

OPINION UNDER SECTION 74A

Patent	EP(UK) 0715672
Proprietor(s)	Mr John Clement Preston
Exclusive Licensee	
Requester	Ing.und Beratungsburo Sonnenberg, on 27 April 2009
Observer(s)	
Date Opinion issued	15 July 2009

The request

1. The comptroller has been requested to issue an opinion as to whether claims 1 to 8, 12 and 15 of EP0715672 (“the patent”) are valid in light of various pairs drawn from the following documents and technical knowledge:

AU- A-63026/90
GB759187
FR1528135
US4444289
EP0226169

2. More specifically the request seeks an opinion on whether claim 1 of the patent is inventive in light of each of the following four separate combinations:

AU- A-63026/90 & technical knowledge
AU- A-63026/90 & GB759187
FR1528135 & GB759187
US4444289 & AU- A-63026/90

3. Although in the request the fourth combination is headed “US 4,444,289 + GB 759,187” there is only one passing mention of GB759187 in the ensuing discussion and the various features of claim 1 are all said to be shown in one or other of US4444289 and AU- A-63026/90. I have therefore assumed that the requester intended to combine the

disclosures of US4444289 and AU- A-63026/90.

4. The request then goes on to seek an opinion as to the inventiveness of the following claims, which are dependent on claim 1: claims 2, 3 in light of the combination of US4444289 and AU- A-63026/90, claim 4 in light of AU- A-63026/90, claims 5 and 6 in light of US4444289 or AU- A-63026/90, claim 7 in light of FR1528135 or either US4444289 or AU- A-63026/90 combined with EP0226169, claim 8 in light of e.g. FR1528135, claim 12 in light of the combination of US4444289 and AU- A-63026/90 and claim 15 in light of the knowledge of the skilled man.

Observations

5. Observations in response to the request were received on 28 May 2009 from Rouse Patents on behalf of the patentee. In these observations issue is taken with various parts of the request such as the characterisation of the pre-grant examination before the European Patent Office (EPO), the problem solved by the invention, the description of the operation of the invention, the mode of operation of some of the prior art, the interpretation of the characterising feature of the invention and the disclosures of the prior art.
6. In the observations the patentee also suggests that the fourth combination listed above is actually US4444289, GB759187 and AU- A-63026/90. Since GB759187 is effectively absent from the discussion in this part of the request I do not agree with this observation. I have noted above that I have assumed that the requester intended to combine the disclosures of US4444289 and AU- A-63026/90.

Observations in reply

7. No observations in reply were received.

Allowing the request

8. The request seeks an opinion as to the validity of the claims in light of the combination of AU- A-63026/90 and technical knowledge. However, it seems clear that this combination was considered by the European Patent Office prior to the grant of the patent and is referred to in an examination report dated 30 November 1999. That examination report was based upon amended claims 1 to 5 as filed with a letter dated 17 May 1999 and these claims are identical to the claims of the granted patent.

9. Section 74A(3)(b) gives the comptroller the option not to issue an opinion “if for any reason he considers it inappropriate in all the circumstances to do so”. Several decisions (*Franks* BL O/289/07 and *Automation Conveyors* BL O/370/07) make it clear that one reason that issuing an opinion would be inappropriate is where a request effectively seeks a reappraisal of the pre-grant examination process.
10. Therefore it is my intention to issue an opinion only in respect of the combinations of documents including previously uncited documents, i.e. GB759187 or EP0226169, and not in respect of the combination of AU-A-63026/90 and technical knowledge.

The patent

11. The patent was granted on 13 April 2005, it designates GB and remains in force at the time of writing this opinion. It derives from international application PCT/AU94/00509 (published as WO95/06794) filed on 30 August 1994 claiming a priority date of 30 August 1993.
12. The invention concerns construction platforms or temporary landings which in use extend away from an exterior face of a multi-storey building under construction.
13. Claim 1 as granted requires:

*A construction platform comprising a stationary support structure (102, 107) adapted to be fixedly secured to a floor of a building under construction, a landing deck (103) having an outermost edge carried by said support structure and able to move to and fro by sliding horizontally between at least one inboard and at least one outboard position relative to the building, and safety barrier means (104, 105) movable with the deck and extending along its said outermost edge and **characterised by immobilising means** (112; 126, 127, 128; 142) to releasably lock the deck in said at least one outboard position.*

14. The invention is shown in figure 1:

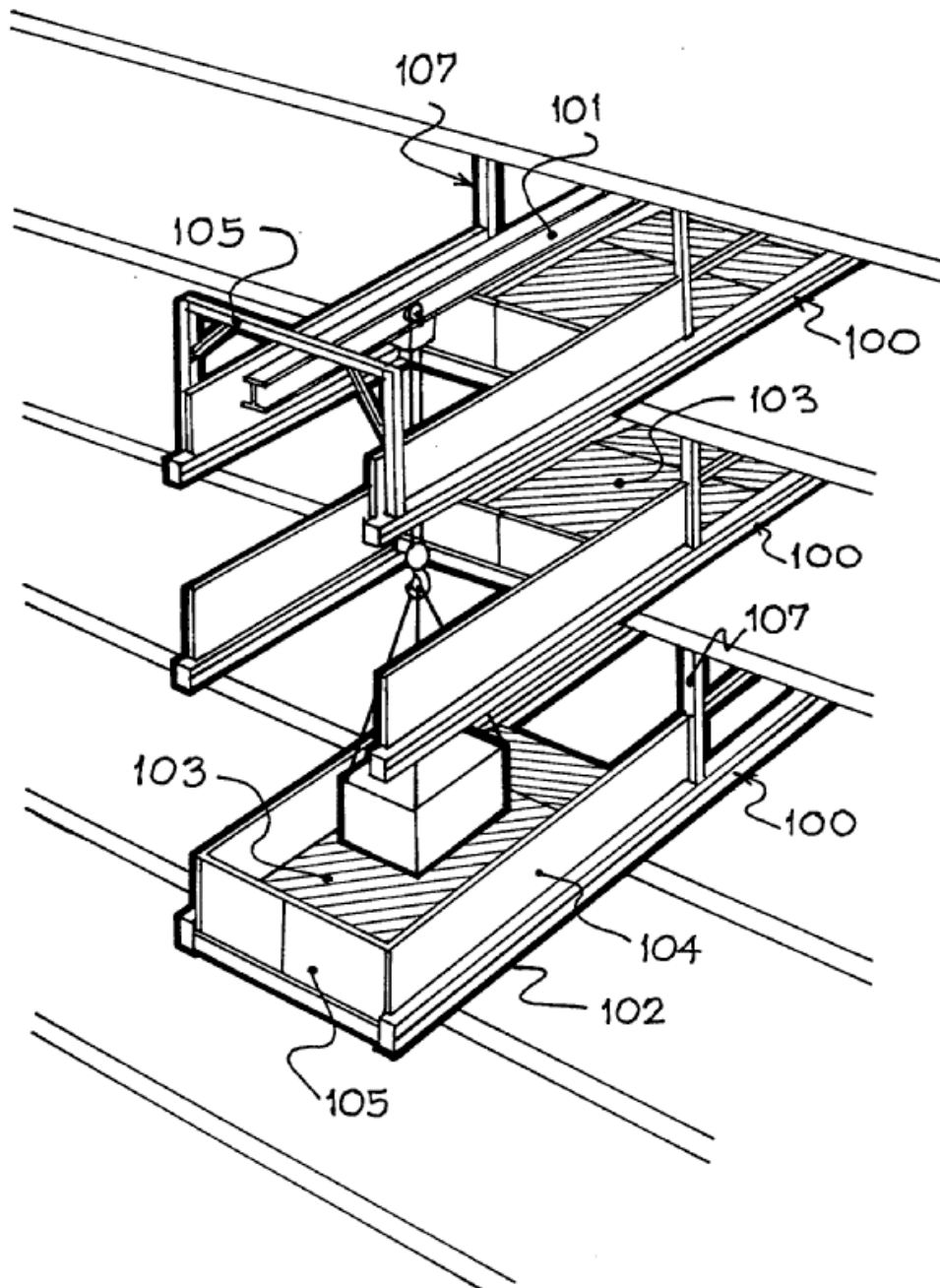


FIG. 1

15. An immobilising means according to the invention is shown in figure 3

and comprises a latch bolt 126, a bolt guide 127 and a clip 128 to hold the bolt in a retracted position:

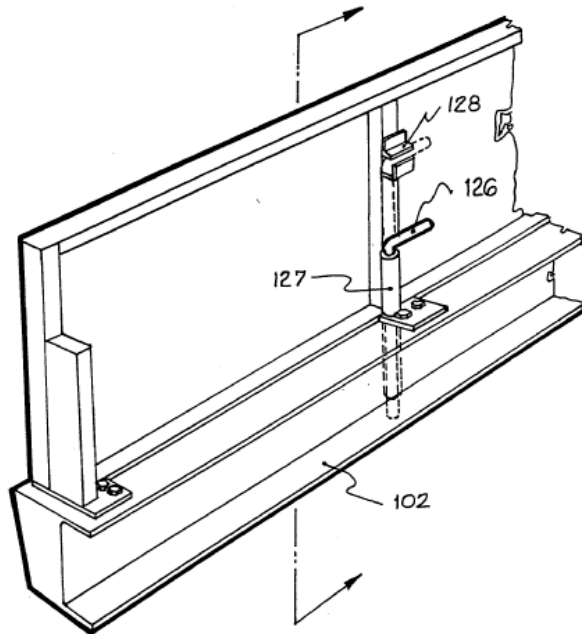


FIG. 3

Claim construction

16. Before considering the documents put forward in the request I need to construe the claims of the patent, following the standard principles of claim construction set out in *Kirin-Amgen Inc v Hoechst Marion Roussel Ltd* [2005] RPC 9. I should put a purposive construction on the claims and follow section 125(1) of the Patents Act 1977 and the Protocol on the Interpretation of Article 69 of the European Patent Convention by interpreting the claims in the light of the description and drawings. As emphasised by Lord Hoffmann, 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.
17. I shall turn first to the question of the skilled person and his knowledge. In paragraph 1.4 of the request the identity of the skilled person and his knowledge is discussed in the context of the obviousness of the patent. In that paragraph the skilled man is said to be a graduate mechanical

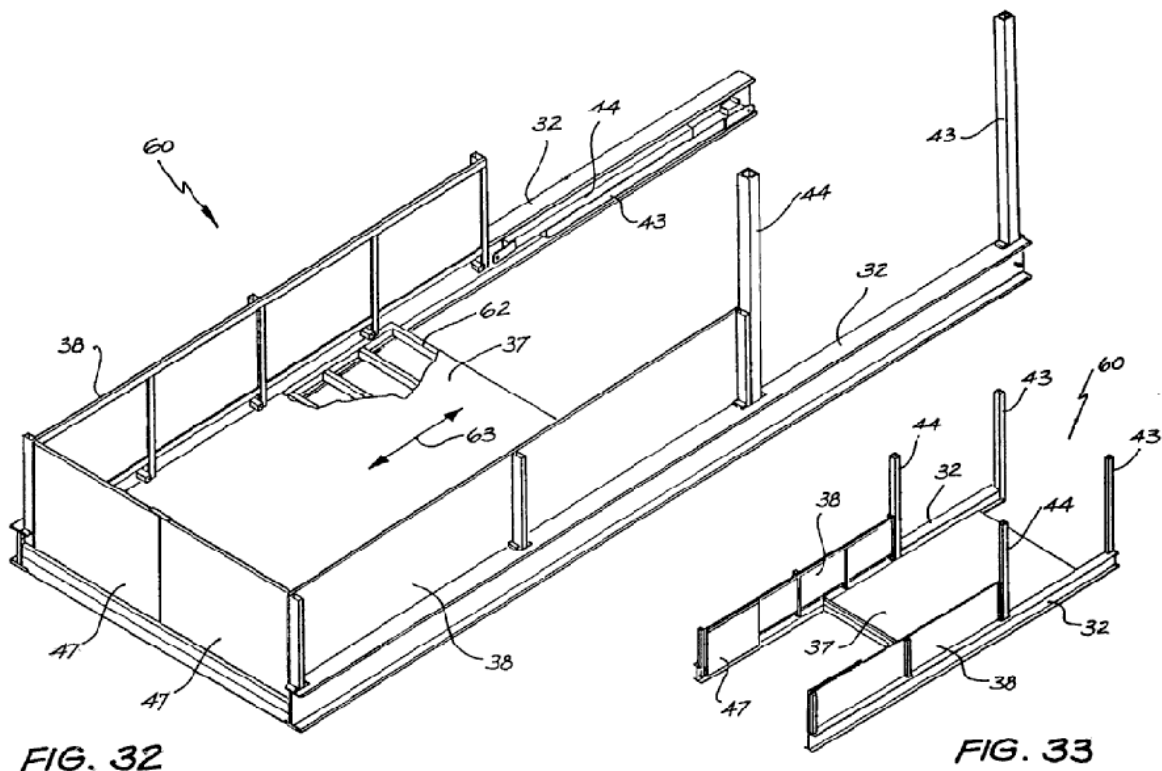
engineer with several years of experience in the design of construction equipment and related accessories. No evidence is adduced to support these assertions. The observations from the patentee make no comments on the identity and knowledge of the skilled person. I think it reasonable for me to adopt the description of the skilled man from the request.

18. To my mind the skilled person would have no difficulty understanding the claims on plain reading. Only one minor point needs addressing: the safety barrier means of claim 1 is required to be movable with the deck and to extend along its outermost edge. The safety barrier means in claim 1 is associated with reference numerals 104 and 105. Reference 104 indicates side walls extending along beams 102 and reference 105 indicates folding or swinging doors mounted on the deck, see paragraph 0012 and figure 1 of the patent. From this it seems that only part of the safety barrier moves with the deck. Further embodiments are shown in figures 18 and 28 and in these the safety barrier is once again formed of two parts 205, 206 and 306, 307, but, by contrast with figure 1, both parts move with the deck. Yet a further arrangement is shown in figure 15. This is described in paragraph 0025 which states that the end edge of the deck is closed by doors 157 detachably hinged to the walls 104. Thus in this embodiment it seems that neither parts of the safety barrier move with the deck in the manner required by claim 1.
19. It seems to me that the skilled man would understand claim 1 to require only a safety barrier extending along the outermost edge of the deck and moving with the deck, i.e. the doors 105, 206 and 307. I believe that he would understand that the safety barrier of claim 1 need not include the side walls or barriers, which are introduced in claim 4. Thus he would understand that the reference numeral 104 should not appear in claim 1 (the alternative being that figures 1 to 5 do not embody the invention). He would also conclude that figure 15 does not embody the invention as claimed, since the barrier at the outermost edge of the barrier does not move with the deck. I note that reference numerals in claims are generally to be regarded as helpful and not restrictive.

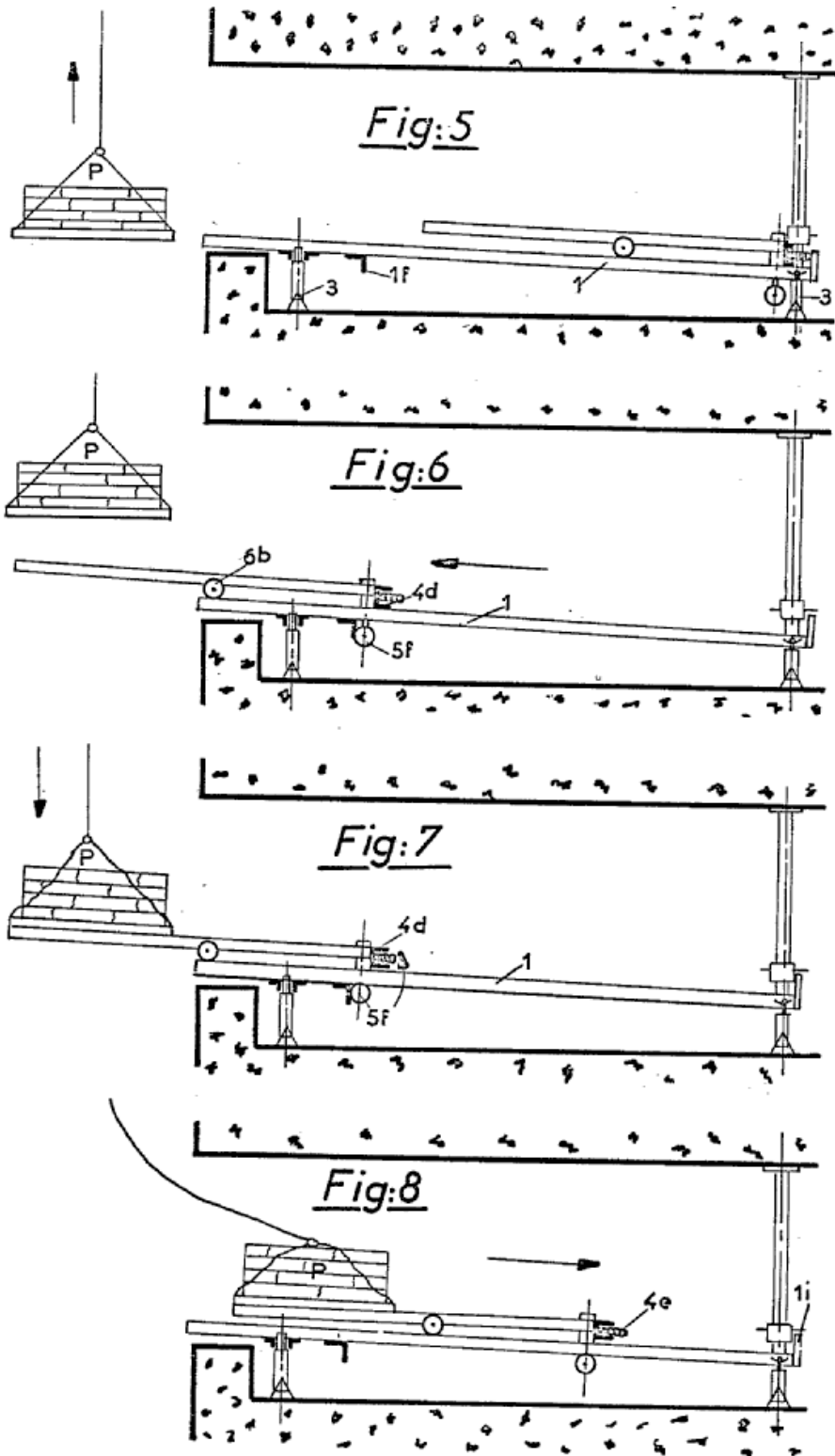
The prior art

20. Since GB759187 is combined with each of AU- A-63026/90, FR1528135 and US4444289 in the request I shall described the disclosures of those three documents first, then GB759187 and finally EP0226169, which is only said to be relevant to dependent claim 7.
21. The first document referred to in the request, AU- A-63026/90, is entitled a foldable landing platform and was invented by the patent owner. It

was published on 28 March 1991, well before the priority date of the patent. The invention concerns loading platforms and rubbish chutes employed in the construction of buildings, particularly high rise buildings. The embodiment shown figures 32 and 33, below, is described on page 9 lines 23 to 30 and includes a retractable floor panel 37, side panels 38 and doors 47, both of which, i.e. the side panels and the doors, could be attached to beams 32 along which the floor panel 37 moves. Elsewhere it is said that the side panels and doors could be mounted on the floor panel, see e.g. page 8 lines 8 and 9 and page 9 lines 12 to 22.

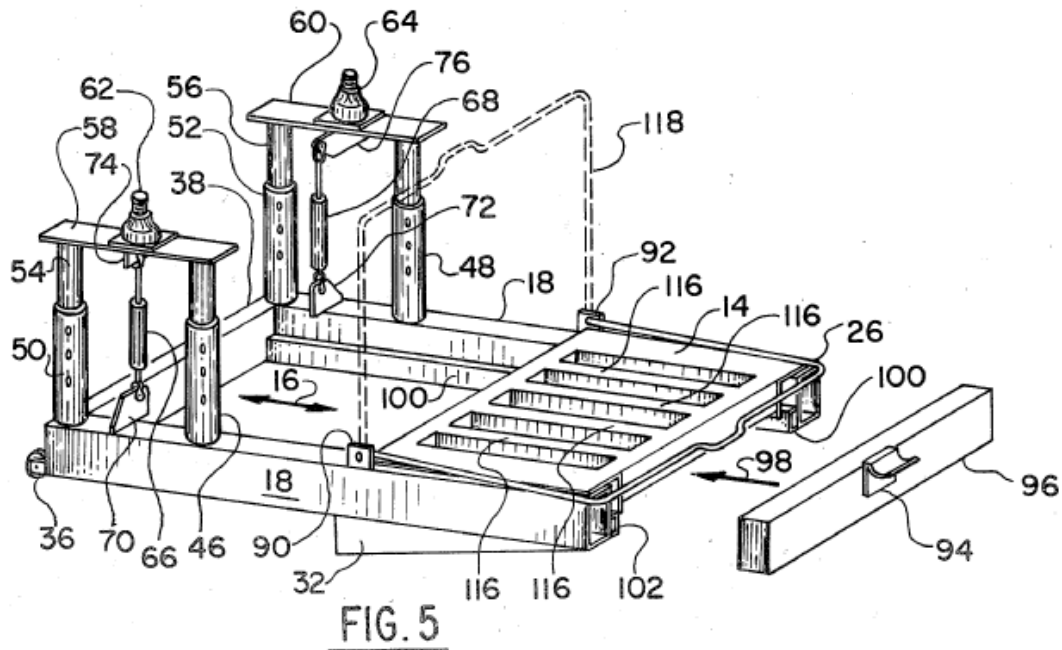


22. FR1528135 was published in 1968 and concerns a movable platform for use in the construction of buildings. Figures 5 to 8, below, show the sequence of operations in which a movable deck is moved to and fro along a support structure. Frictional contact between section 4d and rails 1 retains the deck in the position in figure 6 until the load P rests on the deck as shown in figure 7, at which time the deck rotates, raising section 4d and allowing the deck to roll along the support structure using rollers 6b and 5f, as shown in figure 8, below.

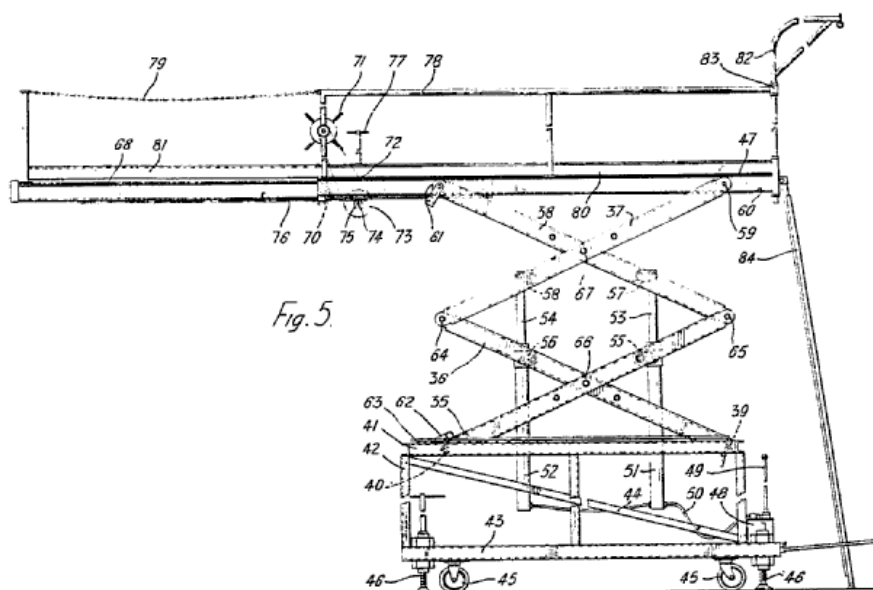


23. US4444289 was published in 1984 and concerns a removable platform for use on a building under construction. Figure 5 shows a platform 14 movable horizontally (see arrow 16) along a frame 18 by means of a

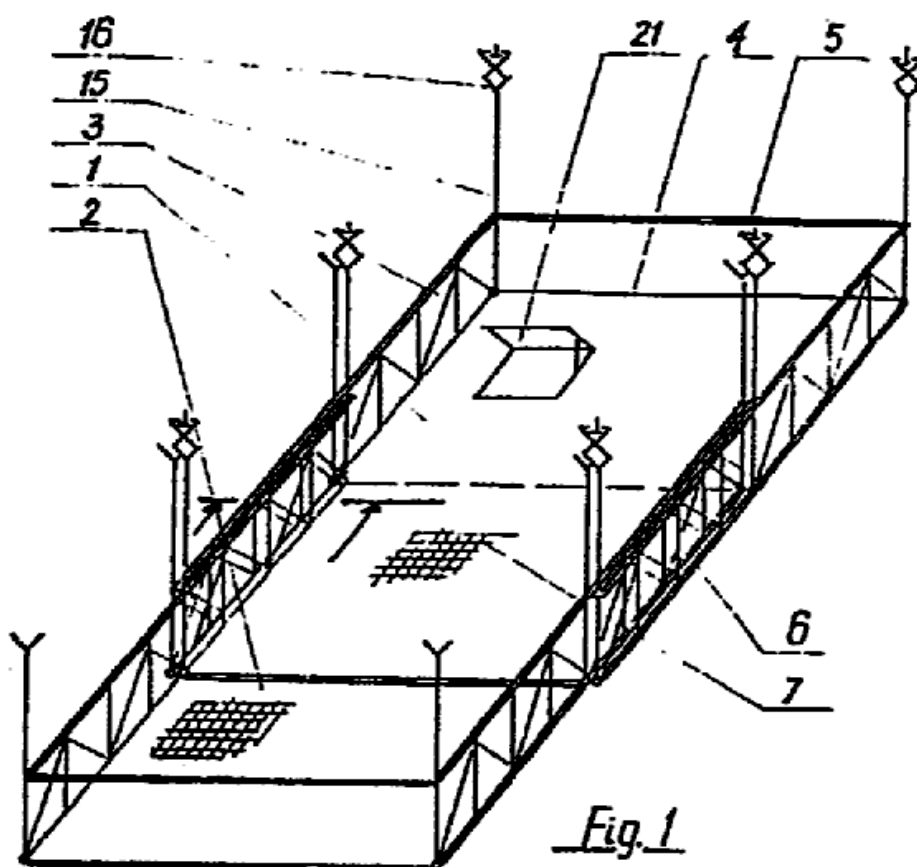
hydraulic motor or a cable and winch that is driven electrically or by hand.



24. GB759187 was published on 17 October 1956 and concerns mobile working platforms. Figure 5 shows a slidable extension 68 to platform 47 and a locking device 77 to retain the extension in any desired position. A chain 79 is also provided around the extension, serving a similar purpose to the handrails around platform 47.



25. The final document mentioned in the request is EP0226169. It was published on 24 June 1987. The application concerns a working platform for working at heights. Figure 1 shows a platform made up of upper and lower segments 1 and 2 slidable relative to one another and each having hangers 15 for securing the platform to structural members of an industrial shop.



Inventive step – general approach

26. I shall follow the so-called *Pozzoli* approach to considering the obviousness of the claims. In *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588, the approach from *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59 was restated and elaborated upon. The reformulated approach is as follows:
- (1)(a) Identify the notional “person skilled in the art”
 - (1)(b) Identify the relevant common general knowledge of that person;

- (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;
 - (3) Identify what, if any, differences exist between the matter cited as forming part of the “state of the art” and the inventive concept of the claim or the claim as construed;
 - (4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?
27. The first two steps are independent of the documents selected so I shall deal with those here and then move on to the individual attacks on the claims in the request.
 28. As I have said in construing the claims above, I shall adopt the description of the skilled man from the request, i.e. a graduate mechanical engineer with several years of experience in the design of construction equipment and related accessories.
 29. Paragraph 1.4 of the request goes on to discuss the knowledge of the skilled man. This is said to include immobilizing means for locking two relatively movable parts and more specifically bolts or the like. Once again no evidence is adduced to support this statement. However, I think it would be obtuse to suggest that locking bolts are not sufficiently well known across a variety of arts to be called common general knowledge.

Inventive step – AU- A-63026/90 & GB759187

30. In this case AU- A-63026/90 is taken to be the matter cited as forming part of the state of the art. According to the request all of the pre-characterising features of the patent are disclosed in AU- A-63026/90, i.e. a stationary support structure, sliding landing deck and safety barrier. The difference identified in the request between AU- A-63026/90 and claim 1 of the patent is therefore the characterising feature of immobilising means to releasably lock the deck in an outboard position.
31. The observations from the patentee dispute this analysis. They suggest that there is no unambiguous disclosure of safety barrier means movable with the deck and extending along its outermost edge. Reference is made to page 9 and figures 27 to 31.
32. The description in AU- A-63026/90 of the embodiment of figures 32 and 33 showing the movable landing deck says “In this particular embodiment, the side panels 38 and doors 47 could remain attached to

the beams 32.”. To my mind the skilled man would understand this to mean that other arrangements were envisaged by the writer. I also believe that he would understand the particular alternative arrangement which is described in AU- A-63026/90, in which the side panels and doors are attached to the floor panel, was intended as an alternative arrangement for this embodiment. Therefore I agree with the requester that the only difference between AU- A-63026/90 and claim 1 of the patent is the immobilising means.

33. This brings me to the fourth step: do the differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?
34. The request suggests that if the skilled person were not able to develop immobilising means to prevent unwanted movement of a loading platform then he would obtain the information from GB759187.
35. In the observations the patentee points out that GB759187 is concerned with mobile working platforms rather than fixed construction platforms and hence with a different technical field from the invention of the patent.
36. It seems to me that between them AU- A-63026/90 and GB759187 show all of the features required by claim 1 of the patent. However, I can see no motivation for the skilled man to identify the problem of unwanted movement in the landing deck of AU- A-63026/90. Nor, had he identified such a problem, do I believe that he would readily have turned to the locking arrangement shown in GB759187. As the observations suggest, GB759187 is concerned with a different technical field to the present invention and I have no reason to suppose its disclosure is so well known as to constitute common general knowledge of the skilled man.
37. Therefore it is my opinion that claim 1 of the patent involves an inventive step over a combination of AU- A-63026/90 and GB759187.

Inventive step – FR1528135 & GB759187

38. Taking FR1528135 as the state of the art, it discloses the pre-characterising features of claim 1, apart from the safety barrier means. The differences between FR1528135 and claim 1 are therefore the safety barrier means and the immobilising means.
39. GB759187 does show safety barrier means and immobilising means and so, once again, between them FR1528135 and GB759187 show all of the requirements of claim 1. However, following the same reasoning as I did when considering the combination of AU- A-63026/90 and

GB759187 above I can see no motivation for the skilled man to identify the problem of unwanted movement in the landing deck of FR1528135. Once again I do not believe that the skilled man would readily turn to the safety barrier means and locking arrangement shown in GB759187 since it is concerned with a different technical field to the present invention and I have no reason to suppose its disclosure is so well known as to constitute common general knowledge of the skilled man.

40. Therefore it is my opinion that claim 1 of the patent involves an inventive step over a combination of FR1528135 and GB759187.

Inventive step – US4444289 & AU- A-63026/90

41. Starting from US4444289 as the state of the art, it shows the pre-characterising features of claim 1, apart from the safety barrier means.
42. The request points out that US4444289 discloses a hydraulic motor for moving the landing deck. Since the patent suggests that drive means for the landing deck may be self-locking, the request goes on to assert that the hydraulic motor constitutes an immobilising means in the meaning of claim 1. The observations do not concur with this and I agree that US4444289 does not disclose any braking or immobilising means for the hydraulic motor. I also feel that an hydraulic motor is not implicitly self-locking.
43. Therefore the differences between US4444289 and claim 1 are again the safety barrier means and the immobilising means.
44. The request argues that it would be obvious to add a safety barrier to the deck shown in US4444289 in view of AU- A-63026/90. The observations from the patentee point out column 6 lines 12 to 19 of US4444289 where it is said that there is no need for construction workers to venture out onto the movable platform and that this is a safety aid. Therefore I can see reason for the skilled man to consider the need for a safety barrier at the end of the movable platform shown in US4444289.
45. In any event since neither US4444289 nor AU- A-63026/90 discloses an immobilising means the combination of the two cannot show all of the features of claim 1.
46. It is my opinion that claim 1 of the patent involves an inventive step over a combination of US4444289 and AU- A-63026/90.

Dependent claims

47. Given my opinion that claim 1 of the patent is inventive in light of all the combinations in the request it follows logically that the dependent claims must also be inventive.

Opinion

48. I conclude that claims 1 to 8, 12 and 15 of EP0715672 are inventive over the following combinations: AU- A-63026/90 and GB759187, FR1528135 and GB759187 or US4444289 and AU- A-63026/90.

Application for review

49. 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.

Karl Whitfield
Examiner