

OPINION UNDER SECTION 74A

Patent	GB 2393478
Proprietor(s)	Mr Robert John Cribb
Exclusive Licensee	
Requester	Mr Robert John Cribb, on 9 May 2007
Observer(s)	Decor-Grille Security
Date Opinion issued	8 August 2007

The Request

1. This opinion relates to a request as to whether patent number GB 2393478 is infringed by a device called 'Shed Bar', which is distributed and marketed by Decor-Grille Security.
2. The request is accompanied by a statement by the proprietor, Mr R J Cribb and a copy of the granted patent. Further included are a printout of the website shedsafe.co.uk (dated 15 May 2007), which sells, Mr Cribb's device under the name 'ShedSafe' and a printout of the online auction website Ebay.co.uk (dated 27 February 2007), selling the Shed Bar device.

Observations

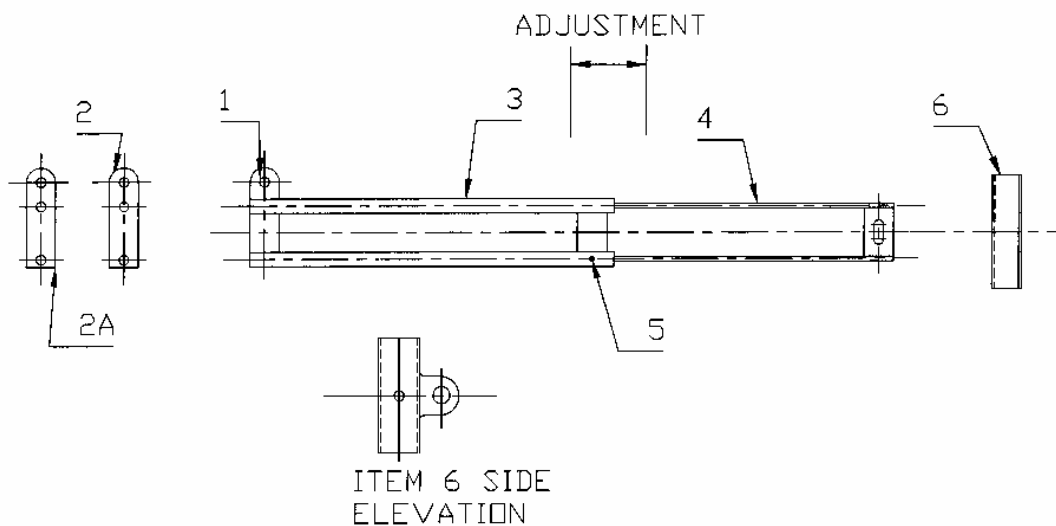
3. Observations on the request were received from Decor-Grille Security in a letter dated 13 June 2007.
4. The observations were accompanied by:
 - An e-mail from Steven Nunn of Decor-Grille Security to Kathy Wootton of Xpanda Export dated 27 February 2002
 - Pages 1 and 6 (of 6) of a fax from Kathy Wootton to Steven Nunn dated 1 March 2002. Page 6 of the fax contains a technical drawing of the Shed Bar.
 - A letter from Andrew Dootson of Xpanda to Stuart Yeo of Decor-Grille Security dated 13 March 2002

Observations in reply

5. Observations in reply were received in a letter from Mr Cribb dated 9 July 2007.

The Patent

6. The patent was granted on 15 September 2004 and is still in force. The application was filed on 28 September 2002, which is also the priority date, and published on 31 March 2004.
7. The patent relates to an outbuilding locking device which extends across an outbuilding doorway. The preferred embodiment is illustrated in figure 1:



8. Male 4 and female 3 parts are slidably connected and extend across a doorway. One end of the assembly is pivotably connected to mounting plate 2, while the other end lockably engages bracket 6.
9. The patent has three claims, of which claim 1 is the only independent claim. The request does not specify which claims are allegedly infringed, so I will assume that the request pertains to all three claims.
10. Claim 1, which relates to an outbuilding locking device, reads as follows:

An outbuilding locking device, of metal construction, consisting of a two part elongate member mounted horizontally (when in the locked position) across the external face of the door secured at either end to the vertical structural members of the building;

one end by means of a pivotal mounting plate and the other by means of securing to a lockable mounting plate;

the device being pivoted into the vertical position (when in door open position);

the two part elongate member comprising of a two tube female section (secured by cross members at either end) and a two bar male section secured at one end by a cross member, the other end engaging the female tube part in a telescopic manner.

The Shed Bar device

11. Two examples are given of the Shed Bar device, one supplied by the requester and one supplied with the observations. They are almost identical. While I will concentrate on the evidence supplied by the requester, I believe that all the features that I discuss are applicable to both devices.
12. The Shed Bar was offered for sale by Décor Grille Security on Ebay on 27 March 2007 under the title 'Garden Shed Security Lock'. The device is offered as a kit which comprises the following parts: a main bar with swivel bracket, two U brackets, two padlocks, six coachbolts with nuts and three steel back plates.
13. The main bar of the Shed Bar is pivotably mounted at its centre on to the door which is being secured. When it is not in use it swings into a vertical position. When it is in use, each end of the main bar engages a U bracket. A padlock may be applied to one U bracket and a locking plate on the main bar to lock the main bar in place, thus securing the door.

Discussion

14. My task is to determine whether the Shed Bar infringes the patent. To do this I must first decide how to construe claim 1. Then I must decide whether the Shed Bar falls within the scope of the claim so construed. The latest guidance on how to construe claims is given by Lord Hoffman 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.
15. 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.

16. 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.

17. 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*”.

18. So what would a skilled person have understood Mr Cribb to have meant by claim 1? The claim is directed ‘*an outbuilding locking device, of metal construction*’. The description specifically mentions sheds and therefore, the Shed Bar, is clearly an outbuilding locking device. The Shed Bar is also described as being of an ‘all steel construction’.

19. The next feature mentioned in the claim is a ‘*two part elongate member mounted horizontally (when in the locked position) across the external face of the door*’. ‘Two part’ is a key phrase here and I need to deduce what constitutes a ‘part’. The main elongate member of the Shed Bar had two parts, a main bar and a locking plate permanently attached to the main bar. But can these each be considered a part in the way in which Mr Cribb intended the word to be used? To answer this I need to jump to end of the claim which states that ‘*the two part elongate member comprising of a two tube female section (secured by cross members at either end) and a two bar male section secured at one end by a cross member*’. This suggests that permanently attached members such as the bars and tubes cannot be considered as individual parts. Therefore, I have to conclude the parts need to be suitably distinct and that the elongate member of the Shed Bar constitutes a single part.

20. Furthermore, the Shed Bar clearly does not have separate male and female sections with the male part ‘*engaging in to the female part in a telescopic manner*’ as required by claim 1. There is also no evidence of bars or tubes being used to form any of the Shed Bar.

21. Claim 1 also says that the elongate member is secured at one end by means of a pivotal mounting plate. The Shed Bar on the other hand is pivoted at its centre point and not at its end. A separate plate is used which is of a similar construction to the one shown in the preferred embodiment, but to be a pivotal mounting plate it must provide a mounting means and pivot point. The Shed Bar plate does neither, merely providing a locking means.
22. Therefore, most of the key features of patent, which have been defined in claim 1 are not present in the Shed Bar. Therefore, I must consider the Shed Bar to fall outside the scope of claim 1. As both claims 2 and 3 are appendent to claim 1, the Shed Bar also falls outside the scope of these claims.
23. Therefore, on the grounds that the Shed Bar does not fall within the scope of the claims, it does not infringe the patent.
24. The observations from Décor Grille included a technical drawing contained in a fax dated 1 March 2002, which pre-dates Mr Cribb's patent. In his observations in reply, Mr Cribb concedes that a technical drawing may pre-date his patent, but questions whether sufficient substantiation of the dates has been provided. He also asks whether patent law can be applied in retrospect of infringement retrospectively. And whether actions can be taken against the non-patented version.
25. Once the fax had been sent it the Shed Bar became part of the state of the art unless a confidentiality agreement existed between the two communicating parties. Therefore, if no such agreement existed and the Shed Bar had fallen within the scope of claim 1, then it would have invalidated Mr Cribb's patent. However, as the Shed Bar does not fall within the scope of claim 1, it does not effect the validity of the patent.

Opinion

26. I conclude that the Shed Bar, as presented by the evidence provided, does not infringe patent number GB 2393478.

Application for review

27. 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.
28. 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