

OPINION UNDER SECTION 74A

Patent	GB 2365611
Proprietor(s)	Mr Shaun Robert Jordan
Exclusive Licensee	
Requester	Mr Shaun Robert Jordan, on 28 June 2007
Observer(s)	Streetbroadcast Limited SMF International Limited
Date Opinion issued	11 September 2007

The request

1. The requester, who is the proprietor of patent GB2365611 seeks an opinion as to whether the patent is infringed by an advertising sign said to be located in the United Kingdom. The request is accompanied by fourteen photocopies of photographs (R1-R14) of the sign which have been annotated with numbers to identify various parts shown. The request also includes a discussion identifying the features of the patent claims which correspond to the annotated parts in the photographs.

Observations

2. Observations in response to the request were received from Ian Stuart of Mewburn Ellis on behalf of SMF International Limited comprising a statement disputing the requestor's interpretation of the photographs.
3. Observations in response to the request were also received from Tessa Bucks of Boulton Wade Tennant on behalf of SMF International Limited and StreetBroadcast Limited comprising a statement disputing the requestor's interpretation of the photographs (R1-R14), and a further five annotated photographs (O1-O5).

Observations in reply

4. Observations in reply were received from Gallafent & Co. on behalf of the requester comprising a statement refuting the assertions made in the observations.

The Patent

5. The patent was filed on 31 July 2000 and granted on 26 March 2003. It relates to a street sign comprising an internally illuminated box designed to receive therein an advertising poster. There are seven claims as follows:
 1. *An internally illuminated sign consisting of a base frame adapted for mounting around a street furniture post, at least two transparent windows through which a poster may be viewed, means located adjacent the windows for receiving and holding a poster or the like and means located on the opposite side of the poster when so held providing illumination from behind the posters as seen through the windows, and wherein the assembly of base frame and windows forms an internally illuminated box structure, the top and side walls of which, when the structure is installed in an advertising location, form a fixed weatherproof sealed housing which is downwardly open, and wherein each poster receiving and holding means is in the form of a panel structure which can be slid vertically in a slot defined by the base and windows structure from a first position in which substantially the whole of the panel structure is located within the box structure and a poster held therein is viewable through the adjacent window to a second position in which it has been withdrawn downwardly from the box structure, wherein the lower edge of the panel structure bears a floor which, when the panel is fully inserted into the box structure, seals against the base frame.*
 2. *A sign according to Claim 1 wherein the panel structure is rendered captive within the box structure so that it can be withdrawn almost completely but not entirely therefrom in a downwards direction.*
 3. *A sign according to claim 1 or 2 wherein the fixing and sealing of the panel structure in the first position is effected using a small number of quick release fasteners fitted at the lower end of the panel structure.*
 4. *A sign according to any one of the preceding Claims wherein the or each sliding panel structure consists of a frame and means for attaching a poster to span the frame.*
 5. *A sign according to Claim 4 wherein the frame is fitted with an overall extending flat or curved panel.*
 6. *A sign according to any of the preceding Claims wherein the base frame includes a pair of parallel rails on which the sliding panel structure may run.*

7. *A sign according to Claim 1 and substantially as described with reference to Figures 1 to 5 and 11 to 13 or Figures 6 to 10 of the accompanying drawings.*

Discussion

6. Since there has been no evidence or argument to the contrary by any party, I will assume, for the purposes of this Opinion, that the sign shown in both sets of photographs is the same sign, is located in the United Kingdom, and was not made available to the public in any way before the priority date of the patent.

7. I shall take the general approach of going through claim 1 feature by feature and considering whether the sign in the photographs possesses each feature. If the sign does not have all the features required by claim 1 then there is no infringement of the patent. Dependent claims will be considered if I find there is infringement of claim 1.

8. In construing the claims I shall be following the latest authority on claim construction given in *Kirin-Amgen Inc v Hoescht Marion Roussel Limited [2005] RPC 9*. Following that authority, I must put a purposive construction on the claims, interpret the claims in the light of the description and drawings as required by section 125(1) of the Act and take into account the Protocol to Article 69 of the EPC. To put it simply, I must decide what a person skilled in the art would have understood the patentee to have used the language of the claim to mean. I consider that for present purposes the “person skilled in the art” is a technician with a very good background technical knowledge in the field of signs, particularly internally illuminated street signs.

9. The first part of claim 1 reads:

An internally illuminated sign consisting of a base frame adapted for mounting around a street furniture post, at least two transparent windows through which a poster may be viewed, means located adjacent the windows for receiving and holding a poster or the like and means located on the opposite side of the poster when so held providing illumination from behind the posters as seen through the windows, and wherein the assembly of base frame and windows forms an internally illuminated box structure,

It is clear from the photographs that the sign has all of these features and there has been no disagreement on this by the observers.

10. The second part of claim 1 reads:

the top and side walls of which, when the structure is installed in an

advertising location, form a fixed weatherproof sealed housing which is downwardly open,

The second observer has argued that the top and side walls do not form a fixed weatherproof sealed housing because water can pass through an aperture in the top cover through which the post extends and down a rainwater channel in the form of a plastic sleeve placed around the post. Photograph O1 cited as evidence shows an aperture on the underside of the sign through which the post extends. There is no photograph showing an aperture in the top wall or a plastic sleeve. However, the post extends out of the top wall which therefore requires an aperture. The requester does not dispute this description of the sign but retorts that if the sign has this plastic sleeve, it still forms a fixed weatherproof housing as required by claim 1. The sign described in the patent does not have such a sleeve. Instead it has a sealing ring which compresses against the post. Nevertheless I agree with the requester since the sign must form a weatherproof sealed housing even with the plastic sleeve. Furthermore, I construe the claim to mean that the sign does not require the top and side walls alone to form a weatherproof sealed housing. A further component (sealing ring or plastic sleeve) is necessary in each case. I conclude therefore that the sign has all the features of this part of the claim.

11. The third part of claim 1 reads:

and wherein each poster receiving and holding means is in the form of a panel structure which can be slid vertically in a slot defined by the base and windows structure from a first position in which substantially the whole of the panel structure is located within the box structure and a poster held therein is viewable through the adjacent window to a second position in which it has been withdrawn downwardly from the box structure,

The second observer has argued that the panel structure does not slide vertically in a slot defined by the base and windows structure. Instead, the unit has a pair of telescopic arms which slide vertically in an enclosed tubular cavity in the base and windows structure. The telescopic arms have pegs which slide vertically along tracks provided at each side of the panel structure. The telescopic arms slide relative to the base and windows structure and the panel slides relative to the telescopic arms. Photographs O1 to O5 appear to show such an arrangement. The requester does not disagree with this description of the sign but argues that the telescopic arms are a sub-component of the panel structure, not excluded by the claim, which slide vertically in a slot defined by the base and windows structure. The sign described in the patent has a panel structure comprising a plastic panel with rails bonded to its vertical edges for sliding in slots in the base and windows structure. If the telescopic arms are considered a sub-component of the panel structure then it has all the required features. However I am inclined to

disagree with this view. The telescopic arms seem to me to be separate components to which the panel structure is connected in a way that allows it to slide relative thereto. However, the panel structure itself also slides into the base and windows structure. Photograph O5 suggests that the edge of the panel structure slides into a slot defined by the base and window structure. I therefore conclude that the sign has all the features required by the third part of the claim.

12. The last part of the claim reads:

wherein the lower edge of the panel structure bears a floor which, when the panel is fully inserted into the box structure, seals against the base frame.

The first observer has argued that the photographs R1 to R14 do show a floor but do not show that the floor is borne by the lower edge of the panel structures or that it seals against the base frame. I disagree with this view. Photographs R13 and R14 show a floor attached to the bottom of the panels when in their dropped down position. Photographs R2 to R5 and O1 show a release/locking catch on the underside of the floor which when locked seals the floor against the base frame to prevent tampering. The sign therefore has all the features required by the last part of the claim.

13. Thus I find, on the basis of the information that has been put before me, that the sign depicted in the photographs has all the features of claim 1 and consequently claim 1 is infringed.

14. Turning now to the dependent claims, claim 2 reads:

A sign according to Claim 1 wherein the panel structure is rendered captive within the box structure so that it can be withdrawn almost completely but not entirely therefrom in a downwards direction.

The second observer has argued that the telescopic arms allow the panel structure of the sign to be completely withdrawn from the box structure. From the photographs, this is clearly the case if the telescopic arms are not considered as a sub-component of the panel structure. The requester has rejoined that the panel structure is captive and that claim 2 does not require complete withdrawal. The sign described in the patent has a panel structure with a strap attached to the panel adjacent the upper edge preventing complete withdrawal of the panel from the box structure. I therefore construe claim 2 to being limited to a sign with a panel structure which cannot be withdrawn completely from the box structure. Claim 2 is therefore not infringed.

15. The requester has asserted that dependent claims 3 to 6 are infringed. Since this has not been disputed by the observers, I will not consider them in detail. I merely note that the photographs appear to show all the features of these claims.

16. Claim 7 is an omnibus claim and reads:

A sign according to Claim 1 and substantially as described with reference to Figures 1 to 5 and 11 to 13 or Figures 6 to 10 of the accompanying drawings.

The second observer has argued that the presence of the telescopic arms, amongst other things, in the sign provides a difference which circumvents infringement of claim 7. Following the guidance in *Raleigh Cycle Co Ltd and Anr. V Miller an Co Ltd, 65 RPC 141 [1948]*, I construe claim 7 as a narrow claim limited to the embodiments shown in the drawings. Since none of the figures shows telescopic arms and they are not a well known alternative then claim 7 is not infringed.

Opinion

17. I conclude that the sign depicted in the photographs infringes claims 1, 3, 4, 5 and 6 but does not infringe claims 2 and 7 of patent GB2365611.

Application for review

18. 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.

19. 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 the opinion and filing observations have chosen to put before the Office.

Gareth Griffiths
Examiner