

OPINION UNDER SECTION 74A

Patent	EP2670682 B1
Proprietor(s)	Donna-Marie Sabga
Exclusive Licensee	
Requester	The Barista Cup Ltd.
Observer(s)	Donna-Marie Sabga
Date Opinion issued	19 July 2018

The request

1. The comptroller has been requested by The Barista Cup Ltd. (“the requester”) to issue an opinion as to whether the claims of EP(UK)2670682 (“the patent”) lack novelty or an inventive step in light of documents D1-D14 provided by the requester. The request was received from the requester’s representative on 23 April 2018. It was accompanied by a statement explaining the request as well as copies of the documents below.

D1: US 5168140, published 1 December 1992

D2: US 3868043, published 25 February 1975

D3: United States Design Patent number D570,213S, published 3 June 2008

D4: US 6419105 B1, published 16 July 2002

D5: US6419112 B1, published 16 July 2002

D6: US5820016, published 13 October 1998

D7: US2006/0163251 A1, published 27 July 2006

D8: US2009/0277335 A1, published 12 November 2009

D9: US2009/0065518 A1, published 12 March 2009

D10: JP2004-238037, published 26 August 2004

D11: English language abstract and bibliographical data for JP 2004-238037(A)

obtained from the Espacenet database of the European Patent Office

D12: Machine translation of the description of JP 2004-238037(A) obtained from the Espacenet database of the European Patent Office on 12 April 2018

D13: US2009/0092711 A1, published 9 April 2009

D14: US3870220, published 11 March 1975

Observations and observations in reply

2. Observations were received from the proprietor's representative on 23 May 2018.
3. Observations in reply were submitted by the requester's representative on 5 June 2018.
4. Observations were also received from an anonymous observer on 10 May 2018. These observations included further alleged prior art not cited in the original request.
5. Observations in reply to the anonymous observations were received from the proprietor's representative on 5 June 2018.

Matters to be considered by this opinion

6. Section 74A of the Patents Act 1977 provides for the procedure where the comptroller can issue, on request, non-binding opinions on questions of validity relating to novelty, inventive step, added matter, sufficiency and excluded matter, amongst other things, and on questions of infringement. Any observations should be confined to the issues raised by the request and should not broaden the scope of the opinion by raising new issues. Consequently if an observer wishes to explore validity issues not raised by the requester then they must file a separate request.
7. Therefore the new prior art and the US prosecution history raised by the anonymous observer will not be taken into account in this opinion.
8. In the observations the proprietor has submitted that an opinion should not be given in respect of the requester's arguments regarding lack of inventive step as they are a repetition of the objections raised pre-grant in examination of the patent.
9. By virtue of section 74A(3)(b) an opinion shall not be issued if it is considered inappropriate in all circumstances to do so. In decision BLO370/07 the hearing officer stated that:

"It is an intrinsic part of the substantive examination process to assess the novelty and obviousness of the claims, as properly construed, in light of the prior art. In this context "prior art" means documents cited in the search report (at least under category "X" or "Y", which indicate possible relevance to novelty or inventive step) as well as material which has come to the examiner's attention in some other way. I think it reasonable to suppose in general that the examiner will have done his or her job properly in the

absence of indication to the contrary, and I see no reason why this assumption should not apply even if the examiner has decided not to raise objection on the basis of any citations at substantive examination”.

10. Reviewing the arguments raised in the request in relation to inventive step, the examination report of 8 September 2014 and the applicant’s response of 6 March 2015, it is my opinion that the inventive step arguments raised by the requester are not a repetition of those put forward during the examination of the patent. I consider that as the request uses new documents to form the starting point of the inventive step argument there is a prima facie new question to consider. Additionally, I note that the inventive step objection raised during examination was rebutted, at least in part, on the basis that - using WO2009/008587 as the starting point - it was not obvious to include the filter of US2009/065518 (D9 cited by the requester) because the drinking aperture of WO2009/008587 was for receiving a drinking straw and so was not suitable for use with a filter. As such I disagree with the proprietor’s submission that *“D2 to D6 do not add anything to Park [WO2009/008587]”*.
11. Therefore the inventive step arguments raised in the request will be considered in this opinion.
12. In the observations in reply the requester comments that *“Alternatively, it is submitted that it would have been obvious to a person skilled in the art that a filter mesh could be incorporated into the beverage aperture 340a in embodiment of figure 8 the same manner as disclosed in relation to the embodiment of figures 1 to 5 in D1 and as taught in column 3 at lines 38 to 42”* and *“However, similar arguments can be presented over the combination of D5 and D1 and any of D7 to D9. Furthermore, similar arguments can be presented starting from any one of prior art documents D2 to D4 or D6 in light of any one of prior art documents D1, and D7 to D10”*. However I can find no such corresponding comments in the request. The only inventive step issues raised in relation to D1 in the request were with regard to claims 4 and 5. As I have outlined above any observations should be confined to the issues raised by the request and should not broaden the request by raising new issues. I consider that the issue of obviousness in light of D1 in relation to claim 1 is a new issue which was not raised in the original request and as such will not be considered in this opinion.

The Patent

13. The patent entitled “Lid for drinking vessels” was filed on 2 February 2012 having a priority date of 2 February 2011, and was granted on 13 July 2016. The patent remains in force in the United Kingdom.
14. The patent relates to a drink-through lid 1 for a beverage cup, in particular disposable cups. The lid 1 has a lid body 2 comprising a beverage aperture 5, through which a beverage can exit the lid for drinking when the lid is on a beverage cup. The patent explains that the arrangement of the lid is such that it is possible to prepare drinks from infusible matter, such as tea leaves or coffee grinds, within the cup without the insoluble particulate matter passing through the beverage aperture and into the mouth of the user, and further allows the user to see the beverage after it has exited the beverage aperture and before it reaches the rim when the cup is held in a drinking position, reducing the tendency of the user to spill the beverage.

Figure 14 of the patent is reproduced below.

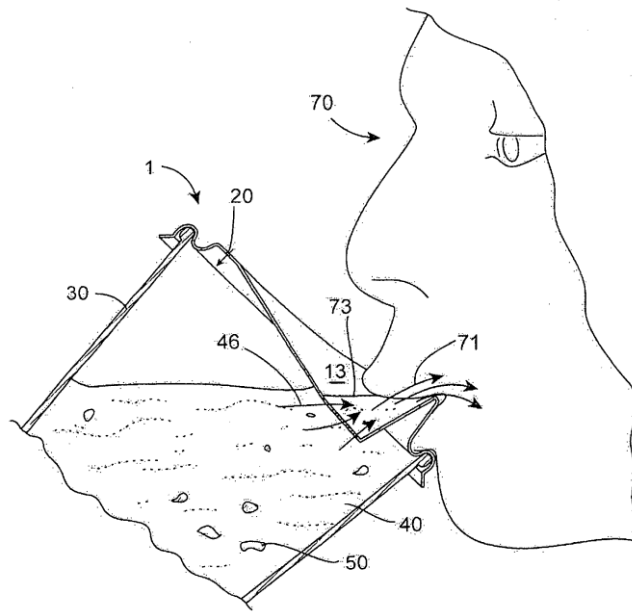


Figure 14

15. Figures 11 and 12, reproduced below, depict an embodiment of the claimed invention (figure 12 showing the underside of the lid of figure 11). The lid (1) comprises a lid body (2) and a beverage aperture (5) defined on a recessed area of the lid body (2). The beverage aperture comprises a filter for filtering the beverage before it is drunk. A drinking rim (10) is provided on the lid (1) which is raised relative to the beverage aperture (5). The lid is arranged so that, in use for drinking, the beverage exits through the beverage aperture (5) and flows along the lid toward the drinking rim (10) so that the user can see the beverage after it has exited the beverage aperture (5) and before it reaches the rim (10) when the cup is held in a drinking position.

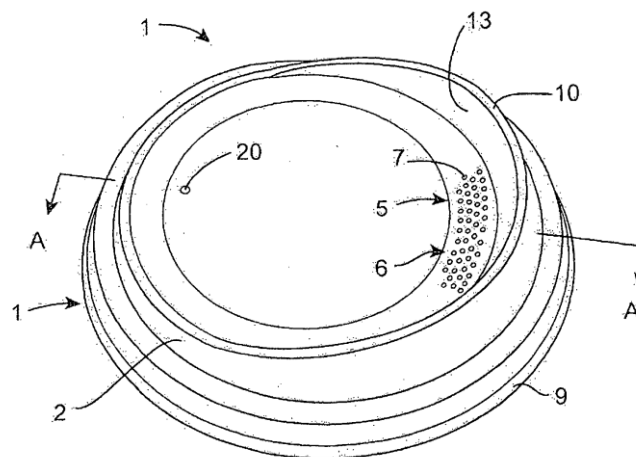


Figure 11

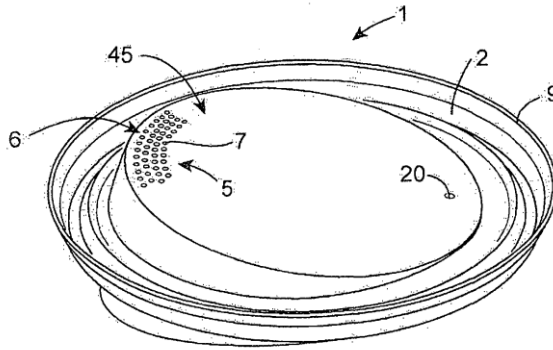


Figure 12

16. There are ten claims, including one independent claim, claim 1. Claim 5 relates to a kit comprising the lid of claim 1 and claim 9 relates to a method for dispensation of a beverage comprising providing a lid according to claim 1.
17. Claim 1 reads as follows with the features separated out using the notation a, b1, b2, c and d as used by the requester:

	<i>A lid (1) for a beverage cup comprising:</i>
<i>a</i>	<i>a lid body (2);</i>
<i>b1</i>	<i>a beverage aperture (5) defined on a recessed area of the lid body through which a beverage can exit the lid for drinking when the lid is on a beverage cup;</i>
<i>b2</i>	<i>the beverage aperture further comprising a filter for filtering the beverage before it is drank;</i>
<i>c</i>	<i>a drinking rim (10) on the lid (1) which is raised relative to the beverage aperture (5), and</i>
<i>d</i>	<i>characterised in that the lid is arranged so that, in use for drinking, the beverage exits through the beverage aperture (5) and flows along the lid toward the drinking rim (10) so that the user can see the beverage after it has exited the beverage aperture (5) and before it reaches the rim (10) when the cup is held in a drinking position.</i>

Novelty and Inventive step – the law

18. Section 1(1)(a) of the Patents Act 1977 reads:

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*

19. The relevant provisions in relation to novelty are found in section 2(1) and section 2(2) which read:

2(1) An invention shall be taken to be new if it does not form part of the state of the art.

2(2) 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.

20. The provisions in relation to inventive step are found in section 3 which states:

3. 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).

21. The Court of Appeal in *Windsurfing*¹ formulated a four-step approach for assessing whether an invention is obvious to a person skilled in the art. This approach was restated and elaborated upon by the Court of Appeal in *Pozzoli*². Here, Jacob LJ reformulated the windsurfing approach as follows:

(1)(a) Identify the notional “person skilled in the art”;

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

(2) Identify the inventive concept of the claim in question or if that cannot be readily 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 or the claim or the claim as construed;

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

22. I will begin by determining whether claim 1 is novel. Throughout I will consider the cited documents where relevant and as proposed by the requester.

Construction of claim 1

23. When considering the validity of the claims of the Patent I will first need to construe them. This means interpreting them in light of the description and drawings as instructed by section 125(1) and take account of the Protocol to Article 69 of the EPC. In doing so I must interpret the claims in context through the eyes of the person skilled in the art. Ultimately the question is what the person skilled in the art would have understood the patentee to be using the language of the claims to mean. This approach has been confirmed in the recent decisions of the High Court in *Mylan*

¹ *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd.*, [1985] RPC 59

² *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

v Yeda³ and the Court of Appeal in *Actavis v ICOS*⁴.

24. Section 125(1) of the Act states that:

For the purposes of this Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of protection conferred by a patent or application for a patent shall be determined accordingly.

25. The proprietor has submitted that “*Claim 1 of the patent covers at least the embodiment shown in Figures 11 to 14 and described in paragraphs [0051] to [0053] of the patent... Claim 1 of the granted patent will be interpreted by this embodiment*”, suggesting that I restrict my interpretation of the claims to the embodiment as depicted in figures 11 to 14 and as described in paragraphs [0051] to [0053]. However I agree with the requester that section 125(1) requires the claims to be interpreted in light of the description and drawings in their entirety, not in light of a specific chosen embodiment.
26. The proprietor has made no comment regarding the skilled worker. I note, in relation to inventive step, the requester has identified the person skilled in the art as “*a designer of drink-through lids*”. I think this is a reasonable assessment.
27. The main area of contention between the requester and the proprietor lies in the interpretation of the feature “*lid body*” in claim 1.
28. The requester has submitted arguments asserting that the term “*lid body*” should be taken to mean an integral structure defining the whole lid, including the “*drinking rim*”.
29. The proprietor contends that the requester’s interpretation of “*lid body*” to include the “*drinking rim*” is incorrect, as these characteristics are defined as distinct features within claim 1. The proprietor further argues that such an interpretation is inconsistent with the description, in particular paragraph [0042] which reads “*the drinking rim is raised relative to the lid body*”.
30. In the observations in reply the requester submits that there is no inconsistency in construing the “*drinking rim*” to be part of the “*lid body*” as there is nothing in claim 1 which excludes the drinking rim from being part of the “*lid body*”.
31. The only specific definition of “*lid body*” in the specification is in paragraph [0039] which states “*The lid has a lid body 2... The lid body is a single piece of plastic which has been formed into the lid shape by a suitable forming process*”. I consider that the person skilled in the art would understand “*single piece of plastic*” to mean that the lid body is formed as an integral structure, and “*formed into a lid shape*” to mean that it forms the shape of the lid.

³ Generics UK Ltd (t/a Mylan) v Yeda Research and Dev. Co. Ltd & Anor [2017] EWHC 2629 (Pat)

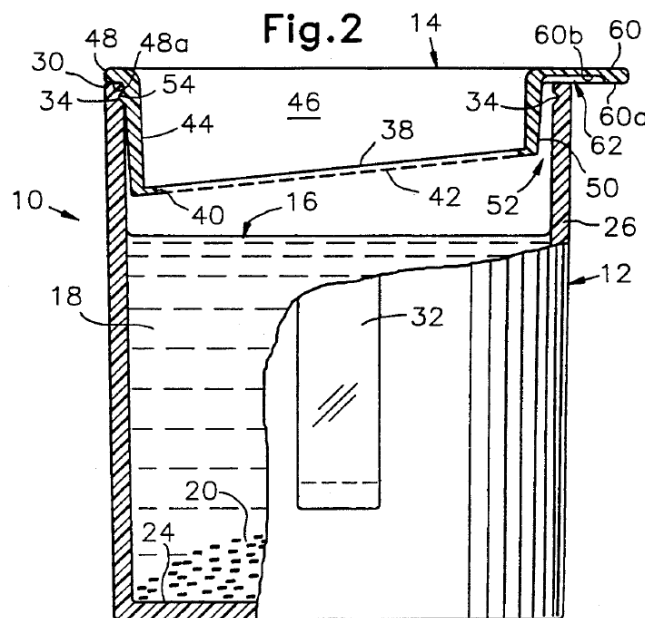
⁴ Actavis Group & Ors v ICOS Corp & Eli Lilly & Co. [2017] EWCA Civ 1671

32. The proprietor has argued that the *“lid body”* and the *“drinking rim”* are separate distinct features. However I disagree; claim 1 defines *“a drinking rim (10) on the lid (1) which is raised relative to the beverage aperture”* and thus does not exclude the *“drinking rim”* from being part of the *“lid body”*.
33. I am in agreement with the requester’s point that whilst the lid of figures 1 and 9 is not in accordance within the invention as defined by claim 1, it nonetheless forms part of the general teaching of the patent which the skilled person would take into account when interpreting the claims. In this context, paragraph [0039] reads *“A drink-through aperture 5 is defined in the lid body 2 through which a beverage 40 (see figure 9) can exit the lid 1 for drinking”*, where figure 9, clearly shows the drink-through aperture located on the *“drinking rim”*. From this disclosure I believe that the skilled person would understand that the *“drinking rim”* is part of the *“lid body”*.
34. In light of the above I am in agreement with the requester’s interpretation of the term *“lid body”*, that is to say the lid body defines the overall lid, and I do not believe that the *“lid body”* has to be distinguished from the remainder of the lid in any particular way.
35. In relation to features b1 and c the requester has submitted that *“It is not clear whether the requirement for the beverage aperture to be in a recessed area of the lid body is satisfied by its being in a part of the body below the rim or whether the requirement for the rim to be raised relative to the beverage aperture is additional to the requirement for the aperture to be defined in a recessed area of the lid body”*. Paragraph [0025] reads *“the beverage aperture is formed in an area of the lid that is a lower position relative to an outer rim of the lid”*. In my view the skilled person would interpret features b1 and c to mean that the beverage aperture is located on the lid body at a position lower than the drinking rim, i.e. a rim suitable for drinking, such that the drinking rim is located higher relative to the beverage aperture.
36. In respect of feature d the requester contends that *“The characterising portion d of claim 1 is defined in functional terms and it is not clear what technical features the lid must have to meet the requirement”*. Whilst feature d is defined in functional terms it is my view that the person skilled in the art would realise that the arrangement of the lid is such that when the cup is tilted for drinking the beverage exits the lid through the beverage aperture and flows to the drinking rim.
37. Neither the requester nor the proprietor have given any comment regarding feature b2 or the interpretation of the term *“a beverage aperture”*, however I believe they are worthy of consideration.
38. I consider that the skilled person would understand the term *“a beverage aperture”* to mean a space on the lid through which a drink can exit the cup. I have construed this term in its broadest sense i.e. (i) where it defines the entire area through which the beverage exits the lid i.e. where multiple holes (apertures) form the beverage aperture, and (ii) where it defines a single hole in the lid through which the beverage exits.
39. Feature b2 requires *“the beverage aperture further comprising a filter for filtering the beverage before it is drunk”*. The embodiments of the patent teach that the aperture through which the beverage exits also serves as a filter, which is achieved by the

holes that form the aperture being of a suitable size to prevent the passage of insoluble material, such as coffee ground or tea leaves, there through. However I consider that claim 1 does not exclude other means associated with the aperture to filter the beverage. I note that paragraph [0027] states *“Desirably the lid further comprises a filter associated with the beverage aperture for filtering the beverage before it is drank”*. I am therefore of the opinion that the skilled person would interpret the phrase *“the beverage aperture further comprising a filter for filtering the beverage before it is drank”* in its broadest sense i.e. a beverage aperture having a filter associated therewith.

Whether Claim 1 is novel in light of D1

40. The requester argues that claim 1 is not novel in light of document D1. In order for a claim to lack novelty, the prior art disclosure must clearly and unambiguously disclose all of the features of the claim.
41. D1 discloses a beverage brewer and travel mug for brewing a beverage within a microwave oven. The mug includes a cup and a lid which incorporates filter element(s) for straining coffee grounds from brewed coffee.
42. I will now refer to each of the features of claim 1 in turn. Features (1), (a) and (b1) require: (1) a lid for a beverage cup comprising (a) a lid body, and (b1) a beverage aperture defined on a recessed area of the lid body through which a beverage can exit the lid for drinking when the lid is on a beverage cup. In the request the requester refers to figure 2 of D1 which is reproduced below.



43. Figure 2 shows a beverage lid (14) comprising a bottom wall (38) having a beverage aperture with slits (apertures) (40) formed therein through which the drink can exit the cup.

44. The bottom wall (38) is recessed relative to the side walls (44) and peripheral rim (48).
45. Figure 2 shows the bottom wall (38) comprising a region which is lower relative to the region adjacent to the tab (60).
46. The proprietor contends that *"it can be seen that D1 does not disclose "a beverage aperture defined on a recessed area of the lid body through which a beverage can exit the lid for drinking..." as required by claim 1, feature b1. Instead the entire bottom wall 38 in D1 allows a beverage to exit the lid, through any one of multiple apertures 40. None of the apertures 40 are on an area recessed relative to any other part of the bottom wall 38 that forms the lid"*.
47. I consider that the only requirement of feature b1 is that the beverage aperture is provided on a recessed area of the lid body. I have construed *"lid body"* to be the overall lid such that, in relation to the lid of D1, it includes the side walls and peripheral rim. Therefore as the bottom wall (38) is recessed relative to the side walls (44) and peripheral rim (48) I am satisfied that feature b1 is disclosed.
48. Feature b2 requires that the beverage aperture further comprises a filter for filtering the beverage before it is drunk. As depicted in figure 2, I consider that the apertures (40) would be suitable to filter material from the contents of the cup and thus would anticipate this feature.
49. Feature c requires that the drinking rim on the lid is raised relative to the beverage aperture. As I have discussed above, I consider that the drinking rim is a rim suitable for drinking. In the context of D1 the rim (48) is placed against the lips for drinking and I am satisfied that it can be described as a drinking rim. Figure 2 clearly shows that the drinking rim (48) is raised relative to the drinking aperture (40) located on the bottom wall (38) and thus I am satisfied that this feature is disclosed.
50. Feature d specifies that the lid is arranged so that, in use for drinking, the beverage exits through the beverage aperture and flows along the lid toward the drinking rim so that the user can see the beverage after it has exited the beverage aperture and before it reaches the rim when the cup is held in the drinking position. I consider that the lid depicted within figure 2 is arranged such that when in use, i.e. when the cup is tilted for drinking, the beverage passes through the slits (apertures) (40) and collects in the lower region of the bottom wall (38) where it then flows toward the drinking rim where the user is able to see the beverage before it reaches the rim, thus meeting the terms of feature d.
51. I consider that the lid as shown in figure 2 of D1 has all of the features of claim 1 such that claim 1 is anticipated.
52. Furthermore, although not discussed, it is my view that the embodiments of figures 5 and 8 also meet the requirements of claim 1.
53. Accordingly it is my opinion that claim 1 lacks novelty based on D1.

Whether claim 4 lacks novelty in light of D1

54. The requester has also asked for an opinion on the novelty of dependent claim 4. As I consider that claim 1 is anticipated I shall now consider this claim.
55. Claim 4 reads:
- “A lid according to any preceding claim wherein the filtrate is tea leaves and the lid is arranged to filter out tea leaf residue from loose tea leaves within the beverage cup, or
Wherein the filtrate is coffee grinds and the lid is arranged to filter out coffee residue from loose ground coffee beans within the beverage cup”.*
56. It is clear that D1 discloses a lid suitable for filtering coffee grounds. Column 1 lines 27-39 outline the use of the cup and lid arrangement in brewing coffee from coffee grounds where filter elements are specifically provided to strain coffee grounds from the brewed coffee before drinking. Claim 4 is therefore also anticipated.
57. The requester has also asked me to consider whether claims 1-10 lack an inventive step in light of the documents outlined in the request. I will do this now by employing the *Windsurfing/Pozzoli* steps outlined above.

Whether claim 1 lacks an inventive step

58. I note that the requester argues in two ways in relation to inventive step, as follows: (i) claim 1 lacks an inventive step in light of the combination of any one of D2 to D6 with any one of D7 to D10; and (ii) claim 1 lacks an inventive step on the basis of any one of D2 to D6 with common general knowledge as illustrated by the features presented in D7 to D10.
- Step 1(a) and 1(b): Identify the notional “person skilled in the art” and the relevant common general knowledge of that person.*
59. As discussed above I consider that the skilled person is a designer of drink-through lids for drinking vessels.
60. The proprietor has argued that *“the requester cites various prior art documents as evidence of the common general knowledge (“CGK”). This is contrary to the approach as set out by Sachs LJ General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd [1972] RPC 457”*. Whilst I acknowledge that it is well established that individual patent documents and their contents do not normally form part of the common general knowledge, patent documents can however be used to illustrate features of common general knowledge.
61. In the observations in reply the requester submits that *“It is submitted that D1 and D7 to D10 can be regarded as a series of patent specifications which demonstrate that it was so well known in the field of drinking cup lids that a filter could be provided in the beverage aperture that this can be regarded as part of the CGK of the person skilled in the art”* and *“The relevant common general knowledge of the person skilled in the art would include the commonly known methods of manufacturing drink-through lids*

such as various moulding techniques for forming lids from polymeric materials. The person skilled in the art would also undoubtedly be aware of the need to filter drinks such as tea and coffee brewed from solids before consumption” which in my opinion seems a reasonable assessment of the common general knowledge. I therefore consider that the skilled person would be aware of the requirement to filter freshly brewed coffee or tea made from coffee grounds or tea leaves and would be aware that there are a variety of ways that this may be achieved for example as illustrated in documents D7 to D10. Furthermore, the skilled person would also realise that the filter apertures need to be of a suitable size to ensure that the insoluble material does not pass through the filter.

Step 2: Identify the inventive concept of the claim in question or, if that cannot be readily done, construe it.

62. I have construed claim 1 above.

Steps 3 and 4: Identify what, if any differences exist between the matter as cited as forming part of the state of the art and the inventive concept of the claim or claim as construed; and viewed without any knowledge of the alleged invention as claimed do those differences constitute steps that would have been obvious to the person skilled in the art or do they require a degree of invention?

63. I will consider documents D2 to D6 in turn for steps 3 and 4.

64. D2 discloses a non-spill lid for a cup comprising a central portion 14 and a rim 16 which is raised relative to the central panel 14. Figure 2 shows the central panel 14 sloping towards a drinking section 22 which is removed to define a beverage aperture which is positioned lower relative to the drinking rim 16. In use the beverage exiting the drinking area 22 will flow up the side wall to the rim 16 allowing the user to see the beverage. The difference between that disclosed in D2 and the inventive concept of claim 1 is that the beverage aperture does not comprise a filter (feature b2). The requester submits that it would be obvious to the skilled person that the lid of D2 could be provided with a filter as disclosed in any one of D7 to D10, however I disagree. I note that column 1 lines 50-56 of D2 teach *“This also provides a convenience for adding cream or sugar without removing the lid... The opening though small is sufficiently large to use a stir stick or spoon to stir the coffee if cream or sugar is added”*. In my opinion D2 therefore teaches away from associating a filter with the aperture as the beverage aperture is to be used in conjunction with a stir stick and allow the addition of sugar to the cup. Thus in my opinion claim 1 is inventive in light of D2 and common general knowledge, or in combination with anyone of D7 to D10.

65. D3 depicts a lid for a disposable drink cup which comprises a central section surrounded by a raised lip. The central section comprises two holes the larger of which appears to be suitable for use as beverage aperture and is positioned in a recessed area of the central section. The difference between that disclosed in D3 and the inventive concept of claim 1 is that the beverage aperture does not comprise a filter (feature b2). The requester submits that it would be obvious to the skilled person that the lid of D3 could be provided with a filter as disclosed in any one of D7 to D10, however I disagree. D3 is a design specification having no information regarding the technical features of the lid. I therefore do not believe that there is

enough information within the specification to direct the skilled worker to consider providing the beverage aperture with a filter. Thus in my opinion claim 1 is inventive in light of D3 and common general knowledge, or in combination with anyone of D7 to D10.

66. D4 discloses a spill resistant lid to be secured over the top of a container to resist spilling. As pointed out by the requester the lid has a body which comprises a central lid portion 12, a peripheral rim 10 for engagement with the rim of the container and a raised spout or mouthpiece 13 which extends above the level of the central lid portion. The central portion 12 slopes downwardly towards a deformable section 15 which opens to form a hole 18. In use the contents of the container exits the hole 18 and flows towards the mouthpiece allowing the use to see the contents. The difference between that disclosed in D4 and the inventive concept of claim 1 is that the aperture does not comprise a filter (feature b2). The requester argues that it would be obvious to the skilled person that the lid of D4 could be provided with a filter as disclosed in any one of D7 to D10, however I disagree. I note that column 1 lines 22-28 state *“For some containers, such as soup cups containing soups having chunks of material therein, such as meat or vegetable chunks, a larger hole than that normally required for drinking a beverage is usually preferred so that chunks can pass therethrough. The larger the hole in the lid, however the more the chance of spillage by the liquid in the container splashing through the hole”*, and column 2 lines 43-47 teach *“The spill resistant lid of the invention includes a circumferential securing means 10 which fits over and secures the lid to the walls of a container such as a disposable plastic or paper cup as commonly used for hot beverages such as coffee or soup or cold beverages such as soft drinks”*. In my opinion D4 therefore teaches away from feature b2 as the aperture is arranged to allow soup, including soup with chunks, to pass through. Thus in my opinion claim 1 is inventive in light of D4 and common general knowledge, or in combination with anyone of D7 to D10.
67. D5 discloses a spill resistant lid comprising a discharge opening 38 which is recessed relative to the lid walls 33. A spout 40 is provided which is raised relative to the discharge opening 38. In use the beverage exiting the discharge hole will flow up the side wall 33 to the drinking spout 40 allowing the user to see the beverage. The difference between that disclosed in D5 and the inventive concept of claim 1 is that the aperture does not comprise a filter (feature b2). The requester contends that it would be obvious to the skilled person that the lid of D5 could be provided with a filter as disclosed in any one of D7 to D10. As the requester points out in the observations in reply column 4 lines 27-30 of D5 teach *“Various opening configuration may be used. The elliptical or oval opening arranged radially lengthwise of the lid is shown and has been found to work well”*. As I have discussed above I consider that the skilled worker would be aware of the need to filter coffee grounds or tea leaves from freshly brewed coffee or tea before it is drunk. I consider that the skilled worker would consider that the cup and lid arrangement as disclosed in D5 would be suitable to prepare freshly brewed tea or coffee. I believe the skilled person would appreciate the need to provide some sort of filter arrangement to prevent the passage of coffee grounds or tea leaves through the beverage aperture and therefore I consider that it would be obvious to skilled worker that this may be achieved by either reducing the size of the hole through which the beverage passes to prevent the insoluble material, i.e. tea leaves or coffee grounds, from passing through the aperture, or by providing a filter in association with the beverage

aperture. Therefore in my opinion by combining the disclosure in D5 with their common general knowledge the skilled person would arrive at feature b2 without exercising any inventive skill.

68. D6 discloses a beverage cup 10 and lid 28. In the request the requester refers my attention to attention to figures 1, 2 and 19 in particular. As pointed out by the requester figures 1 and 2 show a lid 28 comprising a base 34 and an outer peripheral wall with an inner face 30 which extends upwardly from the base to an outwardly flared rim 36. The lid base 34 comprises fluid port 38 which is provided on recessed portion of the lid base 34. A similar drinking port arrangement is shown in figure 19 and also in figures 22, 23, 24, 39 and 40. The arrangement of the discussed embodiments is such that in use the beverage exiting the fluid port will flow up the side wall to the drinking rim allowing the user to see the beverage. The difference between that disclosed in D6 and the inventive concept of claim 1 is that the aperture does not comprise a filter (feature b2). The requester contends that it would be obvious to the skilled person that the lid of D6 could be provided with a filter as disclosed in any one of D7 to D10. I note that figures 25-38 disclose embodiments where the lid is provided with a device that seals the fluid port to inhibit fluid flow to and from the fluid port. I also note however that column 8 lines 34-40 state *“Although not needed to prevent spill-over or splash, the lid can be provided with a device that seals the fluid port”*. I consider that skilled worker would understand from this teaching that the sealing device is not an essential feature of the lid. As discussed above I consider that the skilled worker would be aware of the need to filter coffee grounds or tea leaves from freshly brewed coffee or tea before it is drunk. I consider that the skilled worker would consider that the cup and lid arrangement as disclosed in D6 would be suitable to prepare freshly brewed tea or coffee. I believe the skilled person would appreciate the need to provide some sort of filter arrangement to prevent the passage of coffee grounds or tea leaves through the beverage aperture and therefore I consider that it would be obvious to the skilled worker that this may be achieved by either reducing the size of the hole through which the beverage passes to prevent the insoluble material, i.e. tea leaves or coffee grounds, from passing through the aperture, or by providing a filter in association with the beverage aperture. Therefore in my opinion by combining the disclosure in D6 with their common general knowledge the skilled person would arrive at feature b2 without exercising any inventive skill.

69. I therefore consider that claim 1 lacks an inventive step in light of either D5 or D6 and common general knowledge.

Whether claims 2-10 lack an inventive step

70. I will now move on to consider whether the remaining claims lack an inventive step.

71. Claim 2 reads:

“A lid for a beverage cup according to claim 1, wherein the aperture comprises an area of the lid in which there is defined at least 20 apertures, the apertures being large enough to allow a beverage to be drunk through the lid whilst obstructing passage of a filtrate material”

72. And claim 3 reads:

“A lid according to claim 2 wherein there are provided at least 40, preferably at least 50 apertures in the lid”

73. I think it is reasonable to assume that the skilled person would realise that if the beverage aperture is sized to prevent the passage of coffee or tea leaves there through then multiple apertures would be required to allow the user to drink the beverage. Therefore in my opinion claims 2 and 3 to lack an inventive step in light of either D5 or D6 in combination with common general knowledge.

74. I have reproduced claim 4 above. I consider claim 4 to lack an inventive step in light of either D5 or D6 in combination with common general knowledge.

75. Claim 5 reads:

“A kit comprising:

a. a beverage cup;

b. an infusible material used in the preparation of the beverage in a closed compartment within the cup;

c. and a lid according to any of claims 1 to 4 for the beverage cup”

76. In the request the requester asserts that *“It was known before the priority date of the Patent to provide a kit comprising a beverage cup and an infusible material used in the preparation of the beverage in a closed compartment within the cup”* and has cited documents D13 and D14 to support this view. The requester goes on to say that *“Since it has been shown that lids according to any one of claim 1 to 4 were also known or obvious before the priority date of the Patent, there is no inventive step in combining the two”*. However I am not convinced by this argument. Whilst I acknowledge that D13 and D14 each disclose cups comprising a sealed compartment having a soluble material retained therein, without any further evidence, I do not believe it reasonable to assume that this feature forms part of the common general knowledge. Furthermore, I do not consider that the skilled person would seek to combine the teachings of either D13 or D14 in combination with D1 or with either D5 or D6 and common general knowledge. In this respect there is no teaching within D1, D5 or D6 to direct the skilled worker to consider providing an infusible material, such as coffee grounds or tea leaves, within a sealed compartment in the cup. I therefore consider claim 5 to be inventive and also, by analogy, claims 6-10.

Opinion

77. On the basis of the evidence put forward regarding D1, I am of the opinion that claims 1 and 4 of the patent lack novelty. It is also my opinion that claims 1-4 of the patent lack an inventive step in light of either D5 or D6 and common general knowledge. I consider claims 5-10 of the patent to be inventive in light of the evidence submitted.

Application for review

78. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the Comptroller for a review of the opinion.

Natalie Cole
Examiner

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.