

**OPINION UNDER SECTION 74A**

Patent	<b>GB 2412061</b>
Proprietor(s)	Picture House Cabinets Limited
Exclusive Licensee	
Requester	Picture House Cabinets Limited, on 18 June 2007
Observer(s)	
Date Opinion issued	17 September 2007

**The request**

1. The comptroller has received a request from Picture House Cabinets Limited (“the requester”) to issue an opinion as to whether the requester’s granted patent, GB2412061 (“the patent”), has been infringed by the manufacture and sale of a fire surround by TDK Architectural Joinery Limited (“TDK”) of Hornchurch in Essex.[]

**Observations**

2. No observations were received in response to this request.

**The patent**

3. The patent specifically relates to an apparatus and method for allowing movement of a flat display screen from a viewing position above a fire surround for a fireplace and into a hidden position within the fire surround and vice versa. It seems that furniture designed to support a flat screen display such that it may be moved from a viewing position to a hidden position is in itself well known
4. I note that the patent was filed on 13 July 2005 and claims a priority date of 9 February 2005. It was granted on 24 May 2006. According to the register of patents, it is still in force. The requester/patentee states that a license has not been sought.

## The law

5. Firstly, I should consider what constitutes infringement of an invention protected by a patent. Infringing acts are defined by section 60(1) of the Patents Act 1977, which reads as follows:

*“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 .....*”

## The monopoly

6. In coming to an opinion as to whether the patent has been infringed, I must determine whether the alleged infringing act or item lies wholly within the scope of the patent's claims. There are 12 claims in total, including two independent claims (1 and 12) which read as follows:

*“ 1. A fireplace apparatus for use with a flat-screen display, the apparatus comprising: a fireplace and a fireplace surround adapted to stand against a wall and comprising a mechanism which can support a flat screen display in a first position such that the flat-screen display remains entirely within the fireplace surround, hidden from view, and in a second position such that the flat- screen display is raised above the fireplace surround into an operating position, the mechanism being operable to move the flat-screen display between the first and the second positions; the fireplace being operable in both the first and second positions of the mechanism such that heat produced by the fire does not detrimentally affect the flat screen display. “*

*“ 12. A method of operating a fireplace apparatus for use with a flat-screen display, the apparatus comprising: a fireplace and a fireplace surround wherein the fireplace surround is adapted to stand against a wall and comprising a mechanism which can support a flat screen display in first and second positions, the mechanism being operable to move the flat-screen display between the first and the second positions, wherein the method comprises the steps of; operating the*

*fire irrespective of position of the flat screen display supporting mechanism such that the flat screen display is not detrimentally affected by the heat produced by the fire. “*

### **Claim construction**

7. Strictly there is no dispute about claim construction, as there often is when observations are made, but even so I must consider the scope of the independent claims. I shall use the principles set out by Lord Hoffmann in *Kirin-Amgen Inc v Hoechst Marion Roussel Ltd* [2005] RPC 9.
8. He 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). However, in determining the extent of protection account must be taken of the Protocol to Article 69 of the EPC. At paragraph 69 he summarized this approach when he said 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. In his judgment, Lord Hoffmann also referred to the well-known case of *Catnic Components Ltd v Hill & Smith Ltd* [1982] RPC, where he said at paragraph 48: *“The Catnic principle of construction is, in my opinion, precisely in accordance with the Protocol. It is intended to give the patentee the full extent, but not more than the full extent, of the monopoly which a reasonable person skilled in the art, reading the claims in context, would think he was intending to claim.”*
10. Having considered claims 1 and 12 carefully, I believe there is nothing in the claims that a skilled person would misunderstand when reading them in context. In my opinion the scope of these claims would be clear to such a person and they can be read literally.
11. I consider that the critical characterizing feature of the apparatus and method claims, as seen by the skilled person, is that of a mechanism which supports a flat screen display whilst allowing the screen to be moved between two positions. Only claim 1 explicitly refers to the two positions as being one position in which the screen is situated entirely within the fire surround and hidden from view while in the other position it is raised above the fireplace into an operating position. What is also important is that the normal operation of the fire to produce heat, in either position as stated in the claims, must not detrimentally affect the display.

### **The dependant claims**

12. The requester argues that many if not all of the dependant claims are also infringed. These claims include non-essential features, some of which are common to fireplaces, and they are generally clear. I shall summarize the content of those claims.
13. Claims 2 and 3 are directly dependant upon claim 1 and indicate that the fireplace comprises a hearth and a mantel shelf and an electric/gas fireplace respectively. Claim 4 further specifies the use of a flame effect arrangement.
14. Claim 5 is also directly dependant upon claim 1 and indicates that the mantel shelf is displaceable to allow the otherwise hidden screen to be raised for viewing.
15. Claims 6 and 7 are dependant upon claim 5 and indicate that part, or all, of the mantel shelf is attached to the upper edge of the screen or the screen raising mechanism respectively. Claim 8 alternatively says that part, or all, of the mantel is hinged to the remainder of the fireplace surround whilst claim 9 allows part, or all, of the mantel to be slid out of the way or withdrawn into the fire surround. The latter claim is said to be dependant upon claim 6 but this appears to be an error and the intention may be to refer to claim 5.
16. Claim 10 is dependant upon claim 3 and specifies gas ducting arrangements which do not interfere with the raising/lowering mechanism whilst claim 11 specifies a variety of different conventional raising/lowering mechanisms.

### **The requester's case**

17. The requester says it became aware of TDK's products during a trade show held at the Excel exhibition centre at the Royal Victoria Dock in London between 8<sup>th</sup> and 10<sup>th</sup> June 2007. Indeed, I see that TDK's website still carries an advertisement for this exhibition.
18. The requester says that poster photographs were put on display and copies of TDK's brochure were also made available, all showing a fire surround falling within the patent's claims. The request was accompanied by exhibit 1 which is said to be a copy of a web-page showing the product manufactured and offered by TDK. Exhibit 2 is said to be a copy of a sales brochure showing a similar product and carrying TDK's name and address.

19. In summary the requester appears to explicitly argue that between them, exhibits 1 and 2 indicate that claims 1-7, 11 and 12 are infringed by TDK because those exhibits show products which have the features of the claims. The remaining claims are also referred to in the request but no specific arguments are made. However, I shall assume the requester requires me to consider all of the claims.
20. The request also referred me to TDK's website, presumably as part of the requester's evidence. It is claimed that the website shows an infringing apparatus as shown in exhibit 1. I must say that I did look and I found that there was a section for fireplaces on TDK's website, within an "entertainment" section, but the information on that particular page was no longer there.

### **Assessment of the information provided**

21. In the absence of any observations from TDK, I must take an impartial view by taking account of the law, the patent's claims as correctly construed and my assessment of the material that has been put before me. I also appreciate that the mere fact that TDK have not made any observations is not necessarily indicative of anything.
22. As I said, exhibit 1 is said to be from TDK's web-page. It shows what looks like an otherwise conventional fire surround arrangement with a hearth and a mantel shelf. I cannot determine if the fireplace is of the gas or electric type (though it is likely to be one or the other) and I also cannot determine whether it has a flame effect feature.
23. There appears to be a screen on top of the mantel having a sign placed in front of it which carries the words, "*screen supplied by Richer Sounds*", who I understand is a well-known provider of electronic entertainment equipment. So it seems certain that it is a screen. On the top edge of the screen is what looks to be part of the mantel shelf because it matches the material comprising the remainder of the mantel shelf. Arguably the photograph suggests that the flat screen is situated above the mantel shelf and may be moved downwards into a position where its top edge, or the part of the mantle attached to it, becomes flush with the remainder of the apparently matching mantel shelf.
24. Exhibit 2 is said to be from TDK's brochure and it clearly has the company's name on it. It includes a photograph of a fire surround which looks very similar to that shown in exhibit 1 and the photograph is annotated as a "*modern plasma fire surround incorporating flame effect fire*". Also shown are photographs of a "*plasma foot board*" and another furniture unit annotated as "*free standing plasma unit will accommodate*

*up to 42" TV".*

25. At first sight I find it difficult to be certain, purely from these exhibits, whether the screen is moveable from the viewing position shown in the pictures to another position, hidden within the fire surround. The requester merely refers to the exhibits and says that they do. It could be fixed on the mantel shelf, but then again that would seem to be an unusual permanent arrangement.
26. However, the requester was obviously inviting me to look at TDK's website when it specifically quoted its web address in the request. From what I could see on their website, TDK appear to manufacture other types of "entertainment" furniture, including various cabinets and bed foot boards containing flat screen displays. Digital video footage placed on their website shows the displays moving from a viewing position to another position in which the screen is hidden within the various items of furniture, apparently via a powered supporting mechanism. So it is clear that TDK manufacture similar items of furniture which perform the same basic function, i.e. moving the screen to a hidden position.
27. With regard to TDK's fire surround being able to operate the fire irrespective of position of the flat screen display supporting mechanism such that the flat screen display is not detrimentally affected by the heat produced by the fire, there is no firm evidence put forward.
28. I think TDK would be unlikely to offer a fireplace for mounting a very expensive flat screen display unless it was arranged so that heat does not detrimentally affect the screen. Not to do so would make little sense. However, I cannot determine how this might be done from the exhibits.
29. For example, TDK's fire surround might incorporate an interlock which prevents the fire from being used when the screen is hidden within the fire surround. Though arguably not as practical as the requester's arrangement, such an arrangement would not infringe the claims.
30. I have considered the arguments and supporting evidence presented, including that of the video footage shown on TDK's website. Therefore, it is my opinion that on the balance of probabilities, the exhibits show a fire surround arrangement in which a flat screen display is shown in a first viewing position above a fire surround and which is capable of being moved via a supporting mechanism to second position where it is hidden within the fire surround. Accordingly, if TDK's fire surround allows the fire to be used without detriment to the screen when the screen is in either a viewing position or a hidden position within the fire surround then it would fall within the scope of claims 1 and 12 and dependant claims 2-6.

31. Exhibits 1 and 2 do not show that all, or part, of the mantel is attached to a raising mechanism as in claim 7 because a part of it appears to be attached to the upper edge of the screen. Also, the exhibits do not show the alternative hinged and slide mountings of mantel which are features of claims 8 and 9. Accordingly, those claims do not appear to be infringed.
32. On balance, I do not think I have been provided with enough evidence to determine whether claims 10 and 11 have been infringed. So I will say they are not. However, if the apparatus shown in the exhibits does contain the ducting features or drive mechanisms of those claims, as they well might, then those claims would be infringed. It is a matter of evidence.

### **Specified acts**

33. Once a non-binding opinion is given as to whether a product or process (real or hypothetical) specified by a requester falls within the claims, one then has to go on to determine whether the evidence shows that the alleged infringer has actually performed an act within the meaning of section 60(1).
34. In this case the information given to me, admittedly without the benefit of an alternative account from TDK, is such that it seems to follow on that an actual infringement of the patent has taken place. TDK appear to have offered a product for sale at a trade show in London in June of this year. The product falls within the patent's claims as specified above. TDK has done so whilst the patent was in force and without the patentee's permission. Therefore, it is my opinion that those acts do fall within the meaning of section 60(1) of the Act.

### **Opinion**

35. I conclude that the fire surround offered for sale by TDK, as described in the request and shown in the exhibits, infringes claims 1-6 and 12 of patent number GB2412061 on the condition that the fireplace is operable irrespective of position of the flat screen display such that heat produced by the fire does not detrimentally affect the flat screen display.

### **Application for review**

36. 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.

37. Under rule 77H(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.

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***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 Patent Office.*

Eamonn Quirk  
Examiner