

**EIP**

# Sodastream prevails against competitor Aarke in an infringement dispute

## **SodaStream Industries Ltd. v Aarke AB (UPC\_CFI\_373/2023)**

### **Decision of 31 October 2024 (ORD\_598499/2023) [1] concerning EP 1 793 917**

Sodastream (in the following “Claimant”) and Aarke (in the following “Defendant”) are both known companies on the European consumer market, mainly due to their offering of carbonating devices for transforming tap water into sparkling water. The patent in suit EP 1 793 917 relates to such kind of carbonating devices for carbonating a liquid included in a container with a pressurized gas. In practice, the container is typically a bottle filled with water which is carbonated with carbon dioxide to generate the sparkling water. If this bottle is plastic, no particular protection against bottle breakage during carbonating is needed; however, if a glass bottle is employed, some shield against shattering glass will be required.

According to claim 1, the claimed device comprises a flask for receiving the container (such as a glass bottle). Further, the device comprises a filling head having means for adding gas into a liquid of the container. In an insertion position the filling head is spaced away from the flask while in a carbonating position the flask and the filling head are in contact to each other to form a substantially closed cavity. Finally, claim 1 foresees that the filling head and the receiving flask are provided with locking means for interlocking there between, preferably with a bayonet.

The Defendant is offering, distributing and importing a product of the “Aarke Carbonator Pro” line (hereinafter: the challenged embodiment) within the territorial scope of the UPCA (including Germany) for which the Claimant seeks protection.

In the present case, the Defendant refrained from filing a counterclaim for revocation. Instead, it relied on the so-called Gillette Defence, which originates from a 1913 UK decision. For this, the Defendant refers to prior art (US 4,323,090) and argues that claim 1 cannot be interpreted so broadly as to cover the free state of the art. The Claimant argues that the Gillette Defence is not in accordance with the UPCA and is therefore not admissible before the UPC in general or in the present case.

In its decision, the Düsseldorf Local Division concludes that the Gillette Defence is not successful.

Pursuant to Art. 69 (1) S. 1 EPC, the extent of the protection conferred by a European Patent shall be determined by the claims. Nevertheless, the description and the drawings shall be used to interpret the claims. Prior art is not mentioned there. This does however not mean that prior art is always irrelevant to the definition of the scope of the patent and thus to claim construction.

As the prior art document on which the Defendant relied on for the Gillette Defence is discussed in the background section in the description of the patent in suit, the relevant considerations must be taken into account either way. The Court decides that if the patent distinguishes itself from the prior art in a particular way, an interpretation that negates that distinction must be avoided (cf. Headnote 2 of present decision).

By considering these principles for claim construction, the Court comes to the conclusion that the use of any flask which forms an interlocking connection with the filling head and which contributes to burst protection for a burstable glass container by forming a substantially closed cavity together with the filling head rather than putting the liquid container only on the base station itself, distinguishes the patent in suit from the prior art.

As this construction is also present in the challenged embodiment which was used for demonstration at the oral hearing and which was left at the Court for further inspection the Court concludes that the challenged embodiment realises fundamental concepts of claim 1.

Moreover, the Court does not follow the argumentation of the Defendant which referred to specific drawings of the patent in suit for narrowing the scope of the patent. In headnote 1 of its decision, the Court summarizes that “the claim must not be limited to the scope of preferred embodiments. The scope of a claim extends to subject-matter that the skilled person understands as the patentee’s claim after interpretation using the description and drawings. A claim interpretation which is supported by the description and drawings as a whole is generally not limited by a drawing showing only a specific

shape of a component” (cf. Headnote 1 of present decision).

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By applying these standards together with the other basis principles for claim construction as established by the UPC already at an earlier stage (CoA, order of 26 February 2024 - UPC\_CoA\_335/2023 App\_576355/2023, NanoString Technologies and others v 10x Genomics and others, p. 24; Order of 25 September 2024 – UPC\_CoA 182/2024, APL\_21143/2024, para 82 et.seq.; CFI CD Munich, UPC\_CFI\_1/2023, Decision of 16 July 2024, para 6.6), the Court decides that also all other features of claim 1 are realised in the challenged embodiment “Aarke Carbonator Pro”.

In summary, the Court finds that the patent in suit is infringed and grants an injunction against the continuation of the infringement in seven UPCA member states, namely Austria, Belgium, Finland, France, Germany, Italy and Sweden, where the respective national parts of the EP bundle patent are in force.

The only bright spot for the Defendant in this decision may be that the Court does not grant a right of publication of the decision. According to headnote 3 of the present decision, “the right of publication includes a further element of punishment. Publication should therefore only be granted if the protection of the Claimant is not provided effectively and sufficiently ensured by other measures ordered.”

[1] <https://www.unified-patent-court.org/en/node/1229>