



PATENTS ACT 1977

APPLICANT Sergei Aleksandrovich Korotkov

ISSUE Whether application GB1813098.9 complies with
Sections 14(3), 1(1)(a) and 1(1)(b) of the Patent Act
1977.

HEARING OFFICER Dr Stephen Brown

DECISION

Introduction

- 1 Patent application GB1813098.9 is the national phase of a PCT application published as WO 2017/123121 and has a filing date of 23 December 2016. It claims a priority date of 12 January 2016 from Russian application 2016100777. GB1813098.9 was subsequently republished as GB2562010 on 31 October 2018.
- 2 Despite several rounds of correspondence, the applicant was not able, within the unextended Section 20 Compliance period, to persuade the Examiner the application met the requirements of the Act. The applicant filed a first form 52 on 21 December 2021 to obtain a two month, as-of-right, extension to the Section 20 Compliance period and the examiner agreed a further discretionary extension to the Compliance date upon receipt of second form 52 on 7 July 2022. However, at the end of this doubly extended Compliance period (on 31 July 2022) the Examiner was still not satisfied that the application met the requirements of the Act. The examination report dated 24 June 2022 objected that the specification did not meet the requirements of the Act in respect of Sufficiency of disclosure or Novelty. On 1 August 2022, one day after the end of the extended compliance period, the Applicant filed amendments and observations which aimed to address the objections set out in that examination report. The Examiner issued a letter on 26 August 2021 explaining that it would only be possible to consider those if the applicant filed yet another form 52 requesting a further discretionary extension to the Compliance period. The applicant duly filed a third form 52 on 8 September 2022, with the aim of extending the Compliance period to 31 September 2022. However, the Examiner was not satisfied that the Applicant had provided adequate grounds for the request and issued an examination report to that effect on 26 September 2022. That examination report intimated that, even if the Compliance period had been successfully extended, the amendments of 1 August 2022 would not, in the Examiner's opinion, have satisfied the Sufficiency and Novelty requirements of the Act.

- 3 On 28 September 2022, the applicant requested a decision, by a Hearing Officer, based on the papers on file. The Examiner’s pre-hearing report of 12 October 2022 suggested that, because they had rejected the most recent request for an extension to the Compliance period, the decision should be based on the application on file on 31 July 2022.

The issues to be decided

- 4 The issues for me to decide are whether the disclosure of the invention is Sufficient, as required by Section 14(3) of the Act and whether the invention of claim 1 is Novel, as required by Section 1(1)(a). If necessary, I will also consider whether the invention provides an Inventive Step, as required by Section 1(1)(b). I will assess both the application on file on 31 July 2022 and the amendments to the application filed the day after this. If necessary, I will then decide whether the Compliance period should have been extended beyond 31 July 2022.

The Application

- 5 The apparatus disclosed in the application, as originally filed, is a container for heating water, such as a “teakettle”. The container includes a lower chamber 4 and an upper chamber 5, selectively divided from each other by a partition 6. When the partition is in an open position (as shown in Figure 1), heating a bottom part of the container 1 may lead to boiling in both chambers. However, when the partition is closed, water in the upper chamber is isolated from water in the lower chamber and consequently water in the upper chamber is heated more slowly than water in the lower chamber. If only a small amount of hot water is required, the container may be operated with the partition closed to reduce energy consumption. Figure 1 is reproduced below.

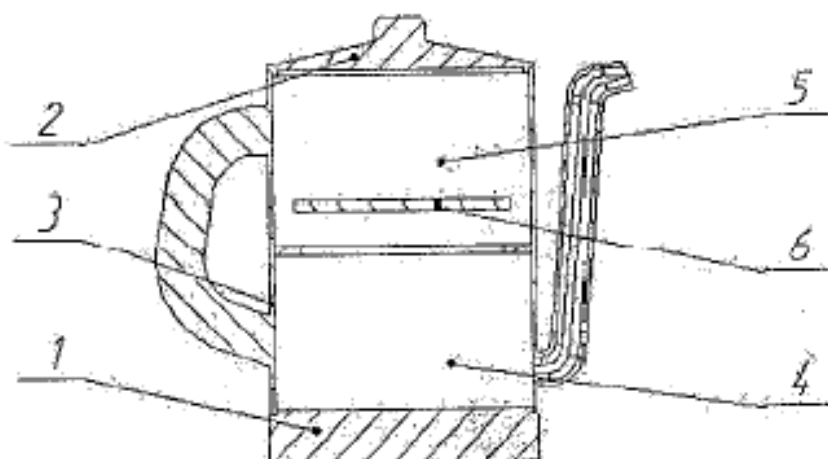


Fig. 1

- 6 Crucially, the originally filed application also disclosed a method of operating the apparatus which involved heating water with the partition open and, “in the future”, heating water with the partition closed.

Claim 1 as amended on 31 May 2022

- 7 On 31 July 2022, the only claim on file was claim 1 as amended on 31 May 2022. It is reproduced below:

A food preparation method, characterized in that water or liquid food products inside a container are separated within the container after the start of a heating process but before it ends, into a part that continues to heat and a remaining part.

Claim 1 as amended on 1 August 2022

- 8 However, on 1 August 2022, the day after the last day of the Compliance date, as extended by the first two form 52s, the sole claim was amended to:

*A food preparation method, characterized in that water or liquid food products inside a container are separated **by an internal partition** within the container after the start of a heating process but before it ends, into a part that continues to heat and a remaining part.*

- 9 I have added emphasis to indicate how the claim of 1 August differs from the previous claim of 31 May. I note that the claim 1 filed on 1 August 2002 is identical to the claim 1 filed on 4 May 2022, so if the Compliance date had been extended a third time, the effect of the amendment of 1 August 2022 would have been to have reversed the amendment to claim 1 of 31 May 2022.

Sufficiency

The Law – Section 14(3)

- 10 The section of the Act concerning Sufficiency is Section 14(3). This reads:

The specification of an application shall disclose the invention in a manner which is clear enough and complete enough for the invention to be performed by a person skilled in the art.

- 11 Whilst there is only one provision under the Act, it is now settled law that sufficiency of disclosure can be approached in three different ways:

- (1) Classical insufficiency
- (2) Insufficiency by ambiguity

(3) Insufficiency by excessive claim breadth.

Analysis – claim 1 filed on 31 May 2022

12 As a preliminary step to assessing Sufficiency, it is helpful to clearly identify the invention. I will therefore construe claim 1 (as amended on 31 May 2022) in the light of the description and drawings, as originally filed in the international phase. I shall take some time over this because the construed claim will be relevant for the assessment of novelty and inventive step also.

13 Claim 1 begins: “A food preparation method”. However, the only reference to food preparation comes at the beginning of the description and is confined to:

“The invention relates to food preparation methods.

A food preparation method is known in the art, wherein water is heated...”

14 The remainder of the description refers only to the heating of water, for example in a “teakettle” and not to the preparation of food. Of course, I appreciate that water heated using the invention could be used for preparing food, for example by adding it to dehydrated soup or noodles.

15 I note that there is no explicit reference to heating liquid food products in the original description or claim but there is in the official translation of the amended claim filed with WIPO on 28 July 2017. As WIPO accepted this amendment, I will ignore the possible issue of added matter for now. I don’t believe that the option of using the invention with liquid food products will change my conclusions anyway. I therefore construe the first line of Claim 1 as “A method of heating either water or liquid food products in a container, the water being suitable for use in the preparation of food or beverages”.

16 The next part of Claim 1 which I need to consider is: “*after the start of a heating process but before it ends*”. I note that the Examination report of 28 September 2021 indicated that the Examiner originally considered this passage to add matter. However, the attorney’s letter of 31 January 2022 argued that lines 24-28 of page 1 of the description (as originally filed) provided support. This persuaded the Examiner to withdraw the added matter objection. To my mind, a literal reading of the section of the claim in question might suggest separation must take place during a single continuous heating process. However, lines 24-28 of page 1 state:

When the water is boiled, chambers 4 and 5 of body 3 are combined by opening partition 6. In the future, if only some of the water needs to be heated, the water is divided by closing partition 6. The rest of the water in chamber 5 is heated slowly.”

17 To my mind, these lines merely disclose that there is initial heating of water, a partition is then closed to separate the heated water into two parts, and then there is subsequent heating of part of the water. This passage does not go so far as to disclose that the partition is moved during continuous heating. Furthermore, I note

that the initial heating operation of lines 24-28 of page 1 involves boiling of water which, in the context of a kettle, would seem to me to suggest the initial heating operation (raising water to boiling point) may be completed before the partition is closed to separate the water. An earlier reference in the description to “multiple heatings” would seem to support this view. Therefore, to my mind, the proper construction of separating “after the start of a heating process but before it ends” is that an initial heating operation is performed, then the water which has been heated is separated and then a subsequent heating operation is performed.

18 Finally, claim 1 states that the first part continues to heat but is silent in respect of heating of the remaining part. However, it seems essential to the invention that the water at the second part is not heated at as fast a rate as the water in the first part, or as line 28 of page 1 of the description puts it, the water in the remaining part is “heated slowly”. If the water in the second part was heated at the same rate as water in the first part, the stated aim of saving energy would not be achieved.

19 Taking all the above into account, I construe claim 1 as:

A method of heating either water or liquid food products within a container, the water being suitable for use in the preparation of food or beverages, the method including the steps of:

(i) performing an initial heating operation on the water or liquid food products within the container; then

(ii) separating the water or liquid food products, within the container, into a first part and a second part; and then

(iii) performing a subsequent heating operation in which water or liquid food products in the second part are heated more slowly than in the first part.

20 Having construed the claim, I can now turn to the Sufficiency objections raised by the Examiner, and the applicant’s arguments in reply. Looking at the examination report dated 24 June 2022, it is clear to me that the Examiner was essentially making two separate Sufficiency objections: (1) the amendments of 31 May 2022 deleted “internal partition” from the previous claim 1 on file, and this resulted in a claim which the Examiner considered to lack sufficiency due to excessive claim breadth and (2) the specification did not provide sufficient details of how the internal partition should be opened and closed to enable a skilled person to perform the invention. The first of these objections is of insufficiency by excessive claim breadth and the second is of classical insufficiency.

21 I shall first consider whether there is insufficiency due to excessive claim breadth. I note that claim 1 as originally filed did not refer to an internal partition, so there is no possibility of added matter by deletion here. The applicant did not respond to the Examiner’s objection until 1 August 2022, after the extended compliance date had expired. The amended claim 1 filed on 1 August 2022 re-inserted the “internal partition” feature; the amended claim is reproduced above. The accompanying attorney’s letter stated that the objection to lack of sufficiency `has been addressed by amending Claim 1 to include the phrase “*by an internal partition*””. The applicant provided no arguments to counter the Examiner’s objection to insufficiency by excessive claim breadth.

22 In *Regeneron Pharmaceuticals Inc v Kymab Ltd*¹ Lord Briggs summarised the principles which should be used when assessing the sufficiency of product claims. In *Illumina Cambridge Ltd v Latvia MGI Tech SIA & Ors*², Birss J adapted these principles to apply also to method claims. I have reproduced the fourth and fifth of these principles below, as they seem particularly relevant here:

iv) The disclosure required of the patentee is such as will, coupled with the common general knowledge existing as at the priority date, be sufficient to enable the skilled person to perform substantially all the types or embodiments [] within the scope of the claim. That is what, [], enablement means. [...]

v) A claim which seeks to protect products or processes which cannot be performed by the skilled person using the disclosure in the patent will, subject to de minimis or wholly irrelevant exceptions, be bound to exceed the contribution to the art made by the patent, measured as it must be at the priority date.

23 I can envisage embodiments which fall within the scope of claim 1 but which have not been disclosed in the specification. For example, the container could be divided into two tanks, and water heated in a first tank could be separated by pumping a portion of the water to a second tank. Or, to use the example provided by the Examiner of multiple portions of soup heating in a pan, a ladle could be used to scoop up one of the portions and the ladle could be held up within the pan, above the level of the remaining portions. Omission of the internal partition from claim 1 clearly results in an invention which is not enabled across the full scope of the claim. I conclude that the application on file on 31 July 2022 lacked sufficiency due to excessive claim breadth.

24 I shall now consider whether the application is classically insufficient. It is the Examiner's position that the invention is not disclosed in a manner complete enough for the invention to be performed by the skilled person. If I have understood the Examiner correctly, they are concerned that the application does not disclose the means used to move the internal partition from open to closed. The applicant's position, as set out in the attorney's letter of 1 August 2022, is that the Figures provide an example of how to separate water or liquid food products by moving a partition and "*it would not require the skilled person to conduct prolonged research enquiry or experiment to separate the water or liquid food products after having being informed that a partition is used*". The attorney's letter appears to be implicitly referring to Floyd J's remarks in *Zipher Ltd v Markem Systems*³:

"Classical insufficiency arises where the express teaching of the patent does not enable the skilled addressee to perform the invention. This type of insufficiency requires an assessment ...of the steps to which it would be necessary for the skilled reader or team to take in following the teaching of the specification and in order to arrive within the claim. Plainly the steps should

¹ *Regeneron Pharmaceuticals Inc v Kymab Ltd* [2020] UKSC 27 at [56]

² *Illumina Cambridge Ltd v Latvia MGI Tech SIA & Ors* [2021] EWHC 57 (Pat) at [253]-[258]

³ *Zipher Ltd v Markem Systems Ltd* [2009] FSR1

not include inventive ones. But a patent can also be found insufficient if the steps can be characterised as prolonged research, enquiry or experiment.”

25 I consider the skilled person to be a designer of kettles, urns, or similar water heating apparatus, who has experience of preparing beverages and basic food using hot water from such apparatus. Of course, the drinks-making experience I refer to is no doubt shared by a significant proportion of the adult population of the UK. As pointed out in the attorney’s letter, the application clearly teaches the skilled person that the water is to be divided by moving an internal partition 6. To a skilled person seeking to implement the invention of claim 1, it would, to my mind, be a very straightforward task to work out how to move the internal partition 6. For example, the skilled person would be familiar with French press coffee pots and would likely appreciate that the vertical axial rod used to move the filters within such pots could be adapted to move the internal partition disclosed in this application. It seems unlikely to me that a skilled person would require prolonged research to solve the problem of how to move the internal partition, or that it would require inventive thought to do so. I therefore conclude that the claim 1 on file on 31 July 2022 was not classically insufficient.

Analysis – claim 1 filed on 1 August 2022

26 Having already considered Sufficiency for the application on file on 31 July 2022, it is a relatively straightforward matter to adapt my decision to the application on file on 1 August 2022. Adapting my construction of claim 1 as filed on 31 May 2022, I construe claim 1 as filed on 1 August 2022 as:

A method of heating either water or liquid food products within a container, the water being suitable for use in the preparation of food or beverages, the method including the steps of:

- (i) performing an initial heating operation on the water or liquid food products within the container; then*
- (ii) separating the water or liquid food products, using an internal partition of the container, into a first part and a second part; and then*
- (iii) performing a subsequent heating operation in which water or liquid food products in the second part are heated more slowly than in the first part.*

27 Claim 1 on file on 1 August is limited to separating the water or liquid food products using an internal partition, after initial heating. I think it is likely implicit within the claim that the separation is achieved by movement of at least part of the internal partition. I therefore do not consider this claim to lack sufficiency due to excessive claim breadth. I have already decided that the application on file on 31 July 2022 was not classically insufficient and this decision must clearly also apply to the application as amended on 1 August 2022. In summary, I have decided that the amendments filed on that date meet the Sufficiency requirements of Section 14(3).

Novelty and Inventive Step

The Law

28 Section 1(1) of the Act states that:

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;

29 Sections 2(1) & 2(2) of the Act read:

An invention shall be taken to be new if it does not form part of the state of the art.

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

30 Section 3 of the Act states:

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

31 In addition to statute, the courts have long used the so-called Windsurfing test to assess issues of inventive step. This test was reformulated by the Court of Appeal in Pozzoli⁴. Paragraph 23 of this decision lays out the test as:

(1) (a) Identify the notional "person skilled in the art"

(b) Identify the relevant common general knowledge of that person;

(2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;

(3) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed;

⁴ Pozzoli Spa v BDMO SA & Anor [2007] EWCA Civ 588

(4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?

Analysis – claim 1 as amended on 31 May 2022

32 The Examiner cited the following prior art documents:

D1: GB 2242614 A (STRIX LTD)

D2: GB 2417670 A (STRIX LTD)

D3: WO 2008/139173 A2 (OTTER CONTROLS LTD)

D4: US 2004/178131 A1 (MONTEIRO)

D5: WO 01/93733 A1 (HARTLEY)

33 Each of these documents was published before the priority date of the current application. When assessing novelty and inventive step, I will construe claim 1 as in paragraph 19 above.

34 D1 discloses a kettle 1, which is equivalent to the container of claim 1. A partition separates the kettle into a first chamber 2, which contains a heating element 7, and a second chamber 3, which is not directly heated. Figure 2 of D1 provides a plan view of the kettle, and I have reproduced this figure below.

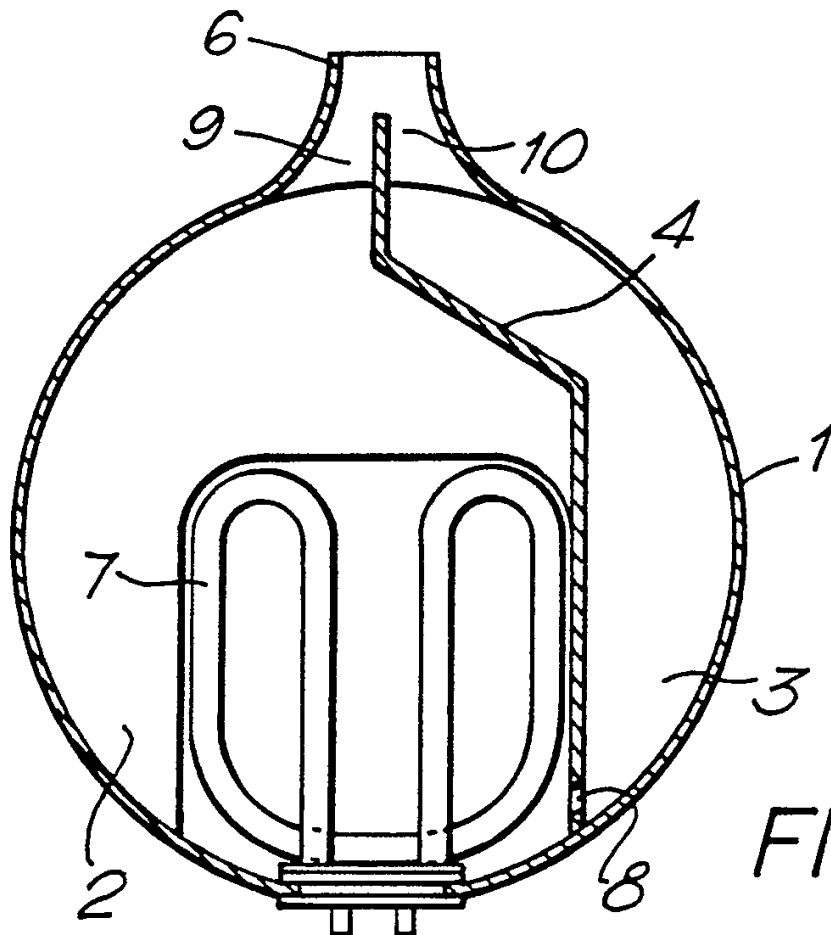


FIG.2.

- 35 Water in the second chamber 3 is heated less rapidly than water in the first chamber 2, which is heated to boiling point. When water from the kettle is poured from its spout 6, water from the first and second chambers mixes so that water exiting the spout has a lower temperature than water in chamber 2. This is said to solve the problem of providing water at an optimal temperature (90 degrees Celsius apparently) for making coffee.
- 36 However, lines 4-13 of page 5 of D1 disclose the provision of a “selectively openable and closable aperture” in the partition 4. D1 discloses that the aperture can be opened to permit mixing between the chambers when water at boiling point is required for tea making. If the kettle of D1 was used (with the aperture open) to make a cup of tea, and then later the kettle was used (with the aperture closed) to make a cup of coffee then such use of the kettle would anticipate claim 1, as I have construed it, provided the water for coffee was reheated without re-filling the kettle. D1 does not however explicitly disclose such use. Furthermore, as I am not satisfied that this is implicit in D1, I conclude that the invention of claim 1 is therefore novel over D1.
- 37 I will now consider whether the invention of claim 1 provides an inventive step over D1. The *Pozzoli* test might seem like an overly powerful tool for the present situation. Nevertheless, it is the established test so I shall briefly run through the steps. I consider the skilled person to be the same skilled person as I defined above when considering sufficiency. Making a cup of tea and a cup of coffee using a kettle would, of course, lie within the common general knowledge of such a skilled person. The skilled person would also appreciate that water in kettles is often re-heated, without refilling.
- 38 Turning now to point 3 of the *Pozzoli* test, D1 differs from claim 1 as construed in paragraph 19 above in that D1 does not disclose that the step of separating water (achieved by closing the aperture in the partition 4) is performed between two heating steps.
- 39 The attorney’s letter dated 31 May 2022 alleges the following additional differences:
- i) D1 does not disclose dividing a liquid inside a container*
 - ii) D1 does not disclose the separation is to take place after a specified time-period*
 - iii) D1 would not be able to deal with viscous liquids*
 - iv) D1 does not permit repeated cycles of re-heating and separation*
- 40 I shall now quickly consider these alleged additional differences. Alleged difference i can be quickly dismissed: the “*selectively openable and closable aperture*” of D1, when closed, clearly divides the liquid into two parts.
- 41 In response to alleged difference ii, I note that claim 1, as I have construed it, does not require separation to take place after a specified time-period. Claim 1 as filed on 31 May 2022 did state that separation should occur “*after the start of the heating process but before it ends*”. However, I cannot construe this passage of the claim as requiring separation after a specified time-period because such a construction would add matter to the originally filed specification. Furthermore, as discussed

above, the passage cannot be construed to disclose that separation must take place during continuous heating, for similar reasons.

- 42 Turning now to alleged difference iii, claim 1 is not limited to use with viscous liquids; it relates to heating of *water or* liquid food products. Finally, addressing alleged difference iv, repeated re-heating and separation cycles are not claimed. Claim 1 only requires one separation followed by one re-heating. As I have acknowledged in paragraph 38 above, I agree that claim 1 does not explicitly disclose re-heating after separation.
- 43 In the final step of the test, I must decide whether the difference identified in paragraph 38 above would have been obvious to a person skilled in the art. As explained above, D1 teaches that when making tea the aperture should be open but when making coffee the aperture should be closed to separate water in the container into two parts. The final step of the test therefore really boils down to deciding whether it would be obvious to heat water in a kettle to make tea and then, later, to reheat water remaining in the kettle to make coffee. I am sure that beverage making sequence would be obvious to a person skilled in the art. It is something I have done myself on numerous occasions. I therefore conclude that the invention, as claimed in claim 1 of 31 May 2022, fails to provide an inventive step over D1.
- 44 For completeness, I note that even if I had adopted a literal construction of performing separation “*after the start of a heating process but before it ends*”, claim 1 would still, in my view, lack an inventive step over D1. I say this because it would seem obvious to decide to make a cup of tea, adjust the aperture to the tea setting, start heating the water but then, having decided part way through the heating process that coffee would be preferable, to adjust the aperture to the coffee setting while the water is heating.
- 45 D2 provides a broadly similar disclosure to D1. It discloses a kettle with a partitioned volume 30 which is separated from a main part of the vessel 6 by a wall part 28. The main part of the vessel sits over a heated part of a base, but the partitioned part sits over an unheated part of the base. Water in the partitioned portion is heated more slowly than water in the main part. When heated water is poured from the kettle, water from the partitioned portion mixes with hotter water from the main portion to produce water at the appropriate temperature for making coffee. The mixing may simply occur in the spout as the kettle is tipped. However, D2 suggests⁵:

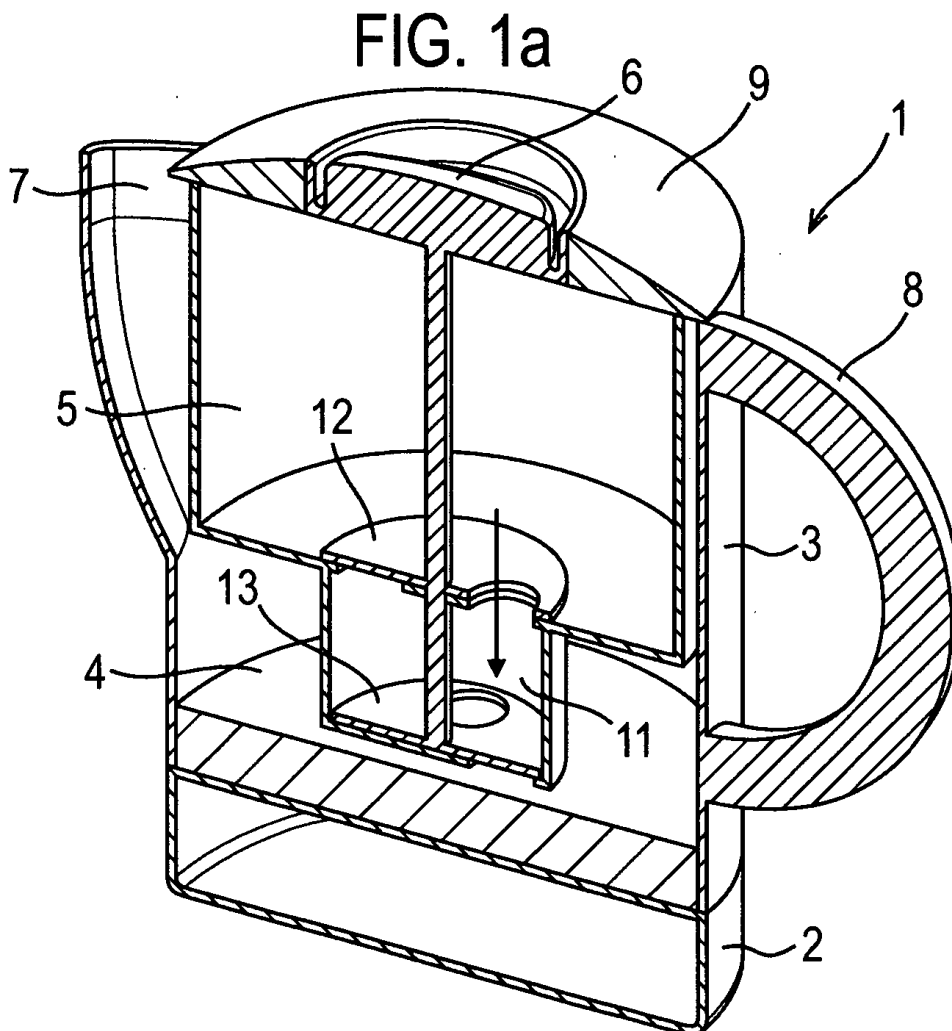
“more complicated arrangements could be provided where mixing was allowable when a vessel was tipped such as a mechanically operated valve or door. This could even be operated by the control unit or independently by a user. Such a mechanism could also be used to partition the liquid after filling.”

- 46 Although D2 refers to partitioning liquid after filling the kettle and mixing liquid after heating, it does not explicitly disclose partitioning liquid after heating. D2 does not, therefore, demonstrate that claim 1 lacks novelty.
- 47 Does D2 demonstrate a lack of inventive step, however? The passage of D2 reproduced above, in effect, discloses the possibility of filling the kettle with water,

⁵ At lines 26-31 of page 4

then manually operating the door to partition the water into two parts. It also discloses, having heated water, manually operating the door to mix the water to obtain water at a suitable temperature for making coffee. It seems implicit that each of these operations would be performed in sequence. It would be obvious (to a person skilled in the art) to heat water for a first cup of coffee using this sequence and, later, to reheat water for a second cup. It would also be obvious that, prior to reheating, the door should be controlled to partition the water again, to ensure water of a suitable temperature for coffee is produced. It would therefore be obvious to partition liquid within the kettle of D2 after an initial heating operation. I therefore conclude that claim 1 also lacks an inventive step over D2.

48 D3 discloses a kettle including a reservoir 5, a heating chamber 4 and a dispensing compartment 11. Figure 1a provides an example of an embodiment of the kettle. I have reproduced Figure 1a below.



- 49 The kettle allows metred quantities of water to be dispensed from the reservoir to the heating chamber. When the dispensing compartment is in a first position (as shown in Figure 1a) water passes from the reservoir to the compartment until the compartment is filled. A user then operates an actuator to rotate the compartment so that it dispenses the water it contains into the heating chamber (as shown in Figure 1b). There is no disclosure of separation of water from the heating chamber 4 into two parts. Water from reservoir 12 is separated into a first part, which remains in the reservoir, and a second part, which is heated in the heating chamber. However, I am not convinced that the water in the reservoir can be considered to have been heated. The reservoir water appears to be isolated from the heating chamber water during heating. I therefore conclude that D3 does not demonstrate a lack of novelty. Furthermore, the clear aim of D3 is to heat only the water which is required. This aim points away from heating water in the reservoir. D3 cannot, therefore, be used to demonstrate a lack of inventive step either.
- 50 Documents D4 and D5 also disclose kettles with reservoirs located above heating chambers. Similar analysis to that applied above to D3 also applies to D4 and D5. Neither D4 nor D5 demonstrate that the invention lacks novelty or an inventive step.

Analysis – claim 1 as amended on 1 August 2022

- 51 When assessing novelty and inventive step for this claim, I shall use the claim construction of paragraph 26 above. This is very similar to the construed claim of 31 May 2022 but additionally requires that the separation is performed using an internal partition. In D1, the means for closing the aperture in the partition 4 is considered equivalent to the internal partition of claim 1. Similarly, the door of D2 is considered equivalent to the internal partition. Despite the narrowing amendment of 1 August, there are no additional differences at step 3 of the *Pozzoli* test over those set out above for the 31 May claim. As I have decided that the claim filed on 31 May 2022 lacks an inventive step, I must therefore conclude that the amended claim filed on 1 August 2022 also lack an inventive step over D1 and D2.
- 52 As the claim of 1 August 2022 falls entirely within the scope of the claim of 31 May 2022 and I decided the claim of 31 May was novel and inventive over D3, D4 and D5, the 1 August claim must also be novel and inventive with respect to those documents.

Section 20 Period

- 53 I have decided that neither the invention of claim 1 as filed on 31 May 2022 nor the invention of claim 1 as filed on 1 August 2022 provides an inventive step. Therefore, I do not need to decide whether the request to further extend the expiry date of the compliance period from 31 July 2022 should be allowed since it would make no difference to the outcome.

Added Matter

- 54 In paragraph 15, above, I noted the possibility that the reference to heating liquid food products might constitute added matter. To return to this issue briefly, as the claim is to “*heating either water or liquid food products*” its inclusion does not stop the claims lacking the required inventive step over documents D1 and D2. I thus do not need to decide this issue either.

Decision

- 55 I have decided that the application on file at the end of the extended compliance period (*i.e.* 31 July 2022) lacked sufficiency due to excessive claim breadth. The invention as claimed on that date also lacked the required inventive step.
- 56 Even If I were to allow the request for a third extension of the compliance date (to 30 September 2022) then the amended application would still lack an inventive step. I therefore refuse this application under Section 18(3).

Appeal

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

Dr Stephen Brown

Deputy Director, acting for the Comptroller