

OPINION UNDER SECTION 74A

Patent	GB 2388945
Proprietor(s)	LWS 2007 Limited
Exclusive Licensee	
Requester	LWS 2007 Limited, on 30 September 2009
Observer(s)	Tunstall Healthcare (UK) Limited
Date Opinion issued	30 December 2009

The Request

1. The comptroller has been requested to issue an opinion as to whether GB 2388945 ("the patent") is infringed by a system by Tunstall Group Limited based on an extract from the latter's website.

Observations

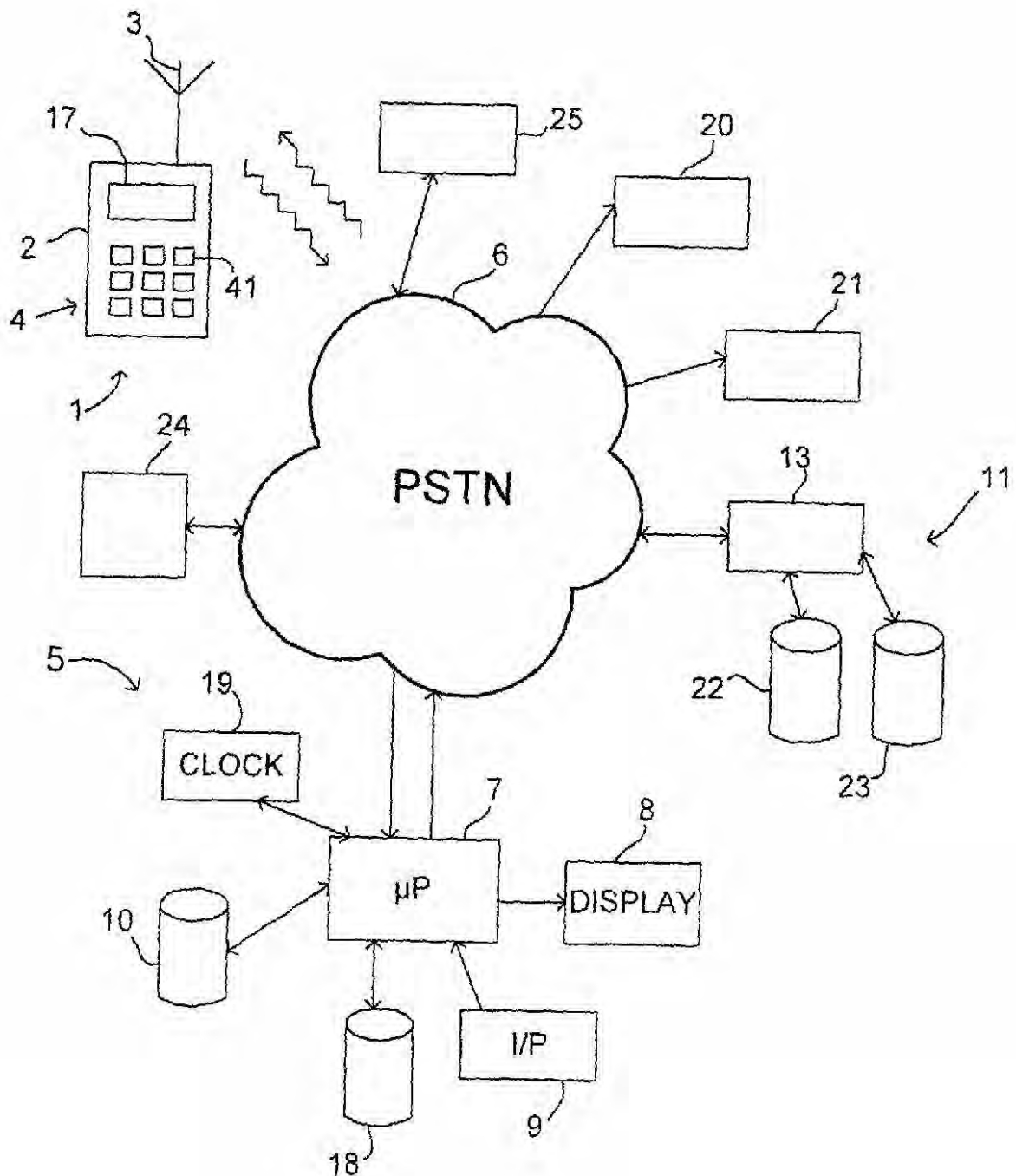
2. Observations in response to the request were received from Appleyard Lees on behalf of Tunstall Healthcare (UK) Ltd. The requester's interpretation of the claims of the patent is disputed by the observer, the observer including evidence of prior art comprising an extract from a website relating to "SAFE 21 - a new social alarm service via a proven infrastructure" to support a case that the invention of the patent is not novel.
3. Observations in reply were received from the requester, Withers and Rogers.
4. As regards the observer's statements regarding lack of validity of the patent, I note that the request is only as regards whether the patent is infringed and I will not therefore consider validity. The observer also questions whether the patent has an appropriate "technical effect", but this is not part of the request either, and even if it were, it is not a ground for requesting an opinion under the Act.

The Patent

5. GB 2388945 was filed on 26 October 2001 with application number

0311585.4. It claimed priority from a New Zealand patent application 507837 filed on 27 October 2000. The patent was granted on 16th of November 2004 and is in force.

6. The patent is concerned with the generation of an alert message in response to certain conditions and is particularly intended for use by a worker entering premises which might pose some danger to them, in which case the alert message can be sent, for instance to the worker themselves or to someone else for appropriate assistance. The invention of the patent can be used in the services and enforcement sectors (for example government fieldworkers such as customs, housing or social services personnel, police officers, energy company meter readers, sex industry workers etc.).
7. The patent describes an embodiment of the invention wherein a cellular phone 1 (see figure below) connects via a public switched telephone network to a central monitoring station 5. Before entering the property the user presses a pre-designated speed dial key 41 which automatically connects the phone 1 with the central monitoring station 5. Once connected, the user enters a location ID number which uniquely identifies the property/location they are about to visit. The monitoring station retrieves a phone ID from memory 14, the phone ID uniquely identifying the phone 1 so that on receipt of the location ID and user ID from the phone, the central processor retrieves a linked information record associated with the location ID. The patent quotes an extensive list of possible linked information relating to the location, including the client and/or business relationships. All or part of the linked information record can then be automatically transmitted to the phone 1 as a warning alert. The patent also describes and claims various other measures such as transmitting a duress message which can then be sent to an appropriate response agency such as a security firm or the police.



The Claims

1. A method of generating an alert message, the method including the steps of:
 - a) receiving a location identifier from a user input device of a communication unit;
 - b) transmitting the location identifier from the communication unit to a central monitoring station;
 - c) receiving the location identifier at the central monitoring

station;
d) retrieving information associated with the received location identifier from a database and
e) outputting an alert message which varies in accordance with the retrieved information.

12. Apparatus for generating an alert message, the apparatus including:

a communication unit including an input device for receiving a location identifier, and a transmitter for transmitting the location identifier; and
a receiver for receiving the location identifier; means for retrieving information associated with the received location identifier from a database; and means for outputting an alert message which varies in accordance with the retrieved information

Claim Construction

8. Before I can decide on the question of infringement I need to construe the claims of the patent. Following the standard principles of claim construction set out in *Kirin-Amgen Inc v Hoechst Marion Roussel Ltd* [2005] RPC 9, I should put a purposive construction on the claims and follow section 125(1) of the Patents Act 1977 and the Protocol on the Interpretation of Article 69 of the European Patent Convention by interpreting the claims in the light of the description and drawings. In summary then I must consider what the person skilled in the art would have understood the patentee using the language of the claim to mean.
9. Neither the requester nor the observer appears to have provided any specific submissions as regards who the person skilled in the art is and the knowledge that person has. To me it is clear that the person skilled in the art must be a designer of alert message systems and as such that they will be skilled particularly in the art of communications, and especially alert messaging systems.
10. The parties disagree on how the claims should be construed. The requester takes a generally broad view of the scope of protection provided by the claims, but in contrast the observer takes a twofold approach. Firstly he goes through the broad interpretation given by the requester, but he then goes into a much narrower interpretation based on what he contends is a purposive construction of the claims.

The Evidence

The Tunstall system

11. The only evidence provided by the requester is the aforementioned extract from Tunstall's website. It sets out the operation of a product called "Lone Worker Manager" which is said to be a software application for PNC4 Vision which appears to be a more general monitoring centre system developed by Tunstall. In Lone Worker Manager, the lone worker records that he/she is beginning work by calling the automated Lone Worker Manager and then recording a message that indicates the location in which they will be working. The Lone Worker Manager software automatically calls the worker's phone and will do so at intervals for the duration of their working period. The system records details of the lone worker including their contact numbers, location, type of business etc. The system can periodically call the worker who then enters a valid PIN code. If the worker enters the wrong PIN, does not answer or indicates an emergency, an alarm call is raised. When an alarm call is raised, the lone worker's details are displayed on screen at the response centre.
12. The observer has provided evidence in the form of a paper entitled "SAFE 21- new social alarm services via a proven infrastructure".

Infringement

The law

13. Section 60 (1) and (2) of the Patents Act state:

60(1) Subject to the provisions of this section, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say -

(a) where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;

(b) where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;

(c) where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise.

60(2) Subject to the following provisions of this section, a person (other than the proprietor of the patent) also infringes a patent for an invention if, while the patent is in force and without the consent of the proprietor, he

supplies or offers to supply in the United Kingdom a person other than a licensee or other person entitled to work the invention with any of the means, relating to an essential element of the invention, for putting the invention into effect when he knows, or it is obvious to a reasonable person in the circumstances, that those means are suitable for putting, and are intended to put, the invention into effect in the United Kingdom.

14. The Tunstall webpage extract is dated with a "copyright 2007" statement and the patent was in force at that time. The observer does not contest the accuracy or the date of the website extract or that the webpage constitutes an offer for sale, so I take it that the webpage was and still is available in the United Kingdom and therefore that that the Lone Worker Manager has been offered for sale via Tunstall's website in the meaning of section 60 (1). The question of whether section 60 (2) is appropriate is I think bound up with the question of interpretation of the claims given below.

Arguments

15. Claim 1 is introduced as "a method of generating an alert message..., but step (e) of claim 1 refers specifically to the alert message so I propose to focus the arguments as regards what is "an alert message" in relation to step (e).
16. Next we proceed to step (a) of claim 1-"receiving a location identifier from a user input device of a communication unit...". The requester says that it is clear from page 3, lines 16 to 17 of the patent that the term "location identifier" is to be interpreted broadly and indeed the passage in question says "the location identifier may be input into the unit by speaking into a microphone. However, preferably the location identifier is entered by actuating one or more keys or other input devices". In the Tunstall system the lone worker rings the automated Lone Worker Manager and then "records a message that indicates the location in which they will be working". In his broader interpretation the observer appears to concede that the Lone Worker Manager falls within the scope of step (a) but in his so-called purposive construction, he points to the paragraph lines 20 to 25 on page 1 of the patent which leads away from the voice user input.
17. The observer goes on to say that the passage on page 3, line 16 to 17 of the patent is not elaborated further in the description so the skilled person would dismiss the vocal input option. In relation to step (d) the observer also expresses some doubt over interpretation of "a location identifier" and wants to interpret it as something which gives precise information as to the whereabouts of the user and submits that the location identifier is a computer-usable search string. In my view despite the passage on page 1, lines 20 to 25, a voice input is clearly envisaged by the passage on page 3, lines 16 to 17 and so the skilled person would recognise that it could be within the scope of the claims. Furthermore, the observer contends that

the requester relied on just such a narrow interpretation in obtaining a granted patent. The requester is however correct in his observations in reply that in *Kirin Amgen*, Lord Hoffmann expressly opposes using the file of a patent application to construe the meaning of the patent in this way.

18. In my view there is no doubt that the phone of the lone worker constitutes a "communication unit". I also have no doubt that the message sent by the lone worker to the response centre includes his/her location, but is that the same as the response save centre receiving a location identifier as required by step (a)? I think that the skilled person, on reading the preamble and statements on pages 1 to 3, would interpret the location identifier as not simply the location, but some sort of identifier or symbol indicating the location and not the full address. This would then enable the response centre to retrieve more information relating to the location than the location itself, particularly when looking at the array of possible information associated with a particular location set out on pages 7 and 8 of the patent. I therefore conclude that the Lone Worker Manager does not receive a location identifier from the user input device of a communication unit as required by step (a) of claim 1.
19. There appears to be no dispute that the Lone Worker Manager system includes steps (b) and (c) of claim 1.
20. The next point of contention is step (d) "retrieving information associated with the received location identifier from a database". The requester says that the Tunstall system operates by calling the lone worker's phone. If the lone worker does not answer, an alarm call is raised and the lone worker's details are displayed on the screen. The observer emphasises the order in which this ought to happen, i.e. that precise information of the location of the lone worker must be received before generating the alert message. I cannot see that either the precision of the location information or the need for the location information to be received before the alerting message is particularly germane to whether the Lone Worker Manager meets step (d). I note in this respect that step (d) does not merely state that the method retrieves the location identifier, but information associated with the location identifier. The Lone Worker Manager merely retrieves the location itself and as I have discussed above, I think that the location identifier is not simply the location, and therefore I do not think that the Lone Worker Manager retrieves information associated with the received location. I therefore conclude that the Lone Worker Manager does not fall within step (d) of claim 1.
21. Finally as regards claim 1, step (e) specifies "outputting an alert message which varies in accordance with the retrieved information". There are two strands in the interpretation of this phrase. Firstly, what is "an alert

message" and secondly does that alert message "vary in accordance with the retrieved information"? The requester would have it that the Tunstall system envisages taking "appropriate action" which they say would clearly involve a message to appropriate authorities to act to help the lone worker. The observer however contends that the "alert message" must refer to a computer generated alert message and that the message must not be standard, but must vary "in accordance with the retrieved information". The observer also contends that the skilled person would think that message must contain the precise location of the user, using the passage of the first full paragraph of page 11 of the patent as support for that contention.

22. The observer says that the message cannot be a verbal one, because then the claim would be anticipated by a simple verbal conversation and he quotes an extract from "The Munros" by Cameron McLeish last revised in 1998, page 24. I will not reproduce the extract here in full, but suffice it to say that the conversation involves someone climbing a mountain and leaving behind a route card and informing someone else by phone saying where they are going and what route they are following and where they will be at a given time. If the person they rang then perceives an emergency, for example if the climber is late returning, then they can ring mountain rescue with the likely location of the mountaineer. I can only consider this as regards how it affects construction of the claims because the opinion request relates to infringement only. The requester admits, and even proposes, that verbal indication of location is within the scope of claim 1 so I do not see that there this particularly helps me with interpretation of that part of the claim. I think in any case that the requester is right in the observations in reply that the person skilled in the art would not consider a single individual to be a "central monitoring station". For me to go into this in any greater depth would, I believe, lead to an opinion on validity, which is outside the scope of this request.
23. The observer also says that the interpretation of the claims set out by the requester would mean that claim 1 will be anticipated by the prior art described on pages 1 and 2 of the patent. The requester however points out that construction should not have the result that the claims read on to prior art referred to in the patent itself, referring me to *Beloit vs Valmet* [1995] RPC 705 and *Ultraframe vs Eurocell* [2005] RPC 36. Having studied these authorities, I think they are really relating to prior art in general, and not necessarily that quoted as such in the patent specification. I think however that the references on pages 1 to 2 of the patent of various generalised individual disadvantages of the prior art cannot really form anything which could be said to anticipate and therefore doesn't really affect construction of the claim, except for the specific point made in reference to the paragraph lines 20 to 25 on page 1 in paragraph 17 above.

24. The second strand of step (e) of claim 1 is that the alert message varies "in accordance with the retrieved information", the retrieved information referring back to step (d), being "information associated with the received location identifier from a database". The requester says that if the operator of the lone worker management system is unable to make contact then they "take the most appropriate action" and that action must involve sending a message which contains the location of the lone worker. Again, the observer says that the alert message must be a computer-generated message and the message must conform, or at least be in harmony with the retrieved information, so that the alert message contains the precise location of the user.
25. I think there are potentially two alert messages involved in the Lone Worker Manager. Firstly, when the lone worker fails to enter the correct information alarm call is raised and the lone worker's details are displayed on the screen at the response centre. The web page subsequently says that if the operator is unable to make contact then they may retrieve the lone worker's voice message file "to ascertain their location". This indicates to me that the lone workers "details" cannot have included the location and therefore the display of the lone workers details on the screen following an alarm call cannot be an alert message which "varies in accordance with the retrieved information" as required by step (e) of claim 1.
26. Secondly, when the operator in the response centre has retrieved the lone worker's voice message to ascertain the location, the operator can then take "the most appropriate action". Unfortunately the "most appropriate action" is not further defined in the web page. One can surmise that if this action is to have any effect as regards a third-party aiding or rescuing the lone worker, then it will almost certainly involve sending a message to someone such as the police, a security company or even the lone worker themselves and the message will involve an alert. One can also surmise that if the message is to be any use to the police or security company then information as regards the location of the lone worker will be vital, but if the message was to the lone worker themselves it seems to me that the location could be rather pointless as the message might be simply not to enter the premises, as envisaged in the patent. On the other hand however, step (e) specifies that the alert message "varies in accordance with the retrieved information" where the retrieved information must be that referred to in step (d). As I have concluded in relation to step (d) that this information is more than just location, then I think it follows that I cannot conclude that the Lone Worker Manager outputs an alert message "which varies in accordance with the retrieved information." As we can only conclude that "the most appropriate action" will include the location but not necessarily information associated with the location identifier, which must

be more than the location itself, I therefore conclude that the Lone Worker Manager does not fall within step (e) of claim 1.

27. I have difficulties with claim 12, however, because in its broadest form this claim can indeed, as pointed out by the observer, simply include two phones and a database, as the means for outputting an alert message could simply be one of the phones. On the face of it the phone of the lone worker clearly constitutes the communication unit, including an input device, the phone having a microphone for receiving a location identifier and a transmitter for transmitting the location identifier. The PNC 4 vision response centre has a receiver for receiving the location identifier, and means for retrieving information associated with a received location identifier from a database, that being the operator. The operator's telephone is also a means for outputting an alert message which is in accordance with the retrieved information, when, as discussed above, the "appropriate action" is to inform a response centre. So in summary, all of the features of the albeit very broad claim 12 are there in the Lone Worker Manager so I conclude claim 12 is infringed.

Appendant claims

28. Having concluded that the Lone Worker Manager does not infringe claim 1, then it cannot infringe claims appendant thereto, i.e. claims 2 to 11. I will not therefore consider these claims in any detail.

Contributory infringement

29. As set out in paragraph 13 above, section 60 (2) says that a person will also infringe if they supply "means relating to an essential element of the invention".

30. So what are the "essential elements" of the invention in the patent? I think the nub of the invention is really the database, how it is organised to store the location identifier and issue information related to the location identifier in an alert message in certain circumstances. The other elements of the invention such as telephones and the response centre are commonplace, and therefore cannot be considered as essential elements. As I have already concluded that the database does not store or send out a location identifier, I conclude that sale or supply of the lone worker manager could not constitute infringement of claims 1 or 12, or any of the claims appendant thereto, under section 60 (2).

Opinion

31. I therefore conclude that the offer for sale of the Tunstall "Lone Worker Manager" system does not constitute an infringement of claims 1 to 11 of the patent, but does constitute an infringement of claim 12 within the meaning of section 60(1) of the Act. I also conclude that the Lone Worker Manager does not constitute an infringement of any of the claims of the patent in the meaning of section 60 (2) of the act.

Application for review

32. 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.

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.

Jim Calvert
Examiner