

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

SEP 08 2015

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

JAMES W. MCCORMACK, CLERK
By: M. S. [Signature]
DEPUTY CLERK

GRACE MANUFACTURING, INC.,

Case No. ~~1:15-cv-~~ 4:15CV556-KGB

Plaintiff,

Hon. BAKER
Magistrate Judge: Kearney

v.

DI-ORO LIVING, LLC,

COMPLAINT AND JURY DEMAND

Defendant.

_____/

R. Michael Azzi (MI Bar No. 74508)
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487
616.752.2000
Attorneys for Plaintiff

Plaintiff Grace Manufacturing, Inc. brings its Complaint against Defendant Di Oro Living, LLC as follows:

The Parties

1. Plaintiff Grace Manufacturing, Inc. (“Grace”) is an Arkansas corporation having its principal place of business in Russellville, Arkansas. Grace is a precision parts manufacturer that provides services and products across a wide range of industries.

2. In addition to being a leader in the precision parts industry more generally, Grace also designs, manufactures, markets, and sells high-quality kitchen tools under the MICROPLANE trademark and brand-name, including its MICROPLANE line of zesters and graters.

3. Defendant Di-Oro Living, LLC (“**Di Oro**”) is an Idaho limited liability company, with a principal place of business at 7680 N. Government Way Suite 3, Dalton Gardens, Idaho 83815. Di Oro sells kitchen tools, including a zester which as set forth below is a blatant knock-off of Grace’s MICROPLANE zester-grater, and infringes Grace’s design patent.

Jurisdiction and Venue

4. This is an action for patent infringement under the Patent Act, 35 U.S.C. § 101 *et seq.*

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), as this action arises under the patent laws of the United States.

6. Upon information and belief, Di Oro makes, sells, and offers for sale its zester throughout the United States and has systematic and continuous dealings within this District.

7. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

Allegations and Claim for Relief

8. For many years, Grace has continuously engaged in the development, design, manufacture, and sale of its MICROPLANE line of graters and zesters, becoming a premiere source for graters and zesters in the competitive kitchen tools market throughout the United States.

9. Grace has taken steps over the years to protect its innovative line of graters and zesters, which has continued to grow and expand since the original MICROPLANE zester came to market years ago. In particular, but without limitation, Grace is and has been the sole owner by assignment of all right, title, and interest in United States Design Patent No. D577,552, titled “Zester Blade” and issued April 13, 2007 (the “**552 Patent**”). (**Exhibit 1.**)

10. Grace is entitled to sue for past, present, and future infringement of the '552 Patent.

11. Grace is in the business of manufacturing or having manufactured, offering to sell, selling or importing into the United States various MICROPLANE brand zesters, including the zester embodying the design at issue in this case, in competition with other manufacturers and sellers, including Di Oro.

12. Di Oro has, without authority or license from Grace, made, used, offered to sell, sold or imported into the United States zesters that are covered by the '552 Patent (the "**Accused Products**"). A photograph of one such infringing zester is included as **Exhibit 2**.

13. Di Oro actively and purposefully encourages infringement of the '552 Patent through at least its marketing and/or sales activities.

14. Specifically, but without limitation, Di Oro's website, www.dioro-living.com, includes a product description of the Accused Products with a "Buy Amazon" link enabling and encouraging customers to buy the Accused Products at www.Amazon.com (the "**Authorized Infringing Retailer**").

15. The Authorized Infringing Retailer sells the Accused Products at issue in this case.

16. Upon information and belief, Di Oro expressly authorized and continues to authorize the Authorized Infringing Retailer to sell the Accused Products, thereby actively and purposefully encouraging the Authorized Infringing Retailer to infringe the '552 Patent.

17. Di Oro had and continues to have specific intent to induce infringement of the '552 Patent at least by marketing and selling its infringing products with the intent that the products be bought and used by its customers, including without limitation the Authorized

Infringing Retailer and individual consumers, while knowing that the consumers' acts constitute infringement.

COUNT I: Infringement of the '552 Patent by Di Oro

18. Grace incorporates by reference all preceding paragraphs.

19. Di Oro has been and still is making, using, offering to sell, selling or importing into the United States zesters, including but not limited to the zester embodied in Exhibit 2, which infringe the '552 Patent in violation of 35 U.S.C. § 271(a).

20. Di Oro has been and still is actively inducing others to infringe the '552 Patent, including but not limited to the Authorized Infringing Retailer, in violation of 35 U.S.C. § 271(b).

21. Di Oro's continued infringement of the '552 Patent has damaged and will continue to damage Grace.

22. By reason of Di Oro's infringement of the '552 Patent, Grace has been irreparably harmed, and unless and until Di Oro is enjoined by this Court, Grace will continue to suffer irreparable damage and injury for which it has no adequate remedy at law.

WHEREFORE, Grace respectfully requests the following relief:

A. Judgment that Di Oro has infringed and actively induced others to infringe the '552 Patent;

B. A permanent injunction enjoining Di Oro, its officers, employees, agents, and all others acting in concert with it or participating with it from further infringement and/or inducement of infringement of the '552 Patent;

C. An award of damages adequate to compensate Grace for Di Oro's infringement, but in no event less than a reasonable royalty under 35 U.S.C. § 284;

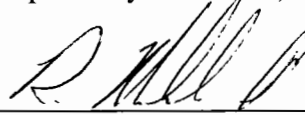
D. Enter an order awarding Grace interest on the damages awarded and its costs pursuant to 35 U.S.C. § 284; and,

E. Award such other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Grace demands a trial by jury.

Respectfully submitted,



R. Michael Azzi (P74508)
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487
616.752.2000
Attorneys for Plaintiff

Dated: September 3, 2015

EXHIBIT 1



US00D577552S

(12) **United States Design Patent** (10) **Patent No.:** **US D577,552 S**
Chalfant et al. (45) **Date of Patent:** **** Sep. 30, 2008**

(54) **ZESTER BLADE** 5,997,221 A * 12/1999 Sadler 407/29.1

(75) Inventors: **Louis Chalfant**, Russellville, AR (US);
Carter W. McGuyer, Muscle Shoals,
 AL (US); **Christopher R. Grace**,
 Russellville, AR (US)

* cited by examiner

Primary Examiner—Terry A Wallace
 (74) *Attorney, Agent, or Firm*—Ladas & Parry LLP

(73) Assignee: **Grace Manufacturing Inc.**,
 Russellville, AR (US)

(57) **CLAIM**

The ornamental design of a zester blade, as shown and described.

(**) Term: **14 Years**

(21) Appl. No.: **29/278,910**

(22) Filed: **Apr. 13, 2007**

(51) **LOC (8) Cl.** **07-06**

(52) **U.S. Cl.** **D7/678**

(58) **Field of Classification Search** D7/672-676,
 D7/678, 693, 381; 241/92-95, 100, 168,
 241/169, 169.1, 273.1-273.4, 285.2, 280,
 241/287, 274, 275; 99/495, 508-513; 407/29.15,
 407/29.1

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

3,501,821 A *	3/1970	Ford	.....	407/29.15
3,606,709 A *	9/1971	Countryman	.....	407/29.15
4,537,207 A *	8/1985	Gilhaus	.....	132/76.4
4,587,868 A *	5/1986	Kuwica	.....	407/29.15
D347,979 S *	6/1994	Feer et al.	.....	D7/678
D378,336 S *	3/1997	Podrini	.....	D7/678

DESCRIPTION

FIG. 1 is a perspective view of the zester blade displaying the ornamental features of the present invention and as seen from beneath the blade;

FIG. 2 is a bottom plan view of the zester blade of FIG. 1;

FIG. 3 is an end plan view of the zester blade of FIG. 1 as seen from the end upon which the tips are formed;

FIG. 4 is a view similar to FIG. 3, but taken from the opposite end of the zester blade;

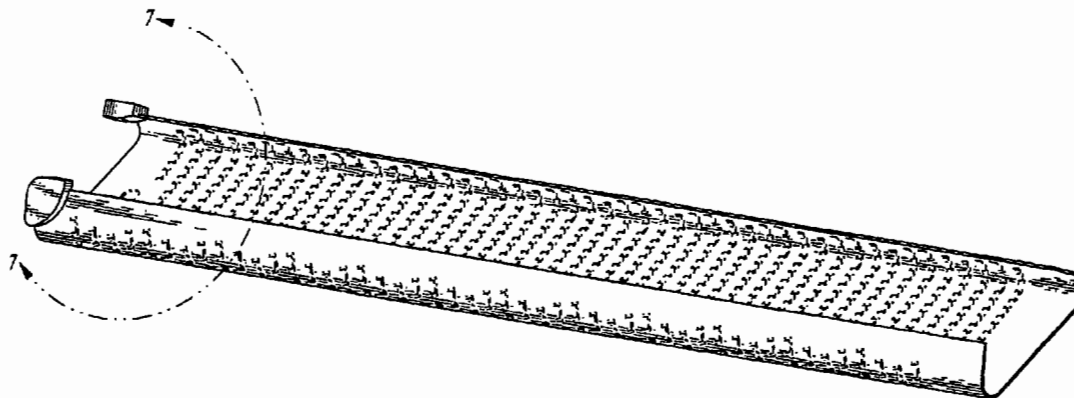
FIG. 5 is a side elevation of the zester blade of FIG. 1;

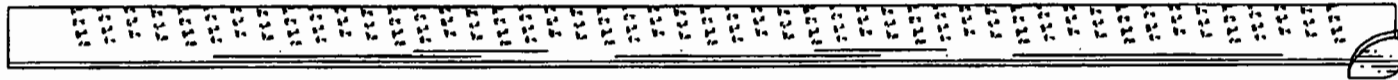
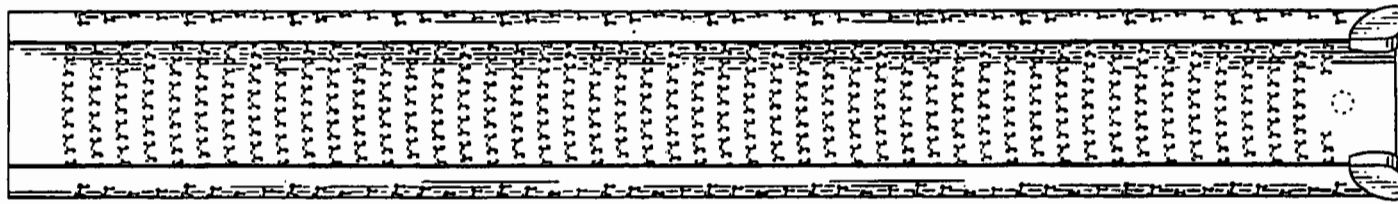
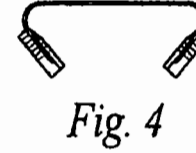
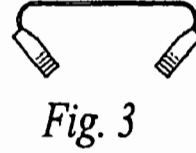
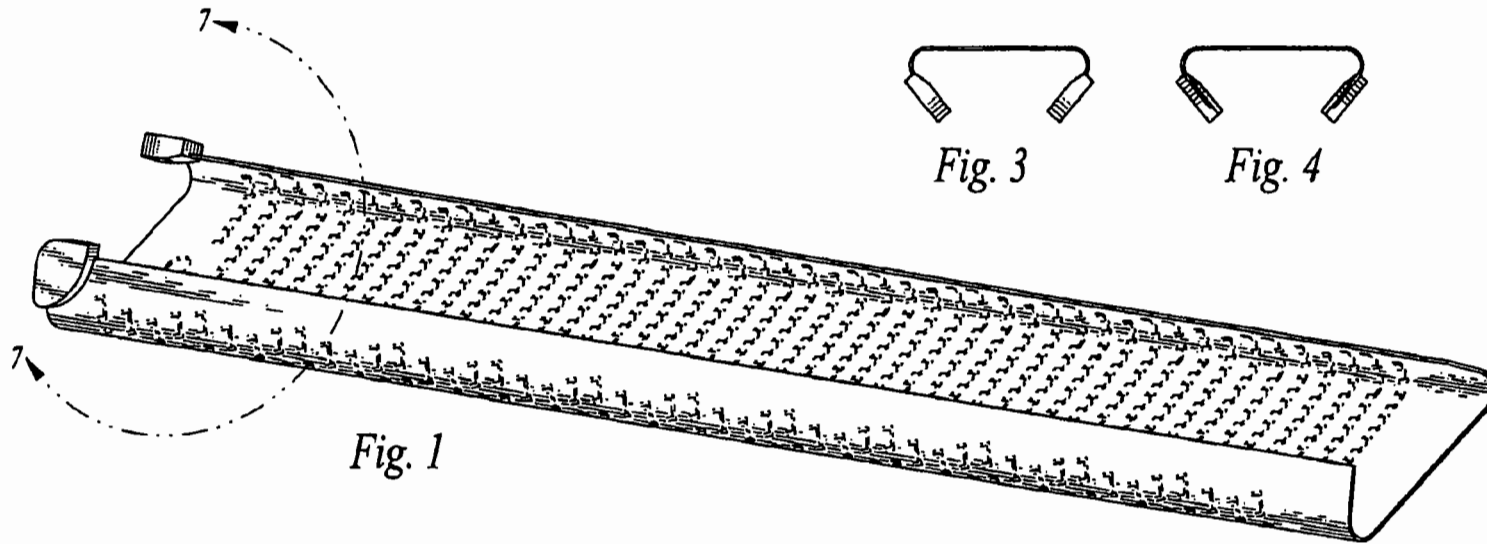
FIG. 6 is a perspective view of the zester blade as seen from above and with a handle in place; and,

FIG. 7 is a view of the end of the zester blade of FIG. 1 as shown in FIG. 3, in perspective and taken along arc 7-7.

The portions of the zester blade handle shown in dotted lines in FIG. 6 are for purposes of illustration only and do not form part of the claimed design.

1 Claim, 2 Drawing Sheets





U.S. Patent

Sep. 30, 2008

Sheet 2 of 2

US D577,552 S

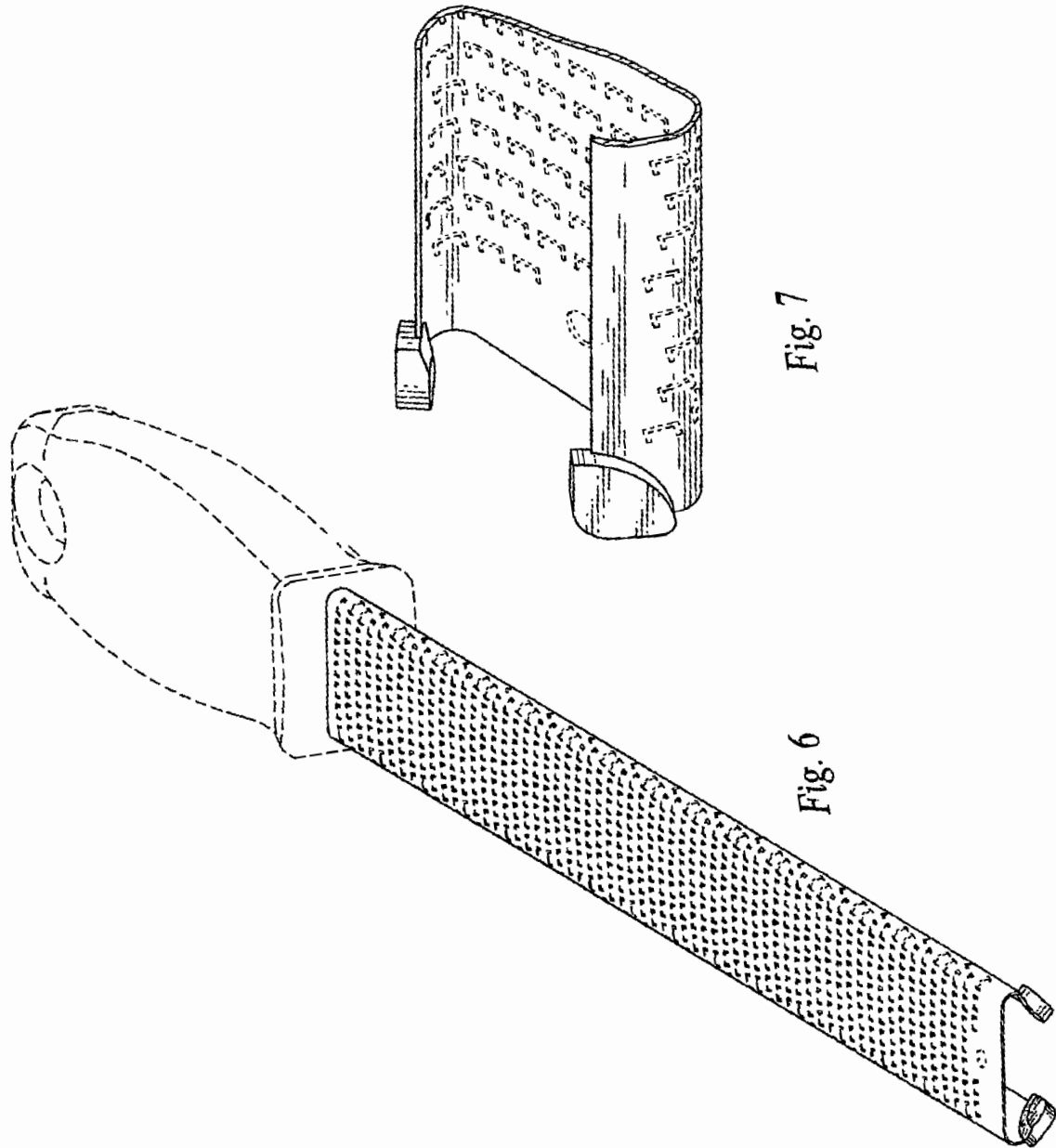


Fig. 7

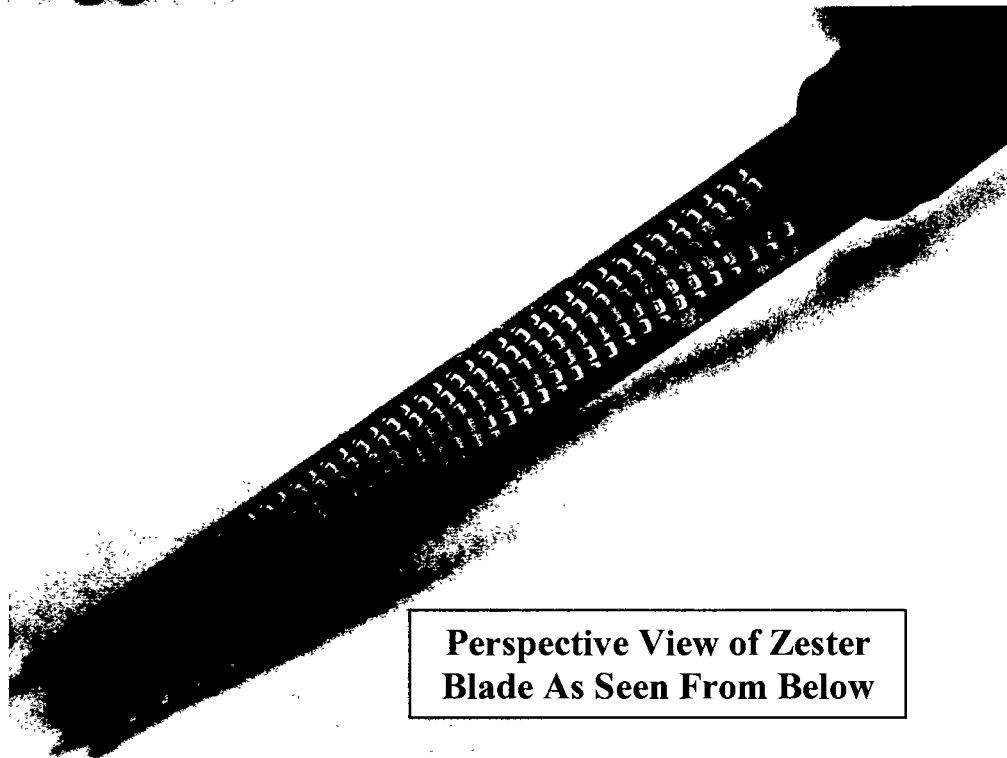
Fig. 6

EXHIBIT 2

Exhibit 2 – Di Oro Zester



**Perspective View of Zester
Blade As Seen From Above**



**Perspective View of Zester
Blade As Seen From Below**