

OPINION UNDER SECTION 74A

Patent	GB 2426767
Proprietor(s)	Manchester Cabins Ltd
Exclusive Licensee	
Requester	Portasilo Limited, on 5 June 2008
Observer(s)	Manchester Cabins Ltd
Date Opinion issued	4 September 2008

The request

1. The comptroller has received a request from Portasilo Limited (the "Requester") to issue a validity opinion in respect of claims 1 to 27 of the granted patent GB 2426767 B taking account of the following documents:

D1 - "Design recommendations for multi-storey and underground car parks", 3rd edition, published by The Institution of Structural Engineers in June 2002

D2 - Statutory Instrument 1991 No 2125 The Road Vehicles (Construction and Use) (Amendment) (No. 4) Regulations 1991

D3 - Copy of the relevant parts of Regulation 82(7) and Paragraph 3 of Schedule 12 of The Road Vehicles (Construction and Use) Regulations 1986

D4 - FR 2642784

D5 - US 3708933

D6 - EP 0364414

D7 - WO 99/45220

D8 - AU 645756

2. The patent has a priority date of 12 August 2003, it was granted on 9 May 2007 and remains in force. All of the documents above lie in the

period defined by section 2(2) of the act.

3. There is an equivalent European patent application, EP 1507053, which designates GB but that application has yet to be granted.
4. The requester has raised two arguments in relation to claim 1 and claim 27, the independent claims, as to why they lack the required inventive step. The first argument is that the claimed surface length of each deck module is an obvious "selection invention" driven by the road transport regulations of D2 and D3 and the de-facto "UK standard" car park dimensions given in D1 so as to modify the length of the channels (equivalent to the deck modules in the patent) shown in D5. The second argument is that the skilled person would find it obvious to extend the length of the deck modules of D4 to 15 metres.
5. The requester then goes on to argue that the characterizing features of claims 2 to 26 are known from D4-D8, arbitrary choices or well-known and so those claims also lack the required inventive step.
6. The requester acknowledges that D5 has been considered in the pre-grant substantive examination of the patent at the UK-IPO and that D4 has been considered in the pre-grant substantive examination of the equivalent patent application at the EPO. I note that D7 and D8 will also have been considered in the pre-grant substantive examination of the patent at the UK-IPO since D8 is listed on the UK-IPO search report and D7 is mentioned in the patent as its GB equivalent GB 2350132. In the normal run of things an opinion will not re-consider arguments already considered pre-grant. However the requester is raising new arguments with the introduction of D1, D2 and D3 which set out UK regulations and de facto standards. The requester is casting a new light on these "old" documents.

Observations

7. Observations in response to the request were received from the patent proprietor Manchester Cabins Limited on 11 August 2008. Whilst presented in some detail these observations can be summarized as dismissing the Requester's arguments as the products of hindsight.
8. The proprietor has also provided a copy of their Agent's letter of 5 December 2006 in response to the UK-IPO examiners report of 28 September 2006 providing further reasoning in respect of why the claims are inventive. In particular this letter gives details of how the chosen deck module dimensions ease transport of the deck modules and ease construction of the platform.

Observations in reply

9. Observations in reply were received from the requester on 26 August 2008. These seek to rebut forcefully the allegations of hindsight made in the proprietor's observations by pointing out several deficiencies in those observations, as seen by the requester.
10. The requester has included an English language translation of D4 with the observations in reply.

Issues to be considered

11. The opening lines of claim 1 and claim 27 provide various options. The claimed modular platform is said to be suitable for supporting "vehicles or portable buildings or the like". The arguments in the request are confined to the vehicle option. Therefore I shall consider only that option for the purposes of this opinion. If I should find claim 1 invalid when taking account of only the vehicle option it follows that claim 1 as a whole will be invalid.
12. The opinion request is couched in terms of validity, i.e. novelty and inventive step. The novelty aspect of validity can be dealt with quickly; none of the cited documents disclose modular platforms composed of deck modules having the dimensions required by either claim 1 or claim 27. Thus claim 1 and claim 27 are novel. It follows that claims 2 to 26 are novel.
13. There is no dispute that I should use the *Pozzoli*¹ reformulation of the *Windsurfing*² approach, the so-called *Windsurfing/Pozzoli* approach, when deciding on the presence or absence of an inventive step. I shall first look for the presence or absence of an inventive step in claim 1. It is clear to me that although worded as a kit of parts claim 27 will stand or fall with claim 1. Only if claim 1 lacks an inventive step will I go on to consider claims 2 to 26.
14. The requester's first argument starts from D5. D5 discloses a raised modular platform suitable for supporting vehicles, the platform comprising a plurality of prefabricated and interconnected deck channels or modules generally as recited in the notional claim 1 above. These channels are said to be as wide as a parking stall or space (see column 1 line 54). The length of these channels is described as "... quite long,

¹ *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

² *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

for example, they may easily be 60 feet or even more in length” (see column 3 lines 25 & 26).

15. The requester’s first argument runs that the person skilled in the art would consult D2 and D3 and thus realize that deck modules having lengths between 14.04m and 17.09m could be transported by road in the UK without incurring the cost and inconvenience of informing the police and employing a “driver’s mate”. In addition to that the requester states that the person skilled in the art would be aware of the critical dimensions of UK car parks as set down in D1, which critical dimensions lead to a deck module length of 15.6m. Therefore according to the requester it would be obvious to modify the channel length given in D5 to the claimed deck module length of between 15m and 16m. It would be an obvious selection from a statute- and standard-defined range within which the skilled person is constrained to work, and moreover there is no special technical character arising from such a selection. In short the requester’s first argument can be summarized as there can be no inventive step in meeting a pre-existing technical standard. The same kind of argument runs in connection with the claimed width of the deck modules.
16. To counter this the proprietor argues that the skilled person would not be motivated to shorten the deck channels of D5 because the teaching of that document is that deck channels of 60 feet (18.3m) or more are to be preferred, that the requester’s argument is based on hindsight and that the age of D5 indicates that the patent solves a long-standing problem by simple, although inventive, means. The proprietor also indicates that the claimed arrangement leads to some commercial advantages.
17. In their observations in reply the requester states that the proprietor is mistaken in thinking that D5 teaches only towards deck channels of 18.3m or longer. Instead the requester believes that D5 teaches that the 18.3m value is an example taken from a range around 18.3m. The requester also states that the age of D5 is no barrier to its use in an inventive step objection.

Does claim 1 involve an inventive step?

18. As is well-known the *Windsurfing/Pozzoli* approach comprises the following steps:
 - (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?

Who or what is to be considered as the “person skilled in the art”?

19. There is some difference of opinion between the proprietor and the requester as to the nature of this person. In their observations the proprietor defines the person skilled in the art as “a person concerned with the manufacture and/or erection of modular platforms for supporting e.g. vehicles”. In their observations in reply the requester defines this person as “a person concerned with the manufacture of car parks who has a knowledge of both permanent and temporary car parks.” Neither of these two definitions seems entirely satisfactory to me. The phrase “a person concerned with ...” to me is too vague.
20. Before I give my own definition of the person skilled in the art I should give a few words in respect of what I consider the art to be. I concede that a temporary car parking structure such as is described in the patent is a rather different structure to a permanent multi-storey car park but I believe that there is such a degree of commonality to these structures that both temporary and permanent car parks belong to a single art. I believe that D1 supports such a view. As pointed out by the proprietor in their observations paragraph 2.1.1 of D1 states that temporary demountable car parks are excluded, but as pointed out by the requester in their observations in reply paragraph 1.2 of D1 does clearly indicate that the design guidance of D1 may find use in other forms or car park. It appears to me that there would be such a natural flow of useful design information between the various types of car park that they should be considered to fall within a single art.
21. For the purposes of this opinion my definition of the “person skilled in the art” is a team of at least structural, mechanical and/or constructional engineers with considerable experience of the design, manufacture and/or construction of car parks, in particular temporary car parks. I am taking the skilled person to be a team in the light of what is said in paragraph 2.1.3 of D1 about the breadth of expertise needed when commissioning a car park.
22. Such a team of engineers will have the common general knowledge of

their particular specialisms, and the team will have a particular knowledge of the common requirements of car parks, be they temporary or permanent.

23. As stated in paragraph 3.30 of The Manual of Patent Practice Laddie J explained common general knowledge in *Raychem Corp's Patents* [1998] RPC 31 as follows:

"The common general knowledge is the technical background of the notional man in the art against which the prior art must be considered. This is not limited to material he has memorized and has at the front of his mind. It includes all that material in the field he is working in which he knows exists, which he would refer to as a matter of course if he cannot remember it and which he understands is generally regarded as sufficiently reliable to use as a foundation for further work or to help understand the pleaded prior art. This does not mean that everything on the shelf which is capable of being referred to without difficulty is common general knowledge nor does it mean that every word in a common text book is either. In the case of standard textbooks, it is likely that all or most of the main text will be common general knowledge. In many cases common general knowledge will include or be reflected in readily available trade literature which a man in the art would be expected to have at his elbow and regard as basic reliable information."

24. In paragraph 16 above I said that that I believe there to be only a single car park construction art. Following the view of Laddie J above I believe that D1 would form a part of the common general knowledge of the team that comprises the skilled person; being the product of a relevant professional body D1 would be regarded as "sufficiently reliable to use as a foundation for further work", they would have D1 "at their elbow".
25. It follows that the person skilled in the art will have the car park dimensions set out in D1 as part of their common general knowledge. Looking at tables 4.2 and 4.3 on page 34 of D1 one can see that for general use a UK parking bay is between 2.3m and 2.5m in width, 4.8m in length and that the aisle space between parking bays is either 6.0m or 6.95m depending on whether one-way or two-way traffic is allowed in the aisle space.
26. Footnote 2 to table 4.2 directs one to paragraph 4.4.1 which, on page 39, discusses some possible reductions of parking bay and aisle space dimensions. If the deck module were built to these specifications then its width would remain between 2m and 3m whilst its length would range between 14m and 14.95m where the smaller 4m x 2m parking bays are in use. With a reduced aisle space of 5.5m the deck module length would be 15.1m.

What is the inventive concept of claim 1?

27. As I mentioned in paragraph 10 I am considering only the vehicle option presented in claim 1 and claim 27 in this opinion. Therefore for the purposes of this opinion claim 1 can notionally be re-written as follows:

A modular platform suitable for supporting vehicles, the platform having:

a plurality of deck modules, each deck module being a prefabricated unit for forming a part of the deck of the modular platform, each deck module being attached to at least one other deck module and including a deck surface suitable for vehicle parking on;

and support means attached to the platform for supporting it above an area;

wherein the deck surface of each deck module is substantially rectangular, the deck surface having a support space located at each of the longitudinally opposite ends, and an aisle space between the support spaces suitable for allowing passage of traffic and the width of the deck surface of each deck module is between 2m and 3m and the length of the surface of each deck module is between 15m and 16m.

28. For the most part this notional claim is clear and easily understood. However the term “support space” does present a little difficulty. Should this term be taken such that each deck module has a space enough for a complete car parking space at each end or should it be taken that each deck module’s “support space” provides only at least a part of a complete car parking space? Adopting the usual *Kirin-Amgen*³ approach to claim construction, i.e. asking the question “what would the person skilled in the art have understood the patentee to have used the language of the claim to mean?”, I find that each deck module’s support spaces should each provide space enough for a complete car parking space. I take this view on the basis of what is said in the patent description at, for example, page 4 lines 12-14:

“The present invention thus provides a platform made up of deck modules each of which has more than one car parking space on it.”

or at page 18 line 23 to page 19 line 1:

“It can be seen that the module is long enough to permit two cars 27a, 27b to park facing inwards whilst leaving enough room (an aisle space) for two lanes of traffic between them”

³ *Kirin-Amgen Inc v Hoechst Marion Roussel Ltd* [2005] RPC 9

and what is clearly shown in, for example, figures 11, 12 and 14 of the drawings.

29. In my view the inventive concept of claim 1, when confined to the vehicle option, is a raised modular platform suitable for supporting vehicles, the platform comprising a plurality of prefabricated deck modules, each deck module being attached to at least one other deck module and including a deck surface suitable for vehicle parking on; wherein the deck surface of each deck module is substantially rectangular, the deck surface having a support space sufficiently large so as to provide a complete car parking space located at each of the longitudinally opposite ends, and an aisle space between the support spaces suitable for allowing passage of traffic and the width of the deck surface of each deck module is between 2m and 3m and the length of the surface of each deck module is between 15m and 16m.

The differences

30. The requester has two arguments in respect of lack of inventive step in claim 1. The first based on D5 and the second based on D4 with each supplemented by information from D1, D2 and D3. It is clear to see that the differences between D4, D5 and the inventive concept of claim 1 lie in the dimensions set for the deck modules.
31. Having considered the various arguments put forward by the requester and the proprietor my view is that D5 discloses a modular platform generally as set down in the notional claim 1 of paragraph 27 above except that the width of each deck modules will be the width of a parking stall and the length of the deck modules will be in a range around 60 feet (18.3m). The dimensions of such deck modules are large enough to provide space for the two car parking bays and the aisle space required by claim 1. I do not see that the age of D5 is an issue here.
32. D2 and D3 provide the regulations covering the transport of long or wide loads on UK roads. Whilst I have little doubt that the team that comprises the skilled person will know in general that such regulations exist it is my belief that any such regulations would come a distant second to the team's need to design and construct building elements of such dimensions as are necessary for the efficient construction of the building. Therefore I do not believe that the team that comprises the skilled person in this case will give a great deal of weight to D2 and/or D3 when designing the platform of claim 1.

Is it obvious? – First Argument

33. It must be understood that the platform shown in D5 would be built to US standards. In adapting such a platform to conditions in the UK the skilled person has to consider any UK regulations and standards, de facto or otherwise, that might impinge upon their work. As I see it that is the motivation for seeking any change in the deck channel dimensions set down in D5.
34. The deck module dimensions recited in claim 1 fall squarely within the range of values allowed for in the UK standard of D1. The patent contains no indication of any technical challenges that were overcome in achieving these new deck module dimensions, and so it appears that the dimensions were selected merely to meet the standard set down in D1, a standard that I believe to form a part of the skilled person's common general knowledge. There should be no invention in that.
35. On the other hand the proprietor does make great play of the commercial and financial advantages of adopting the claimed dimensions. When transported by road the deck modules are not considered either a "wide" or "long" outside load and so they can be transported relatively freely and at some reduced cost. Also adopting the claimed dimensions allows the construction of the platform to proceed relatively simply, again reducing costs.
36. Whether or not commercial advantage can provide inventiveness is an open question. Paragraph 3.72 of The Manual of Patent Practice states:

"The question is, does the invention make available to the person skilled in the art something that he would not reach by normal exercise of his skill? If so, the inventor has made a contribution to the art which provides the consideration justifying the grant of a patent. The contribution must be of a technical nature. This is not to say that it must be technically complex; simplicity does not count against an invention and may indeed point to its being non-obvious. There may be invention in appreciating commercial features, for example in realising that there is a market for a new product. The Court of Appeal has provided competing views on this, see *Hallen Co v Brabantia (UK) Ltd* [1991] RPC 195 and *Dyson Appliances Ltd v Hoover Ltd* [2002] RPC 22."

Paragraph 3.07 of The Manual provides some further detail:

"The Court of Appeal followed *Windsurfing in Hallen Co v Brabantia (UK) Ltd* [1991] RPC 195, observing that "obvious" in s.3 is not directed to whether an advance is "commercially obvious" and stating:

"We do not think that the hypothetical technician must also be taken as applying his mind to the commercial consequences which might follow if

the step or process in question were found in practice to achieve or assist the objective which he had in view”.

However the Court of Appeal has more recently appeared to retreat from this position, stating in *Dyson Appliances Ltd v Hoover Ltd* [2002] RPC 22 that:

“commercial realities cannot necessarily be divorced from the kinds of practical outcome which might occur to the skilled addressee as worthwhile”

and so it followed that a “commercial mindset will have played a part in setting the notional skilled addressee’s mental horizon”.

37. Therefore I have to set the lack of inventive step apparent in merely adopting a pre-existing standard against the possibility of an inventive step brought about by the commercial advantage in adopting that standard if I am to decide whether or not claim 1 involves an inventive step.
38. Given the scant evidence before me of the scale of any commercial or financial advantage I find that, on balance, claim 1 does not involve an inventive step in the light of D5 and the skilled person’s common general knowledge as exemplified by D1.
39. As I have indicated above it follows that I will find that claim 27 lacks the necessary inventive step in the light of D5 and the skilled person’s common general knowledge as exemplified by D1.

Is it obvious? – Second Argument

40. The requester’s second argument starts from D4. D4 discloses a raised car parking deck composed of a number of identical deck modules. In their observations in reply the requester points out that these modules are described as follows (in translation):

“By way of non limiting example, each module could have the following dimensions: length = 5 metres, width = 2.5 metres, height = 2 metres”

The requester’s second argument can be simply summarized as saying that it is obvious for the skilled person to at least triple the length of the deck modules disclosed in D4 and so achieve the platform as set forth in claim 1.

41. The skilled person is usually taken to be someone who is good at their job, a fully competent worker with the skill to make routine developments

but not to exercise inventive ingenuity of think laterally. I believe that such a large extension of dimensions as is envisaged here is so far beyond what is usually expected of the skilled person that this second argument is untenable.

Dependent claims

42. Having found that claim 1 and claim 27 each lack an inventive step I must continue to consider the dependent claims. In their statement the requester has provided some argument as to why each dependent claim lacks an inventive step, but the proprietor has provided very little by way of response in their observations.
43. Claims 2, 3 and 17 to 21 specify a variety of different values for the dimensions of the deck modules. All of these different values fall within the ranges of values allowed by the de facto standard given in D1 and so I consider all of these claims to lack an inventive step.
44. All of D4, D5, D6 and D7 show the deck module as supported by a leg at each corner of the module. In D4, D5 and D6 each of these legs is attachable to two deck modules, and in D4 and D5 each of these legs has a support surface for resting the deck module on. Consequently none of claims 4, 5 and 6 appear to have an inventive step because their characterizing features seem to be well-known in the art.
45. Neither claim 7 nor claim 8 appear to involve an inventive step because it appears to be well-known in this art to use a foot or foot plate at the lower end of the legs used to support the deck module. This is clearly shown in D4 and D6.
46. Adjustable length legs are clearly shown in D6 and the adjustment of leg length is discussed in D4 (see page 2 of the translation provided by the requester) and so I believe that claim 9 will lack the required inventive step.
47. A ramp or ramps providing entry and exit access to car parks are commonplace; they are also shown in D4 and D7. I find that claims 10, 11 and 12 are obvious.
48. Claim 13 requires the access ramp or ramps to be attached to the platform "adjacent the aisle space of the endmost deck module". The requester argues that this arrangement is shown in D7. I do not believe that to be so. One can see from figure 1 that the deck modules run in such a direction that the ramps are not attached to the "endmost deck module. Nor do I believe that the arrangement of claim 13 can be

considered an obvious variation of the arrangement shown in figure 1. Figure 4 of D4 shows an access ramp attached to an endmost deck module but the dimensions of the modules in D4 are such that in this situation the entire module will constitute an aisle, there would be no distinct "aisle space" on the deck module. Consequently I believe that claim 13 is not obvious in the light of the supplied documents.

49. Staircase access to the raised decks of multi-storey car parks is commonplace and so claim 14 appears obvious to me.
50. Claim 15 requires the length of the short side of a deck module to be the width of a car parking space. This is clearly disclosed in D5 and so claim 15 cannot be inventive.
51. There can be no invention in providing an aisle space wide enough for two traffic lanes (claim 16) since that is expressly provided for in the de facto UK standard described in D1.
52. Claims 22 and 23 require the dimensions of the each deck module to be such that one or four modules can be transported without creating a wide load. The wide load limit is set by regulation and statute. There can be no invention in complying with such a limit.
53. Claim 24 requires that a bowed beam runs along the length of each deck module. The requester correctly identifies that D6 and D7 show beams running the length of the deck modules, however I can see no hint or indication in either one of these two documents that the longitudinal beam is bowed. The requester argues that such bowing is needed so as to give a cambered deck surface that will aid water run-off. But cambering is only one way of aiding run-off; other methods are available, sloping the deck module or the entire deck for example. I take it that the skilled person could have chosen cambering. It is not the case that they would have chosen cambering. I see that the section of D1 concerned with drainage, section 9.1, talks of providing each deck with a fall (i.e. a slope) to aid run-off. I do not believe that claim 24 is obvious in the light of the supplied documents.
54. Claim 25 requires that a number of lifting brackets are attached to the deck module to facilitate its lifting by a crane. I understand that this is a technique commonly used in the building industry. I can see no invention in this.
55. Claim 26 requires that the deck modules be substantially identical. This is shown in all of D4, D5, D6 and D7. This claim is not inventive.

Opinion

56. I conclude that the patent is not valid because claims 1 to 12, 14 to 23, 25, 26 and 27 lack the required inventive step.

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.

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