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20529
NATH, GOLDBERG & MEYER
112 South West Street
Alexandria, VA 22314

MAILED

MAR 25 2014

PCT LEGAL ADMINISTRATION

In re Application of :
AMREIN *et al* :
U.S. Application No.: 13/994,494 :
PCT No.: PCT/EP2011/073128 :
Int. Filing Date: 16 December 2011 :
Priority Date: 17 December 2010 :
Attorney Docket No.: 32751U :
For: CAPSULE, SYSTEM, AND METHOD :
FOR PREPARING A BEVERAGE :

DECISION

This decision is in response to applicants' renewed petition under 37 CFR 1.47(a) filed 06 March 2014.

BACKGROUND

On 18 February 2014, a decision dismissing applicants' petition under 37 CFR 1.47(a) was mailed. Applicants were given two months to respond.

On 06 March 2014, applicants filed a renewed response which was accompanied by, *inter alia*, a declaration executed by two of the three named inventors.

DISCUSSION

Applicants renew their claim that co-inventor, Christian Ionut POPESCU refuses to cooperate.

As previously noted, a petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventor.

Items (1), (2) and (3) of 37 CFR 1.47(a) were complete in the initial petition.

Concerning item (4), the 37 CFR 1.47(a) applicants submitted a one-page declaration signed by two inventors in the initial petition. The declaration noted that additional inventors are being named on one additional forms attached. However, the additional form was not provided. Therefore, the declaration was not accepted as the proper inventive entity was not listed.

In the renewed response, the 37 CFR 1.47(a) applicants submitted a complete copy of the declaration previously submitted which included the additional form listing all three inventors. Applicants state that the two-page declaration was submitted to all the inventors and that the "second page of the declaration was inadvertently left out of the original petition." This is an appropriate response.

The declaration provided is in compliance with 37 CFR 1.497(a) and (b) and meets the requirement of MPEP § 409.03(a)(A).

Item (4) of 37 CFR 1.47(a) is now satisfied.

CONCLUSION

Applicants' renewed petition under 37 CFR 1.47(a) is **GRANTED**.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 16 December 2011 under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 06 March 2014.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record and will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

/James Thomson/

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302



UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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Cristian Ionut Popescu
Amselweg 8B
CH-4802 Strengelbach
Switzerland

MAILED

MAR 25 2014

PCT LEGAL ADMINISTRATION

In re Application of
AMREIN *et al*
U.S. Application No.: 13/994,494
PCT No.: PCT/EP2011/073128
Int. Filing Date: 16 December 2011
Priority Date: 17 December 2010
Attorney Docket No.: 32751U
For: CAPSULE, SYSTEM, AND METHOD
FOR PREPARING A BEVERAGE

Mr. Popescu:

You are named as an inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. The counsel for the applicant is listed below. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

/James Thomson/

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

NATH, GOLDBERG & MEYER
112 South West Street
Alexandria, VA 22314

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

AMREIN et al.	Conf. No.: 1083
Appl. No.: 13/994,494	Examiner: TBD
Filed: 14 June 2013	Art Unit: TBD
Int. Appl. No.: PCT/EP11/73128	
Int. Filing Date: 16 December 2011 (16.12.2011)	
Title:	CAPSULE, SYSTEM, AND METHOD FOR PREPARING A BEVERAGE

RENEWED PETITION UNDER 37 CFR §1.47(a) FOR FILING WHEN AN INVENTOR REFUSES TO SIGN

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

Sir:

Petitioner, through the undersigned attorney, hereby requests reconsideration of the Petition filed 31 January 2014, for the application filed by **signing co-inventors Peter AMREIN and Christina MARSCHALL** on behalf of themselves and the non-signing inventor, **Cristian Ionut POPESCU**. Item (4) of 37 CFR 1.47(a), the declaration, which was described as non-compliant by the examiner, is now submitted herewith, as a declaration in compliance with 37 CFR 1.497(a) and (b).

Statement of Facts:

- 1) The Petition under 37 CFR 1.47 (a) for filing when an inventor refuses to sign, was filed by the applicant on 31 January 2014.
- 2) Examiner James Thomson reviewed the petition and considered items (1) (2) and (3) as satisfied.

- 3) Item (4) which was the declaration was not considered satisfied by Examiner Thomson.

The Examiner stated that the submitted one-page declaration is signed by two inventors. However, he notes that on the bottom of the page that additional inventors are being named on one additional forms attached. Yet, there is no form provided listing the non-signing inventor as an inventor. As such, the proper inventive entity is not recorded on the declaration provided.

- 4) Examiner Thomson states that a complete declaration showing the proper inventive entity and signed by each inventor on their behalf and on behalf of the non-signing inventor must be provided.
- 5) The applicant now submits the two page declaration listing the entire inventive entity of Peter Amrein, Christina Marschall and Cristian Ionut Popescu. The second page of the declaration was inadvertently left out of the original petition that was filed 31 January 2014. The attorney signing below states that the two page declaration was submitted to all the inventors along with a complete copy of the application as described in the original petition. Cristian Ionut Popescu has refused to sign the declaration.

Attachments:

Declaration which shows entire inventive entity.

Summary:

By this renewed petition, under 37 C.F.R. § 1.47(a), it is respectfully requested that this application be made by the signing inventors, **Peter AMREIN** and **Christina MARSCHALL** on behalf of themselves and on behalf of inventor **Cristian Ionut POPESCU** who refuses to sign.

It is believed that no further fees are due. However, should there be any deficiency in fees or credit for any overpayment in connection with this matter, please charge or credit our deposit Account No. 14-0112, accordingly.

Please direct any questions or comments to the undersigned attorney.

Respectfully submitted,
NATH, GOLDBERG & MEYER

/Jerald L. Meyer/

Jerald L. Meyer
Registration No. 41,194
Customer No. 20529

Date: March 6, 2014
NATH, GOLDBERG & MEYER
112 South West Street
Alexandria, VA 22314
Phone: (703) 548-6284
Fax: (703) 683-8396
JLM/dd:dd:Pet.1.47(a)NonSigningInv32751U

**DECLARATION (37 CFR 1.63) FOR UTILITY OR DESIGN APPLICATION USING AN
APPLICATION DATA SHEET (37 CFR 1.76)**

Title of Invention	CAPSULE, SYSTEM, AND METHOD FOR PREPARING A BEVERAGE
As the below named inventor(s), I/we declare that: This declaration is directed to: <input type="checkbox"/> The attached application, or <input checked="" type="checkbox"/> Application No. <u>13/994,494</u> filed on <u>June 14, 2013</u> <input type="checkbox"/> As amended on _____ (if applicable);	
I/we believe that I/we am/are the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought;	
I/we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;	
I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT International filing date of the continuation-in-part application.	
WARNING: Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.	
All statements made herein of my/our own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.	
FULL NAME OF INVENTOR(S)	
Inventor one: <u>Peter Amrein</u>	Date: <u>X M. 07. 13</u>
Signature: <u>X P. Amrein</u>	Citizen of: <u>Switzerland</u>
Inventor two: <u>Christina Marschall</u>	Date: <u>X 15. 07. 13</u>
Signature: <u>X C. Marschall</u>	Citizen of: <u>Switzerland</u>
<input checked="" type="checkbox"/> Additional inventors or a legal representative are being named on <u>1</u> additional form(s) attached hereto.	

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 minute to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

DECLARATION	ADDITIONAL INVENTOR(S) Supplemental Sheet
Page _____ of _____	

Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Cristian Ionut		Popescu	
Inventor's Signature		Date	
Residence: City	State	Country	Switzerland
Citizenship			
Amselweg 8B 4802 Strengelbach / Switzerland			
Mailing Address			
City	State	Zip	Country
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
Mailing Address			
City	State	Zip	Country
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Andreas		GRIMM	
Inventor's Signature		Date	
Frankfurt	Germany	Germany	Germany
Residence: City	State	Country	Citizenship
Hachenburgerstrasse 23, 95936 Frankfurt / Germany			
Mailing Address			
City	State	Zip	Country

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.



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112 South West Street
Alexandria, VA 22314

MAILED

FEB 18 2014

In re Application of :
AMREIN *et al* :
U.S. Application No.: 13/994,494 :
PCT No.: PCT/EP2011/073128 :
Int. Filing Date: 16 December 2011 :
Priority Date: 17 December 2010 :
Attorney Docket No.: 32751U :
For: CAPSULE, SYSTEM, AND METHOD :
FOR PREPARING A BEVERAGE :

PCT LEGAL ADMINISTRATION

DECISION

This decision is in response to applicants' petition under 37 CFR 1.47(a) filed 31 January 2014.

BACKGROUND

On 01 July 2013, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed requesting an English translation, a processing fee, an oath or declaration in compliance with 37 CFR 1.497(a) and (b), and a surcharge fee. Applicants were given two months to respond with extensions of time available under 37 CFR 1.136(a).

On 31 January 2014, applicants filed the subject petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a declaration signed on behalf of the nonsigning inventor; a petition fee; a surcharge fee; a processing fee; a five-month extension fee; an English translation; a statement of Yvonne Mesmer, Andrea Moser and Rene Wenger; and documentary evidence in support of the petition.

DISCUSSION

Applicants claim that co-inventor, Christian Ionut POPESCU refuses to cooperate and have filed the subject petition under 37 CFR 1.47(a).

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventor.

The \$200.00 petition fee and required extension fee were paid.

Item (1) of 37 CFR 1.47(a) is satisfied.

Concerning item (2), the 37 CFR 1.47(a) applicants provided evidence showing that a complete copy of the subject application and a declaration were presented to the nonsigning inventor. Applicants indicated that they were willing to pay his reasonable attorney's fee. Mr. POPESCU sent a letter requesting additional fees to sign the documents. Applicants refused to pay.

Applicants included sufficient documentary evidence in the petition with English translations of the relevant documents. Among these documents provided was a copy of a letter dated 15 January 2014 from Mr. POPESCU in which he requested additional fees of CHF 123,000 (\$137,240).

A review of the evidence shows that the conduct of Mr. POPESCU constitutes a refusal to cooperate as contemplated in section 409.03(d)(II) of the MPEP.

Item (2) of 37 CFR 1.47(a) is satisfied.

With regards to item (3) of 37 CFR 1.47(a), the last known address of Mr. POPESCU was provided in the petition.

Item (3) of 37 CFR 1.47(a) is satisfied.

Concerning item (4), the 37 CFR 1.47(a) applicants submitted a one-page declaration signed by two inventors. The declaration notes on the bottom of the page that additional inventors are being named on one additional forms attached. However, there is no form provided listing the nonsigning inventor as an inventor. As such, the proper inventive entity is not recorded on the declaration provided.

This declaration is not in compliance with 37 CFR 1.497(a) and (b).

A complete declaration showing the proper inventive entity and signed by each inventor on their behalf and on behalf of the nonsigning inventor must be provided.

For this reason, item (4) of 37 CFR 1.47(a) is not yet satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions

of time under 37 CFR 1.136(a) are available.

Failure to timely respond will result in the abandonment of the application.

Any further correspondence may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/James Thomson/

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

AMREIN et al.	Conf. No.:	1083
Appl. No.: 13/994,494	Examiner:	TBD
Filed: 14 June 2013	Art Unit:	TBD
Int. Appl. No.: PCT/EP11/73128		
Int. Filing Date: 16 December 2011 (16.12.2011)		
Title:	CAPSULE, SYSTEM, AND METHOD FOR PREPARING A BEVERAGE	

PETITION UNDER 37 CFR §1.47(a) FOR FILING WHEN AN INVENTOR REFUSES TO SIGN

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

Sir:

Petitioner, through the undersigned attorney, hereby requests that the executed oath/declaration submitted in response to the Notification of Missing Requirements under 35 U.S.C. 371 mailed July 1, 2013, be accepted without the signature of one of the three inventors listed on International Application Number PCT/EP2011/073128. It is requested, under 37 CFR 1.47(a) that the above captioned application for patent be made by the **signing co-inventors Peter AMREIN and Christina MARSCHALL** on behalf of themselves and the non-signing inventor, **Cristian Ionut POPESCU**.

Statement of Facts:

- 1) The invention was first described and filed as European patent application 10195723.1 on 17 December 2010.
- 2) On 16 December 2011, an International PCT Application was timely filed with the European Receiving Office claiming priority to the European patent application identified

above.

- 3) The applicant/assignee (*for all designated states except US*) was **DELICA AG** of Switzerland for the PCT International Application.
- 4) The European law firm, Hepp Wenger Ryffel AG, who represents DELICA AG, instructed our firm our law firm, NATH, GOLDBERG & MEYER to file the U.S. national phase of the PCT International Application.
- 5) Our firm, NATH, GOLDBERG & MEYER entered the application into the U.S. national phase on 14 June 2013. The inventors/applicants listed on the PCT application (*for the US only*), were 1) **Peter AMREIN** 2) **Christiana MARSCHALL**, and 3) **Cristian Ionut POPESCU**. No executed inventors' declaration was submitted at the time of filing of the U.S. national phase application. An English translation of the application was not filed at the time of the U.S. entry.
- 6) On 1 July 2013, the US PCT Receiving Office sent a formalities letter to NATH, GOLDBERG & MEYER "Notification of Missing Requirements under 35 U.S.C. 371" which indicated that a properly executed oath or declaration had not been submitted with the application and that an English translation was required.
- 7) NATH, GOLDBERG & MEYER informed their client HEPP WENGER RYFFEL AG, of the required items needed to satisfy the Notification.
- 8) HEPP WENGER RYFFEL AG, informed NATH, GOLDBERG & MEYER that they were having difficulties in obtaining the signatures one of the co-inventors, Cristian Ionut POPESCU who was now a former employee of the applicant, Delica AG. They were able to obtain the signatures of the other two inventors, Peter AMREIN and Christiana MARSCHALL and subsequently sent the executed declaration signed by the two inventors to NATH, GOLDBERG & MEYER.
- 9) NATH, GOLDBERG & MEYER informed their client of the steps needed to be taken to attempt to obtain the signature from the inventor who was refusing to sign.
- 10) HEPP WENGER RYFFEL AG, proceeded to contact the applicant, Delcia AG for help in obtaining the executed documents from Mr. POPESCU.
- 11) A signed Statement of first-hand knowledge by Ms.Yvonne Messmer of Delica AG is attached, describing her attempts to procure Mr. POPESCU'S signature. Also attached are the proofs of her actions, attachments 1-3.

- 12) When Ms. Yvonne Messmer of Delica AG was not able to procure Mr. POPESCU'S signature, Mr. René Wenger of HEPP WENGER RYFFEL AG, the law firm representing Delica AG, proceeded to contact Mr. POPESCU for his signature and to explain his legal obligations. A signed Statement of first-hand knowledge by Mr. René Wenger is attached, describing his attempts. Also attached are the proofs of his actions, attachments 4-5.
- 13) Finally, Ms. Andrea Moser, the Chief Legal Executive of Migros Cooperative, the parent company of Delica AG, contacted Mr. POPESCU, several times and even agreed to compensate Mr. POPESCU for his attorney's expenses. Mr. POPESCU requests an amount that Migros Cooperative believes is completely unreasonable and considers an attempted extortion. A signed Statement of first-hand knowledge by Ms. Andrea Moser is attached describing her correspondence with Mr. Popescu. Also attached are the proofs of her actions and Mr. Popescu's actions.

Attachments:

- (a) **Statement of first-hand knowledge** by **Yvonne Messmer**, responsible Assistant of the Head Business Unit Coffee of Delica AG.
- (b) Attachments 1-3, emails between Ms. Messmer and Mr. POPESCU.
- (c) **Statement of first-hand knowledge** by **Rene Wenger**, attorney representing the assignee/applicant, Delica AG.
- (d) Attachments 4-5, correspondence between Mr. Wenger and Mr. POPESCU.
- (e) **Statement of first-hand knowledge** by **Andrea Moser**, Chief of Legal Executive of Migros Cooperative (parent company of Delica AG).
- (f) Attachments 6-9, correspondence between Ms. Moser and Mr. POESCU.

Last Known Addresses of Non-Signing Inventor:

Cristian Ionut POPESCU
Amselweg 8B
CH-4802 Strengelbach
SWITZERLAND

Summary:

By this petition, under 37 C.F.R. § 1.47(a), it is respectfully requested that this

application be made by the signing inventors, **Peter AMREIN** and **Christina MARSCHALL** on behalf of themselves and on behalf of inventor **Cristian Ionut POPESCU** who refuses to sign.

Signed statements by Yvonne Messmer, René Wenger and Andrea Moser, persons with first-hand knowledge are enclosed along with Attachments 1-9, as proof supporting their statements.

The fee of \$200 under § 1.17(g) for the petition fee is enclosed and the last known address of the inventor who would not sign is listed above.

The surcharge (\$140) for the late filing of the executed Combined Declaration and Power of Attorney for the signing inventors is being paid concurrently, along with the fee for the English translation (\$140) and fee for the 5 month extension of time (\$3,000) in response to the Notice to File Missing Parts.

Thus, the fees total \$3,480. However, should there be any deficiency in fees or credit for any overpayment in connection with this matter, please charge or credit our deposit Account No. 14-0112, accordingly.

Please direct any questions or comments to the undersigned attorney.

Respectfully submitted,
NATH, GOLDBERG & MEYER

/Jerald L. Meyer/

Jerald L. Meyer
Registration No. 41,194
Customer No. 20529

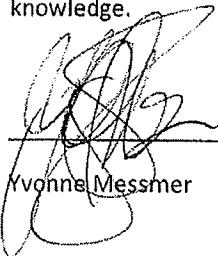
Date: January 31, 2014
NATH, GOLDBERG & MEYER
112 South West Street
Alexandria, VA 22314
Phone: (703) 548-6284
Fax: (703) 683-8396
JLM/dd:dd:Pet.1.47(a)NonSigningInv32751U

32751
13994494

STATEMENT OF YVONNE MESSMER

- 1) I am the responsible Assistant of the Head Business Unit Coffee of Delica AG, and have personally sent an e-mail including an assignment document, declaration of inventorship as well as a power of attorney form on July 16, 2013 to Mr. Cristian Ionut POPESCU. Mr. POPESCU is a co-inventor of an invention titled "Capsule, System, and Method for Preparing a Beverage" which was internationally filed as PCT/EP2011/073128 and published as WO 2012/080501 A1 on 21 June 2012. (attachment 1)
- 2) I sent a second email to Mr. POPESCU on 17 July 2013, with the Declaration and mentioned that this case is very urgent. (attachment 2)
- 3) Mr. Popescu replied to me on 23 July 2013, that he refuses to sign the documents. He said he was no longer an employee of Delica AG since June 30, 2011 and that Delica had not the right to request anything of him. (attachment 3)

I attest the above to be a first-hand, true and accurate account of the events according to my knowledge.


Yvonne Messmer

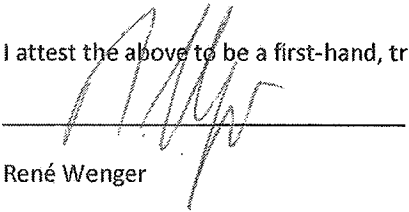
23.07.2014
Date

32751
13994494

STATEMENT OF RENÉ WENGER

- 1) I am the attorney representing the assignee, Delica AG, in Switzerland, who is the owner of the invention titled "Capsule, System and Method for Preparing a Beverage" which was internationally filed as PCT/EP2011/073128 and published as WO 2012/080501 A1 on 21 June 2012.
- 2) I personally sent a letter to Mr. POPESCU, on August 23, 2013, by registered mail together with the published patent application, a literal English translation, the declaration and the assignment. I explained to Mr. POPESCU the legal situation regarding the fact that according to Swiss Law, the Intellectual Property of employees automatically belongs to the employer if the Intellectual Property belongs to a particular work area of the employee. The invention was assigned to Delica AG. I requested that he sign the documents. (attachment 4)
- 3) Mr. POPESCU, replied to me on August 30, 2013, that he refuses to sign the documents based on some rather strange arguments. It seems he wants to be paid for signing the documents. (attachment 5)

I attest the above to be a first-hand, true and accurate account the events according to my knowledge.


René Wenger

28.01.2014
Date

STATEMENT OF ANDREA MOSER

- 1) I am the Chief Legal Executive of Migros Cooperative. Migros is the largest retailing company in Switzerland. The applicant, Delica AG is a 100% daughter company of Migros Cooperative.
- 2) I have sent a registered letter, return receipt requested, on November 29, 2013, to Mr. POPESCU, with the published patent application, the declaration and the assignment. The German text of the application was also sent to Mr. POPESCU and I asked him to sign the documents. (attachment 6)
- 3) With letter dated January 6, 2014, Mr. Popescu has replied to my letter dated November 29, 2013. As you will note, Mr. Popescu declared that he needed an attorney of law to clarify the situation. The greater part of Mr. Popescu's explanations refers to the (alleged) statement of his attorney. Under § 4 Popescu refers to US design registration D689 768 of Migros Genossenschaftsbund. According to Popescu this registration was made "without his consent". However, Popescu was not responsible for the design of the capsule, only for technical features. He is therefore not the designer of this particular capsule. Further under § 6 Popescu agrees that "the intellectual property remains with the employer". Nevertheless he still refuses to sign the papers. He asks Migros to suggest a "reasonable compensation". (attachment 7)
- 4) I replied with letter dated 10 January 2014, stating that Migros agreed to take over the costs of Mr. Popescu's attorney and asked Mr. Popescu to send the respective debit note. Of course Migros assume that the cost of such legal advice would certainly not exceed an amount of approximately CHF 2,000 – 3,000 (USD \$2,240 - \$3,350). (attachment 8)
- 5) Mr. Popescu replied with registered letter dated 15 January 2014. He requested a hold harmless declaration and a payment in the amount of CHF 123,000 (USD \$137,240). He stated after issuing such a declaration and after payment of this amount, he would sign the document. Popescu did not forward the debit note of his attorney but he attached his own debit note indicating simply "expenses". Of course Migros is not willing to pay this completely unreasonable amount and it is obvious that this is nothing but an attempted extortion. (attachment 9)

I attest the above to be a first-hand, true and accurate account of the events according to my knowledge.



Andrea Moser



Date

32751
13994494

ausschliesslich an die adressierten Personen. Falls Sie nicht zu diesen Personen gehören, bitte ich Sie, die Nachricht zu löschen und mich zu informieren. Die weitere Verwendung einer solchen Nachricht ist nicht zulässig.
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32751
13994494

-----Ursprüngliche Nachricht-----

Von: cristian.popescu@swissonline.ch [mailto:cristian.popescu@swissonline.ch]
Gesendet: Dienstag, 23. Juli 2013 08:59
An: Messmer, Yvonne-DELICA
Betreff: Internationale Patentanmeldung Café Royal

Attachments

3

Sehr geehrte Frau Messmer

Ich nehme Bezug auf Ihre E-Mails vom 16. Juli 2013 und vom 17. Juli 2013. Sie haben mir Unterlagen für die „internationale Patentanmeldung“ von Café Royal übermittelt, wobei es bei Lichte betrachtet wohl um eine Anmeldung beim US-Patentamt geht.

Ich kann Ihnen dazu folgendes ausführen:

Ich bin bereits seit dem 30. Juni 2011 nicht mehr für die Delica AG tätig. Die Delica AG ist deshalb mir gegenüber nicht mehr weisungsberechtigt.

2. Ich habe auch keine Vereinbarung bezüglich der künftigen Nutzung des geistigen Eigentums und bezüglich einer allfälligen internationalen Patentanmeldung nach Austritt aus dem Arbeitsverhältnis unterzeichnet.

3. Nach meinem Rechtsverständnis besteht keine Rechtsgrundlage dafür, von mir eine Unterschrift zu verlangen.

4. Ich bin nur rudimentär darüber informiert, dass es darum geht, das in der Schweiz und in Europa gültige Patent auch in den USA einzutragen. Welche Rechtsfolgen dies für mich hat, ist unklar.

5. Nach meinem Rechtsverständnis werde ich möglicherweise in den USA passivlegitimiert für allfällige Forderungen. Bevor diesbezüglich Klarheit herrscht, kann ich sicherlich keine Dokumente unterzeichnen.

6. Offenbar gehen Sie davon aus, dass ich trotz des umschriebenen Sachverhalts die Unterschrift unentgeltlich leiste.

Nach dem Gesagten kann ich Ihrem Ansinnen, die beigelegten Dokumente zu unterzeichnen, nicht nachkommen. Ich bin nun bis am 4. August 2013 ferienabwesend.

Ich ersuche Sie höflich, mich danach zu kontaktieren und mir mitzuteilen, wie Sie mich bezüglich der oben umschriebenen Bedenken schadlos zu halten gedenken.

Weiter ersuche ich Sie, für die entsprechende Korrespondenz nicht meine geschäftliche E-Mail-Adresse zu verwenden. Mit meinem neuen Arbeitgeber hat die Angelegenheit nichts zu tun.

Mit freundlichen Grüßen
Cristian Popescu

From: yvonne.messmer@delica.ch<mailto:yvonne.messmer@delica.ch>
Sent: Mittwoch, 17. Juli 2013 11:48
To: Popescu Cristian CHBS
Subject: WG: Attached Image
Importance: High

2

Hallo Herr Popescu

In meiner gestrigen Mail habe ich eine Seite vergessen (siehe Anhang) Wären Sie so

nett und würden diese auch unterzeichnen?

Wäre es möglich, dass Sie uns die Unterlagen noch heute oder morgen unterzeichnet zurücksenden?

Danke und Gruss
Yvonne Messmer

Assistentin Leiter BU Kaffee
Delica AG
Hafenstrasse 120 | Postfach | CH-4127 Birsfelden | Phone: +41 61 315 72 36 |
yvonne.messmer@delica.ch<mailto:yvonne.messmer@delica.ch>
http://www.delica.ch

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From: yvonne.messmer@delica.ch<mailto:yvonne.messmer@delica.ch>
Sent: Dienstag, 16. Juli 2013 10:45
To: Popescu Cristian CHBS
Subject: Internationale Patentanmeldung Café Royal

①

Hallo Herr Popescu

Wie telefonisch besprochen anbei die Dokumente, die Sie uns unterschreiben müssten. Wie Sie daraus ersehen können, haben Herr Amrein und Frau Marschall ebenfalls bereits unterzeichnet.

Bitte senden Sie mir die Dok. dann wieder zurück.

Herzlichen Dank im Voraus.

Freundliche Grüsse
Yvonne Messmer

Assistentin Leiter BU Kaffee
Delica AG
Hafenstrasse 120 | Postfach | CH-4127 Birsfelden | Phone: +41 61 315 72 36 |
yvonne.messmer@delica.ch<mailto:yvonne.messmer@delica.ch>
http://www.delica.ch

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This message may contain confidential information. If you are not the designated recipient, please notify the sender immediately, and delete the original and any copies. Any use of the message by you is prohibited.

3

Dear Mrs Messmer

I refer to your emails of 16 July 2013 and 17 July 2013. You have sent me documents for the "international patent application" for Café Royal, but on closer inspection I see that it is actually an application to the US patent office.

In this regards let me explain as follows:

1. I have not worked for Delica AG now since 30 June 2011. Delica AG therefore no longer has any authority to give me instructions.
2. Also I have signed no agreement in relation to the future use of intellectual property and in relation to a possible international patent application after my resignation from the employment relationship.
3. According to my understanding of the law there is no legal basis on which to demand a signature from me.
4. I have only been given sketchy information that it is a matter of registering the patent which is already valid in Switzerland and in Europe also in the USA. The legal consequences of this for me are unclear.
5. According to my understanding of the law there is a chance that I might be capable of being sued in the USA for any possible claims. Before there is clarity on this point I certainly cannot sign any documents.
5. You are clearly making the assumption that, in spite of the facts described, I should provide my signature free of charge.

In light of all this I cannot comply with your request that I sign the attached documents. I am now away on leave until 4 August 2013.

I would politely request that you contact me again after that and inform me how you intend to hold me harmless in relation to the reservations expressed above.

I would also ask you not to use my business email address for the relevant correspondence. The matter has nothing to do with my new employer.

Yours sincerely,
Cristian Popescu

Hello Mr Popescu

I omitted a page from my email yesterday (see attachment). Would you be so kind as to sign this for me too?

2

Could you possibly return the signed documents to us today or tomorrow?

With thanks and best regards,
Yvonne Messmer

Hello Mr Popescu

As discussed on the phone, here are the documents which you need to sign for us.
As you can see from these, Mr Amrein and Mrs Marschall have also already signed.

Please can you then send the docs back to me.

Many thanks in advance.

Kind regards,
Yvonne Messmer

①

2

4

Hepp Wenger Ryffel AG – Friedtalweg 5 – CH-9500 Wil

Einschreiben

Herrn

Cristian Ionut Popescu

Amselweg 8B

4802 Strengelbach

Wil, 23. August 2013 /MK

U.S.-Amerikanische Patentanmeldung Nr. 13/994,494

Capsule, System, and method for preparing a beverage

Anmelder: Delica AG

Unser Zeichen: PDELI011US

Sehr geehrter Herr Popescu

Als beauftragte Patentanwälte der Delica AG betreuen wir die oben aufgeführte Patentanmeldung zu einer Erfindung, an deren Hervorbringung Sie mitgewirkt haben.

Unsere Mandantin hat uns nun mitgeteilt, dass Sie als Mitarbeiter ausgeschieden sind und dass Sie nicht gewillt sind, die Ihnen zugestellten Dokumente zur obigen Anmeldung ohne weiteres zu unterzeichnen. Wir sind im Besitz Ihrer diesbezüglichen E-Mail vom 23. Juli 2013 an Frau Yvonne Messmer. Es scheint uns, dass Sie über diverse Sachverhalte nicht oder nicht richtig informiert sind und dass möglicherweise ein Missverständnis vorliegt. Die Delica AG hat uns daher gebeten, direkt mit Ihnen in Kontakt zu treten, um allfällige Bedenken im Zusammenhang mit der Leistung der Unterschrift auszuräumen. Dazu folgendes:

- a) Die oben aufgeführte Anmeldung in den USA ist aus der internationalen Patentanmeldung mit der Veröffentlichungsnummer WO 2012/080501 hervorgegangen. Diese Anmeldung wurde am 16. Dezember 2011 eingereicht und Sie wurden zusammen mit zwei weiteren Personen als Erfinder benannt. Die Anmeldung geht wiederum zurück auf eine ältere europäische Patentanmeldung, welche am 17. Dezember 2010 eingereicht wurde. Bei den Erfindern handelt es sich um die gleichen Personen. Die internationale Patentanmeldung wurde neben den USA auch noch in

zahlreichen weiteren Ländern nationalisiert. Die speziellen rechtlichen Rahmenbedingungen in den USA machen es jedoch leider erforderlich, dass von den Erfindern beim Eintritt in die nationale Phase Dokumente unterzeichnet werden müssen.


- b) Bei diesen Dokumenten handelt es sich einerseits um die „Declaration“ und andererseits um das „Assignment“. Mit der Declaration bestätigt der Erfinder, dass er die Patentanmeldung verstanden hat und dass er nach bestem Wissen Erfinder (oder Miterfinder) ist. Der Erfinder bestätigt ausserdem, dass ihm kein Stand der Technik bekannt ist, der einer Patenterteilung entgegenstehen würde. Mit dem Assignment tritt der Erfinder seine Rechte an der Erfindung ab, im vorliegenden Fall also an die Delica AG. Das Assignment ist in Ihrem Fall allerdings nur die Bestätigung eines Rechtsübergangs, der bereits während der Dauer Ihres Anstellungsverhältnisses bei der Delica AG stattgefunden hat.
- c) Was die Rechte an der Erfindung betrifft, so sind diese bereits im Rahmen Ihres damaligen Arbeitsvertrages auf die Delica übergegangen. Gemäss Art. 332 Abs. 1 des Schweizerischen Obligationenrechts gehören nämlich Erfindungen die der Arbeitnehmer bei Ausübung seiner dienstlichen Tätigkeit und in Erfüllung seiner vertraglichen Pflichten macht oder an deren Hervorbringung er mitwirkt, unabhängig von Ihrer Schutzfähigkeit dem Arbeitgeber. Es bedurfte somit keinerlei Vereinbarung bezüglich der künftigen Nutzung des Geistigen Eigentums, weil die Delica AG darüber frei verfügen kann. Auch Ihre Vermutung, dass Sie in den USA mit Forderungen Dritter konfrontiert werden könnten, ist unzutreffend. Die Passivlegitimation für derartige Forderungen liegt ausschliesslich bei der Delica AG, welche im Patentregister als Anmelderein geführt wird. Sie bestätigen mit Ihrer Unterschrift lediglich Ihre Eigenschaft als Miterfinder. Die Nennung des Erfinders ist nicht nur eine Pflicht gegenüber dem Patentamt, sondern es ist auch ein Recht des Erfinders, in der Patentliteratur tatsächlich benannt zu werden.
- d) Sie erhalten in der Beilage nochmals die beiden zu unterzeichnenden Dokumente, wobei wir an die Declaration eine Kopie des englischen Anmeldetextes angeheftet haben. Wir wären Ihnen zu grossem Dank verpflichtet, wenn Sie die Unterschriften leisten und die beiden Dokumente so rasch wie möglich an uns zurück senden könnten. Sie würden uns damit die Arbeit erheblich erleichtern.

Der guten Ordnung halber möchten wir noch hinzufügen, dass die Patentanmeldung auch ohne Ihre Mitwirkung weitergeführt werden kann. Wir müssten dann allerdings beim US Patentamt eine Erklärung einreichen, wonach Sie sich weigern, die entsprechenden Dokumente zu unterzeichnen. Abgesehen von den

unnötigen Umtrieben, sollte dies auch in Ihrem eigenen Interesse vermieden werden.

Für allfällige Rückfragen steht Ihnen der Unterzeichner auch telefonisch gerne zur Verfügung.

Freundliche Grüsse
Hepp Wenger Ryffel AG


René Wenger

WO 2012/080501
Declaration mit englischem Anmeldetext
Assignment

Kopie:
Frau A. Moser, MGB, Zürich

Hepp Wenger Ryffel AG - Friedtalweg 5 - CH-9500 Wil

registered letter

Mr
Cristian Ionut Popescu
Amselweg 8B
4802 Strengelbach

Wil, 23 August 2013/ MK

US American patent application No. 13/994,494
Capsule, System and method for preparing a beverage
Applicant: Delica AG
Our Ref: PDELI011US

Dear Mr Popescu

As the appointed patent lawyers of Delica AG, we are dealing with the above patent application in respect of an invention in the production of which you were involved.

Our client company has now informed us that you are no longer employed by it and that you are not necessarily willing to sign the documents delivered to you in respect of the above application. We are in possession of your email of 23 July 2013 to Mrs Yvonne Messmer regarding this matter. It appears to us that you have not been informed, or not correctly informed, about various matters and that there may have been a misunderstanding. Delica AG has therefore asked us to make direct contact with you in order to dispel any possible reservations which you may have in connection with providing the signature. Please therefore note the following:

- a) The above application in the USA has originated from the international patent application having the publication number WO 2012/080501. This application was filed on 16 December 2011 and you were named, together with two other individuals, as the inventor. The application is itself based on an earlier European patent application which was filed on 17 December 2010. The inventors are the same individuals. The international patent application has also been nationalised in numerous other countries as well as in the USA. However, the special regulatory framework in the USA unfortunately means that it is necessary for documents to be signed by the inventors upon entry into the national phase.
- b) These documents are, firstly, the "Declaration" and, secondly, the "Assignment". By making the Declaration the inventor confirms that he has understood the patent application and that to the best of his knowledge he is the first inventor (or co-inventor) of it. The inventor also confirms that he is not aware of any prior art which would stand

in the way of grant of a patent. By making the Assignment the inventor assigns his rights to the invention, in this case therefore to Delica AG. However in your case the Assignment is merely confirmation of a transfer of rights which has already taken place during the term of your employment with Delica AG.

- c) With regard to the rights in the invention, these were already transferred to Delica under your employment contract at the time. Indeed, under Art. 332(1) of the Swiss Code of Obligations, inventions which the employee creates or helps to create in the performance of his duties and in performing his contractual obligations belong to the employer, regardless of their patentability. Consequently there was no need for any agreement whatsoever in respect of future use of the intellectual property, because Delica AG can use it as it sees fit. Furthermore, your assumption that you could face claims from third parties in the USA is inaccurate. The proper defendant of such claims is exclusively Delica AG, which is listed in the patent register as the applicant. By signing, you are merely confirming your capacity as co-inventor. The naming of the inventor is not only a requirement of the patent office but it is also a right of the inventor to actually be named in the patent literature.
- d) You will find enclosed further copies of the two documents which need to be signed, and we have attached to the Declaration a copy of the English application text. We would be most grateful to you if you would provide the signatures and return the two documents to us as soon as possible. In doing so you would make our work considerably easier.

For the sake of clarity we would like to add that the patent application can still be continued even without your cooperation. However, in that case we would have to file a declaration with the US patent office that you refuse to sign the relevant documents. Apart from the unnecessary administration, it is also in your own interests that this be avoided.

If you have any queries, I would also be happy to speak with you on the phone.

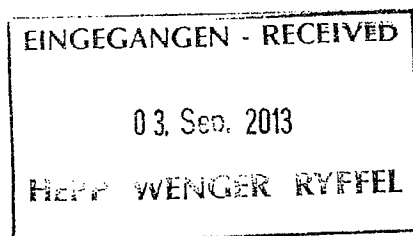
Yours sincerely,
Hepp Wenger Ryffel AG
[signature]
René Wenger

WO 2012/080501
Declaration with English application text
Assignment

cc.
Mrs A. Moser, MGB, Zurich

5

Cristian Ionut Popescu - Amselweg 8B - 4802 Strengelbach



Hepp Wenger Ryffel AG
Herr René Wenger
Friedtalweg 5
9500 Wil

Strengelbach, 30. August 2013

Ihr Zeichen: PDELI0111US

Amerikanische Patentanmeldung für Delica AG

Sehr geehrter Herr Wenger

Besten Dank für Ihr Schreiben vom 23. August 2013. Ich habe die Ausführung zur Kenntnis genommen.

Es ist unbestritten, dass die Rechte an der Erfindung im Rahmen des damaligen Arbeitsvertrages auf die Delica AG übergegangen sind. Jedoch habe ich mich nicht verpflichtet, nach Auflösung des Arbeitsverhältnisses weitere Patentanträge zu unterzeichnen. Der Arbeitgeber hat auch kein Weisungsrecht mehr. Insofern ist es befremdend, wenn Sie zum Schluss Ihres Schreibens ausführen, dass es auch in meinem Interesse sei, unnötige Umtriebe bei der Patentanmeldung zu vermeiden.

Dokumente nach amerikanischem Recht zu unterzeichnen ist und bleibt ein Risiko. Ihre diesbezüglichen Zusicherungen nützten mir letztlich überhaupt nichts.

Ich gehe davon aus, dass es im Interesse der Delica AG ist, die unnötigen Umtriebe, die Sie erwähnen, zu vermeiden. Ich erwarte deshalb von der Delica AG eine rechtsverbindliche Erklärung, wonach sie mich für jegliche Ansprüche Dritter, die sich aus der Unterzeichnung der beiden Dokumente und der Eintragung des Patentes in den USA ergeben könnten, schadlos hält, sowie eine Umtriebsentschädigung. Letzteres soll mir ermöglichen, meine bisherigen rechtlichen Abklärungen zu entschädigen und für den Fall, dass weitere Forderungen eintreten, einen Anwalt mandatieren zu können.

Gerne erwarte ich Ihren Vorschlag.

Mit freundlichen Grüßen

A handwritten signature in black ink, appearing to read "C. Popescu".

Cristian Popescu



Cristian Ionut Popescu - Amselweg 8B - 4802 Strengelbach

[stamp: RECEIVED 3 Sept. 2013 HEPP WENGER RYFFEL]

Hepp Wenger Ryffel AG
Mr René Wenger
Friedtalweg 5
9500 Wil

Strengelbach, 30 August 2013

Your Ref: PDELI0111US
American patent application for Delica AG

Dear Mr Wenger

Thank you for your letter of 23 August 2013. I have noted what you have to say.

It is undisputed that the rights to the invention under the former employment contract have been assigned to Delica AG. However, I have not undertaken to sign additional patent applications after termination of the employment relationship. The employer also no longer has any right to give instructions. In this respect I am surprised that you state at the end of your letter that it is also in my interest to avoid unnecessary administration in respect of the patent application.

Signing documents under American law is and remains a risk. At the end of the day your assurances in this regard have not assisted me at all.

I imagine that it is in the interests of Delica AG to avoid the unnecessary administration to which you refer. I therefore expect a legally binding declaration from Delica AG in which it holds me harmless in respect of any third-party claims which might result from signature of the two documents and registration of the patent in the USA, as well as reimbursement of administrative expenses. The latter should be such as to compensate me for the legal clarifications I have had to undertake to date and, in the event of further claims arising, to enable me to appoint a lawyer.

I look forward to receiving your reply.

Yours sincerely,

[signature]

Cristian Popescu

MIGROS

Migros-Genossenschafts-Bund
Direktion Recht



Einschreiben mit Rückschein

Herr Cristian Ionut Popescu
Amselweg 8B
4802 Strengelbach

Ort/Datum Zürich, 29. November 2013

Betreff **US Amerikanische Patentanmeldung Nr. 13/994,494 für Delica AG**

Sehr geehrter Herr Popescu

Die Direktion Recht des Migros-Genossenschafts-Bundes ist von der Delica AG – einer 100 %igen Tochtergesellschaft des ersteren – mit der Vertretung und Wahrung der rechtlichen Interessen in der vorliegenden Angelegenheit bevollmächtigt.

Ich nehme Bezug auf das an Sie gerichtete Schreiben von Herrn Patentanwalt Wenger vom 23. August 2013 im Zusammenhang mit der Patentanmeldung Nr. 13/994,494 der Delica AG (vgl. **Beilage 1**) und Ihr Antwortschreiben vom 23. August 2013 (vgl. **Beilage 2**).

Sie haben im Rahmen und während Ihres ehemaligen Arbeitsverhältnisses mit der Delica AG die den Gegenstand der erwähnten Patentanmeldung bildenden Kaffeekapsel Café Royal mitentwickelt. Ihre Pflicht, die für die Patentanmeldung erforderliche Unterschrift im Interesse Ihrer ehemaligen Arbeitgeberin zu leisten, ergibt sich aus der diesbezüglich über die Beendigung des Arbeitsverhältnisses hinaus bestehenden arbeitsrechtlichen Treuepflicht.

Gerne können wir Ihnen hiermit eine rechtsverbindliche Erklärung abgeben, dass die Delica AG Sie für einen – allfällig eintretenden – Schaden, der sich wider Erwarten aufgrund von Ansprüchen Dritter im Zusammenhang mit der Unterzeichnung der beiden für das US Patent and Trademark Office bestimmten Dokumente und der Eintragung des Patentes in den USA ergeben könnte, selbstverständlich vollumfänglich schadlos halten wird. Eine Umtriebsentschädigung sind wir hingegen nicht bereit zu bezahlen, weil letztlich nicht ersichtlich ist, inwiefern Ihnen mit der Unterzeichnung des Dokumentes (Rückantwortcouvert liegt bei, vgl. **Beilage 3**) Umtriebe entstehen sollten. Falls Ihnen solche entstehen sollten, bitten wir Sie, uns diese zu substantiieren.

Wir bitten Sie nunmehr nochmals, die beiliegende Erklärung (vgl. **Beilage 4**) umgehend unterzeichnet an uns zu retournieren. Falls Sie uns diese erneut verweigern sollten, muss sich die Delica AG vorbe-

Migros-Genossenschafts-Bund
Direktion Recht
Limmatstrasse 152
Postfach 1766
CH-8031 Zürich

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Fax +41 (0)44 277 21 41
andrea.moser@mgb.ch
www.migros.ch

Mwst-Nr. 231 115
Postcheckkonto 80-766-6

Migros-Genossenschafts-Bund

halten, diese Leistung oder einen allfälligen, aus der Weigerung ihr entstehenden Schaden (Verlust der Patentanmeldung, entgangene Lizenzgebühren, Patentanwaltskosten, usw.) auf dem Gerichtswege einzuklagen.

Falls Sie Fragen haben, können Sie sich gerne an die Linksunterzeichnende wenden. Besten Dank für eine umgehende Reaktion. Die Frist zur Einreichung des Formulars läuft in Bälde ab.

Freundliche Grüsse
Migros-Genossenschafts-Bund



Andrea Moser
Leiterin Direktion Recht



Franziska Schweizer
Trademark Paralegal

Beilagen

1. Schreiben von Herrn Patentanwalt Wenger vom 23. August 2013
2. Antwortschreiben vom 23. August 2013
3. Rückantwortcouvert
4. Englische Übersetzung der Anmeldung zur Unterzeichnung



Migros-Genossenschafts-Bund (Migros Cooperative Society)

MIGROS

Legal Department

Registered letter with advice of delivery

Mr Cristian Ionut Popescu
Amselweg 8B
4802 Strengelbach

Place/date: Zurich, 29 November 2013

Re: **US American patent application No. 13/994,494 for Delica AG**

Dear Mr Popescu

The legal department of the Migros-Genossenschafts-Bundes (Migros Cooperative Society) is instructed by Delica AG, which is wholly-owned subsidiary of the former, to represent and defend its legal interests in this matter.

I refer to the letter sent to you on 23 August 2013 by Patent Lawyer, Mr Wenger, in connection with the patent application no. 13/994,494 by Delica AG (cf. **Enclosure 1**) and your reply of 23 August 2013 (cf. **Enclosure 2**).

Within the scope of and during your former employment with Delica AG you co-developed the coffee capsule, Café Royal, which is the subject-matter of the aforementioned patent application. Your obligation to provide the signature required for the patent application in the interests of your former employer results from the loyalty in this respect under employment law which survives termination of the employment relationship.

We will gladly provide you with a legally binding declaration to the effect that Delica AG will of course hold you entirely harmless from any possible loss which might arise contrary to expectations as a result of claims by third parties in connection with signature of the two documents intended for the US Patent and Trademark Office and registration of the patent in the USA. However, we are not willing to pay reimbursement of administrative expenses because, in short, it is not clear to what extent signing the document (a reply-paid envelope is enclosed, cf. **Enclosure 3**) could cause you administration expenses. In the event that you should incur such administration expenses, we would ask you to substantiate these for us.

Migros-Genossenschafts-Bund
Legal Department
Limmatstrasse 152
Postfach 1766
CH-8031 Zurich

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andrea.moser@mgb.ch
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VAT Reg. No. 231 115
Post Office account 80-766-6

We would now ask you once again to sign and send back to us by return the enclosed declaration (cf. **Enclosure 4**). Should you again refuse to do this for us, Delica AG must reserve the right to enforce this performance or bring an action for any damages which it incurs as a result of the refusal (loss of the patent application, lost licensing fees, patent lawyers' fees, etc.) through the courts.

If you have any questions, please address them to the signatory on the left below. We would thank you for an immediate response. The time-limit for submitting the form expires shortly.

Yours sincerely,
Migros-Genossenschafts-Bund
[signature]
Andrea Moser
Head of the Legal Department

[signature]
Franziska Schweizer
Trademark Paralegal

Enclosures

1. Letter of 23 August 2013 from Patent Lawyer, Mr Wenger
2. Reply of 23 August 2013
3. Reply-paid envelope
4. English translation of the application for signature

7

Cristian Ionut Popescu - Amselweg 8B - 4802 Strengelbach

EMMENTEN
08. Jan. 2014

Einschreiben

Migros-Genossenschafts-Bund
Direktion Recht
Limmatstrasse 152
Postfach 1766
8301 Zürich

Strengelbach, 6. Januar 2014

US-Amerikanische Patentanmeldung Nr. 13/994-494 für Delica AG
Ihr Schreiben vom 29. November 2013

Sehr geehrte Frau Moser
Sehr geehrte Frau Schweizer

Ich nehme Bezug auf Ihr Schreiben vom 29. November 2013.

Es ist sehr irritierend, dass Sie mir nun auch noch mit einer Klage drohen.

Ich kann Ihnen zu Ihrem Schreiben folgendes ausführen:

1. Am 16. Juli 2013 habe ich von Frau Messmer die besagten Dokumente zugestellt erhalten, verbunden mit der Mitteilung, dass ich diese unterschreiben „müsse“.

Schon tags darauf bin ich aufgefordert worden, die Unterlagen „noch heute oder morgen“ unterzeichnet zurückzusenden. Seitens meiner ehemaligen Arbeitgeberin hat man somit behauptet, ich müsse diese Dokumente unterzeichnen, ohne dass man mich auch nur mit einem Wort darüber informiert hätte, was es bedeutet, derartige Dokumente nach US-amerikanischem Recht zu signieren.

Es versteht sich von selbst, dass ich in dieser Situation einen Anwalt aufgesucht habe. Wenn Sie nun einfach ausführen, es sei nicht einzusehen, inwiefern mit der Unterzeichnung des Dokumentes Umtriebe entstehen sollten, machen Sie es sich zu einfach. Die Umtriebe sind längst entstanden, und diese einzig und allein auf Grund des unbedarften Vorgehens der Delica.

2. Der konsultierte Rechtsanwalt hat mich zwar tatsächlich darüber informiert, dass nach schweizerischem Rechtsverständnis das geistige Eigentum an einer Erfindung bei meiner damaligen Arbeitgeberin, der Delica AG, bleibt. Er hat mich aber auch ebenso darüber informiert, dass meine ehemalige Arbeitgeberin mir gegenüber nicht mehr weisungsberechtigt ist und deshalb nicht einfach verlangen kann, dass ich rechtsrelevante Dokumente unterzeichne.

Mein Anwalt hat ausgeführt – und hier unterscheidet sich seine Rechtsauskunft von derjenigen, die Sie in Ihrem Schreiben vom 29. November 2013 vertreten – dass sich eine Pflicht, die entsprechenden Dokumente zu unterzeichnen, auch nicht ohne weiteres aus der arbeitsrechtlichen Treuepflicht ableiten lässt, welche über das Arbeitsverhältnis hinaus dauert. Mein Anwalt hat dezidiert die Meinung vertreten, dass es nicht angehe, dass mir meine ehemalige Arbeitgeberin eine Weisung zukommen lasse, ich müsse irgendwelche Dokumente unterzeichnen, ohne zu erklären, von welcher Relevanz die Unterschriften sein könnten.

3. Weiter hat mir mein Anwalt mitgeteilt, dass sich das US-amerikanische Patentrecht in verschiedenen Punkten vom schweizerischen unterscheidet. Er hat mir angeboten, eine entsprechende Abklärung bei einem amerikanischen Partneranwalt vornehmen zu lassen. Wir sind deshalb zum Schluss gekommen, dass es angesichts der Unwägbarkeiten, die das US-amerikanische Rechtssystem mit sich bringt, nicht ratsam sein kann, rechtsrelevante Dokumente einfach so zu unterzeichnen.

Mein Anwalt hat mir deshalb vorgeschlagen, dass ich zumindest von der Delica AG eine Erklärung verlange soll, wonach sie mich schadlos hält, wenn Ansprüche Dritter entstehen. Unter Dritten sind nicht nur Privatparteien, sondern auch amerikanische Behörden zu verstehen. Die entsprechende Erklärung haben Sie ja nun inzwischen abgegeben. Dies ist an sich erfreulich, zeigt aber, dass meine rechtlichen Abklärungen notwendig waren.

4. Weiter hat mein Anwalt Abklärungen vorgenommen und mir mitgeteilt, dass am 17. September 2013 ein US-Patent (US D689, 768 S) für den Migros-Genossenschafts-Bund (und nicht für die Delica AG) angemeldet worden sei und Frau Melina Inderbitzin als Erfinderin angegeben worden sei. Sie haben demnach offenbar ohne meine Zustimmung (die Sie ja scheinbar so dringlich brauchen) das Patent mit einem falschen Namen angemeldet. Auch hier könnten die entsprechenden Konsequenzen nach US-amerikanischem Recht noch abgeklärt werden.

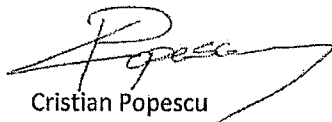
5. Selbstverständlich habe ich meinem Anwalt auch Ihr Schreiben vom 29. November 2013 unterbreitet. Er hat mir versichert, dass ich insbesondere angesichts des Verhaltens meiner bisherigen Arbeitgeberin (unzulässige Anweisung, nach wie vor fehlende Informationen, etc.) die von Ihnen angedrohten rechtlichen Schritte in keiner Weise fürchten müsse.

Dies insbesondere auch deshalb, weil Herr Patentanwalt Wenger ja ausdrücklich ausgeführt hatte, dass die Einreichung der Patentanmeldung auch ohne meine Unterschrift möglich sei. Die Androhung solcher Schritte stelle im Rechtssinn zwar keine Drohung oder Nötigung dar, sie sei aber Ausdruck eines schlechten Stils.

6. Zusammenfassend kann ich festhalten, dass mir zwar bekannt ist, dass ich nach schweizerischem Recht keine direkten Ansprüche aus meiner Erfindung geltend machen kann, da das geistige Eigentum beim Arbeitgeber verbleibt. Es verhält sich aber auch so, dass ich aufgrund des „Überfalls“ durch die Delic AG und die mangelnde Information Umtriebe hatte, die zumindest entschädigt werden müssen. Zu behaupten, dies sei unnötig gewesen, ist nach dem gesagten schlechterdings unhaltbar. Ich wäre ohne Beizug eines Anwaltes nicht in der Lage gewesen, die Risiken, die aus einer Unterzeichnung der Dokumente entstehen, abzuschätzen und diese abzufedern. Noch heute habe ich bezüglich der Risiken keine andere Auskunft erhalten, als die Behauptung, dass es keine gäbe.

Da die Frist „in Bälde“ ausläuft, ersuche ich Sie deshalb nochmals höflich, mir einen angemessenen Entschädigungsvorschlag zu unterbreiten.

Mit freundlichen Grüßen


Cristian Popescu



Cristian Ionut Popescu - Amselweg 8B - 4802 Strengelbach

[stamp: RECEIVED
8 January 2014]

Registered letter

Migros-Genossenschafts-Bund (Migros Cooperative Society)
Legal Department
Limmatstrasse 152
Postfach 1766
8301 Zurich

Strengelbach, 6 January 2014

**US patent application no. 13/994-494 for Delica AG
Your letter of 29 November 2013**

Dear Mrs Moser
Dear Mrs Schweizer

I refer to your letter of 29 November 2013.

It is very irritating that you are now also threatening me with legal action.

In response to your letter I can tell you the following:

1. On 16 July 2013 I received the said documents served on me by Mrs Messmer together with the memo stating that I 'must' sign them.

The very next day I was also asked to return the signed documents "today or tomorrow". A demand was therefore made on behalf of my former employer that I must sign these documents, without anyone having provided me with any information whatsoever as to what it means to sign such documents under US law.

It goes without saying that in the circumstances I have consulted a lawyer. If you are now simply stating that you cannot see to what extent administrative expenses could be incurred in signing the document, you are making matters too easy for yourselves. The administrative expenses were already incurred some time ago and these are based purely and simply on the thoughtless conduct of Delica.

2. The lawyer whom I consulted in fact has indeed informed me that under Swiss law the intellectual property in an invention remains with my former employer, Delica AG. However, he has also informed me that my former employer no longer has any

authority to give me instructions and therefore cannot simply demand that I sign documents relating to legal matters.

My lawyer has explained (and in this respect his legal advice differs from that which you present in your letter of 29 November 2013) that neither is an obligation to sign the documents in question automatically inferred from the loyalty under employment law provisions which endures beyond the employment relationship. My lawyer has specifically expressed the view that it is quite improper for my former employer to send me an instruction to the effect that I must sign any documents whatsoever without explaining the possible relevance of the documents.

3. My lawyer has also informed me that US patent law differs from Swiss patent law on a number of points. He has offered to arrange for me appropriate clarification from an American associate lawyer. We have therefore reached the conclusion that, in view of the uncertainties which the US legal system brings with it, it cannot be prudent just to sign documents relating to legal matters in this way.

My lawyer has therefore suggested to me that I should at least demand from Delica AG a declaration according to which it holds me harmless if third-party claims should arise. By third parties I mean not just private parties but American authorities as well. In the meantime, you have of course now provided the appropriate declaration. This in itself is welcome, but it does prove that my legal clarifications were necessary.

4. In addition, my lawyer has made further investigations and informed me that on 17 September 2013 a US patent (US D689 768 S) was applied for on behalf of the Migros-Genossenschafts-Bund (and not on behalf of Delica AG) and Mrs Melina Inderbitzin was cited as the inventor. You have therefore clearly applied to register the patent without my consent (which you appear to need so urgently) using a false name. Perhaps the relevant consequences of this under US law could also be clarified.
5. I have of course also presented my lawyer with your letter of 29 November 2013. He has assured me that, particularly in view of the conduct of my former employee (inadmissible instruction, continuing lack of information, etc.), I should have nothing to fear whatsoever with regard to the legal steps which you have threatened.

This is particularly the case given that Patent Lawyer Mr Wenger did expressly state that it was possible to file the patent application even without my signature. Whilst in legal terms the threat of such steps may not constitute an actual threat or coercion, it does indicate bad form.

6. In summary, may I say that I am indeed aware that under Swiss law I cannot assert any direct claims in respect of my invention, given that the intellectual property remains with the employer. However, it is also the case that I have incurred administrative expenses as a result of the "attack" by Delica AG and the lack of information, and they at least must be compensated. To claim that this was

unnecessary in the light of all that has been said is absolutely untenable. Without the assistance of a lawyer I would not have been in a position to assess and cushion myself against the risks arising on signing the documents. I have still not received any information in respect of the risks other than the claim that there are none.

Given that the time-limit will "shortly" expire, I would therefore politely ask you once again to send me a reasonable proposal for compensation.

Yours sincerely,

[signature]

Cristian Popescu

Migros-Genossenschafts-Bund
Direktion Recht

Einschreiben

Herr Cristian Ionut Popescu
Amselweg 8B
4802 Strengelbach

Ort/Datum Zürich, 10. Januar 2014

Belreff **US Amerikanische Patentanmeldung Nr. 13/994,494 für Delica AG**

Sehr geehrter Herr Popescu .

Wir nehmen Bezug auf Ihr Schreiben vom 6. Januar 2014. Im Sinne einer unkomplizierten Lösung des Konflikts sind wir bereit Ihnen entgegenzukommen, indem wir Ihre Anwaltskosten übernehmen.


Bitte senden Sie uns die Rechnung Ihres Anwaltes samt der unterzeichneten beiliegenden Erklärung zu. Da die Frist zur Einreichung der Dokumente am 31. Januar 2014 abläuft, bitten wir um Vorabkopie per E-Mail.

Bei Fragen können Sie sich gerne an die Linksunterzeichnende wenden.

Freundliche Grüsse
Migros-Genossenschafts-Bund



Andrea Moser
Leiterin Direktion Recht



Franziska Schweizer
Trademark Paralegal

Beilagen erwähnt

8

Migros-Genossenschafts-Bund (Migros Cooperative Society)

MIGROS

Legal Department

Registered letter

Mr Cristian Ionut Popescu
Amselweg 8B
4802 Strengelbach

Place/date: Zurich, 10 January 2014

Re: **US patent application no. 13/994,494 for Delica AG**

Dear Mr Popescu

We refer to your letter of 6 January 2014. In the interests of resolving the dispute quickly we are willing to reach a compromise with you, in that we will pay your legal costs.

Please send us your lawyer's invoice together with the enclosed declaration duly signed. Given that the time-limit for filing the documents expires on 31 January 2014, we would ask for an advance copy by email.

If you have any queries, please address them to the undersigned on the left of this letter.

Yours sincerely,

Migros-Genossenschafts-Bund

[signature]

Andrea Moser

Head of Legal Department

[signature]

Franziska Schweizer

Trademark Paralegal

Enclosures

Migros-Genossenschafts-Bund
Legal Department
Limmatstrasse 152
Postfach 1766
CH-8031 Zurich

Direct line +41 (0)44 277 24 60
Switchboard +41 (0)44 277 21 11
Fax +41 (0)44 277 21 41
andrea.moser@mgb.ch
www.migros.ch

VAT Reg. No. 231 115
Post Office account 80-766-6



Cristian Ionut Popescu - Amselweg 8B - 4802 Strengelbach

EINGEDANGEN
17. Jan. 2014

Einschreiben

Migros-Genossenschafts-Bund
Direktion Recht
Limmatstrasse 152
Postfach 1766
8301 Zürich

Strengelbach, 15. Januar 2014

US-Amerikanische Patentanmeldung Nr. 13/994-494 für Delica AG
Ihr Schreiben vom 10. Januar 2014

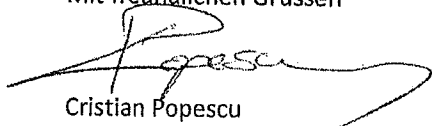
Sehr geehrte Frau Moser
Sehr geehrte Frau Schweizer

Ich nehme Bezug auf Ihr Schreiben vom 10. Januar 2014.

Wie Sie schreiben, im Sinne einer unkomplizierten Lösung des Konflikts schlage ich deshalb folgendes vor:

1. Sie geben eine Erklärung ab, wonach Sie mich für allfällige Ansprüche Dritter, insbesondere auch von US-Behörden, die aus der Unterzeichnung von den erwähnten Dokumenten entstehen, schadlos halten werden.
2. Unkosten in der Schweiz und den USA belaufen sich auf 123'000 CHF.
3. Nach Abgabe dieser Erklärung und der Zahlung unterzeichne ich die entsprechenden Dokumente.
4. Die Parteien erklären sich danach per Saldo aller Ansprüche auseinandergesetzt unter Vorbehalt der erwähnten Schadloserklärungsklausel.

Mit freundlichen Grüssen



Cristian Popescu

Beilage: Rechnung Cristian Popescu

EINGEGANGEN

17. Jan. 2014

Migros-Genossenschafts-Bund
Direktion Recht
z.H.v. Frau Moser
Limmatstrasse 152
Postfach 1766
8301 Zürich

Strengelbach, 15.01.2014

Rechnung

US-Amerikanische Patentanmeldung Nr. 13/994-494 für Delica AG

Unkosten

CHF 123'000

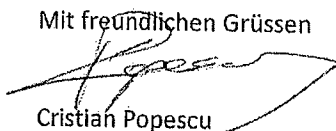
Total zu meinen Gunsten

CHF 123'000

Bankverbindung: Basler Kantonalbank, CH40 0077 0253 1263 2200 1, Swift BKBBCHBB, 4002 Basel

Danke für die Begleichung der Rechnung.

Mit freundlichen Grüßen



Cristian Popescu



Cristian Ionut Popescu - Amselweg 8B - 4802 Strengelbach

[stamp: RECEIVED
17 January 2014]

Registered letter

Migros-Genossenschafts-Bund (Migros Cooperative Society)
Legal Department
Limmatstrasse 152
Postfach 1766
8301 Zurich

Strengelbach, 15 January 2014

US patent application no. 13/994-494 for Delica AG
Your letter of 10 January 2014

Dear Mrs Moser
Dear Mrs Schweizer

I refer to your letter of 10 January 2014.

As you write, in the interests of resolving the dispute quickly, I therefore make the following proposal:

1. You make a declaration in which you hold me harmless in respect of any possible third-party claims, including in particular claims by US authorities, which might arise as a result of signing the said documents.
2. My costs in Switzerland and in the US amount to CHF 123,000.
3. Once this declaration and the payment have been made I shall sign the relevant documents.
4. The parties shall thereafter declare that all claims between them have been settled, without prejudice to the said indemnity clause.

Yours sincerely,
[signature]
Cristian Popescu

Enclosure: Invoice of Cristian Popescu

Popescu Cristian-Ionut - Amselweg 8B - 4802 Strengelbach

Migros-Genossenschafts-Bund
Legal Department
fao. Mrs Moser
Limmatstrasse 152
Postfach 1766
8301 Zurich

[stamp: RECEIVED 17 January 2014]

Strengelbach, 15.01.2014

Invoice

US patent application no. 13/994-494 for Delica AG

Costs CHF 123,000

Total payable in my favour **CHF 123,000**

Bank details: Basler Kantonalbank, **CH40 0077 0253 1263 2200 1**, Swift BKBBCHBB, 4002
Basle

Thank you for settling the invoice.

Yours sincerely,
[signature]
Cristian Popescu