

OPINION UNDER SECTION 74A

Patent	GB 2392126
Proprietor(s)	
Exclusive Licensee	
Requester	CRI2000, L.P., on 5 June 2009
Observer(s)	Tonic Studios Limited
Date Opinion issued	11 August 2009

The Request

1. The requester, J. A. Kemp & Co. on behalf of CRI 2000 LP seeks an opinion as to whether their client's proposed product would constitute an infringement of GB patent GB2392126 B. The request is accompanied by a diagram of the product and a statement of facts and arguments in support of non-infringement.

Observations

2. Observations were received from Chapman Moloney on behalf of Tonic Studios Limited, the proprietor of the patent. The observations comprise a written statement asserting that the proposed product infringes the patent.

Observations In Reply

3. Observations in reply were received from the requester comprising a further statement refuting the assertions of the observer.

The Patent

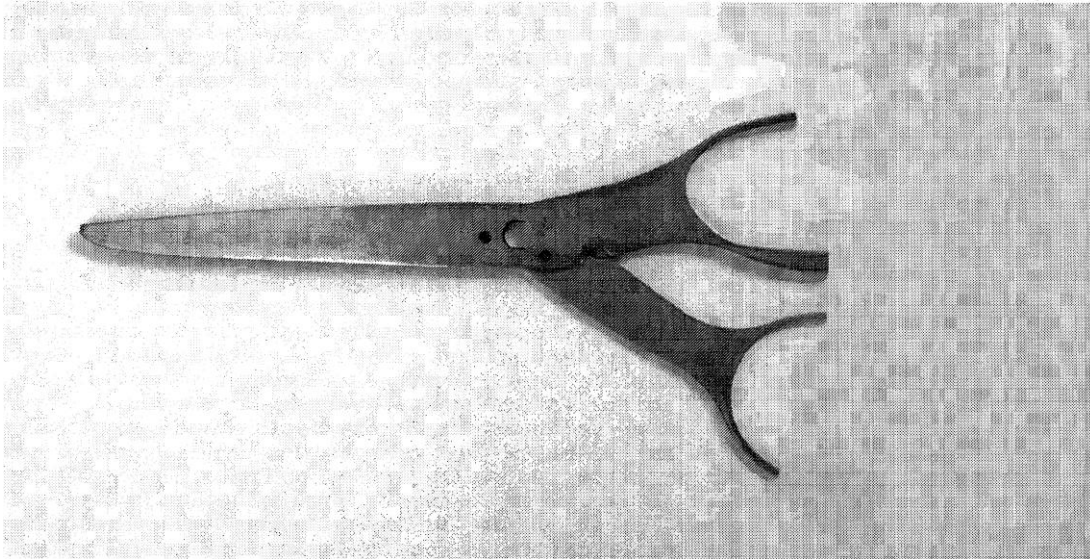
4. The patent was filed on 22 August 2002, granted on 16 March 2005 and is still in force. It relates to improvements in scissors and has 4 claims as follows:
 1. *Scissors in which a blade and handle incorporating a finger ring is formed from a single metal sheet, CHARACTERISED IN THAT the handle and finger ring has moulded thereover a relatively hard plastics material and at least the portion around the finger ring has moulded thereover on top of the relatively hard plastics material a relatively soft plastics material.*
 2. *Scissors according to claim 1, further characterised in that the amount*

of metal used to form the finger ring is sufficient to provide only a skeleton over which the relatively hard and relatively soft plastics may be moulded.

3. Scissors according to claim 1 or claim 2, further characterised in that the metal forming the finger ring has sharp edges over which the relatively hard plastics material is moulded.

4. Scissors substantially as hereinbefore described with reference to the drawings

5. The figures of the patent are reproduced below. Figure 1 shows the sheet metal scissor blades with associated handles 3, 4 and finger rings 5, 6. Figure 2 shows the assembled scissor blades with the hard plastics 9, 10 and soft plastics 11, 12 moulded thereover. Figure 3 shows a cross-section of the finger rings along the line X-X'.



7. According to the requester, in order to complete the product, “a full handle of hard plastic would be moulded around each of the metal handle portions and a softer plastic material would then be moulded around part of the hard plastic material”.

Infringement

8. In order to decide whether the requester’s scissors infringe the patent I must first construe the claims of the patent. To do this I shall follow the latest authority on claim construction given in *Kirin-Amgen Inc v Hoescht Marion Roussel Limited [2005] RPC 9*. Following that authority I must put a purposive construction on the claims, interpret the claims in the light of the description and drawings as required by section 125(1) of the Act and take into account the protocol to Article 69 of the EPC. To put it simply, I must decide what a person skilled in the art would have understood the patentee to have used the language of the claim to mean. I consider that for present purposes the person skilled in the art is someone with a good knowledge of the design and manufacture of scissors.
9. In this case claim 1 is for the most part relatively easy to construe. There is no argument from either party on any point of construction other than the term “finger ring”. Since it appears to be common ground that the requester’s scissors fulfil all other requirements of claim 1, the construction of the term “finger ring” will decide whether there is infringement.
10. The requester has argued that the term “finger ring” must be construed as meaning a closed loop ring for the following reasons:
 - (a) The normal unambiguous definition of a ring is a closed loop ring.
 - (b) The description and drawings of the patent describe nothing but a closed loop ring.
 - (c) The purpose of a closed loop ring is to provide mechanical strength which

an open loop design would not provide. Thus a purposive construction requires a closed loop.

(d) Any construction other than a closed loop finger ring would read on to the prior art acknowledged in the patent.

11. The observer's argument counters that:

(a) Claim 1 does not specify a closed loop ring and the term ring is simply used in the art to describe that part of the scissors, which could be an open or closed loop ring.

(b) The description is but one example of scissors that embody the invention.

(c) The purpose of the finger ring is to provide mechanical strength and while a closed loop ring may provide an increased mechanical strength over a split or open ring, a closed ring is not necessary to provide the required mechanical strength. Thus a purposive construction is *"a ring which extends at least part way round a handle of a scissors"*.

(d) The prior art acknowledged in the patent describes a linear handle end of the cutting member received and anchored in a shank portion of the handle and does not extend around the finger receiving portion to provide the necessary support and so does not anticipate the claims.

12. The requester's observations in reply re-iterate the four original points and also argue that even if the term "ring" were interpreted to include structures with a small gap, then the proposed scissors would still not infringe the claim, the handle portion being U-shaped and not forming part of a ring.

13. With regard to the points (a) and (b), I am not convinced by the observer's argument. The normal unambiguous meaning of the term ring is a continuous closed loop structure. The patent specification does not describe or hint at anything other than a closed loop ring. Therefore I believe the skilled person would on this basis construe "finger ring" to mean a closed loop ring. I am not persuaded by the argument that "finger ring" is used in the art to merely describe that part of the scissors. Whilst the term "ring" is undoubtedly used, along with other terms such as "eye" or "hole", there has been no evidence submitted that suggests that "ring" is the standard term or that open loop structures are common and conventionally described as rings.

14. Turning to point (c), it is agreed that a closed loop ring provides an increased mechanical strength over an open loop design. I also agree with the observer's point that an open loop ring may provide adequate mechanical strength. However, the patent specification emphasizes the skeletal nature and thinness of the ring. The person skilled in the art would therefore I believe understand that a closed loop ring would be necessary to provide the full benefit in terms of thinness and strength. In other words an open loop ring would be an inferior design, compromised in terms of either strength or thinness.

15. Turning to point (d), whilst the prior art is not directly relevant to this infringement opinion, I do not believe that construing “finger ring” as an open loop ring necessarily means that claim 1 is anticipated by the prior art acknowledged in the patent. The prior art simply does not have any part which can be described as a ring, whether open or closed loop.
16. Finally the requester’s assertion that the proposed scissors have a U-shaped structure rather than an open loop ring is persuasive. The point at which an open loop ring ceases to be a ring and becomes a U-shaped structure is debatable, but it seems to me that the proposed scissors are some way from being an accurately described as an open loop ring.
17. In view of these points I believe that the correct construction of the term “finger ring” is a “closed loop finger ring”. It follows therefore that claim 1 and dependent claims 2 to 4 are not infringed

Opinion

18. I conclude that, from the evidence in front of me, the patent GB2392126 B would not be infringed should the requester’s proposed scissors be manufactured, disposed of, offered for disposal, used, imported, or kept for disposal or otherwise within the United Kingdom.

Application for review

19. 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.

Gareth Griffiths
Examiner