Intellectual Property Office

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27 June 2016

PATENTS ACT 1977

APPLICANT Alex Gort-Barten

ISSUE Whether patent application number GB 1112047.4 complies with section 1(1)(a) and (b) of the Act

HEARING OFFICER A Bartlett

DECISION

Introduction

1 This decision addresses the issue of whether the invention defined in the claims of patent application GB 1112047.4 is new and involves an inventive step as required by section 1(1) of the Patents Act 1977.

2 The application is entitled “Blender” and was filed in the name of Mr Alex Gort-Barten on 31 January 2008. After being searched, it was published as GB2492817 on 16 January 2013.

3 The application was first examined on 21 November 2014 and the examiner reported that the invention defined in the claims lacked novelty and an inventive step. Despite numerous attempts to amend the claims the Applicant has been unable to persuade the examiner that the claims are novel and inventive over the disclosure of EP0795290 (Breville).

4 When it became clear that the examiner and the Applicant would not be able to reach agreement, a hearing was appointed to help decide the matter. That hearing took place on 3 March 2016 and Mr Gort-Barten was represented by Mr David S Moore from Jensen and Son. Also in attendance were the examiner, James Palmer, my assistant, Conal Clynch and an observer Christopher Harrison.

5 I am extremely grateful to Mr Moore for all the submissions he has made in relation to this application including the skeleton argument and performance test results he submitted on 25 February 2016, and at the hearing itself (where Mr Moore explained the invention with reference to an appliance said to embody the invention). I confirm that I have taken all those submissions and all the other correspondence on file into account in reaching my decision.

The Law

6 Section 1 of the Act sets out a number of requirements with which an application must comply before a patent can be granted. The relevant parts of that section read as follows:

> *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*

The Application

7 As explained in the description, the invention seeks to provide a more effective blender. In particular it addresses the problem of cavitation that is common in conventional blenders (where air pockets form between the material being processed and the blades thus reducing efficiency of the appliance). This is achieved by the particular arrangement of the cutting blades proposed by the inventor and the provision of a fin on the internal wall of the jug that impedes the circulation of the food being processed. It is best explained with reference to figures 1 & 2 reproduced below.

8 According to the embodiment, jug 2 is adapted to receive a cutter assembly 7 driven by a motor 5. The cutter assembly is disposed in a way such that, in use, a first mixing zone is formed below the cutter assembly and a second mixing zone is formed above the cutter assembly. A motor rotates the cutter assembly which creates a vortex in the material within the blender jug. The blender jug is provided with a fin 9 disposed on an interior surface of the blender jug to impede rotational travel of the material in the jug. The fin has a curved surface 11 which faces the flow of the material in the jug such that the material is urged back to the cutter assembly to prevent cavitation.

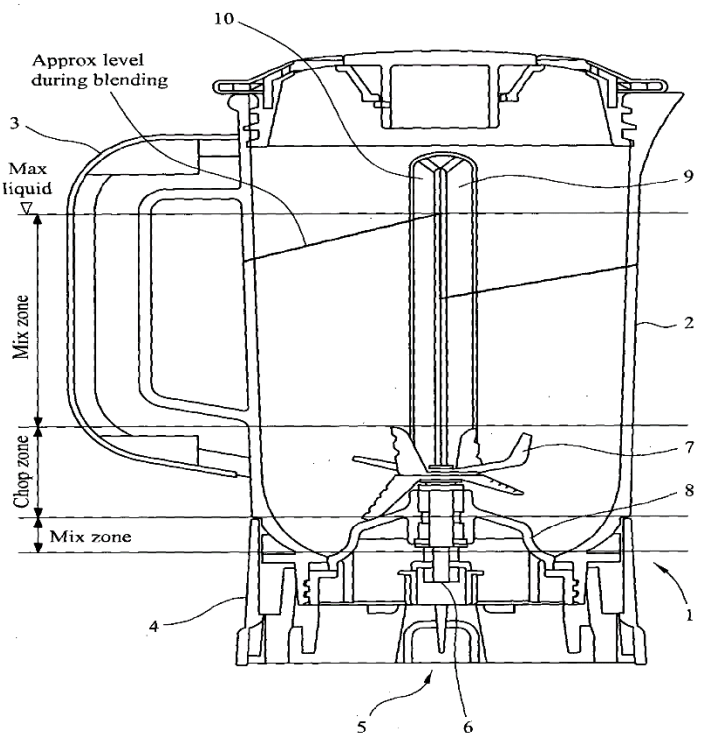
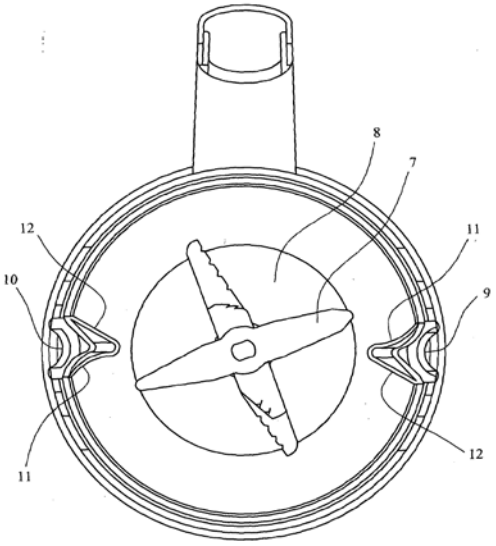


Fig 1

Fig 2



The claims

9 The claims on which this decision is based are those filed 2 November 2015. The application contains only one independent claim (other than omnibus claim 8) which reads:

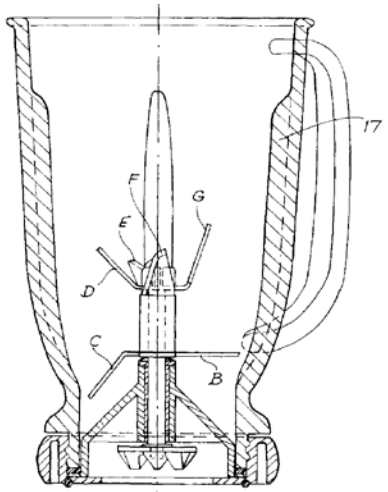
> *1. A blender comprising a blender jug adapted to receive a cutter assembly, which cutter assembly is driven by a motor, wherein the cutter assembly is disposed in the blender jug such that, in use, there is a first mix zone in the jug below a chop zone in the space around the cutter assembly and a second mix zone above the cutter assembly, wherein when the motor rotates the cutter assembly a vortex is created in material in the blender jug wherein the blender jug is provided with a fin disposed on an interior surface of the jug, which fin is adapted to impede rotational travel in the material in the jug, wherein the fin is provided with a curved face, which curved face faces the flow of the material in the jug such that the material is urged back to the cutter assembly and by doing so substantially reduces cavitation and the effects of cavitation.*

Interpretation

10 The skeleton argument provided by Mr Moore focussed on the interpretation to be given to claim 1 in the light of EP0795290 (Breville) over which the examiner does not consider claim 1 to be distinguished. The nub of his argument is that *Breville* does not show a first mix zone in the jug below a chop zone or a second mix zone above it, that the material is not urged back to the cutter assembly in *Breville* and that cavitation and the effects of cavitation are not reduced.

11 While it is true that *Breville* doesn't explicitly refer to first and second mix zones above and below the chop zone, that is not the end of the matter. As described with

reference to the drawing reproduced below, the chop zone is the area occupied by the cutting blades. In a section beginning at column 2 line 44, *Breville* explains the purpose of the space between the blades of the cutter assembly and the bottom of the jug and cutter assembly mounting. It is clearly not simply a void or minimum spacing necessary to allow the blades to rotate without fouling on the base of the jug. At the hearing I put it to Mr Moore that it is inevitable that some mixing of material will occur in this region (making it by definition a "mixing zone"). Whilst he accepted that, Mr Moore sought to stress that the teaching of *Breville* is that the mixing takes place above the blades B, C rather than below them and that any mixing below the blades in *Breville* is "incidental".



12 Expanding that line of argument, Mr Moore sought to rely upon the judgment of Arnold J. in Nestec SA & Ors v Dualit Ltd & Ors [2013] EWHC 923 (Pat) (22 April 2013) to support his argument that this sort of "incidental disclosure" did not constitute an anticipation of this feature. Having considered that judgment, I do not consider it helps Mr Moore in this instance. The point in *Nestec* is that something which the skilled man would appreciate happened occasionally due to faulty and unintended operation of the device in question did not constitute an enabling disclosure and did not destroy the novelty of the invention. The situation here is different – mixing will inevitably occur below the blades in *Breville* in its normal operation. In my view the space below the blades in *Breville* constitutes a mixing zone as required in claim 1.

13 Moreover, as described, the contents of the jug in *Breville* will be circulated above the blades which I consider to constitute disclosure of a 2nd mixing zone above the cutting zone. Thus novelty is not conferred to claim 1 by specifying the presence of first and second mixing zones above and below the chop zone.

14 The second strand of Mr Moore's submissions concerned the particular way the fin or fins on the jug wall operate. In short Mr Moore contended that material is not urged back to the cutter assembly in *Breville* as is required in present claim 1. I accept entirely that the fins do function differently in *Breville* compared to the present invention; In *Breville* (column 2 line 40) they cause the material being processed to rise up the jug and then down onto the centre of the cutter assembly whereas the curved shape of the ribs in the present arrangement direct the circulating material towards the blade. Whilst the path that the material is made to follow is different, I

consider that *Breville* none the less discloses an arrangement where the material is "urged back to the cutter assembly" by fins. Those fins have a curved surface facing the direction of rotation of the material being processed and the effect is to reduce cavitation. Thus I do not consider this aspect of present claim 1 sufficient to distinguish the claimed invention from that disclosed in *Breville* either.

15 Consequently I find that claim 1 is not novel over the disclosure of *Breville*.

Possible amendments

16 At the hearing, and with reference to the dependent claims, Mr Moore and I discussed possible avenues of amendment that might render the claims novel and inventive over the prior art in the event that I found claim 1 to lack novelty and/or an inventive step. These avenues included incorporating the contents of claim 3 or 5 (relating to the radial extent of the fin) into claim 1 or specifying the dimension of the first mixing zone below the cutter. Whilst that discussion was far from comprehensive, consistent with the objections reported by the examiner we concluded that it may be more fruitful to consider limiting the claim to specify the particular shape of the fin that causes the processed material to be urged back towards the cutter. Should the applicants file amendments to the claims they would of course need to be searched and examined fully to ensure they comply with the requirements of the Act.

Decision

17 I have found that the invention defined in claim 1 is not novel. The application may however disclose features that could form the basis of a valid claim and I therefore allow a period of one month from the date of this decision to file amendments to the claims. If no amendments are filed within that period the application will be refused under section 18(3) for failure to comply with section 1(1)(a).

Appeal

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

A Bartlett
Divisional Director, acting for the Comptroller