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Practitioner's Docket No. 1859.029USD3 (KRU0022-WO-US-T5)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Marc Krüger

Group Art Unit: 1792

Serial No.: 16/538,752

Examiner: Smith, Chaim A.

Filed: August 12, 2019

Conf. No.: 8143

For: PORTION CAPSULE HAVING AN IDENTIFIER

Attorney Docket No.: 1859.029USD3 (KRU0022-WO-US-T5)

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Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE AND AMENDMENT**

In response to the Office Action mailed November 8, 2019, please amend the above-identified application as follows and consider the following remarks.

## Amendments to the Claims

1) – 8) (Cancelled)

9) (Currently Amended) A method of using a ~~portion capsule~~system for making a coffee beverage, the method comprising:

providing an apparatus including a ~~bar code~~barcode reader, the apparatus being adapted to supply heated water;

loading ~~the a first~~ portion capsule into the apparatus, the first portion capsule including a first foil lid sealed to a base element having a cavity within which a powdered coffee material is located, the ~~portion capsule including (i) a base element including (a) a cavity with including a central portion, and (b) having a plurality of ribs that are (i) radially spaced, (ii) vertically oriented, and (iii) configured to extend toward the central portion of the cavity and (2) the base element including a circumferential flange having a top side and a bottom side with a first barcode located on the bottom side;~~

reading the first barcode with the barcode reader;

controlling a production process of a first~~the~~ coffee beverage based upon the reading of the first~~according to the read~~ barcode;

piercing the first foil lid with a mandrel of the apparatus in a region that is offset from a central axis of the first portion capsule; and

sealing the top side of the flange and/or the first foil lid against a seal of the apparatus;

introducing the heated water into the first portion capsule through a water inlet of the apparatus that is arranged along the central axis of the portion capsule to form the coffee beverage;

loading a second portion capsule into the apparatus, the second portion capsule including a second foil lid sealed to a base element having a cavity within which a powdered coffee material is located, the cavity of the second portion capsule including a central portion, and a plurality of ribs that are (i) radially spaced, (ii) vertically oriented, and (iii) configured to extend toward the central portion of the cavity, the base element of the second portion capsule including a circumferential flange having a top side and a bottom side with a second barcode located on the bottom side and being different from the first barcode;

reading the second barcode with the barcode reader;

controlling a second production process of a second coffee beverage based upon the reading of the second barcode, the second production process being different than the first production process;

piercing the second foil lid with the mandrel of the apparatus in a region that is offset from a central axis of the second portion capsule;

sealing the top side of the flange and/or the second foil lid of the second portion capsule against the seal of the apparatus, and

introducing the heated water into the second portion capsule to form the second coffee beverage.

10) (Currently Amended) The method according to claim 9, wherein the first portion capsule and/or the second portion capsule is free of a filter.

11) (Currently Amended) The method according to claim 10, wherein the method comprises: providing holes in the first foil lid and/or the second foil lid.

12) (Currently Amended) The method according to claim 11, wherein one or both of the introducing steps includes: inducing turbulent flow of the heated water by the ribs.

13) (Previously Presented) The method according to claim 9, wherein the method comprises: comparing the read barcode with a stored reference.

14) (Previously Presented) The method according to claim 13, wherein the method comprises: activating the apparatus if the read barcode matches with the stored reference.

15) (Previously Presented) The method according to claim 14, wherein the method comprises: activating a water-providing-pressure pump of the apparatus if the read barcode matches with the stored reference.

16) (Previously Presented) The method according to claim 15, wherein the barcode reader is placed in a media chute of the apparatus.

17) (Previously Presented) The method according to claim 13, wherein the method comprises activating a water-providing-pressure pump of the apparatus if the read barcode matches with the stored reference.

18) (Previously Presented) The method according to claim 17, wherein the barcode reader is placed in a media chute of the apparatus.

- 19) (Cancelled)
- 20) (Cancelled)
- 21) (Cancelled)
- 22) (Cancelled)
- 23) (Cancelled)
- 24) (Cancelled)
- 25) (Cancelled)

26) (Currently Amended) A method of using a system for making a coffee beverage, comprising steps of:

providing an apparatus including a ~~detector-barcode reader~~ configured to read a barcode, and being adapted to supply heated water under pressure, ~~the apparatus including a mandrel, a water inlet, and a seal;~~

loading a first portion capsule into the apparatus, the first portion capsule including a first lid that is sealed to a base element having a cavity within which a powdered coffee material is located, the base element has been shaped to define (1) a wall (a) that defines ~~a~~ the cavity with a central interior portion, and (b) having a plurality of ribs that are (i) radially spaced, (ii) vertically oriented, and (iii) configured to extend toward the ~~cavity~~ central interior portion and (2) a circumferential flange having a top side and a bottom side with a first barcode located on the bottom side;

~~piercing the first foil lid with the mandrel in a region that is offset from a central axis of the first portion capsule;~~

~~sealing the top side of the flange of the first portion capsule and/or the first lid against the seal of the apparatus;~~

reading the first barcode with the barcode reader;

controlling production of a first coffee beverage based upon the reading of the first barcode;

introducing the heated water into the first portion capsule via the water inlet that is arranged along the central axis of the first portion capsule according to production conditions associated with the first barcode to form the first coffee beverage;

unloading the first portion capsule from the apparatus;

loading a second portion capsule into the apparatus, the second portion capsule including a second lid sealed to a base element having a cavity within which a powdered coffee material is located, the base element has been shaped to define (1) a wall (a) that defines a cavity with a central interior portion, and (b) having a plurality of ribs that are (i) radially spaced, (ii) vertically oriented, and (iii) configured to extend toward the cavity central interior portion and (2) a circumferential flange having a top side and a bottom side with a second barcode that is located on the bottom side and being different from the first barcode;

piercing the second foil lid with the mandrel in a region that is offset from a central axis of the second portion capsule;

sealing the top side of the flange of the second portion capsule and/or the second lid against the seal of the apparatus;

reading the second barcode with the barcode reader;

controlling production of a second coffee beverage based upon the reading of the second barcode;

introducing the heated water into the second portion capsule via the water inlet that is arranged along the central axis of the second portion capsule according to production conditions associated with the second barcode to form the second coffee beverage.

27) (Currently Amended) The method according to claim ~~25~~26, wherein the production conditions associated with the first barcode ~~and/or are different from the production conditions associated with the second barcode, the production conditions~~ include: pressure, temperature and/or an amount of the heated water.

28) (Currently Amended) The method according to claim 26, wherein the ~~method comprises piercing the first lid and/or the second lid with a longitudinally extending mandrel having has a~~ chamfered distal tip.

29) (New) The method according to claim 9, wherein one or both of the introducing steps include: inducing laminar flow of the heated water by the ribs.

### **Remarks**

In the Office Action dated November 08, 2019, claims 9-28 were rejected.

### **Claim Amendments**

By way of the foregoing amendments and the markings to show changes Applicant has amended the claims. No new matter has been added.

The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicant from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled.

### **Claim Objections**

The claims are objected to for reasons alleged on page 2 of the office action. Applicant has renumbered the claims to correct this typographical error. The objection is believed to be overcome and now moot.

### **Priority Applications**

Applicant includes herewith certified English language translations of the priority applications.

### **Specification Objection**

The disclosure is objected to because the first sentence of the specification does not include a status of the parent applications. Applicant includes herewith an amendment to the specification to delete the entire paragraph [0001] of the specification. MPEP 608.01(a) states, [t]he order of arrangement of specification elements as set forth in 37 CFR 1.77(b) is *preferable (e.g., not required)*. Moreover, because information relating to the status of related applications is provided

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in the Application Data Sheet that was filed with this application, Applicant submits also including this information in the specification is cumulative. Accordingly, Applicant requests the specification amendment be entered and the specification objection be withdrawn.

### **Claim Rejections – 35 USC 112**

1. Claims 10 and 19 are rejected under 35 USC 112(a) or 35 USC 112(pre-AIA), first paragraph, as allegedly failing to comply with the enablement requirement for the reasons alleged on page 3 of the office action. This rejection is respectfully traversed.

Applicant submits one having ordinary skill in the art understands that there may be several ways in which a capsule may function without a filter. For example, paragraph [00058] discloses: “During this process the raw material is extracted or dissolved and therefore the beverage is produced.” Accordingly, Applicant submits the elements of claims 10 and 19 comply with the enablement requirement. Applicant requests this rejection be withdrawn.

2. Claims 10 and 19 are rejected under 35 USC 112(a) or 35 USC 112(pre-AIA), first paragraph, as allegedly failing to comply with the written description requirement. This rejection is respectfully traversed.

The Office Action alleges the limitations in claims 10 and 19 concerning the portion capsule is free of a filter are not disclosed in the specification. Applicant disagrees, and submits this limitation is found throughout Applicant’s patent application. For example, this limitation is supported at least in the 3<sup>rd</sup> sentence of paragraph [0074], “It is provided that the base element contains the raw material and, if necessary, build-in elements like a filter” (emphasis added), and also in the 7<sup>th</sup> sentence of paragraph [0002], “Additionally the cavity could contain one or several built-in elements, such as, for example a filter” (emphasis added). Accordingly, Applicant submits the elements of claims 10 and 19 comply with the written description requirement. Applicant requests this rejection be withdrawn.

2. Claims 9-28 are rejected under 35 USC 112(b) or 35 USC 112(pre-AIA), second paragraph, as being indefinite for the reasons alleged on 4-5 of the office action. This rejection is respectfully traversed.

Applicant has amended the claims in the interest of expediting prosecution in a manner that is believed to be sufficient to overcome and render this rejection moot. Accordingly, Applicant requests this rejection be withdrawn.

### **Claim Rejections – 35 USC 103**

1. Claims 9-11, 13-15, 17, 19-23, and 26-28 are rejected under pre-AIA 35 USC 103(a) as allegedly being unpatentable over “Schifferle” (US 2005/0150391A1) in view of “Jarisch” (US 2013/0064937A1), “Sweeney” (US 2002/0020659A1), “Boyd” (US 2002/0048621A1), and “WO 2010/099806A1). This rejection is respectfully traversed.

#### **Claims 9 and 26**

The Office Action cites Jarisch for its alleged teaching of “a method of making coffee by reading a code located on the flange bottom” (Office Action, page 7). Without conceding the validity of this alleged teaching in Jarisch, Applicant submits Jarisch is not prior art to Applicant’s pending application. Applicant is entitled to a priority date of July 22, 2010, which is earlier than the Jarisch priority date. Accordingly, Jarisch is not prior art to this pending application. Accordingly, Applicant respectfully requests the rejection of claims 9 and 26 be withdrawn. Applicant requests claims 9 and 26 and all claims depending from these independent claims be allowed.

2. Claims 12 and 24-25 are rejected under pre-AIA 35 USC 103(a) as allegedly being unpatentable over “Schifferle” (US 2005/0150391A1) in view of “Jarisch” (US 2013/0064937A1), “Sweeney” (US 2002/0020659A1), “Boyd” (US 2002/0048621A1), and “WO 2010/099806A1), and further in view of “EP 1849718A1”. This rejection is respectfully traversed.

Without conceding the validity of this rejection, Applicant submits claim 12 is allowable for at least its dependence on claim 9, which is believed to be allowable for the reasons mentioned above. Claims 24-25 are cancelled; thus, the rejection of these claims is moot.

3. Claims 16, 18 are rejected under pre-AIA 35 USC 103(a) as allegedly being unpatentable over “Schifferle” (US 2005/0150391A1) in view of “Jarisch” (US 2013/0064937A1), “Sweeney” (US 2002/0020659A1), “Boyd” (US 2002/0048621A1), and “WO 2010/099806A1), and further in view of “Mahlich”. This rejection is respectfully traversed.

Without conceding the validity of this rejection, Applicant submits claims 16 and 18 are allowable for at least their dependence on claim 9, which is believed to be allowable for the reasons mentioned above.

### **Double Patenting**

Claims 9-28 are provisionally rejected on the ground of non-statutory double patenting as allegedly being unpatentable over the claims of co-pending application no. 16/438,818 in view of “Schifferle” and “Sweeney”. This rejection is respectfully traversed. Without conceding the validity of this rejection, Applicant has amended the claims to be further patentably distinct from the aforementioned co-pending application. Accordingly, Applicant submits the alleged double patenting rejection is moot, and Applicant requests it be withdrawn.

## CONCLUSIONS

In view of Applicant's amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicant submits that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any questions or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or has not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

Date: January 23, 2020

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