

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Vita-Mix Corporation, Vita-Mix Management Corporation, and Vita-Mix Manufacturing Corporation)	Civil Action No.:
)	
)	Judge:
Plaintiffs,)	
)	
v.)	COMPLAINT FOR PATENT INFRINGEMENT
)	
Blendtec, Inc.,)	JURY TRIAL DEMANDED
)	
Defendant.)	

Vita-Mix Corporation, Vita-Mix Management Corporation, and Vita-Mix Manufacturing Corporation (collectively “Vita-Mix” or “Plaintiffs”) hereby file their Complaint against Blendtec, Inc. (formerly known as K-TEC, Incorporated) (“Blendtec” or “Defendant”), and alleges and states as follows:

THE PARTIES

1. Plaintiffs Vita-Mix Corporation, Vita-Mix Management Corporation, and Vita-Mix Manufacturing Corporation are each Delaware corporations having principal places of business at 8615 Usher Road, Cleveland, Ohio 44138.

2. Vita-Mix is the market leader in blending technology. The history of Vita-Mix began in the 1920s with a family-owned business, which was founded by William Grover “Papa” Barnard—the great-grandfather of the current Vita-Mix President and CEO, Jodi Berg.

3. In the late 1930s, W. G. “Papa” Barnard changed the name of his business to the Natural Food Institute, which became a pioneer in the health food industry. In 1939, W. G. “Papa” Barnard and the Natural Food Institute shifted focus to selling a new product, a blender

called the “Vitamix.” W. G. “Papa” Barnard immediately identified the value that the blender provided by allowing customers to quickly and easily prepare healthy foods that taste delicious. In 1949, W. G. “Papa” Barnard created the nation’s first infomercial—a video advertisement featuring the “Vitamix.”

4. In 1964, the family officially changed the name of the company to Vita-Mix Corporation (which was restructured in 2014 to Vita-Mix Holdings Company and three U.S. subsidiaries, Plaintiffs Vita-Mix Corporation, Vita-Mix Management Corporation, and Vita-Mix Manufacturing Corporation). In 1969, the Vitamix 3600 was introduced, which was the first blender that could make hot soup, blend ice cream, grind grain, and knead bread dough. Vita-Mix also created hundreds of recipes using the Vitamix for healthy alternatives. Vita-Mix has continued to make significant improvements to the performance and durability of the Vitamix product line.

5. In addition to its home consumer line of blenders, Vita-Mix has a full line of commercial Vitamix machines that can be found in gourmet restaurants and leading chains around the world. Vita-Mix has been granted numerous patents for its blending systems, and has earned a number of product awards, such as the 2014 “Kitchen Innovation Of The Year” Award. Today, Vita-Mix is still a family-owned company, with hundreds of employees in Northeast Ohio.

6. Vita-Mix designs and manufactures patented blending systems, including blender jars and containers, in this judicial district, and sells those same products in this judicial district and throughout the United States.

7. Upon information and belief, Defendant Blendtec, Inc. is a Utah corporation having its principal place of business at 1206 South 1680 West, Orem, Utah 84058.

8. Upon information and belief, Blendtec makes, uses, offers to sell, and sells blenders, blender jars, and blender accessories for use in home and commercial applications.

JURISDICTION AND VENUE

9. This action is for patent infringement under 35 U.S.C. § 271. This Court has original subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

10. This Court has personal jurisdiction over Blendtec because, upon information and belief, Defendant regularly conducts substantial business in the State of Ohio and this judicial district, including selling, offering for sale, and/or advertising products such as the blenders, blender jars and containers, and blender accessories. Upon information and belief, Blendtec sells these products via its website (www.blendtec.com) and in brick and mortar stores, such as Sam's Club. Blendtec has continuous and systematic contacts within this judicial district, has committed and continues to commit acts of patent infringement in this judicial district, and has harmed and continues to harm Vita-Mix in this judicial district by selling and offering to sell infringing products in this judicial district from which it earns substantial revenues.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Blendtec is subject to personal jurisdiction, and has committed acts of patent infringement within the district.

THE PATENT-IN-SUIT

12. Vita-Mix Management Corporation is the owner by assignment of all legal rights, title, and interest in U.S. Patent No. 8,753,004 ("the '004 Patent") entitled "Container For A Blender Jar."

13. Vita-Mix Corporation is an exclusive licensee of the '004 Patent with all substantial rights to sell the invention of the '004 Patent, including the right to assert all causes of action arising under its exclusive rights to the patent and the right to any remedies for infringement thereon.

14. Vita-Mix Manufacturing Corporation is an exclusive licensee of the '004 Patent with all substantial rights to make the invention of the '004 Patent, including the right to assert all causes of action arising under its exclusive rights to the patent and the right to any remedies for infringement thereon.

15. The '004 Patent was duly and legally issued by the United States Patent and Trademark Office to Brent A. Miller, Richard D. Boozer, and Michael D. Anton on June 17, 2014. A true and correct copy of the '004 Patent is attached as **Exhibit A**.

COUNT I: Infringement of U.S. Patent No. 8,753,004

16. Plaintiffs reallege and incorporate herein by reference the allegations contained in Paragraph 1 through 15 above as though fully set forth herein.

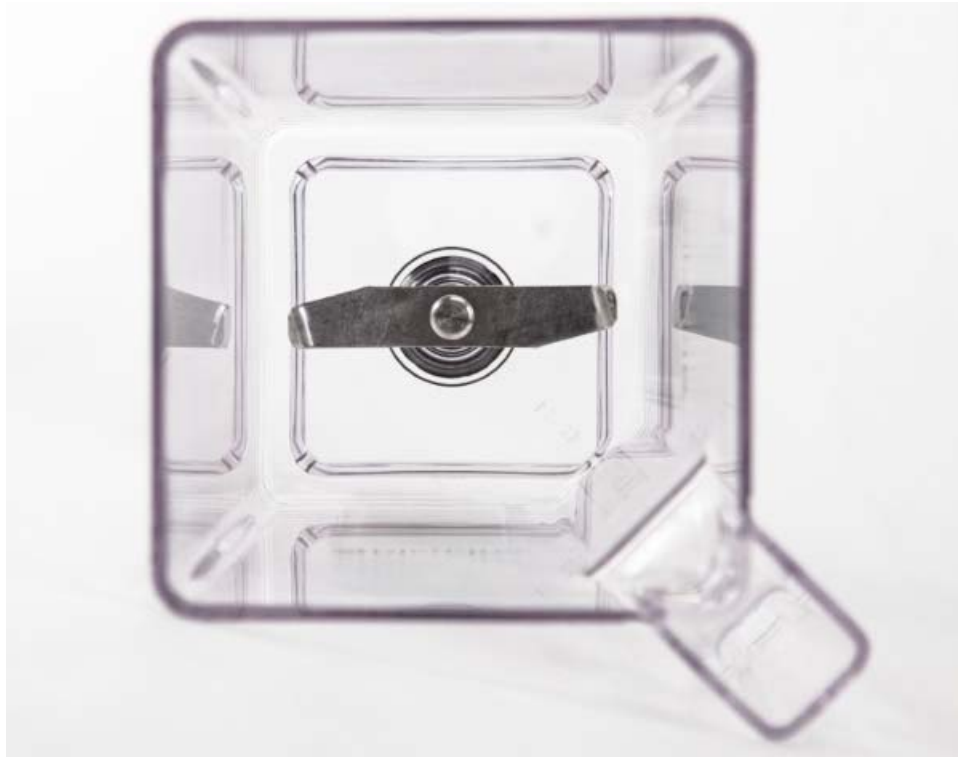
17. Upon information and belief, Blendtec has infringed and continues to infringe the '004 Patent by making, using, offering to sell, and selling certain blender jars or containers within this judicial district as well as throughout the United States.

18. For example, upon information and belief, Blendtec directly infringes at least claim[s] 1-6, 8-9, 14, 20, 24, 28, 33, and 43 of the '004 Patent by making, using, offering to sell, and selling, without limitation, its "WildSide" and "WildSide+" product lines of blender jars ("Accused Blendtec Blender Jars") either alone or in combination with other products. Photographs of a sample "WildSide" blender jar are attached as **Exhibit B**.

19. An example of an Accused Blendtec Blender Jar as viewed from the side can be found on Blendtec's website at <http://www.blendtec.com/jars/wildside-jar>:



20. An example of an Accused Blendtec Blender Jar as viewed from the top can be found on Blendtec's website at <http://www.blendtec.com/blog/whats-in-a-square-jar/>:

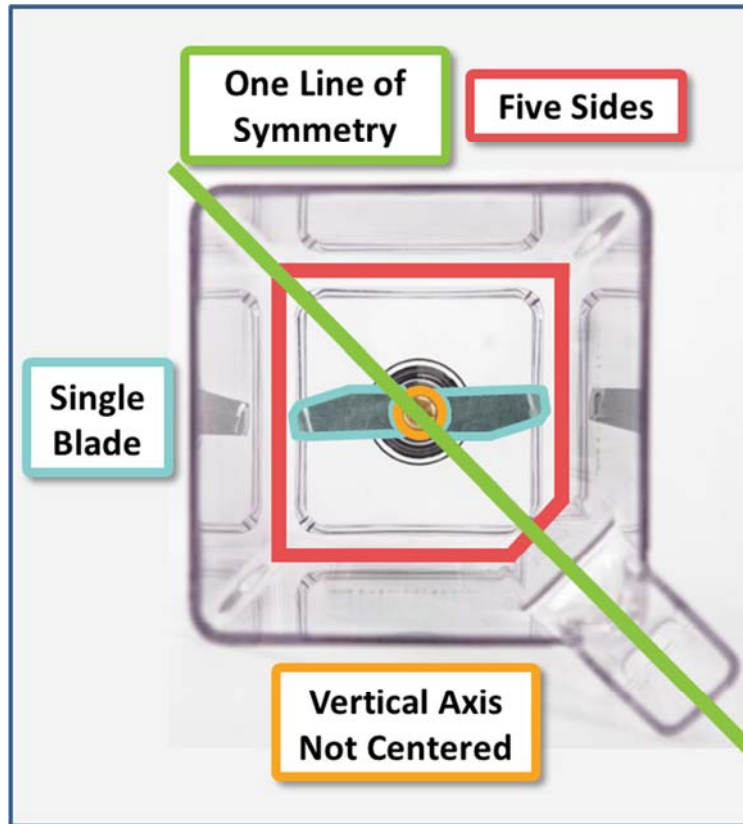


21. As can be seen in the sample annotated images below, the Accused Blendtec Blender Jars infringe the '004 Patent. For example, claim 1 of the '004 Patent claims:

A container for a blender comprising a bottom surface that is at least partially sloped, the bottom surface having a periphery defining only one line of symmetry and at least five sides on the periphery of the bottom surface, and a single blade assembly for chopping and blending foods extending from the bottom surface and rotatable about a vertical axis at the center of the blade assembly, the vertical axis located on the line of symmetry, wherein the vertical axis is not centered relative to the bottom surface.

22. For example, the elements of claim 1 of the '004 Patent are identified in at least the following examples below:





23. Blendtec's acts of infringement have caused irreparable harm to Vita-Mix for which there is no adequate remedy at law. Vita-Mix will continue to be irreparably harmed by Blendtec's infringement, unless such infringement is enjoined.

24. As a result of Blendtec's infringing actions, Vita-Mix has suffered, and continues to suffer substantial injury, and is entitled to recover damages adequate to compensate for its loss of sales and profits, which Vita-Mix would have made but for the Defendant's infringement.

25. Vita-Mix is entitled in any event to no less than a reasonable royalty for Blendtec's acts of infringement.

26. Blendtec and Vita-Mix are competitors in the consumer and commercial blending market.

27. Blendtec has knowledge of the family of patents and patent applications related to the '004 Patent, including U.S. Patent Nos. 7,063,456 and 7,267,478. Blendtec has knowledge of U.S. Patent Application Publication No. 2007/0247966, published October 25, 2007, which was the publication of U.S. Patent Application No. 11/821,485, from which the '004 Patent issued.

28. Upon information and belief, Blendtec has knowledge of the '004 Patent. Upon information and belief, Blendtec has committed its infringing acts with knowledge of the '004 Patent, despite an objectively high likelihood that its actions constituted infringement. Blendtec's infringement has thus been willful.

REQUESTED RELIEF

WHEREFORE, Vita-Mix requests the following judgment and relief:

29. Judgment that the '004 Patent has been and continues to be infringed by Blendtec;

30. A permanent injunction enjoining Blendtec, its directors, officers, employees, servants, agents, and any other person in active concert or participation with Blendtec who receives notice of the injunction, from infringing the '004 Patent;

31. An award to Vita-Mix of damages to compensate it for Blendtec's infringement of the '004 Patent pursuant to 35 U.S.C. § 284, including costs and pre-judgment interest as allowed by law;

32. An accounting and/or supplemental damages for all damages occurring after any discovery cutoff and through the Court's entry of final judgment;

33. That damages be trebled due to Blendtec's willful infringement;

34. A finding that this case is exceptional under 35 U.S.C. § 285 and an award to Vita-Mix of its costs and attorneys' fees; and

35. Any other and further relief found necessary and proper under these circumstances.

JURY DEMAND

Vita-Mix requests a trial by jury on all issues triable to a jury.

Respectfully submitted,

/s/ *Hugh E. McKay*

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