

PATENT COOPERATION TREATY

From the:
INTERNATIONAL SEARCHING AUTHORITY

To:

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PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43*bis*.1)

Date of mailing (*day/month/year*)
16 October 2018

Applicant's or agent's file reference
P274689PCT

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/AU2018/000136

International filing date (*day/month/year*)
15 August 2018

Priority date (*day/month/year*)
17 August 2017

International Patent Classification (IPC) or both national classification and IPC
A47J 43/07 (2006.01) B26D 3/18 (2006.01) B26D 7/18 (2006.01)

Applicant
BREVILLE PTY LIMITED

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step and industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1*bis*(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

Name and mailing address of the ISA

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Date of completion of this opinion
16 October 2018

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Box No. I **Basis of this opinion**

1. With regard to the **language**, this opinion has been established on the basis of:
 - The international application in the language in which it was filed
 - A translation of the international application into, , which is the language of a translation furnished for the purposes of international search (under Rules 12.3(a) and 23.1(b)).
2. This opinion has been established taking into account **the rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43*bis*.1(a))
3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, this opinion has been established on the basis of a sequence listing:
 - a. forming part of the international application as filed:
 - in the form of an Annex C/ST.25 text file.
 - on paper or in the form of an image file.
 - b. furnished together with the international application under PCT Rule 13ter.1(a) for the purposes of international search only in the form of an Annex C/ST.25 text file.
 - c. furnished subsequent to the international filing date for the purposes of international search only:
 - in the form of an Annex C/ST.25 text file (Rule 13ter.1(a)).
 - on paper or in the form of an image file (Rule 13ter.1(b) and Administrative Instructions, Section 713).
4. In addition, in the case that more than one version or copy of a sequence listing has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that forming part of the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
5. Additional comments:

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Box No. IV **Lack of unity of invention**

1. In response to the invitation (Form PCT/ISA/206) to pay additional fees the applicant has, within the applicable time limit:
- paid additional fees
 - paid additional fees under protest and, where applicable, the protest fee
 - paid additional fees under protest but the applicable protest fee was not paid
 - not paid additional fees
2. This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is
- complied with
 - not complied with for the following reasons:

See Supplemental Box for Details

4. Consequently, this opinion has been established in respect of the following parts of the international application:
- all parts
 - the parts relating to claims Nos. **1-23**

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 3-4, 7-8, 12-13, 16-17, 21-22	YES
	Claims 1-2, 5-6, 9-11, 14-15, 18-20, 23	NO
Inventive step (IS)	Claims NONE	YES
	Claims 1-23	NO
Industrial applicability (IA)	Claims 1-23	YES
	Claims NONE	NO

2. CITATIONS AND EXPLANATIONS:

CITATIONS

D1: CN 206011251 U (ELEC-TECH INT CO LTD) 15 March 2017, English translation obtained through Google Patents
D2: US 2010/0154660 A1 (BEBER et al.) 24 June 2010
D3: US 2226317 A (MYERS) 24 December 1940
D4: US 6237178 B1 (KRAMMER et al.) 29 May 2001
D5: US 2016/0302619 A1 (WHIRLPOOL CORPORATION) 20 October 2016
D6: US 2011/0011421 A1 (DUMAS et al.) 20 January 2011

NOVELTY (N)

Claim 1 Due to the broad manner in which the claim is currently drafted, claim 1 is not novel in light of a large number of documents, a selection of which are raised below.

D1 discloses a tool including a base with a base surface (fig. 1-6 item 120), a plurality of projections extending away from the base surface (items 110, 140), the projections being transversely spaced and each having a longitudinal axis and an end surface extending transverse of the respective axis; and wherein the projections are arranged in a first set and a second set, with the projections of the first set having end surfaces that are spaced further from the base surface than the end surfaces of the projections of the second set. See fig. 1-5, [0040]-[0053], [0060]. These features are similarly disclosed in each of D2-D4. See:

- D2 – fig. 7, 8B, 9B, [0050]-[0056]
- D3 – Fig. 1-5 items 6-9, pg. 1 lines 5-38
- D4 – Fig. 3 items 40, 69, 70, 78

Appended claims 2, 5-6, 9 are also not novel for the following reasons:

Claim 2 D1 discloses the first set consisting of two projections (fig. 1-6 items 140).

Claims 5-6 D1 discloses the respective projection axes being generally parallel, and wherein the end surfaces of the second set of projections (items 110) extend from the base surface by a plurality of distances.

D2 (cl. 5 only) similarly discloses the axes being generally parallel (see fig. 8B, 9B items 230, 242). Also see D3 fig. 5 items 7-9

Claim 9 D1 discloses the end surfaces of the first set of projections tapering to an apex. See fig. 1-5 item 140. Similarly see D2 fig. 8A, 8B items 234.

Therefore, claims 1-2, 5-6, 9 are not novel and do not comply with PCT Article 33(2).

Claim 10 The invention defined in claim 10 is not novel in light of D2.

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D2 discloses a cleaning tool including a base having a base surface (fig. 7, 9A, 9B, items 240, 244), a plurality of projections extending longitudinally from the base surface away from the base, each projection having a longitudinal axis and an end surface extending generally transverse of the respective axis, with the projections being transversely spaced (item 242); and wherein at least some of the end surfaces do not lie in a flat plane extending perpendicular to the respective longitudinal axis (tips of item 242 are substantially rounded). Also see fig. 8A, 8B item 234.

Attention is also brought to D4 that also discloses the features of claim 10 as currently drafted. See D4 fig. 3-7 items 40, 69, 70, 78, 81, 82, 72, 73.

Appended claims 11, 14-15 are also not novel for the following reasons:

Claim 11 D2 discloses at least some of the end surfaces are planar, and are inclined to the respective longitudinal axis by an acute angle. Fig. 8A, 8B items 234. Similarly see D4 fig. 3-7.

Claim 14 D2 discloses the projection axes are generally parallel. Fig. 8A-9B. Similarly see D4 fig. 3-7.

Claim 15 D4 discloses the base providing for the coupling of the cleaning tool to a handle. See fig. 3 items 40, 37, 38; col. 9 lines 6-22.

Therefore claims 10-11, 14-15 are not novel and do not comply with PCT Article 33(2).

Appended claims 18-20, 23 are also not novel for the following reasons:

Claim 18 D1 discloses a food processor having a cutting member that provides a plurality of first cutting blades and a plurality of second cutting blades, the first cutting blades being transverse the second cutting blades, so that the cutting blades provide a plurality of apertures, with the projections configured to be received within the apertures. Fig. 8-11 item 400, 410. Similarly see D2 fig. 3, 6 items 66, 68, 72, 74, 166, 168, 172, 174; [0032], [0045], [0052], [0055].

Claim 19-20 D1 discloses the apertures having a complementary shape to a respective one of the projections and are of square configuration. See fig. 7, 11 items 410. Similarly see D2 fig. 7, 10, [0052], [0055].

Claim 23 D1 discloses a pusher fixed to the cleaning tool. See fig. 6, 8 item 130; [0057]-[0058].

Therefore claims 1-2, 5-6, 9-11, 14-15, 18-20, 23 are not novel and do not comply with PCT Article 33(2).

The cited prior art is silent on the features added by appended claims 3-4, 7-8, 12-13, 16-17, 21-22. These appended claims are therefore novel and comply with PCT Article 33(2).

INVENTIVE STEP (IS)

Given the above novelty objections, claims 1-2, 5-6, 9-11, 14-15, 18-20, 23 also lack an inventive step. An invention is necessarily obvious in light of its disclosure. In addition:

Claims 2-4 D1 (cl. 3-4) is silent on the first set of projections consisting of three or four projections but does teach that more than two can be achieved ([0060]). D2 is silent on the first set of projections consisting of two, three or four projections. It is considered that these differences relate to arrangements that are no more than a mere design choice and one that the person skilled in the art would directly and without difficulty proceed to by merely routine non-inventive steps.

Claim 6 D2 is silent on the end surfaces of the second set of projections extending from the base surface by a plurality of distances. However, this difference is considered to be an arrangement relating to mere design choices and cannot contribute to a patentable inventive step.

Claim 7 Each of D1 and D2 is silent on the first set of projections at least partly formed of steel. However it is considered that this difference is no more than a mere design choice.

Claim 8 Each of D1 and D2 is silent on the end surfaces of the first set of projections being dome shaped. However it is considered that this difference is no more than a mere design choice. See D1 fig. 1-5 item 140; D2 fig. 8B item 234.

Claim 10 D1 teaches a similar cleaning tool having a base and a plurality of projections extending longitudinally away from the base surface (fig. 1-6 items 110, 140). D1 is silent on at least some of the end surfaces not lying in a flat plane extending perpendicular to the respective longitudinal axis. It is considered that this difference is no more than a mere design choice and cannot contribute to a patentable inventive step.

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Claim 11 D1 teaches at least some of the end surfaces being planar, but is silent on those surfaces being inclined to the respective longitudinal axis by an acute angle. It is considered that this difference relates to no more than a mere design choice.

Claim 12 -14 D1 teaches where at least some of the projections are square in transverse cross-section and the axes are generally parallel. See fig. 1-5, 11 item 110.

D2 is silent on the projections being square in transverse cross-section (cl. 12-13). However, it is considered that this difference relates to an arrangement that is no more than a mere design choice and cannot contribute to a patentable inventive step. See [0052], [0055].

Claim 15 D1 teaches the base providing for coupling of the cleaning tool to a handle. See fig. 1-5 items 120, 130; [0059].

Claim 16-17 D1 is silent on the base having a socket or a resilient clip to engage the handle. It is considered that these differences relate to arrangements of mere design choice and cannot contribute to a patentable inventive step.

Claim 21-22 D1 teaches the cutting member having a cutting surface through which the projections extend, but is silent on the base surface of the tool having an area less than the area of the cutting surface, or approximately a quarter of the cutting surface. However it is considered that this arrangement relates to no more than mere design choices and cannot contribute to a patentable inventive step. A similar reasoning is applied to D2 (see fig. 6-7, 10 items 166, 168, 222, 224).

Therefore all claims 1-23 do not involve an inventive step and do not comply with PCT Article 33(3).

INDUSTRIAL APPLICABILITY (IA)

The invention defined in the claims 1-23 is considered to meet the requirements of Industrial Applicability under Article 33(4) of the PCT because it can be made by, or used in, industry.

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Box No. VIII Certain observations on the international application

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The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

Claim 1 does not comply with PCT Article 6 because it is not fully supported by the description. The scope of the claims must not be broader than is justified by the description and they must be enabled by the description across their entire scope. However it is considered that it is not reasonable to predict that all variants covered by the claim will possess the properties or uses suggested, that is, a sound prediction cannot be made in respect of the entire scope of the claim. The claim as drafted will also result in claim 18 being unclear when appended to claim 1 because there will not be an antecedent to "the cleaning tool".

Read as a whole, the current application is directed to and specifically teaches cleaning tools or devices therefor. As currently drafted, claim 1 is directed to any generic tool that has a first and second set of projections that extend at varying distances from the base surface, and is not limited to the scope of cleaning tools as taught by the description. For example, a comb or abrading tool having varying teeth/cutting elements may also fall within the scope of claim 1.

For the purpose of examination, the search and opinion is limited to the extent of cleaning tools, and claim 1 is read as defining "a cleaning tool".

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Supplemental Box

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Continuation of: **Box IV**

This International Application does not comply with the requirements of unity of invention because it does not relate to one invention or to a group of inventions so linked as to form a single general inventive concept.

This Authority has found that there are different inventions based on the following features that separate the claims into distinct groups:

- Claims 1-9, 18-23 (in part) are directed to a tool including a base and a plurality of transversely spaced projections extending longitudinally from the surface away from the base, the projections arranged in a first set and a second set. The feature of the projections of the first set having end surfaces spaced further from the base surface than the end surfaces of the projections of the second set is specific to this group of claims.
- Claims 10-17, 18-23 (in part) are directed to a cleaning tool including a base surface and a plurality of transversely spaced projections extending longitudinally from the base surface, each of the projections having an end surface extending generally transverse of the respective longitudinal axis. The feature of at least some of the end surfaces not lying in a flat plane extending perpendicular to the respective longitudinal axis is specific to this group of claims.
- Claims 24-27 are directed to a pusher assembly for a food processor having a feed tube, the pusher assembly configured to engage with the feed tube, the pusher assembly including a pusher configured to be received within the feed tube, the pusher providing an end surface to which a user can apply pressure to move the pusher assembly into the feed tube; a cleaning tool fixed to the pusher including a plurality of transversely spaced projections that extend longitudinally from the pusher. The feature of the cleaning tool being fixed to a pusher to be received within a feed tube of a food processor is specific to this group of claims.
- Claims 28-31 are directed to a food processor including a bowl providing an upper rim surrounding a top opening, a blade drive assembly located in the bowl, a cutting blade mounted on the drive so as to be driven about a generally upright rotational axis; a lid removably coupled to the bowl and at least partly closing said opening; and a bearing member facing the blade and fixed to the lid providing a bearing surface to be engaged by the blade. The feature of the bearing member is specific to this group of claims.

PCT Rule 13.2, first sentence, states that unity of invention is only fulfilled when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features. PCT Rule 13.2, second sentence, defines a special technical feature as a feature which makes a contribution over the prior art.

When there is no special technical feature common to all the claimed inventions there is no unity of invention.

In the above groups of claims, the identified features may have the potential to make a contribution over the prior art but are not common to all the claimed inventions and therefore cannot provide the required technical relationship. Therefore there is no special technical feature common to all the claimed inventions and the requirements for unity of invention are consequently not satisfied *a priori*.

It is also brought to the applicant's attention that there is further potential lack of unity a posteriori within the first and second claims sets, that can be further separated into three groups - Claims 1-9, claims 10-17, claims 18-23. Each of independent claims 1 and 10 (to which claims 18-23 are appended in the broadest form) are considered to be disclosed by the prior art (see D1, D2 as detailed in Box V). The special technical feature of claim 18 and its appended claims is then the food processor as defined, which is considered to be generic in the art.