



- 6 The courts have to date followed the test first mentioned in *Bonzel v Intervention Ltd*<sup>1</sup> where Aldous J. stated :

*“The decision as to whether there was an extension of disclosure must be made on a comparison of the two documents read through the eyes of a skilled addressee. The task of the Court is threefold:*

*(a) To ascertain through the eyes of the skilled addressee what is disclosed, both explicitly and implicitly in the application.*

*(b) To do the same in respect of the patent as granted.*

*(c) To compare the two disclosures and decide whether any subject matter relevant to the invention has been added whether by deletion or addition.*

*The comparison is strict in the sense that subject matter will be added unless such matter is clearly and unambiguously disclosed in the application either explicitly or implicitly.”*

I shall use this approach here. It is important to note that the comparison of documents is that between the patent specifications and thus excludes consideration of the abstract as made clear by Arnold J in the decision of the Patents Court in *Abbott Laboratories Ltd. v Medinol Ltd*<sup>2</sup>. The disclosure of the abstract, even if filed on the date of filing, cannot be considered for the purpose of determining under Section 76 whether an amendment adds matter extending beyond the disclosure of the application as filed.

### **History of filings**

- 7 Mr Bamidele has filed various documents following the original filing and has submitted numerous observations as well. The dossier also contains a number of emails and indicates that Mr Bamidele has had several telephone conversations with Officers in the IPO. I summarise the key filing actions as follows. The application was originally electronically filed on 13<sup>th</sup> January 2010, comprising a 2 page description, 2 pages of claims, 4 pages of drawings. Replacement claims have been filed three times on the 21<sup>st</sup> October 2010, 24<sup>th</sup> October 2014 and finally on the 11<sup>th</sup> December 2014. A replacement for the description was filed on 18<sup>th</sup> December 2010 comprising 3 pages. The original drawings were replaced by a version with the original text labels separated out into a correspondence table on 19<sup>th</sup> October 2010 and comprised 4 pages of drawings and 4 pages of the table. A replacement set of drawings and a replacement of the correspondence table were then filed on 11<sup>th</sup> December 2014.
- 8 There is an issue to be decided regarding the filing date of various versions of the drawings. Mr Bamidele has argued that there were drawings originally filed that differed significantly from those published. In his email of 24<sup>th</sup> March 2015 he provides a copy of “replacement drawings – previously filed prior to publication showing the mobility features of the invention and time stamped by Microsoft” and a copy of “IPO Filing Receipt – which accompanied the submission of the replacement

<sup>1</sup> *Bonzel and Schneider (Europe) AG v Intervention Ltd* [1991] RPC 553 (at 574)

<sup>2</sup> *Abbott Laboratories Ltd. v Medinol Ltd* [2010] EWHC 2865 (Pat)

drawings in February 2010". The drawings attached to this email appear to be a copy of those filed on 11<sup>th</sup> December 2014. In Mr Bamidele's letter of 11<sup>th</sup> December 2014 accompanying the drawings, he says "I have attached the drawings which were filed with the patent application (pre publication) on 12 February 2010)".

- 9 I have inspected the electronic dossier of this application, including all filing receipts, and I am assured that the drawings originally filed are the ones that were included in the A publication. There is no evidence of any other drawings having been filed on the 13 January 2010. The version of the drawings with numeric labels to replace the text labels was filed on the 19 January 2010 but, while acceptable, these were not the version published. Further, there is no evidence that I can see of anything received by the Office in February 2010 other than a letter from Mr Bamidele regarding email correspondence.
- 10 For the purpose of assessing added matter, it is not important if the current drawings were filed in February 2010 or later; I will be concerned with comparing the original drawings of 13<sup>th</sup> January 2010 and the latest version of the specification.
- 11 The current form of the specification that is being considered here comprises : Description filed on 18<sup>th</sup> December 2010 (along with the correspondence table filed on 11<sup>th</sup> December 2014); Drawings filed on 11<sup>th</sup> December 2014; Claims filed on 11 December 2014 that providing a set of claims 1 to 9.

#### **Issues to be decided**

- 12 The pre-hearing report of 27 March 2015 contained a list of amendments that the examiner considered were added matter and thus not allowable; These were :
- i). The addition of the phrase "computer driven process" in claim 1;
  - ii). The reference at the start of claims 2 to 7 to "A **portable** waste processing unit ...";
  - iii). The reference at the start of claims 8 and 9 to "Software executable on a processor ...".

#### **Decision**

- 13 I will first consider point **ii).** above.
- 14 Mr Bamidele argued that both the abstract and the amended drawings that show the wheels etc. should be considered to support the portable aspect introduced to the claims.
- 15 I find no disclosure in the original specification of the device being portable. As I note above, the fact that the abstract filed on 13<sup>th</sup> January 2010 includes the words "...portable domestic recycling system..." is of no help. The abstract must be ignored for the purpose of assessing added matter. Mr Bamidele's assertion that the amended drawings which show the wheels etc. were "filed pre-publication" is irrelevant, it is clear that they were not part of the originally filed specification.
- 16 I conclude that Claims 2 to 7 comprise added matter and are not allowable.

- 17 I will now consider points **i).** and **iii).** together.
- 18 I note that there are several portions of the original specification that warrant consideration. The first page of the original claims refer to “pre-programmed temperatures”, “a pre-programmed duration”. The second page of these claims then describes the apparatus as processing waste “...via input from the user by a touch Screen display” . The claims then describe various functions including enabling, what is implicitly the user, to select various ways the apparatus works, including altering the way the power is provided between the photovoltaic and hydroelectric means and to stop and re-start of a cycle of the process. The claims also state that various system information is provided including malfunctions or where “a system parameter has been breached and the necessary user intervention required”. In particular I note that the portion of the claims on page 2 ends with a reference to “by the supporting software”. I note the original drawings have reference to a “user interface” and “touch screen user interface” and note that the second page of the description lists “materials ... anticipate using to manufacture the product” which includes a “central processing unit.”
- 19 Mr Bamidele in his response to the objections also highlighted many of the parts of the specification I have listed above as support for these amendments.
- 20 It is clear from the required user controls, that there must be a control link between the machinery relating to each cycle of the recycler and the touch screen. Given the disclosure of a ‘central processing unit’ (CPU), of ‘supporting software’ in relation to a ‘touch screen display’ and of a ‘touch screen user interface’ and given the common general knowledge of the skilled addressee, this implies that the system is controlled by software running on a computer. The references to pre-programmed strengthen this conclusion. The explicit references to software, a user interface and a CPU cannot reasonably be thought to point to an alternative control means.
- 21 Thus I conclude that it is implied in the original specification that the recycler of the claims operates a “computer driver process” and the use of this term in claim 1 does not constitute added matter. Further, it is thus implied that there is “software executable on a processor to facilitate the completion of the cycles..”
- 22 Claim 8 refers to “software .... also to enable the following system functions” and lists functions substantially similar to that on page 2 of the original claims, but with these minor variations:
- the amended claim says “dysfunctional or unavailable” rather than just “dysfunctional” in the original; “on” has been deleted from the original phrase “on whether”; New wording “access to any other information as deemed necessary for the smooth operation of the portable waste processing unit” replaces the original “access to other information as defined by the supporting software”.
- 23 These three variations are not considered to be a significant change relevant to the invention and thus they do not add matter. I conclude therefore that claim 8 does not add matter.

- 24 Claim 9 is new, but simply recites that there is software used with a touch screen interface. As I consider it implicit that there is “software executable on a processor”, I conclude that claim 9 does not add matter.

### **Conclusion**

- 25 I find that claims 1, 8 and 9 do not contain added matter and are therefore allowable.
- 26 I further find that claims 2-7 of the application currently contain added matter, under section 76(2), although this may be remedied by amendment.
- 27 Subject to these amendments being made, the application will be remitted to the examiner for consideration of these amendments. If no such amendments are filed, the application will be refused under section 18(3) subject to section 76(2).
- 28 I note that the examiner has deferred consideration of Novelty, Obviousness and Clarity, these will also have to be taken into account and further objections may be made.
- 29 The original compliance period prescribed by Rule 30 of the Patents Rules expired on 19 October 2015. The applicant will need to extend the period by a further two months to 19 December by filing a form 52/77. Further extensions may be required if the application is to proceed. Any such extensions are at the discretion of the Comptroller.

### **Appeal**

- 30 Any appeal must be lodged within 28 days after the date of this decision.

P Mason

Deputy Director, acting for the Comptroller