

**OPINION UNDER SECTION 74A**

Patent	GB 2521750 B
Proprietor(s)	Digital Drink Dispensers Limited
Exclusive Licensee	
Requester	Hanna Intellectual Property (on behalf of Valpar Micro Matic Ltd)
Observer(s)	Bryers LLP (on behalf of the Proprietor)
Date Opinion issued	13 September 2023

**The Request**

1. The Comptroller has been requested by Hanna Intellectual Property ("the Requester") on behalf of Valpar Micro Matic Ltd to issue an opinion as to whether GB 2521750 B ("the Patent") is invalid on the grounds of a lack of novelty, a lack of inventive step and exclusion from patentability. The request was filed on 23 June 2023 and was accompanied by a statement explaining the request. The statement referred to three patent documents D1: US2013/0245819 A1, D2: US2013/0106690 A1, D3: US 2007/0241120 A1, fourteen exhibits: BS1 - BS14, and a witness statement.

**Scope of the Opinion**

2. The Requester has provided their assessment of the novelty of claim 1, and also the novelty or inventiveness of the dependent claims, in view of D1, D2 and D3. They assert that some of the exhibits form prior disclosures of features of the Patent. In addition, they consider that a number of the dependent claims are invalid due to relating to excluded subject matter. My opinion is restricted to the novelty or inventiveness of each claim, as specifically requested. Due to the extensive nature of the request, I have been unable to consider the matter of excluded subject matter.

**Observations and Observations in Reply**

3. Observations were received from Bryers LLP ("the Observer") on behalf of Digital Drink Dispensers Limited ("the Proprietor") on 21 July 2023. Observations in Reply were received from the Requester on 10 August 2023.

## The Patent

4. The Patent is titled “Point-of-sale display for use by a beverage vendor”. It was filed on 11 November 2014 with an earliest priority date of 11 November 2013 and was granted on 05 February 2020. The Patent remains in force.
5. The Patent relates to an electronic display apparatus comprising a display screen for attachment to draught beverage dispensers for displaying information such as the name of the beverage, the producer of the beverage and artwork advertising the beverage. The content displayed on the screen is managed remotely by one or more authorised users. The Patent states that the invention overcomes problems encountered by prior art methods of displaying beverage information using a badge clipped to the dispenser, including damage to the badge or the inconvenience of physically exchanging the badge.
6. Figure 1B of the Patent shows a plurality of point-of-sale display apparatus 101 comprising securing means for attachment in fixed relation to a beverage dispenser 105.

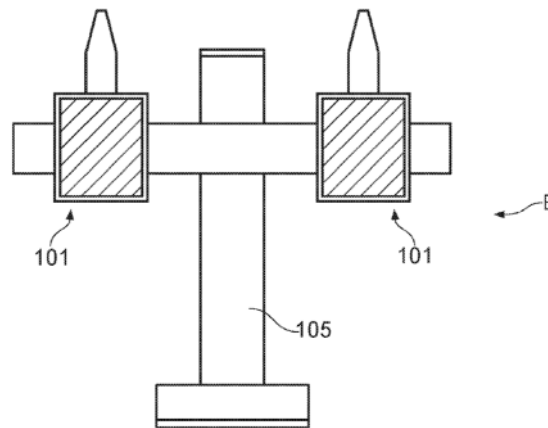


FIG. 1

7. A point-of-sale display apparatus comprises an electronic device 102, as represented in figure 2. The electronic device comprises a display screen 103 that may be a portable computing device such as a smartphone or tablet, or may be a custom-made device. The electronic device further comprises a data processor 201 with access to data storage 202, and a wireless communicator 203 configured to communicate with a wireless network. Each of the plurality of point-of-sale display apparatus is associated with a unique device identifier to allow content presented by an individual electronic device to be set by an authorised user.

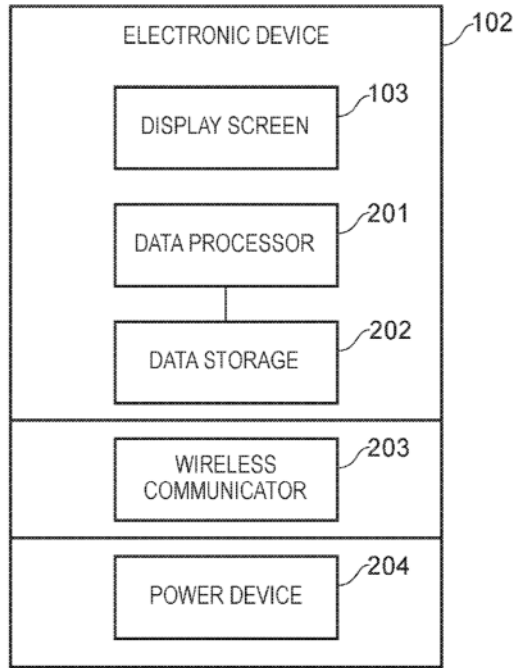


FIG. 2

8. As can be seen in figure 4B, a plurality of electronic devices 102 may be grouped, for example, into first and second groups 402, 403. A user terminal 401 may be used to communicate with each group or with any electronic device in a group individually, allowing the authorised user to set the display content presented by each individual electronic device.

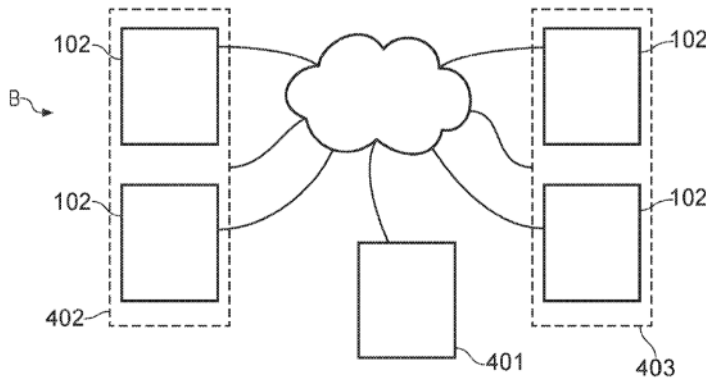


FIG. 4

9. Claim 1 reads as follows:

*A point-of-sale display system for use by a beverage vendor, comprising:  
 at least one draught beverage dispenser;  
 a plurality of point-of-sale display apparatus, each said point-of-sale display apparatus comprising an electronic device that comprises a display screen, a data processor with access to data storage for controlling content presented by the display screen, and a wireless communicator configured to*

*communicate with a wireless communication network; and a user terminal configured to communicate with each individual electronic device via said wireless communication network; each of said plurality of said point-of-sale display apparatus associated with a unique device identifier to allow content to be presented by an individual electronic device to be set by the or each of at least one authorised user, said point-of-sale display system allowing remote content management of said plurality of point-of-sale display apparatus by the or each of said at least one authorised user using said user terminal, wherein said remote content management allows content to be presented by an individual electronic device to be added, modified or deleted using said user terminal.*

10. The Patent also includes dependent claims 2 – 19, which read as follows:

2. *A point-of-sale display system as claimed in claim 1, wherein said at least one authorised user comprises: an authorised user having a publisher authorisation level that grants permission for said authorised user having a publisher authorisation level to edit and publish content to be presented by one or more of said plurality of point-of-sale display apparatus.*

3. *A point-of-sale display system as claimed in claim 2, wherein said at least one authorised user comprises a plurality of authorised users, said plurality of authorised users comprising: an authorised user having an editor authorisation level that grants permission for said authorised user having an editor authorisation level to edit content only to be presented by one or more of said plurality of point-of-sale display apparatus.*

4. *A point-of-sale display system as claimed in claim 2 or claim 3, wherein said at least one authorised user comprises a plurality of authorised users, said plurality of authorised users comprising: an authorised user having a local publisher authorisation level that grants permission for said authorised user having a local publisher authorisation to edit and publish content to be presented by each of one or more of said plurality of point-of sale display apparatus associated with an individual venue group; and an authorised user having a global publisher authorisation level that grants permission for said authorised user having a global publisher authorisation to edit and publish content to be presented by each of one or more of said plurality of point-of sale display apparatus associated with an organisation group comprising a plurality of individual venue groups.*

5. *A point-of-sale display system as claimed in any of claims 1 to 4, wherein said data processor of each of said plurality of point-of-sale apparatus is programmed to define a plurality of display regions of the display screen.*

6. *A point-of-sale display system as claimed in any of claims 1 to 5, wherein said data processor of each of said plurality of point-of-sale apparatus is programmed to control one or more of the following: display item content, display item presentation duration, display item transition type, display item presentation schedule.*

7. *A point-of-sale display system as claimed in any of claims 1 to 6, wherein said electronic device of each of said plurality of point-of-sale apparatus comprises at least one removable data storage device port.*
8. *A point-of-sale display system as claimed in any of claims 1 to 7, wherein said electronic device of each of said plurality of point-of-sale apparatus comprises an audio output device.*
9. *A point-of-sale display system as claimed in any of claims 1 to 8, wherein said display screen of each of said plurality of point-of-sale apparatus is disposed within a waterproof housing.*
10. *A point-of-sale display system as claimed in any of claims 1 to 8, wherein each of said plurality of point-of-sale display apparatus comprises securing means for mounting the display screen in fixed relation to a draught beverage dispenser of said at least one draught beverage dispenser.*
11. *A point-of-sale display system as claimed in claim 10, wherein said display screen of each of said plurality of point-of-sale apparatus is disposed within a housing of said electronic device.*
12. *A point-of-sale display system as claimed in claim 10, wherein said securing means comprises a first portion for supporting said housing and a second portion for clamping around a handle of the draught beverage dispenser.*
13. *A point-of-sale display system as claimed in claim 11 or claim 12, wherein said electronic device of each of said plurality of point-of-sale apparatus presents at least one user-operable region and said securing means comprises a mounting frame for receiving said housing therein with each user-operable region blocked to prevent access to said user-operable region.*
14. *A point-of-sale display system as claimed in claim 10, wherein said securing means is configured for mounting the display screen within a body of a draught beverage dispenser of said at least one draught beverage dispenser.*
15. *A point-of-sale display system as claimed in any of claims 11 to 14, wherein the display screen of each of said plurality of point-of-sale display apparatus is mounted in fixed relation to a draught beverage dispenser of said at least one draught beverage dispenser using said securing means.*
16. *A point-of-sale display system as claimed in claim 15, wherein the or each draught beverage dispenser of said at least one draught dispenser is one of: a beer dispenser, a cider dispenser, a wine dispenser, a soft drinks dispenser.*
17. *A point-of-sale display system as claimed in claim 15 or claim 16, wherein the or each draught beverage dispenser of said at least one draught dispenser is one of: a hand pump dispenser, a single-outlet free flow*

*dispenser, a multi-outlet free flow dispenser.*

18. *A point-of-sale display system as claimed in any of claims 15 to 17, wherein the display screens of said plurality of point-of-sale display apparatus are mounted to one of: a common draught beverage dispenser, respective draught beverage dispensers.*

19. *A point-of-sale display system as claimed in any of claims 15 to 18, wherein the or each draught beverage dispenser of said at least one draught dispenser is sited in a retail outlet, the retail outlet being one of a: licensed public house, bar, hotel, restaurant, café, nightclub, off-licence or retail concession.*

## **Claim Construction**

11. Before considering novelty and inventive step, I need to construe the claims of the patent – that is to say, I must interpret them in the light of the description and drawings as instructed by Section 125(1):

*For the purposes of this Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.*

12. I must interpret the claims in context through the eyes of the person skilled in the art. Ultimately the question is what the person skilled in the art would have understood the patentee to be using the language of the claims to mean. This approach has been confirmed in the recent decisions of the High Court in *Mylan v Yeda*<sup>1</sup> and the Court of Appeal in *Actavis v ICOS*<sup>2</sup>.
13. The Requester has provided their construction of claim 1, which includes some rearrangement and rewording of the claim, and their interpretation of the meaning of parts of the claim. I will not reproduce the Requester's construction here.
14. Firstly, I note that claim 1 is directed to a 'point-of-sale display system for use by a beverage vendor' that comprises a 'user terminal configured to communicate with each individual electronic device via said communication network', which, it is clear from the specification, is not located at the point-of-sale. I consider that claim 1 should be more correctly directed to 'a system for use by a beverage vendor'.
15. As noted by the Requester, the Patent includes carbonated soft drinks, cider or beer served on draught within the definition of 'draught beverages'. I also note that the Patent states that a draught beverage dispenser "*may be a hand pump dispenser, a single-outlet free flow dispenser, a multi-outlet free flow dispenser*". I agree with the

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<sup>1</sup> *Generics UK Ltd (t/a Mylan) v Yeda Research and Development Co. Ltd & Anor* [2017] EWHC 2629 (Pat)

<sup>2</sup> *Actavis Group & Ors v ICOS Corp & Eli Lilly & Co.* [2017] EWCA Civ 1671

Requester's assertion that 'draught' means "*a system of storing and serving drinks from large containers*".

16. The Requester asserts that 'a point-of-sale display system for use by a beverage vendor' should encompass "*display systems occurring not at the point of sale [that] are nonetheless suitable for use at the point of sale without modification*". The Requester states that the Examiner makes this point in their correspondence of 03 July 2019. As noted by the Observer, when making this statement the Examiner was referring to an earlier version of claim 1, which did not include the at least one draught beverage dispenser. Whilst not all components of the system are located at the point of sale, I believe that the skilled person would conclude that that the point-of-sale display apparatus is located at the point-of-sale.
17. The Requester also asserts that the point-of-sale display system is "*suitable for, but not limited to, use by a beverage vendor*". It is my view that the skilled person would understand that a system comprising a draught beverage dispenser is specifically arranged for use by a beverage vendor.
18. The Observer notes that, in their construction of the claim, the Requester removes the word 'individual' from the following part of claim 1: 'a user terminal configured to communicate with each individual electronic device via said wireless communication network'. The Observer goes on to point out that the Requester states "*using a user terminal configured to communicate with each electronic device*" instead of the correct wording of granted claim 1 '*using said user terminal*' (this wording referring to the feature '*a user terminal configured to communicate with each individual electronic device via said wireless communication network*'). In their Observations in Reply, the Requester states that the word 'individual' was omitted accidentally, contending that "*the term 'individual' in the phrase 'a user terminal configured to communicate with each individual electronic device via said wireless communication network' does not add any substantial meaning over the same phrase with the word 'individual' omitted, since 'each' implies meaning of separate or individual*". I am in agreement with the Requester on this point.
19. In their Observations in Reply, the Requester points to the Observer's statement that "*another advantage of the patented point-of-sale system is that each individual electronic device is independently capable of storing content to be displayed*", asserting that "*the phrase 'independently capable' is unclear in this context*", and that "*if, by 'independently capable', the Proprietor means that each individual electronic device has a separate data storage device, then the Requester submits that this feature is not required by the claims of the '750 Patent, nor is it supported anywhere in the description*". I do not agree with the Requester's assertion. Figure 2 of the Patent shows an individual electronic device comprising a data processor connected to data storage. The Patent provides examples of suitable electronic devices including 'an existing portable computing device, such as a suitable smartphone, phablet or computer tablet', each of which are known to comprise inbuilt data storage. Furthermore, I could not identify any disclosure in the Patent of data storage being shared by a plurality of electronic devices. I consider that the skilled person would understand that each individual electronic device comprises its own data storage.

20. Turning to the final section of claim 1, I note that there is no disagreement on the meaning of the terms ‘a unique device identifier’, ‘an authorised user’, ‘remote content management’ and ‘a user terminal’. These terms were respectively defined by the Requester as meaning “*an unambiguous distinguisher of a single device*”, “*someone granted permission to control [such] content*”, “*content control from a geographical location spatially separated from the display apparatuses via a wireless communication network*” and “*a device that is used by an end user to access the services provided by the wireless network(s)*”. I consider these definitions to be appropriate.
21. I further note that the statement in claim 1 that ‘*each of said plurality of said point-of-sale display apparatus associated with a unique device identifier to allow content to be presented by an individual electronic device to be set by the or each of at least one authorised user*’ [emphasis added] might be interpreted to mean simply that it is possible to use the unique device identifier for managing content on a specific device. However, I believe the skilled person would understand the statement to mean that the system is restricted to content on the device associated with the unique device identifier only being managed by the authorised user.
22. Similarly, although ‘*said point-of-sale display system allowing remote content management of said plurality of point-of-sale display apparatus by the or each of said at least one authorised user using said user terminal, wherein said remote content management allows content to be presented by an individual electronic device to be added, modified or deleted using said user terminal*” could be interpreted broadly, I believe the skilled person would understand that the system is restricted to only the authorised user being able to use the user terminal to add, modify or delete content.
23. I therefore construe claim 1 as follows:

*A system for use by a beverage vendor comprising:*

*at least one draught beverage dispenser located at a point-of-sale;*

*a plurality of point-of-sale display apparatus located at the point-of-sale, each said point-of-sale display apparatus comprising an electronic device that comprises a display screen, data storage, a data processor with access to said data storage for controlling content presented by the display screen, and a wireless communicator configured to communicate with a wireless communication network; and*

*a user terminal configured to communicate with each individual electronic device via said wireless communication network;*

*each of said plurality of said point-of-sale display apparatus being associated with a unique device identifier, and the system being arranged such that remote content management of the content to be presented by an individual electronic device allows content to be added, modified or deleted using said user terminal only by the or each of at least one authorised user.*

24. I do not consider that the dependent claims present any further difficulties of



construction.

## Prior Art – D1

25. D1 is titled “Dynamic graphical display for a beverage dispensing system” and was published before the priority date of the Patent. D1 discloses a display for use in product dispensing, for example beverage dispensing, wherein the content of the display is dynamically generated in response to the dispensing of one or more products.
26. In the embodiment described with reference to figure 1, a display 105 presents digital content generated by a processing device 115 using beverage dispensing information including which of a plurality of beverage dispensers 110 are currently dispensing beverage products, the beverage products being dispensed and the amount of beverage product dispensed. The display can be an array of multiple display monitors (as shown in figure 2) or a single display unit. The processing device 115 can be communicatively coupled to a network resource 125, such as a website, over a network 120.

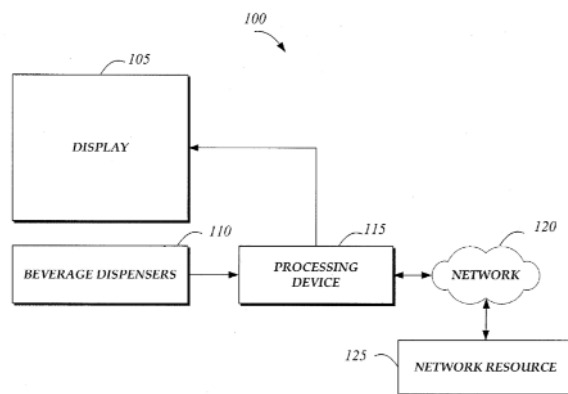


Fig.1.

27. As shown in figure 2, the beverage dispenser comprises at least one handle or tap for dispensing beverages.

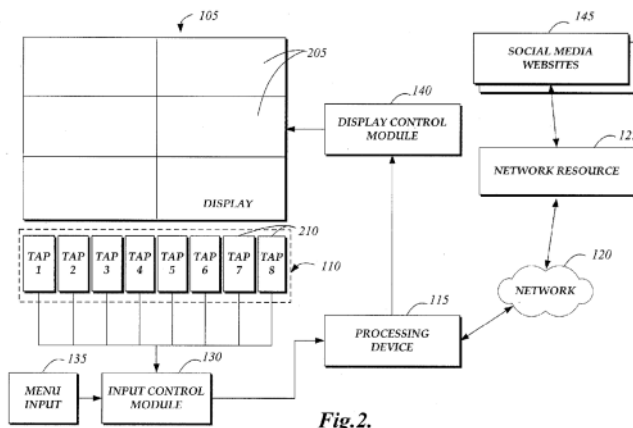


Fig.2.

28. Figure 3 represents the general architecture of the processing device for receiving multiple inputs and generating and outputting visual content for a dynamic graphical display.

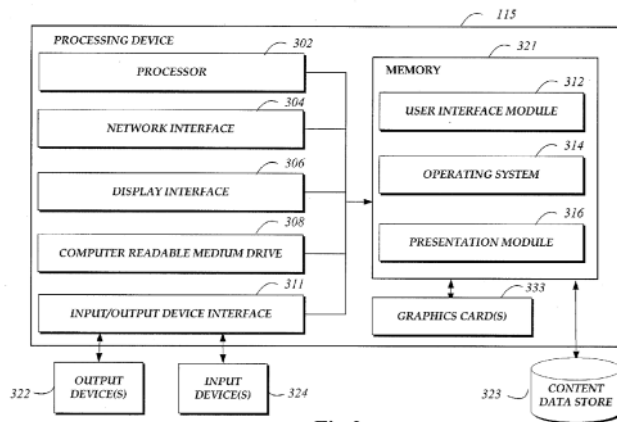
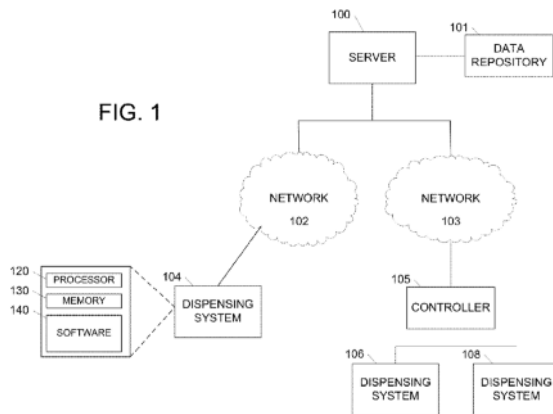


Fig.3.

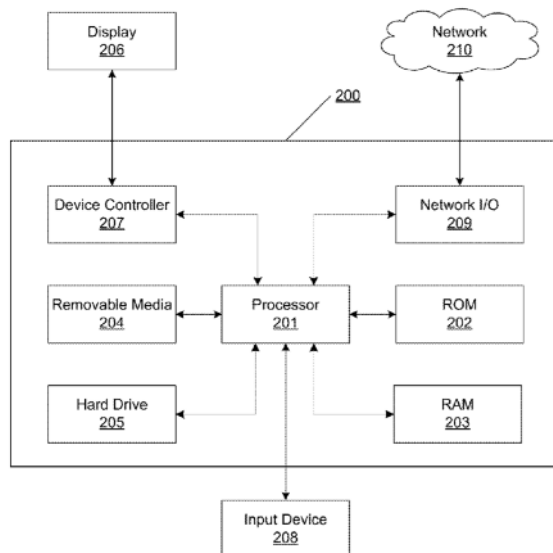
29. D1 further describes how the network resource may transmit micro-posts or other messages to the processing device, which can be displayed. These can be received from third parties, such as customers or patrons, from news feeds or from other sources, and may pass through a filter or screening process to prevent undesired messages from being presented on the display. In some implementations, only micro-posts or other messages from approved personnel or third parties, or the operator of the establishment in which the display is located, can be stored and presented for display.

## Prior Art – D2

30. D2 is titled “Dispensing system and user interface” and was published before the priority date of the Patent. D2 discloses a system for dispensing, for example, soft drinks comprising a display screen for allowing a user to select and dispense a customised beverage, for example, by inputting a code or pressing a button corresponding to a desired product. In a preferred embodiment of the system, a user may make a beverage selection using a touch screen, possibly in combination with other input components of the beverage dispenser. D2 describes how icons associated with available beverages may move location on the screen, for example to represent rotation on a carousel, initiated by interaction with a user.
31. As shown in the preferred embodiment of figure 1, dispensing systems 104, 106, 108 located across different locations may communicate with a server 100 using one or more networks 102, 103. Dispensing system 104 is shown to comprise a processor 120, memory 130 and software 140. Dispensing systems 106 and 108 are shown connected to a shared controller 105.



32. Figure 2 illustrates a computing device on which various components of dispenser systems may be implemented. It would seem from the teaching of D2 that such a computing device may form part of a dispensing system. D2 teaches that instructions may be stored in the read-only memory 202, random access memory 203 or the hard drive 205.



33. D2 teaches that after the dispenser is in service, an operator or supplier of the dispenser may wish to update or change various components of the dispenser, for example, they may change which brands of beverages or flavourings are available. This may be performed via a server in communication with the dispenser. Figure 6 illustrates an example method for updating a dispensing system.

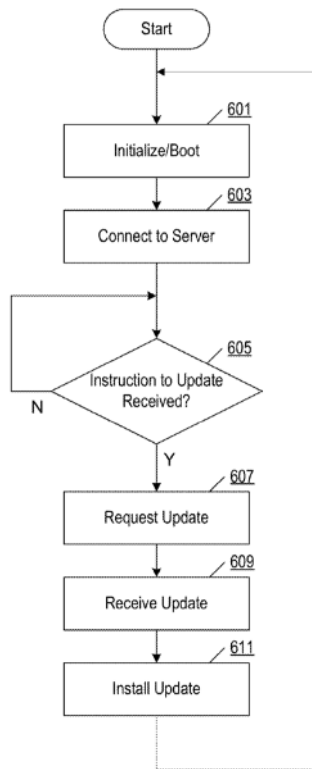


FIG. 6

**Prior Art – D3**

34. D3 is titled “Vending machine having a video display and method of advertising” and was published before the priority date of the Patent. D3 relates to vending machines that can display advertising messages on a display screen. More specifically, the vending machine can be a soda machine that comprises actuation switches, such as pressure actuated triggers, for dispensing soda mixtures. Such a machine is represented in figure 1.

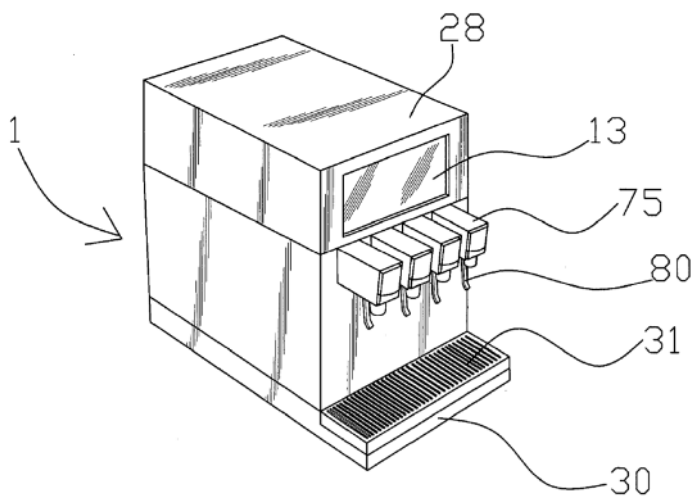


Fig. 1

35. Figure 3 shows a block diagram of the soda machine. A microprocessor 5 includes or is coupled to a memory 7, which is periodically reprogrammed through connection point 8, which may comprise the internet, telephone communications or satellite transmissions. The memory stores various static and dynamic advertising messages and is accessed by the microprocessor for controlling outputs to audio emitter 11 and video means 13. and video means 13.

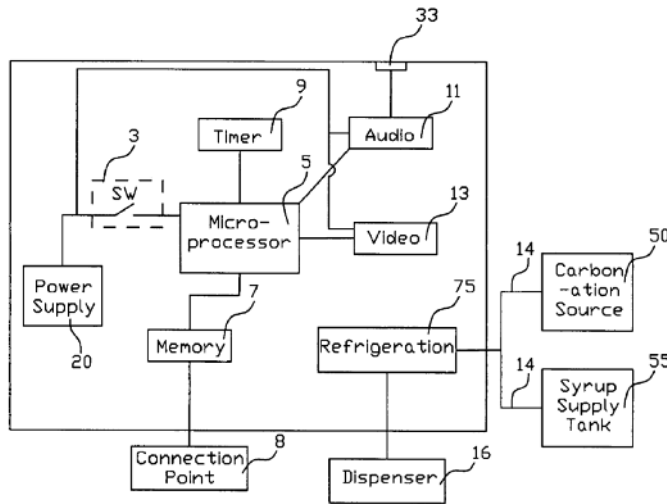


Fig. 3

36. Figure 6 shows a network of convenience stores 100A – 100E that each include an individually addressable soda dispensing machine. A central controller 90 is operated to wirelessly upload advertisements to each machine.

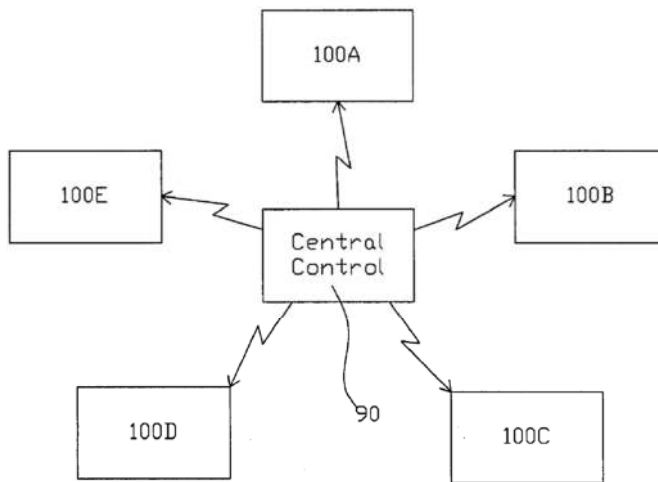


Fig. 6

### Exhibits and Witness Statement

37. The submitted Witness Statement is signed by Mr Bo Schwærter and confirms the

authenticity of exhibits B1 – B14. Mr Schwærter worked as the Area Sales Manager for Micro Matic A/S in 2005 and 2006 and, in this role, he exhibited and sold to several customers LCD screens which were attached to the dispensing outlets of draught alcoholic beverages.

38. Exhibits BS2, BS6, BS8, BS12, BS13 and BS14 are photographs showing digital advertising display screens mounted on or inside draught beverage dispensers. BS3 shows a rear view of how screens are securely mounted to individual draught beverage dispensers. Exhibits BS1, BS9, BS10 and BS11 are evidence corroborating dates of these prior disclosures. Exhibits BS4 and BS5 are photographs of digital screens used in toilets of a nightclub and BS7 is a photograph taken from outside a cocktail bar.

39. Exhibit BS2 is presented below.



## **The Law – Novelty**

40. Section 1(1)(a) of the Act reads:

*A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say –*

*(a) the invention is new;*

41. Sections 2(1) and 2(2) of the Act read:

*2(1) An invention shall be taken to be new if it does not form part of the state of the art.*

*2(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.*

## **The Law – Inventive Step**

42. Section 1(1)(b) of the Act reads:

*1(1) A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say –*

- (a) the invention is new;*
- (b) it involves an inventive step;*

43. The provisions in relation to inventive step are found in section 3 which states:

*3. An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).*

44. The Court of Appeal in *Windsurfing*<sup>3</sup> formulated a four-step approach for assessing whether an invention is obvious to a person skilled in the art. This approach was restated and elaborated upon by the Court of Appeal in *Pozzoli*<sup>4</sup>. Here, Jacob LJ reformulated the *Windsurfing* approach as follows:

- (1)(a) Identify the notional “person skilled in the art” ;*
- (1)(b) Identify the relevant common general knowledge of that person;*
- (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;*
- (3) Identify what, if any, differences exist between the matter cited as forming part of the “state of the art” and the inventive concept of the claim or the claim as construed;*
- (4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?*

### **(1)(a) Person skilled in the art and (1)(b) Common general knowledge**

45. The Requester proposes that *“the person skilled in the art is a team of engineers designing drinks dispensers for use in commercial premises who are readily familiar with electronic devices”* and that their common general knowledge *“would include various types of draught dispensing arrangements as well as electronic displays and WIFI and digital marketing content running on screens”*. I consider this to be a fair assessment of the person skilled in the art and their common general knowledge.

## **Whether claim 1 is novel in light of D1**

46. It is clear to me that D1 discloses at least one draught beverage dispenser located at a point-of-sale.

47. The Requester asserts that the multiple display monitors forming an array of the system of D1 form the plurality of point-of-sale display apparatus each comprising an electronic device, as they may be liquid crystal display monitors, which *“are known to*

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<sup>3</sup> *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

<sup>4</sup> *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

*require an electronic device to function*". They further point to *"figure 2 showing monitors 205 being operably connected with the processing device 115 via display control module 140"*, *"figure 3 showing a processing device operating on memory to output content to the monitors"* and *"figures 2 and 3 showing that the processing device 115 communicates with the network 120 via a network interface 304 (wireless communicator)"* as providing evidence that the electronic devices comprise 'a data processor with access to data storage for controlling content presented by the display screen' and 'a wireless communicator configured to communicate with a wireless communication network'.

48. The Observer notes that *"D1 discloses only a single processing device for the array of display monitors, which provides a single connection to a wireless communication network for the array of display monitors"*.
49. I am in agreement with the Observer that the system of D1 does not comprise the required plurality of point-of-sale display apparatus comprising an electronic device that comprises a display screen, a data processor with access to data storage for controlling content presented by the display screen, and a wireless communicator configured to communicate with a wireless communication network. I do not need to consider the remainder of the claim in order to conclude that I consider claim 1 to be novel over the teaching of D1.

### **Whether claim 1 is novel in light of D2**

50. I agree with the Requester's assertion that the presence of a dispensing head and one or more repositories that store the products or ingredients for generating the products indicate that the system of D2 comprises at least one draught beverage dispenser.
51. Although dispensing systems 106 and 108 are shown connected to a shared controller 105, it seems clear to me that the teaching of D2 includes systems comprising a plurality of point-of-sale display apparatus located at the point-of-sale, each comprising an electronic device that comprises a display screen, data storage, a data processor with access to said data storage for controlling content presented by the display screen, and a wireless communicator configured to communicate with a wireless communication network. It is clear from figure 1 that each apparatus communicates with a server, which I consider to be a user terminal, over a network.
52. The Requester considers that each of said plurality of said point-of-sale display apparatus is associated with a unique device identifier allowing content for presentation by an individual electronic device to be set by the or each of at least one authorised user, and refers to the following statements from D2 as evidence: *"the operator or supplier may update the dispenser via a server in communication with the dispenser"*, *"server 100 may receive data from the dispensing systems, such as usage metrics of the dispenser"*, *"icons of the carousel may be ordered based on usage of the dispenser"* and *"update may also change the appearance of the user interface such as, for example by modifying the order in which the icons are displayed"*.
53. The Observer responds by pointing out that *"D2 discloses the dispenser establishing*



*a connection with the server and then periodically determining whether an instruction to perform an update for the user interface has been received from the server, which instruction may include an identification of which update available from the server to perform*". This can be seen in the method of figure 6, in which the computing system of a dispenser establishes a connection with the server (step 603), waits for an instruction to perform an update (step 605) and transmits a request to the server for the server to provide the update (step 607). The request can include an identification of which update the server is to send to the dispenser.

54. The updates provided to the dispenser may include updates to the user interface, to firmware and to drivers. I could not identify any teaching in D2 that these updates are specifically tailored to each individual point-of-sale display apparatus. I therefore cannot agree with the Requester's assertion that D2 teaches associating each apparatus with a unique device identifier and consider that claim 1 is novel over the teaching of D2.

### **Whether claim 1 is novel in light of D3**

55. I agree with the Requester's assertion that a soda machine forms a draught beverage dispenser in view of the teaching of D3 that *"A typical soda machine includes a plurality of hoses that connect between a first container storing syrup and a second container storing carbonated water"*.
56. The Requester also points out that D3 discloses a plurality of point-of-sale display apparatus, which to my mind is clear from figures 1, 3 and 6. It is my view that each of said point-of-sale display apparatus comprises an electronic device that comprises a display screen (13, figure 3), data storage (7) and a data processor (5) with access to said data storage for controlling content presented by the display screen.
57. The block diagram of the soda machine shown in figure 3 includes connection point 8. D3 teaches that *"the memory may otherwise be updated through the use of connection points that comprise the Internet"*. Figure 6 shows the central controller that is operated to upload advertisements wirelessly to each soda dispensing machine. I consider that the system of D3 therefore comprises a wireless communicator configured to communicate with a wireless communication network. I further consider that the central controller forms a user terminal configured to communicate with each individual electronic device.
58. The Requester considers that the soda dispensing machines being "individually addressable" implies the inclusion of unique device identifiers. The Observer points out that *"D3 discloses a central controller being operated to upload content to all the vending machines in all the stores"*. Notwithstanding this observation, I consider that the reference to the machines being "individually addressable" implicitly discloses that each machine is associated with a unique device identifier.
59. The Requester further considers that *"A central controller implies an authorised user or authorised users"*. I agree that it is implicit to the teaching of D3 that access to the central controller would be restricted to one or more authorised users able to upload, i.e. add, content. It is my view that claim 1 is anticipated by the teaching of D3.

## **Whether claim 1 is novel in light of exhibits BS2, BS3, BS6, BS8, BS12, BS13 and BS14**

60. The Requester asserts that exhibits BS2, BS3, BS6, BS8, BS12, BS13 and BS14 are prior disclosures of features of the Patent.
61. Mr Schwærter states in his description of the exhibits that digital files were stored “*on a SD memory card; a cable connected to a memory card reader being fed from under the bar and through the font to the LCD screens*” or alternatively “*on a computer; a cable connected to the computer being fed from under the bar a through the font to the LCD screens*”.
62. I would seem to me that the exhibits disclose a system for use by a beverage vendor comprising at least one draught beverage dispenser located at a point-of-sale and a plurality of point-of-sale display apparatus located at the point-of-sale. Although each point-of-sale display apparatus clearly comprises a display screen, it is not apparent to me that each comprises an electronic device comprising data storage, a data processor with access to said data storage for controlling content presented by the display screen and a wireless communicator. Furthermore, the evidence provided in the exhibits and witness statement does not suggest the presence of a user terminal configured to communicate with the plurality of point-of-sale display apparatus. I consider therefore that claim 1 is novel in view of the disclosure of the exhibits.

## **Consideration of Dependent Claims**

63. As it is my view that claim 1 is novel over the teaching of D1, D2 and the exhibits, I also consider the dependent claims to be novel in view of D1, D2 and the exhibits. I will therefore only consider the novelty or inventiveness of the dependent claims in view of the teaching of D3.

## **Whether claims 2, 6, 7, 8, 10, 11, 14, 15, 16, 17, 18 and 19 are novel in light of D3**

64. The Requester states that “*It is implied that if the content on the dynamic advertising medium can be controlled remotely then there is an authorised user having editing and publishing authorisations*”. Although I consider that an authorised user can add content, I do not agree that this implicitly includes having editing and publishing authorisations. I consider that claim 2 is novel in light of D3.
65. The data processor of the system of D1 is clearly programmed to control at least the display item content. Claim 6 is not novel in light of D3.
66. In their consideration of claim 7, the Requester points to the disclosure of D3 that “*The mobile memory storage device may include, but is not limited to, thumb drives, discs or other memory storage means that may be inserted into or easily coupled to the dynamic advertising medium for reprogramming advertising operations of the machine*”. This disclosure, however, relates to an alternative embodiment in which a mobile memory storage device is used to manage the content to be presented, instead of remote management of the content. It is my view that claim 7 is novel in

light of D3.

67. I agree that the electronic devices of the system of D3 each comprise an audio output device, as asserted by the Requester with reference to the statement in D3 that *“The memory 7 stores various static and dynamic advertising messages and is accessed by the microprocessor 5 that controls outputs to audio emitter 11 and/or video means 13”*. In my view, claim 8 is not novel in light of D3.
68. The Requester points to the statement in D3 that the display screen is mounted “in or on” the soda dispensing screen as disclosing the inclusion of securing means for mounting the display screen in fixed relation to a draught beverage dispenser. I am in agreement and consider that claim 10 is not novel in light of D3.
69. I do not agree with the Requester’s assertion that the statements in D3 that *“It is another object of the invention to teach a method of advertising using a soda dispensing machine that includes a display mounted thereon”* and *“A microprocessor coupled to the display is housed within a cover that houses the soda dispensing machine”* provide disclosure of the display screens of each of said plurality of point-of-sale apparatus being disposed within a housing of the electronic device. It is my view that claim 11 is novel in light of D3.
70. As noted by the Requester, figure 1 clearly shows the display screen mounted within a body of a draught beverage dispenser by the securing means. Claim 14 is not novel in light of D3.
71. As I have found claim 11 to be novel in light of D3, it follows that claims 15 – 19 are also novel in light of D3.

### **Whether claims 5, 9, 12 and 13 are inventive in light of D3**

72. Claims 3 and 4 are dependent on claim 2, which I have found to be novel over D3. Consequently, although requested, I will not consider the inventiveness of claims 3 and 4.

#### **(2) Identify the inventive concept of claim 5**

73. I consider the inventive concept of claim 5 to be locating a plurality of point-of-sale display apparatus with at least one draught beverage dispenser, wherein each point-of-sale display apparatus comprises an electronic device comprising a display screen, data storage, a data processor and a wireless communicator, and each is associated with a unique device identifier and arranged such that remote management of the content to be presented by each individual electronic device can be added, modified or deleted using a user terminal only by the or each of at least one authorised user, and wherein each data processor is programmed to define a plurality of display regions of the display screen.

#### **(3) Identify what differences exist between D3 and the inventive concept of claim 5**

74. The data processor of each point-of-sale display apparatus of D3 is not programmed to define a plurality of display regions of the display screen.

**(4) Does this difference constitute a step which would have been obvious to the person skilled in the art or do they require any degree of invention?**

75. The soda machines of D3 are arranged to display advertisements on their display screens. Depending on the content being displayed, it would, to my mind, be obvious to the skilled person to define a plurality of display regions. I consider that claim 5 is obvious in view of D3.

**(2) Identify the inventive concept of claim 9**

76. I consider the inventive concept of claim 9 to be locating a plurality of point-of-sale display apparatus with at least one draught beverage dispenser, wherein each point-of-sale display apparatus comprises an electronic device comprising a display screen, data storage, a data processor and a wireless communicator, and each is associated with a unique device identifier and arranged such that remote management of the content to be presented by each individual electronic device can be added, modified or deleted using a user terminal only by the or each of at least one authorised user, and wherein each display screen is disposed within a waterproof housing.

**(3) Identify what differences exist between D3 and the inventive concept of claim 9**

77. The display screen of each point-of-sale display apparatus of D3 is not disposed within a waterproof housing.

**(4) Does this difference constitute a step which would have been obvious to the person skilled in the art or do they require any degree of invention?**

78. I agree with the Requester's suggestion that waterproofing would be an obvious modification due to the proximity of liquid beverages and electronics in the display screen. I consider that claim 9 is obvious in view of D3.

**(2) Identify the inventive concept of claim 12**

79. I consider the inventive concept of claim 12 to be locating a plurality of point-of-sale display apparatus with at least one draught beverage dispenser, wherein each point-of-sale display apparatus comprises an electronic device comprising a display screen, data storage, a data processor and a wireless communicator, and each is associated with a unique device identifier and arranged such that remote management of the content to be presented by each individual electronic device can be added, modified or deleted using a user terminal only by the or each of at least one authorised user, and wherein each point-of-sale display apparatus comprises a securing means comprising a first portion for supporting the display screen and a second portion for clamping around a handle of the draught beverage dispenser.

**(3) Identify what differences exist between D3 and the inventive concept of claim 12**

80. The securing means of the display apparatus of D3 does not comprise a first portion for supporting the display screen and a second portion for clamping around a handle of the draught beverage dispenser.

**(4) Does this difference constitute a step which would have been obvious to the person skilled in the art or do they require any degree of invention?**

81. The display screen forms an integral part of the soda machine of D3. It is my view that the skilled person would not be motivated to modify the securing means to include a portion for clamping around a handle of the draught beverage dispenser and so claim 12 is inventive in light of D3.

**(2) Identify the inventive concept of claim 13**

82. I consider the inventive concept of claim 13 to be locating a plurality of point-of-sale display apparatus with at least one draught beverage dispenser, wherein each point-of-sale display apparatus comprises an electronic device comprising a display screen, data storage, a data processor and a wireless communicator, and each is associated with a unique device identifier and arranged such that remote management of the content to be presented by each individual electronic device can be added, modified or deleted using a user terminal only by the or each of at least one authorised user, and wherein each apparatus comprises a securing means comprising a mounting frame for receiving a housing within which the display screen is disposed with access to an at least one user-operable region being blocked.

**(3) Identify what differences exist between D3 and the inventive concept of claim 13**

83. The securing means of the display apparatus of D3 does not comprise a mounting frame for receiving a housing within which the display screen is disposed with access to an at least one user-operable region being blocked.

**(4) Does this difference constitute a step which would have been obvious to the person skilled in the art or do they require any degree of invention?**

84. The content to be displayed on the screen of the system of D3 is provided via a connection point, making a user-operable region of the screen unnecessary. It is my view that the skilled person would not be motivated to modify the apparatus to include a user-operable region and so claim 13 is inventive in light of D3.

**Opinion**

85. It is my opinion that claim 1 is novel in light of D1 and D2.
86. I consider that claims 1, 6, 8, 10 and 14 lack novelty in light of D3 and that claims 2,

7, 11 and 15 – 19 are novel in light of D3.

87. I consider that claims 5 and 9 are obvious in light of D3 and that claims 12 and 13 are inventive in light of D3.

### **Application for Review**

88. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.

Karen Payne  
Examiner

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### **NOTE**

*This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.*