

OPINION UNDER SECTION 74A

Patent	GB 2284055
Proprietor(s)	Moira Davies Macpherson
Exclusive Licensee	
Requester	Moira Davies Macpherson, on 20 April 2007
Observer(s)	Sailes Marketing Limited
Date Opinion issued	19 July 2007

The Request

1. This opinion relates to a request as to whether patent number GB 2284055 is infringed by a device called "Speed Watch", manufactured, distributed and marketed by Sailes Marketing Limited, through websites including huntertransducers.com and caraudiorecount.com.
2. The request is accompanied by:
 - A letter from Pinsent Masons to Sailes Marketing (16 March 2006)
 - A letter from Sailes Marketing to Pinsent Masons (20 March 2006), with the following documentation enclosed:
 - An advert for "Speed Alert" (undated)
 - An article from *Fleet News* (August 21 1992)
 - A company profile of Sailes Marketing from *Chamber of Commerce Magazine* (September/October 1992)
 - A letter from Robert A.V. Staples of the Staples Group to Mr G.Sailes (August 12 1992)
 - A letter from Pinsent Masons to Sailes Marketing (12 April 2006)

- One screenshot of www.huntertransducers.com (1 February 2006)
- A further screenshot of www.huntertransducers.com (17 October 2006)
- A screenshot of www.caraudiodiscount.com (17 October 2006)

Observations

3. Observations on the request were received from Sailes Marketing in a letter dated 1 June 2007. The observations enclosed a leaflet advertising Speed Watch.
4. No observations in reply were received.

The Patent

5. The patent was granted on 16 October 1996 and is still in force. The application was filed on 21 November 1994, with a priority date of 22 November 1993, and was published on 24 May 1995.
6. The patent relates to a warning system for motorized vehicles with a means for indicating the speed in relation to a preset speed. The preferred embodiment is perhaps best illustrated by figure 1:

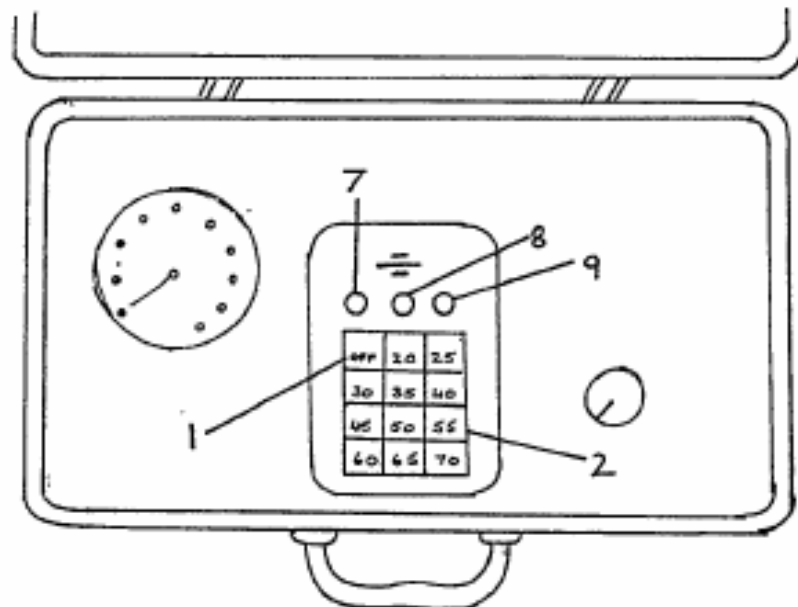


FIG 1

A chosen speed is selected by the user using buttons 2. When the

actual speed of the vehicle is in a particular range surrounding the selected speed, light 8, which may be amber or white, is illuminated. If the actual speed is below that range, green light 7 is illuminated, and if it is above the range, then red light 9 is illuminated.

7. The patent has seven claims, of which claim 1 is an independent claim and claim 7 is an omnibus claim. The request does not specify which claims are allegedly infringed, so I will assume that the request pertains to all claims.
8. Claim 1, which relates to an automatic speed limit warning system, reads as follows:

An automatic speed limit warning system for motorized vehicles, comprising

a monitoring device which compares the actual speed of the vehicle as detected by the vehicle speedometer with a chosen speed which is manually or automatically set in the device to correspond to the speed limit,

the system having means providing a different indication for each of three ranges,

*the first range corresponding to actual speeds within a region including the chosen speed,
the second range corresponding to actual speeds less than speeds in the region,
and the third range corresponding to actual speeds greater than speeds in the region.*

The Speed Watch device

9. There are two different Speed Watch devices in the evidence. The first device (henceforth called "Speed Alert") was provided with the request and the second device (henceforth called "Speed Watch") was provided with the observations.
10. The earlier Speed Alert device was, according to *Fleet News*, available in August 1992, which pre-dates the priority date of GB 2284055. The device is also mentioned in *Chamber of Commerce Magazine* (September/October 1992), and shown in an undated advert which uses the same photograph as the *Chamber of Commerce* article.
11. The advert describes the method of use of the device as follows:

“Press button at required speed to switch on and set. Sounder will bleep above set speed. Press button at any time to reset speed. Hold button down until bleep to switch off.”

12. Further information is provided in the *Chamber of Commerce Magazine* article, which says:

“On entering a 50 mph zone you stabilize the vehicle speed at say 53 to 54 mph and touch the button on the unit. As long as the speed is stable for two seconds the unit will automatically calibrate for that speed. As you exceed this speed it will flash a red warning LED and an audible bleep, therefore reminding you every time you exceed the limit and before the camera has a chance to operate.”

13. The second device, referred to by Sailes Marketing as the “next generation”, is called “Speed Watch” and is shown in the two internet pages and an advertising leaflet. No suggestion has been made by either party that this pre-dates the granting of the patent.

14. The Speed Watch device differs from the Speed Alert device, in that the chosen speed can be selected by the user without actually driving at that speed. The advertising leaflet says that:

“Total flexibility in selecting any speed in one mile per hour increments allows for any possible future change in speed limits”;

and that:

“Six separate speed levels can be set to the driver’s choice by selecting an up or down button, like the pre-set on a radio”.

15. The warning system is also described:

“The unit audibly sounds a warning and flashes the set speed if the selected speed is exceeded”.

Discussion

16. My task is to determine whether the second, “next generation” Speed Watch device infringes the patent. To do this I must first decide how to construe claim 1. Then I must decide whether the Speed Watch device falls within the scope of the claim so construed. The latest guidance on how to construe claims is given by Lord Hoffmann in *Kirin-Amgen Inc v Hoescht Marion Roussel Limited* [2005] RPC 9. The guidance in the judgment is to put a purposive construction on the claim, interpret the claim in light of the description and drawings as instructed by section

125(1) of the Act and take into account the Protocol to Article 69 of the EPC.

17. Section 125(1) of the Act states that:

For the purposes of the Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.

18. The Protocol to Article 69 of the EPC states that:

Article 69 should not be interpreted in the sense that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Neither should it be interpreted in the sense that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patentee has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patentee with a reasonable degree of certainty for third parties.

19. Lord Hoffmann summarized the approach by saying “*The question is always what the person skilled in the art would have understood the patentee to be using the language of the claim to mean*”.

20. So what would a skilled person have understood Moira MacPherson to have meant by claim 1? The claim is directed to ‘*an automatic speed limit warning system for motorised vehicles*’. The description clearly suggests that ‘automatic’ means that the warning is activated automatically, rather than the chosen speed is set automatically (although this is an option). Both the MacPherson device and the Speed Watch device operate in this manner.

21. I now need to look at each of the particular features of the warning system set out in claim 1, construe what each means and then decide whether the feature is present in the Speed Watch device.

22. I start with *'a monitoring device which compares the actual speed of the vehicle as detected by the vehicle speedometer with a chosen speed'*. This is straight-forward and means that the actual speed must be inputted into the device and compared to a chosen speed (the actual meaning of which I will come to). In its observations, Sailes Marketing states that *'In many of cases Speed Watch will require an additional part to operate. To generate a speed pulse signal from a vehicle with a mechanical speedo cable for instance, a transducer will be required; if a vehicle is using a multiplex wiring system then a CANBus interface will be required. If there is a speed sensor wire available on the vehicle then this may also be used as long as it does not affect any of the original vehicle systems'*. Mechanical speedo cables, multiplex wiring systems and speed sensor wires are all part of various speedometer arrangements. Therefore, it is clear that the Speed Watch device has this feature.
23. The claim then says that the chosen speed is set "manually or automatically'. Does this mean that both options are available or either? Of the figures only figure 18 shows automatic setting, while manually setting is present in figures 1-17. This would suggest that it is not essential to have both options. This appears to be confirmed by page 3, which uses the phrase *"The addition of the automatic speed control receptor"* and *"The speed control system... can be fitted with a signal receiver and decoder unit"*. It is also mentioned that the control receptor can be turned off. As there is no indication of automatic setting replacing manual setting entirely, merely supplementing it, I believe that the claim is intended to mean that either option is included, but not necessarily both. The Speed Watch device, with manual setting only, therefore meets this requirement.
24. The claim goes on to say that the chosen speed is *"manually or automatically set in the device to correspond to the speed limit"*. However, must the chosen speed be the same as the speed limit? When set manually, the user press buttons 2, according to what the speed limit is. However, it would be clear to anyone skilled in the art that the user is under no obligation to set the chosen speed and could press any button. The button corresponding to the speed limit merely makes the best use of the device. The chosen speed should not strictly have to be the speed limit. Therefore, the fact that the Speed Watch device can be set to any speed in one mile per increments does not bring it outside the scope of the patent's claim 1.
25. The final part of claim 1 relates to the indication of speed ranges – "the system having means providing a different indication for each of three speed ranges". These ranges are one containing the selected speed, a slower range and a faster range. In the description and all of the

illustrated embodiments there are three separate lights (green, amber/white and red), each representing one of the ranges. They are illuminated according to which range the actual speed falls into. The illumination of the red light can be accompanied by the activation of an alarm bleeper. The use of the word 'indication' in the claim, as opposed to 'indicator', allows for the possibility of a single indicator providing three separate indications (e.g. a single light that can be illuminated in three different colours). However, on the number of ranges that need to be indicated, the claim is quite specific. It states clearly that there must be three separate indications corresponding to three separate speed ranges. Having carefully considered the specification as a whole, I do not believe that the claim can be interpreted in any other way, for example to require fewer than three indications.

26. The Speed Watch device, though only uses two ranges – a range above the chosen speed and a range below the chosen speed. When the actual speed exceeds the chosen speed, the LED display flashes and an audible warning sounds. When the actual speed is below the chosen speed, there is no flashing and no audible warning. Therefore it is clear that there are two ranges, each with a different indication.
27. The earlier Speed Alert device, which predates the filing of the patent, also uses the two range system, but with a simple light rather than an LED display.
28. Therefore, with the patent requiring three ranges and Speed Watch device only having two, I must consider that the Speed Watch system falls outside the scope of claim 1. As claims 2-6 are appendent to claim 1 and claim 7 is an omnibus claim, the Speed Watch device also falls outside the scope of these claims. Therefore the Speed Watch device does not infringe GB 2284055.

Opinion

29. I conclude that the Speed Watch device, as presented by the evidence provided, does not infringe patent number GB 2284055.

Application for review

30. Under section 74B and rule 77H, the proprietor may within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.
31. Under rule 77H(5) such an application for review may be made by the proprietor only on the grounds that by reason of its interpretation of the

specification of the patent the opinion wrongly concluded that a particular act would not constitute an infringement of the patent.

Note

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting this opinion and filing observations have chosen to put before the Patent Office.

Richard Nicholls
Examiner