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**Datasheet for the decision
of 3 September 2009**

Case Number: T 0203/08 - 3.2.04

Application Number: 04077023.2

Publication Number: 1475024

IPC: A47J 43/046

Language of the proceedings: EN

Title of invention:

Beverage mixer

Patentee:

Back to Basics Products, LLC

Opponent:

SEB S.A.

Headword:

-

Relevant legal provisions:

EPC Art. 100(a), 56

Relevant legal provisions (EPC 1973):

-

Keyword:

"Inventive step - no (all requests)"

"Late filed request - (not admitted)"

Decisions cited:

-

Catchword:

-

Case Number: T 0203/08 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 3 September 2009

Appellant:
(Opponent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 21 November 2007
rejecting the opposition filed against European
patent No. 1475024 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: A. de Vries
C. Heath

Summary of Facts and Submissions

I. The Appellant (Opponent) lodged an appeal, received 21 January 2008, against the decision of the Opposition Division posted 21 November 2007 to reject the opposition against European Patent No. 1 475 024. The appeal fee was paid 22 January 2008, while the statement setting out the grounds was received 28 March 2008.

II. The opposition was filed against the patent as a whole and on the basis of Article 100(a) in combination with Articles 54 and 56, for lack of novelty and inventive step.

The Opposition Division held that the grounds mentioned did not prejudice the maintenance of the patent as granted having regard in particular to the following documents:

D1: US-A-2 315 018
D3: US-A-1 874 079
D4: US Design Patent 183,177
D5: GB-A-764 361
D6: DE-A-1 098 171
D10-6: US-A-2 940 738
D10-7: US-A-3 417 972
D10-8: WO-99/59454

III. Oral proceedings were duly held before this Board on 3 September 2009.

IV. The Appellant (Opponent) requests that the decision under appeal be set aside and the patent be revoked in its entirety.

The Respondent (Proprietor) requests, as main request, that the appeal be dismissed and the patent be maintained as granted, or in the alternative, that the patent be maintained in amended form according to auxiliary request X filed with letter of 7 August 2008, or according to the further auxiliary request 1X filed during the oral proceedings before the Board.

V. The wording of claim 1 of the requests is as follows:

Main request (patent as granted):

"A beverage mixer, comprising:

- a) a base (18) including a motor (22) for turning a drive mechanism (26) extending from the base;
- b) a container (14) removably locatable on the base (18) and including a mixing assembly (38) rotatably disposed therein, the mixing assembly being engagable by the drive mechanism (26) when the container(14) is disposed on the base;
- c) a lid (54) removably disposed on the container, having an opening (58);
- d) a spout (80), operably coupled to the container (14) or to a bottom part or portion (46) connectable to the container (44) to dispense contents thereof said spout (80) including a valve (88) disposed on the spout (80) and operable to enable contents of the container to flow through the spout (80), characterized in that the beverage mixer comprises a cup-receiving indentation (100) formed in the base as part of the base configured or provided to provide a space to enable a cup to be readily received under the spout, the spout (80) being

alignable with the cup-receiving indentation when the container is disposed on the base."

Auxiliary Request X

Claim 1 is as in the main request but for omission of all reference signs and the following amendments (with emphasis added by the Board to indicate the changes in question):

- "beverage mixer" is replaced by "*smoothie maker or blender*" in the opening line and in the characterizing feature;
- feature c) adds text to read "c) a lid removably disposed on the container, having an opening *through which a stir stick can be extended to stir ingredients being blended in the container and through which, with the stir stick removed, further ingredients may be added to the container without removing the lid;*";
- in the characterizing feature text is added so that it now reads : "... to enable a cup to be readily received under the spout *and to properly position the cup to resist spills*, the spout being alignable ...".

Auxiliary Request 1X

Claim 1 is as in auxiliary request X but reinstates the omitted reference signs and adds at the end the following wording:

"wherein the spout is mounted in an aperture in the side wall of the container with its inlet end adjacent the periphery of the rotary mixing assembly (38)."

VI. Regarding the decisive issue the Appellant argued as follows:

Departing from D5 as closest prior art, the left half of figure 1 shows a blender of the type claimed in cross-section. It has a two-part spout, 8,9, coupled to the removable container and alignable when the container is placed on the base. The cross-section is incomplete at top and bottom; this is left to the skilled person to finish off. The only differences of the claimed subject-matter are therefore a lid with opening and the cup receiving indentation.

The problems addressed by these differences - how to add ingredients during operation without being splattered by the contents in the container, on the one hand, and how to assist in positioning a cup beneath the spout, on the other - are unrelated, partial problems. They can be dealt with separately.

When realizing a blender according to D5 the skilled person will complete the missing features using his normal skills and knowledge. Blenders are normally provided with a lid or cover, while adding an opening is a routine measure, see D6, D10-6, D10-7 among others. Likewise, a cup receiving indentation is a common expedient in blenders as borne out among others by D4 or D6.

The further features of claim 1 of the auxiliary request X add nothing to the claim. The stir stick that can be extended through the opening can be any size or shape, and this does not limit the opening. Any limitations of the indentation implied by adding that

it serves to properly position the cup to resist spills are wholly unclear.

Further auxiliary request 1X is only admissible at this very late stage if clearly allowable. That is not the case, as D5 already shows the added feature of a spout on the base.

VII. The Respondent argued as follows:

The attachment of D5, figure 1, left-hand side, has no lid as follows from page 1, lines 54 to 55. The spout, represented by part 9 in the figure, is formed in the base, and is not *alignable* and *operatively coupled to the container* (or a bottom part connectable therewith) in the sense in which these terms are to be understood in view of the description. These terms are intended to cover removable as well as fixed mounting of the spout on the container, so that the spout is moved into alignment when the container is placed on the base. Further, the base has no indentation.

There is no incentive to adopt these various features from other citations. Adding an indentation is also not possible without altering the cross-section.

The features added to claim 1 of the auxiliary request X link the features of the lid opening and the indentation, which must be considered together. The further auxiliary request 1X is in response to the focus of the discussion on D5 as closest prior art in view of the debate on "alignable". It clarifies the position of the spout and the meaning of "alignable" so

distinguishing the claimed blender better over D5. D5 expressly teaches away from such a position.

Reasons for the Decision

1. The appeal is admissible.
2. *The Invention & Claim Interpretation*
 - 2.1 The invention concerns a beverage mixer comprising a base with a drive, a removable container with a mixing assembly engaging with the drive, a removable lid with an opening, and a spout. The spout, in the words of granted claim 1, is "operably coupled" to the container or a bottom part connectable to it. The central idea is the provision of a cup-receiving "indentation" (in the words of claim) formed in the base. This provides space for a cup to be readily received under the spout, which is "alignable" with the indentation "when the container is disposed on the base".
 - 2.2 In interpreting the claims the Board notes, that it is well established in jurisprudence that claims should be clear in themselves, as read by the skilled person using normal reading skills and with the aim of making technical sense of their content. He or she considers the claim as a whole, reading each term contextually and giving it its usual, normal meaning in that context. Any given reading should be consistent with the description, that is there should be no conflict between the skilled person's understanding of what the claim defines as the invention, and what he or she gleans from the description regarding the invention.

Exceptionally, however, the description may be necessary to give an unusual term meaning or an unusual meaning to an otherwise known term.

2.2.1 Applying these generally accepted principles of interpretation firstly to the term "indentation", the Board has no doubt that the skilled person will understand this term to mean a dent or recess, which when read contextually, is formed in the base. The claim further specifies that it is a "cup-receiving" indentation "configured or provided to provide a space to enable a cup to be readily received under the spout". This does not imply any particular dimensions, shape or location, other than that these must be commensurate with the stated function. Thus the dent is localized in the area of the base underneath the spout and is large enough to provide the required space for a cup. This interpretation is consistent with the description.

2.2.2 The terms "operably coupled" are somewhat more opaque. In their context they convey no more information than of a functional link between spout and container (or connectable bottom part). That link is explicitly given in the claim, where, in relation to the valve, it states that it enables "contents of the container to flow through the spout". The meaning of the above terms is exhausted in this statement; they do not allow of any inference as to the particular physical form of the coupling. They include base mounted spouts as well as those removably attached to the container, and any other configuration of the spout that serves as outlet for the container contents. The fact that the type of coupling of spout is first specified in a dependent claim (claim 5), leads the Board to believe that this

unspecific formulation in claim 1 has indeed been carefully chosen to embrace all such possibilities. Again this reading is consistent with the description.

- 2.2.3 That the spout is "alignable" with the indentation, as further stated in claim 1, sheds little light on the arrangement of spout with respect to the container. This term, read in context with normal reading skills, refers to the capacity or capability of the spout for being aligned or aligning with the indentation when the container is disposed on the base. Whether this implies that the spout be movable with respect to the indentation, and excludes spouts that are in a fixed state of alignment with it, is not immediately apparent. Had claim 1 specified the spout as a (detachable) part of the removable container, only the former reading would have been possible. Again the unspecific formulation of claim 1 suggests that it is intended to cover also the latter possibility. Here also, the Board sees no conflict with the description.

3. *Main Request and Auxiliary Request X*

- 3.1 The prior art cited in opposition includes various examples of beverage mixers - understood in the normal sense of a household electrical appliance for mixing foods, in this case beverages - of the type described in detail in the main embodiment and commonly referred to as a blender or liquefier. D5 in particular describes a kitchen appliance with a base 1' housing a motor 1 and drive assembly 1" (see figure 1) engageable with one of various processing attachments that can be interchangeably fitted on the base (page 1, lines 16 to 34). Figure 1 shows two such attachments in cross-

section mounted on mounting 2 of base 1. The left-hand attachment is a container 7 with mixing assembly 5,6 shown in engagement with the drive 1". These features are undisputed as are those of a spout 9 with valve 11.

The spout 9 forms part of the mounting 2 of the base body 1', see figure 1 and page 2, lines 63 to 64. It registers with opening 8 to allow discharge from the container, page 2, lines 66 to 73. It is thus "operably coupled" to the container 7 in the interpretation given above.

3.2 In the left-half of figure 1 the container is cut-off towards the top without any detail of the opening, in particular whether or not it has a *lid with an opening*. Furthermore, though the cross-section of the base shows the base wall below the spout set back towards the drive axis with respect to the opposite side of the base, this does not necessarily imply an *indentation with which the spout is "alignable"* in the wider sense, see above. This feature of claim 1 is thus also not disclosed in D5.

3.3 A lid with opening allows ingredients to be added while still affording protection against expulsion of contents during operation. An indentation aligned under the spout on the other hand facilitates positioning of the cup under the spout thereby avoiding spillage. These two differences are thus not only structurally unrelated but also address underlying problems that are wholly unconnected. Consequently, and within the context of the problem-solution approach adopted by the Boards for assessing inventive step, the two differences can be considered separately and

independently as solutions to disparate partial problems.

- 3.4 Lids are a commonplace feature in kitchen appliances such as mixers, blenders and other food processors, where they prevent contents from exiting unexpectedly, the main function of lids. Almost equally widespread is the provision of an opening in the lid to allow ingredients to be added without the need to remove the lid. D6, D10-6, D10-7 or D10-8 provide clear illustrations of such lids. The adoption of such a commonplace measure in a blender as in D5 requires no inventive insight on the part of the skilled person in the field of kitchen appliances.

In this regard it is immaterial whether the passage in D5, page 5, lines 52 to 56, may be read (this is debatable) as distinguishing between generally funnel-shaped blender or mixer containers as open-topped and pot-shaped containers that are closed. The above citations offer incontrovertible evidence that lids are used with such funnel shaped blender/mixer containers, and, what is more, that such lids have openings.

- 3.5 Bases that are recessed immediately below a dispensing spout are also known, if not common, in blenders and mixers. D4 and D6 offer fine examples. In D4 (a design patent directed to a "liquefier", a synonym of the term "blender") the recess, or indentation, is visible in figures 1 and 4 (a top view), arranged immediately below what is readily recognizable as a spout. A similar indentation can be inferred from the cross-section of figure 2 viewed in conjunction with the top view in figure 5 (in figure 2 the base wall is set back

immediately below spout 13 from the base periphery in figure 5). These dents, which are fairly large and located directly below the spout, extending to the bottom of the base, can serve only one, evident purpose, namely to provide space below the spout to make it easier to place the cup in the right position. They are not too shallow, their depth at best determines the degree of ease of placing the cup. Adoption of this known measure in the realization of a base as in D5 is a matter of obviousness. This is particularly so as D5 itself already shows the base wall set back inwardly.

3.6 As the two measures are unrelated (see above) their combined application is also of no inventive merit. The subject-matter of claim 1 according to the main request thus lacks inventive step.

3.7 Even if the claim were to be understood as relating to a container mounted spout that is brought into alignment with the indentation when the container is fitted on the base, the Board is unconvinced that this would render its subject-matter inventive. The idea of mounting the spout on a blender or mixer container is known per se, see D1 or D3 (figure 1 in either case). D5 acknowledges as much on page 1, lines 57 to 60 and 71 to 73, but proposes mounting the spout on the base as an alternative that is simpler in manufacture and use when attachments of different types and sizes are to be (interchangeably) fitted on the base, see further lines 65 to 79. If that is not case, and the machine is to serve a single purpose only - an obvious simplification if the skilled person wishes to dispense with the benefits of versatility - whether the spout is mounted on the base or on the container-attachment

makes no difference, as will be clear to the skilled person. Choosing one or the other of these known alternatives is then of no inventive merit. Should the skilled person also want to indent the base for easier placement of a cup under the spout in such an obviously simplified single purpose blender with container mounted spout, he will as a matter of course ensure that the spout can be brought into alignment with the indentation when the container is attached to the base. The resultant blender, with the obvious addition of a lid with opening (see above), lacks inventive step.

- 3.8 Turning to the claim 1 of the *auxiliary request X*, D5 also undoubtedly concerns a blender. The further added function of the opening (for a stir stick as well ingredients) merely implies that the opening be suitable in some manner for this purpose. Depending on the size of the stir stick (unspecified in the claim), the openings in the lids of D6, D10-6, D10-7 and D10-8 can all receive one, and are thus also suitable for that purpose (D10-7, figure 1 explicitly shows a stir stick 19 in the opening 4 of a blender jar). Finally, any indentation under a spout, such as in D4 or D6, by virtue of it making proper placement of a cup easier, also avoids spilling.

In the light of the above the Board concludes that the further detail adds nothing of inventive merit to the subject-matter of claim 1.

- 3.9 The Board concludes that the subject-matter of claim 1 according to the main request or the auxiliary request X does not involve an inventive step. This opposition

ground thus prejudices maintenance of the patent as granted or in amended form.

4. *Admissibility of Auxiliary Request 1X*

4.1 Auxiliary request 1X was submitted at the end of the proceedings after the issue of inventive step for the main request and auxiliary request X had been debated at length by the parties. The Respondent states that its filing was in response to shift of focus onto D5 as closest prior art in the preceding debate, and the discussion regarding interpretation of "alignable". The annex to the summons, however, already suggested D5 as a pertinent starting point (section 1) and indicated that the meaning of "alignable" would have to be considered (section 3). The Respondent was thus forewarned of these relevant issues, and could in response have formulated and filed appropriate fallback positions before the time limit mentioned in the summons. The Board concludes that there is no proper justification for the late filing of this request.

4.2 Article 13(1) of the Rules of Procedure of the Boards of Appeal of the EPO (RPBA) affords the Boards the discretion in disregarding late filed submissions in particular where their admission might compromise procedural economy. A criterion applied by the Boards in this regard to late filed amended claims is whether or not they are "clearly allowable", that is whether or not it is immediately apparent to the Board, with little or no investigative effort on its part, that amendments successfully address the issues raised without giving rise to new ones (see e.g. Case Law of

the Boards of Appeal, 5th edition, 2006, VII.D.14.2.1 and the case law cited therein).

4.3 In the present case, the amendments (based on granted claim 5) clarify the position of the spout as being mounted in an aperture in a side wall of the container near the mixing assembly. However, D5's mention of attachment mounted spouts, even if it proposes a more advantageous mounting on the base, as well as the container mounted spouts shown in D1 and D3, give rise to serious doubts as to the patentability of this subject-matter. In the light of such doubts the Board does not consider the amended claims (and this request) to be clearly allowable.

4.4 As the claims are filed late without any proper justification, and are not clearly allowable, the Board, using its discretion under Article 13 RPBA, has decided not to admit them into the procedure.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte