

OPINION UNDER SECTION 74A

Patent	GB 2385449
Proprietor(s)	Dr Steve S Singh
Exclusive Licensee	
Requester	Dr Steve S Singh, on 29 February 2008
Observer(s)	Timeguard Ltd
Date Opinion issued	20 May 2008

The request

1. The comptroller has received a request from Dr. Steve S. Singh (the "Requester") to issue an opinion as to whether the claims of his granted patent GB 2385449 B (the "Patent") have been infringed by a remote control dimmer lamp holder that he states is supplied by Timeguard Ltd. to Homebase Ltd. for retail sales.
2. The Patent was granted on 24 June 2004 and remains in force.
3. Three exhibits accompany the request. Exhibit A is a copy of the Patent; exhibit B is a copy of a Homebase till receipt apparently for the purchase of a copy of the allegedly infringing remote control dimmer lamp holder in 2006; and exhibit C is said to be a copy of the installation and operational instruction leaflet for the lamp holder.
4. Dr. Singh's request and statement supporting the request are drawn up to concentrate upon claim 1 of the Patent, but there is some indication in the statement that I should go beyond claim 1 and consider the other claims:

"The patent has 6 claims. This statement presents the grounds for the consideration of infringement based on claim 1 alone. This is deemed adequate at this stage although Exhibit A has been provided containing details of all 6 claims."

5. In his statement supporting the request Dr. Singh provides detailed reasoning as to why he believes that claim 1 of the Patent is infringed. His concern appears to lay with the "Specific button operation" mode of the dimmer lamp holder, in particular the relationship between the actions he states that the holder undertakes when one is at part 4e of the instructions listed in exhibit C and part d of claim 1 of the Patent.

Observations

6. Observations in response to the request were received from Timeguard Ltd. (the "Observer") on 8 April 2008. These observations do not dispute that Timeguard supply the dimmer lamp holder to Homebase, nor do they dispute that Homebase offers the dimmer lamp holder for retail sales, nor do they dispute either exhibit B or exhibit C. However these observations do dispute much of the Requester's reasoning. For example the Observer states that the Requester has provided no evidence of the existence of the four means listed as a to d in claim 1 of the Patent nor can the existence of these means as separate and individual be inferred from the functions carried out by the dimmer lamp holder. The Observer also disputes the Requester's identification of what constitutes a "learning mode" within the meaning of the claim 1 of the Patent.
7. Homebase Ltd. has not supplied any observations in response to the request.

Observations in reply

8. In his extensive and very detailed observations in reply the Requester seeks to rebut all of Timeguard's observations. It is clear from reading the initial statement, the observations and the observations in reply that the core features of this dispute relate to what constitute the dimmer lamp holder's normal mode of operation and its learning mode of operation within the meaning of claim 1 of the Patent.
9. Attached to these observations in reply is a copy of an instruction leaflet for a remote control dimmer lamp holder that appears to have been produced by a company called Light Touch Products Ltd. There seems to be a close link between Light Touch Products and the Requester. According to what is said on the last page of the observations in reply the Requester is seeking to add consideration of this new dimmer lamp holder to his initial request. It is clear from Rule 96(5) that the Requester's observations in reply must not be used to introduce any new argument: they must be confined strictly to matters in reply. Therefore

consideration of this new dimmer lamp holder may or may not be admissible but as I note later, admissible or not, this new dimmer lamp holder does not change my view of things.

Issues to be considered

10. Having read the instructions contained in exhibit C I am satisfied that the Requester has an arguable case that the various means listed in claim 1 of the Patent must be present. I cannot accept the Observer's contention, set out in paragraphs 2 to 5 of the observations, that I must reject the Requester's argument out of hand.
11. 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;
 - (b) where the invention is a process
 - (c) where the invention is a process
12. In coming to an opinion as to whether the claims of the Patent have been infringed I must determine whether the alleged infringing item lies wholly within the scope of those claims. Should I find that the item does fall within the claims I will proceed to consider any evidence of manufacture and/or sale of the item. For the moment I will concentrate upon claim 1 of the Patent which reads as follows:
 - "1. A device for controlling a function of an electrical device using a conventional remote control comprising, said device being susceptible to be switchable between a learning mode and a normal mode of operation; the device comprising
 - a. Means for controlling said function of said electrical device;

- b. Means for receiving a signal from said conventional remote control;
- c. Means for learning an operating key from said conventional remote control, said controlling means responsive to reception by said receiving means of a signal corresponding to said learned operating key;
- d. Means for switching the device between its learning mode (for learning the operating key) and its normal mode, implemented, through means for receiving a signal from said conventional remote control.”

Claim construction

- 13. The Requester, in his statement and observations in reply, and the Observer, in their observations, appear to me to hold irreconcilable views as to the meaning of claim 1 of the Patent in relation to the operation of the dimmer lamp holder. Thus I must come to my own view as to the meaning of this claim if I am to determine whether or not the allegedly infringing dimmer lamp holder falls entirely within the scope of this claim.
- 14. My approach to construing claim 1 must follow the principles set out in *Kirin-Amgen Inc v Hoechst Marion Roussel Ltd* [2005] RPC 9, where Lord Hoffmann said that a purposive construction must be put on the claim as interpreted in the light of the description and drawing as instructed by Section 125(1), and due account must be taken of the Protocol to Article 69 of the EPC.
- 15. 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?”
- 16. The opening passage of claim 1 presents me with some difficulty. I understand that the relevant skilled person would see that the first use of the word “comprising” is an error since it makes no grammatical sense. I believe that this skilled person would understand a “learning mode” to refer to a mode of operation for the device in which the device may learn to respond to or may be configured to respond to a particular key or button of the conventional or standard remote control. However I am

much less certain what the skilled person would consider the “normal mode” of operation of the device to be because that term does not appear in the description. On balance I will take it that the skilled person will understand the term “normal mode” to be that mode of operation in which the device is controlling a function of an electrical device, i.e. when the device is a dimmer lamp holder and the electrical device is a lamp the “normal mode” will be that mode of operation in which the brightness of the lamp is controlled. I make this decision on the basis that this controlling mode is the only other mode of operation that is described that it is reasonable to suppose the skilled person would infer to be a “normal mode” of operation. Certainly the locking and unlocking mode would not be considered a “normal mode”.

17. The following three parts of the claim, parts a to c, appear to me to be straightforward and present no difficulties as to their understanding.
18. Part d, the final part of the claim contains references to the “learning mode” and the “normal mode” that should be interpreted as in paragraph 16 above. This part also refers to the device being switched between these two modes “implemented, through means for receiving a signal from said conventional remote control”. This final reference presents me with some further difficulty. What does the claim mean to the skilled person when it states that the device may be switched “between” the two modes of operation? Would the skilled person understand this to mean that that the device may be switched only in one direction from one mode to the other, without the ability to return to the initial mode; or should “between” include the ability to switch in both directions from one mode to the other?
19. In the description, the passage at the centre of page 4 and the passage at the top of page 5 make it clear that the device enters its “learning mode” in response to a signal from the remote control. However I can see no clear description of how the device leaves the “learning mode”, whether in response to a further signal from the remote control or in response to some other signal. In the absence of any clear guidance from the description I must fall back on what I believe that the skilled person would infer.
20. Again on balance and given the usual meaning of “between” I believe that the skilled person would take “between” to encompass switching from “normal mode” to “learning mode” and back again. Thus the final part of claim 1 has the effect that the device will switch from “normal mode” to “learning mode” in response to a signal from the remote control and that the device will return to its “normal mode” from its “learning mode” upon receipt of a signal from the remote control.

Does the allegedly infringing Touchguard dimmer lamp holder fall within claim 1 as I have construed it?

21. The Touchguard dimmer lamp holder is a device for controlling a function (brightness) of an electrical device (a lamp) and that control is brought about in response to signals from a conventional or standard remote control. This device is switchable between a learning mode, wherein the device is configured to respond to only one of the buttons or keys of the remote control, and a normal mode of operation in which the brightness of the lamp is controlled. Thus the Touchguard device accords with the opening passage of claim 1 of the Patent.
22. The Touchguard device will have the features mentioned in parts a, b and c of the claim if it is to operate as indicated by exhibit C.
23. According to his statement and observations in reply when the Touchguard device is to be used in the Specific button operation mode it is the Requester's view that the timed ON and OFF switching of power to the device puts the device into a "waiting" state; reception of a signal from the remote control then starts the learning mode. This learning mode is then said to have ended once the device has sensed the termination of the received signal from the remote control (see page 10 of the statement accompanying the request).
24. According to the observations from the Observer the Touchguard device is put into the Specific button operation mode by the previously-mentioned timed ON and OFF switching of power to the device. The Observer considers this Specific Button Operation mode to be the learning mode (see paragraphs 14 and 15 of the observations). It is the Observer's case that the device may be switched between what the instructions listed on exhibit C refer to as Normal operation and Specific button operation and back again by timed ON and OFF switching of power to the device rather than the reception of any signal from the remote control.
25. My interpretation of part d of claim 1 (see paragraph 20) requires that reception of signals from the remote control will move the dimmer lamp holder both ways between a normal mode of operation in which brightness of the lamp is controlled and a learning mode of operation in which the dimmer lamp holder is configured to respond to only one of the keys or buttons on the remote control.
26. From the Requester's point of view the device is moved from a "waiting" state to the learning mode and then out of the learning mode in response to respectively the reception and the termination of signals from the

remote control.

27. From the Observer's point of view the learning mode of the device is preceded and followed by periods of timed ON and OFF switching of power to the device.
28. It seems to me that neither the Requester's "waiting" state nor the Observer's periods of ON/OFF switching can be regarded as my normal mode.
29. Guided by the instructions listed in exhibit C my own view of the Touchguard device is that it enters a learning mode of operation, corresponding to part 4e of the instructions, following a period of rapid ON/OFF switching of power to the device that I have already decided does not fall within my interpretation of the device's normal mode of operation. I cannot say with any certainty how the device leaves its learning mode of operation because these instructions give me no hint or clue in respect of this.
30. Thus the Touchguard device does not accord with my interpretation of part d of claim 1 of the Patent. And so the Touchguard device does not fall within the scope of claim 1 of the Patent as I have construed it.

Claims 2 to 5

31. All these claims are dependent upon claim 1 and so the Touchguard device will not fall within their scope.

Claim 6

32. I see that the final part of the second independent claim, claim 6, is identical in wording to part d of claim 1. I have already found that the Touchguard device does not have the features that my interpretation of part d of claim 1 requires, and so it follows that the Touchguard device will not fall within the scope of claim 6.

Conclusion

33. I conclude that the Touchguard remote control dimmer lamp holder does not fall wholly within any of the claims of the Patent. Thus I need not go on to consider exhibits B & C as evidence of manufacture or sale of the Touchguard device.

The Light Touch Products dimmer lamp holder

34. As I mentioned in paragraph 9 the Requester introduced this device for consideration with his observations in reply. Seemingly not in accordance with Rule 96(5) there is some question as to whether or not I should consider this device at all. If I were to consider this device I would see that it enters the learning mode from an OFF state rather than the normal, brightness-controlling mode that my construction of claim 1 requires. Therefore as I have said earlier this device does not appear to me to help the Requester's cause.

Opinion

35. It is my opinion that the Touchguard remote control dimmer lamp holder does not infringe any claim of the Patent.

Application for review

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.

Under rule 98(5), such an application for review may be made only on the grounds that, by reason of its interpretation of the specification of the patent, the opinion wrongly concluded that a particular act did not or 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 the opinion and filing observations have chosen to put before the Office.

Peter Easterfield
Examiner