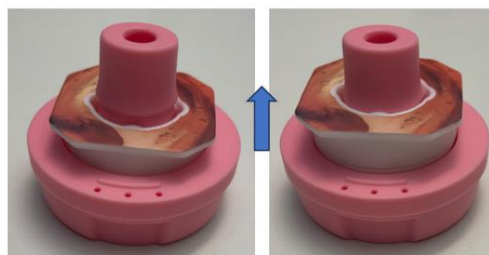
Finally, the aroma container through which air can flow has an essentially annular aroma chamber comprising a carrier substance that contains a fluid with an aromatizing substance:



2. The contested product also infringes dependent claim 2.

The contested product is characterized in that the exchangeable aroma container can be moved in relation to the head part, in an axial direction from a sealing position to a non-sealing position.

The flavoured pod of the contested product can be moved up and down in relation to the head part, which allows the sealing and non-sealing of the air channel:



3. The contested product also infringes dependent claim 6.

The contested product comprises a lid which can preferably be screwed onto the head part of the drinking device and preferably has a receiving means for attaching a carrying strap.

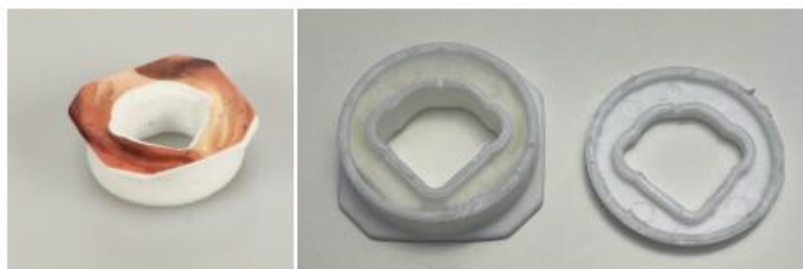


4. The contested product furthermore infringes dependent claim 7, because the head part has an air chamber in connection with the air channel.



5. The contested product also infringes claim 8.

Defendant's flavoured pods comprise an aroma chamber which is enclosed by a wall which comprises an interior circumferential surface, an exterior circumferential surface as well as a top side and a lower side:



Furthermore, the interior circumferential surface has a non-circular cross-section and is shaped in such a way that the aroma container can only be put in a single rotational direction onto a component shaped complementarily to the interior circumferential surface and can be shifted in an axial direction essentially perpendicular to the top side in relation to the component:



Defendant's flavoured pods finally comprise a first opening for air to flow in and a second opening for air to flow out:



Defendant's flavoured also pods comprise a second opening for air to flow out which is located on the interior circumferential surface (infringement of dependent claim 10).

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

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

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

a storage container (12) for drinking liquid;

a head part (14), which can be fastened on the storage container and has a mouth and (28) an exchangeable aroma container (20), through which air can flow and which can be fastened on the head part (14); and

a drinking straw (66), which is fixed in the head part (14), said drinking straw comprising:

a transport channel (18) for drinking liquid, said transport channel extending from the storage container (12) towards the mouth end (28) of the head part (14); and

an air channel (22) for transporting aromatized air, said air channel extending from the aroma container (20) towards the mouth end (28) of the head part (14);

characterized in that

the aroma container through which air can flow has an essentially annular aroma chamber (48) comprising a carrier substance that contains a fluid with an aromatizing substance,

(claim 1 of EP 3 897 305)

in particular, if

the exchangeable aroma container (20) can be moved, in relation to the head part (14), in an axial direction from a sealing position to a non-sealing position,

(claim 2 of EP 3 897 305)

in particular, if

this drinking device is further comprising a lid (40) which can preferably be screwed onto the head part (14) of the drinking device and preferably has a receiving means (46) for attaching a carrying strap (45),

(claim 6 of EP 3 897 305)

in particular, if

this drinking device is characterized in that the head part (14) has an air chamber (82) in connection with the air channel (22);

(claim 7 of EP 3 897 305)

II. an aroma container for a drinking device according to claim 1, wherein:

the aroma container (48) is enclosed by a wall which comprises an interior circumferential surface (52), an exterior circumferential surface (50) as well as a top side (54) and a lower side (56); wherein

the interior circumferential surface (52) has a non-circular cross-section and is shaped in such a way that the aroma container (20) can only be put in a single rotational direction onto a component shaped complementarily to the interior circumferential surface (52) and can be shifted in an axial direction essentially perpendicular to the top side (54) in relation to the component;

at least one first opening (58) for air to flow in; and

at least one second opening (60) for air to flow out,

(claim 8 of EP 3 897 305)

in particular, if

this aroma container is characterized in that the at least one second opening (60) for air to flow out is arranged in the interior circumferential surface (52).

(claim 10 of EP 3 897 305)

- B. 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.
- C. The Defendant is ordered to pay the costs of the proceedings.
- D. The orders are immediately effective and immediately enforceable.
- E. 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_509/2023

Number of the related request: ACT_597615/2023

Type of request: request for provisional measures