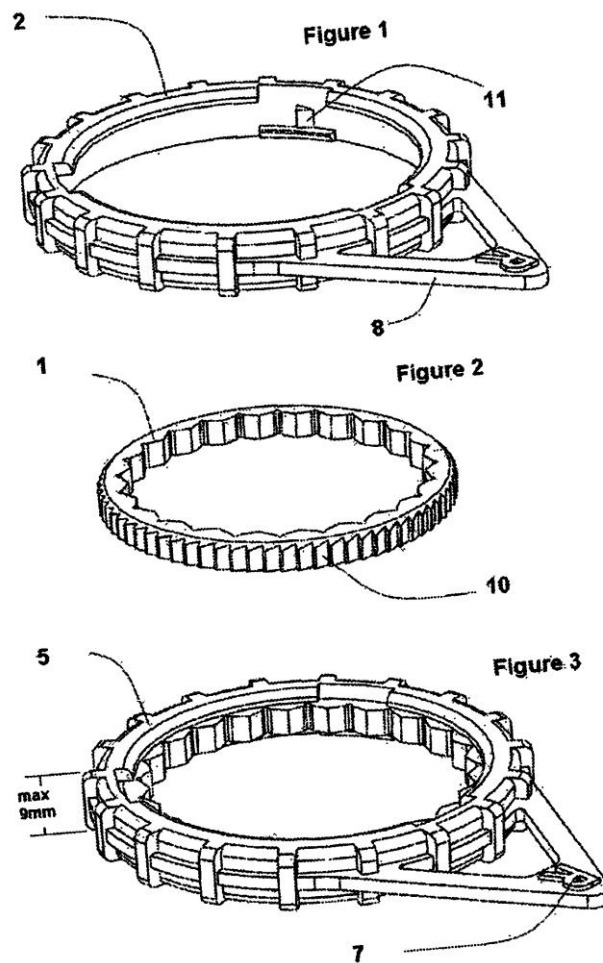


OPINION UNDER SECTION 74A

Patent	GB 2242720
Proprietor(s)	Mr Michael Marczynski Mr Peter Brawley
Exclusive Licensee	
Requester	Business Lines Limited, on 24 December 2008
Observer(s)	Interparts Automotive b.v and A.A. de Groot
Date Opinion issued	26 March 2009

The request

1. The comptroller has been requested by Business Lines Limited (the Requester) to issue an opinion as to whether the two-part wheel nut indicator offered for sale by Bert de Groot of Interparts Automotive (the Observer) constitutes an infringement of the Requester's patent GB 2242720 B (the Patent). The Interparts device is shown on an information sheet supplied by the Requester, and it is more fully described in the Observer's own patent application GB 2446406 A (drawings below).



2. The Patent was granted on 4 August 1993 and remains in force.

Observations

3. Observations in response to the request were received from Mr. de Groot on 30 January 2009. The greater part of these observations concerns the differences between the Interparts device and the device shown in the Patent and differences between the Interparts device and the prior art. The part of the observations that is relevant to the question of infringement states that the Requester is broadening the scope of claim 1 of the Patent so as to make their argument. These observations do not dispute that the Interparts device is offered for sale in the UK.

Observations in reply

4. The Requester's observations in reply were received on 5 February 2009 and dispute the allegation of claim broadening.

Issues to be decided

5. Firstly, I need to consider what actually constitutes infringement of an invention protected by a patent. Infringing acts are defined by section 60 of the Patents Act 1977 and the subsection which is relevant to this case reads as follows:

(1) Subject to the provision 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;

6. In coming to an opinion as to whether claims of the Patent have been infringed I must determine whether the alleged infringing item lies wholly within the scope of those claims and then I will consider any evidence of manufacture and/or sale, etc. of the item within the UK. For the moment I will concentrate upon claim 1 of the Patent which reads as follows:

A safety indicating device for indicating relative rotational displacement between a fixed first member and a second member rotatably engaged with the first member, the device comprising a body having a bore formed with equi-spaced grooves enabling the device to be releasably secured to the second member in one position of a plurality of positions and indicating means to indicate the position of the device relative to a reference.

Claim construction

7. It is clear to me that the proper scope of claim 1 lies at the heart of this dispute. The Requester contends that the scope of claim 1 is broad enough to cover the two-part Interparts device, particularly in the light of dependent claim 3 which specifies that the body and the indicating means are integrally formed. The Observer denies this, saying that claim 1 covers only integrally-formed devices such as those shown in the Patent and that for claim 1 to cover the Interparts device would require an undue broadening of the scope of claim 1.
8. My approach to determining the proper scope of claim 1 (claim construction) must follow the principles set out in *Kirin-Amgen Inc v*

Hoechst Marion Roussel Ltd [2005] RPC 9, in which Lord Hoffmann said that a purposive construction must be put on the claim as interpreted in the light of the description and drawings as instructed by Section 125(1), and due account must be taken of the Protocol to Article 69 of the EPC. He summarized this approach at paragraph 69 of the decision, saying that the question to be asked is:

“what would the person skilled in the art have understood the patentee to have used the language of the claim to mean?”

9. For the purposes of this opinion I will take the person skilled in the art to be an engineer, mechanic or technician who is familiar with the broad range of vehicle systems and who has a particular interest in vehicle safety systems and requirements.
10. I believe that such a skilled person would have little or no difficulty in understanding claim 1. In the light of the description and drawings, which do not go beyond the use of the device with vehicle wheels, the skilled person would take the “fixed first member” to be a threaded stud on a wheel hub and they would take the “second member” to be a wheel nut that engages with the stud to secure the wheel to the hub.
11. There may be some confusion in respect of whether the device comprises either a body part and an indicating part or a body that includes an indicating part, but, as I say below, I believe that any such confusion will not affect the outcome of this opinion.
12. There is no explicit requirement in claim 1 for the device to be of integral or non-integral construction. However the Requester’s view is that dependent claim 3, which restricts the body of the device and the pointer part of the indicating means of the device to be of integral construction, has the effect of making claim 1 embrace both integral and non-integral constructions. The Observer’s view is that claim 1 must be limited to integral constructions because that is what is shown in the drawings of the Patent and recited in the description of the Patent.
13. It is established practice that independent patent claims are used to define the essential features of an invention and that dependent claims are progressively narrower in scope and are used to recite optional, additional and/or non-essential features of the invention.
14. Therefore the integral construction recited in dependent claim 3 must be taken as an optional feature of the invention recited in claim 1. It follows that claim 1 must embrace both integral and non-integral construction of the device. That is the clear, natural and straightforward consequence of the language used in the claims; and I believe that the skilled person

would appreciate that. A reference to non-integral construction of the device may also be inferred from the second use of the word “can” in the sentence “The body and the indicating means which can be a pointer can be formed integrally.” on page 2 of the patent specification.

15. I referred earlier to some potential for confusion as to the meaning of claim 1 in respect of the composition of the device, whether it comprises either a body part and an indicating part or a body that includes an indicating part. It is my view that the skilled person would resolve that potential confusion as an attempt by the claim writer to cover both the integral and non-integral construction options for the device.
16. Taking all of that into account I believe that the proper scope of claim 1 can be expressed as a vehicle wheel safety indicating device for indicating relative rotational, the device comprising a body having a bore formed with equi-spaced grooves enabling the device to be releasably secured in one of a plurality of positions and indicating means to indicate the position of the device relative to a reference, wherein the body and the indicating means are either integrally constructed together or of non-integral construction.

Does the Interparts device have all the features of claim 1 as I have construed it?

17. There can be no doubt that the Interparts device is a vehicle wheel safety indicating device; and upon studying the Observer’s patent application that relates to the Interparts device it is clear that the Interparts device may fairly be said to comprise a body 1 that has bore formed with equi-spaced grooves enabling the device to be releasably secured to a wheel nut in one of a plurality of positions and indicating means 2 to indicate the position of the device relative to a reference wherein the body 1 and the indicating means 2 are of non-integral construction.
18. Therefore it is my view that the Interparts device has all the features of the non-integral construction option within claim 1 as I have construed it.
19. One can also see that the Interparts device and its use have the characterizing features of claim 2, claim 5 and claim 10.

Is the Interparts device being offered for disposal (sale) in the UK?

20. Evidence on this point from the Requester is limited to the information sheet shown at the start of this opinion. It has the appearance of an advertisement for the Interparts device with details of the device in English and contact details for Interparts. By itself I see this information

sheet as persuasive but not conclusive evidence that the Interparts device is being offered for sale in the UK. But taken together with the Observer not denying any offer for sale in the UK I am happy to believe that, on balance, the Interparts device is being offered for sale in the UK.

Opinion

21. I have concluded that the Interparts device and/or its use have all the features of the properly-construed claim 1, claim 2, claim 5 and claim 10. I have further concluded that the balance of probabilities is in favour of the Interparts device being offered for sale in the UK.
22. Therefore it is my opinion that the offer for sale and/or use in the UK of the Interparts device would constitute an infringement of claim 1, claim 2, claim 5 and claim 10 of the Patent, GB 2242720 B.

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.

Peter Easterfield
Examiner