

**OPINION UNDER SECTION 74A**

Patent	<b>GB 2416286</b>
Proprietor(s)	Mr John Pemberton
Exclusive Licensee	
Requester	Mr John Pemberton, on 2 July 2009
Observer(s)	Mr Anthony Ives
Date Opinion issued	2 October 2009

**The Request**

1. The requester, Mr John Pemberton, has requested an opinion as to whether his patent, GB 2416286 B, is infringed by a product from Tancho Tackle, which itself is the subject of a patent application in the name of Mr Anthony Ives, published as GB 2450388 A. The request is accompanied by comments from Mr Pemberton and a print-out of the contacts page of Tancho Tackle's website. Mr Pemberton has also asked that I consider Mr Ives's patent application.

**Observations**

2. Observations were received from Tancho Tackle. The observations comprise a letter from Mrs Joan Ives addressing the issues raised by Mr Pemberton. The letter is accompanied by a selection of drawings.

**Observations in reply**

3. Observations in reply were received from Mr Pemberton. These observations include Mr Pemberton's comments regarding Tancho Tackle's observations, further drawings and print-outs of Tancho Tackle's website, showing the product for sale.

## The Patent

4. The patent was filed on 21 July 2005, with a priority date of 21 July 2004. It was published on 25 January 2006 and granted on 24 June 2009. It relates to a bait dispenser and has 28 claims.
5. Claims 1-21 are apparatus claims defining an apparatus for distributing fishing bait. Claims 2-21 are all appendant to claim 1, which reads as follows:

*Apparatus for distributing fishing bait into a remote area of water, said apparatus comprising a container for the fishing bait having an opening through which bait is distributed, a pole or means for attaching the apparatus to a pole, the pole being used to convey the container to the remote area of water, and a closure that is movable relative to the container between a closed configuration in which the closure occludes the opening such that the bait is retained within the container, and an open configuration in which the bait may be distributed through the opening, the arrangement being such that rotation of the pole about its longitudinal axis, and hence rotation of the apparatus, causes movement of the closure from the closed configuration to the open configuration, and wherein the apparatus includes a float for maintaining the apparatus at the surface of the water during use.*

6. Claims 22 defines a method claim defining a method for distributing fishing bait, and utilising the apparatus of any of claims 1-21. It reads as follows:

*A method of distributing fishing bait into a remote area of water, which method comprises the following steps:*

- (a) providing apparatus as claimed in any one of Claims 1 to 22 and attaching a pole to the apparatus if necessary;*
- (b) charging the container with fishing bait,*
- (c) moving the closure to the closed configuration;*
- (c) conveying the charged container to the remote area of water; and*
- (d) rotating the pole about its longitudinal axis so as to move the container to the open configuration and distribute the bait.*

Note: the two steps (c) is how claim appears in the specification.

7. There are six distinct embodiments of the invention illustrated in the figures. In each case there are three key components:

a container	(20,120,220,320,420,520)
a closure (or lid)	(22,122,222,322,422,522)
a float	(14,114,214,314,414,514)

a fourth key component – a means for attaching the apparatus to a pole – is only explicitly shown in three of the embodiments (13,113,413). However, it appears, undefined, in figures 10 and 11. It is not shown in the sixth embodiment (figures 16 and 17), but, as no mention of its exclusion has been made, it can be assumed to be present.

## **The Tancho Tackle dispenser**

8. The Tancho Tackle dispenser, on which the opinion is sought, is described in patent application GB 2450388. The application was filed on 6 February 2008 with a priority date of 22 June 2007. It has not yet been granted.
9. In his comments the requester, Mr Pemberton, contends that this device covers “the same method or mode of operation as my patent” and submits four points of contention, which are:
  - a) That both devices fit onto fishing poles in the same way;
  - b) That both devices may travel to remote areas of water;
  - c) That both devices have plastic floatation device;
  - d) That both devices deliver fishing bait from their containers by rotating the attached rod.
10. In response, Mrs Ives, on behalf of Tancho Tackle, draws the following distinctions between the dispensers:
  - a) That the Tancho Tackle dispenser has “no latching mechanism or weight”;
  - b) That the Tancho Tackle dispenser is “attached to the pole by the cupping device not to the floatation device”;
  - c) That the pole attachment means differ in their modes of operation and materials;
  - d) That Mr Pemberton’s device claims to reach more remote areas of water than the Tancho Tackle dispenser is capable of (50 metres v 16 metres)
  - e) That the shapes of the respective floatation devices differ;
  - f) That the Tancho Tackle device works “by simply rotating an open cup there are no closed containers, there are no latch mechanisms to open and close these containers”.
11. In his observations in reply, Mr Pemberton counters these assertions at length. His observations are summarised in the opening point. “My submission was and still is that if you take away the latching mechanism from my own device and the weights and the doors, that you would be looking at relatively the same device as Mr Ives”.

## Infringement

12. In order to decide whether the Mr Ives's Tancho Tackle dispenser infringes Mr Pemberton's patent I must first construe the claims of the patent. To do this I shall follow 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 light of the description and figures 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 someone with a good knowledge of the design and use of angling equipment, either involved in the industry or a keen angler.
13. First of all I have to focus on claim 1, breaking it down into consistent parts, construing the meaning of the language used deciding whether those parts are present in the Tancho Tackle device.
14. There is no dispute that the Tancho Tackle device is an 'apparatus for distributing fishing bait' so the first point of contention is the phrase 'remote area of water'. Mrs Ives has contended that the Tancho Tackle device cannot reach areas of water as remote as Mr Pemberton's device, with the maximum suggested distance being 16 metres. However, I believe that a skilled man would understand Mr Pemberton to have meant 'remote' to be any area outside the practical reach of the angler. Page 1 (line 14) of GB 2450388, Mr Ives's patent application, uses the phrase 'considerable distance' and therefore I consider that the Tancho Tackle device does access remote areas.
15. Both containers clearly have an opening, otherwise the bait would not be able to be put into or distributed from the container, so the next issue of disagreement is the 'pole or means for attaching the apparatus to the pole'. Mrs Ives states that the Tancho Tackle dispenser has an attachment means made of a different material and of a different design. However, as neither the material nor design is specified in claim 1, this has no bearing as to whether it infringes claim 1.
16. The next feature is 'a closure that is movable relative to the container between a closed configuration in which the closure occludes the opening such that the bait is retained within the container, and an open configuration in which the bait is may be distributed through the opening'.

This is straightforward to construe, and includes any movable door or lid which can cover the opening, thereby preventing the bait from coming out of the container. It is clear from Mr Ives patent and the print-out of the object from Tancho Tackle's website, that the alleged infringing item has no such closure. Indeed Mr Pemberton, in his observations in reply, writes that 'if you take away the latching mechanism from my own device and the weights and the doors, that you would be looking at relatively the same device as Mr Ives', thereby conceding that there is no such closure.

17. The next part of claim 1 relates to the distribution of by rotation of the pole. Both sides agree that this is how the Tancho Tackle dispenser distributes the bait, however, the rotation of the pole does not cause „movement of the closure’, because, as I have already established, there is no closure.
18. The final part of the claim is the provision of a float. Mrs Ives has claimed that the design of the Tancho Tackle float, and the way in which it is connected to the container and pole differs for Mr Pemberton’s dispenser. While this appears to be true, the float of claim 1 has not been restricted in such a way.
19. Therefore, while the Tancho Tackle dispenser comprises most of the features of the device as defined in claim 1, it is crucially lacking a closure of any kind. Therefore, it follows that it does not infringe claim 1.
20. As claims 2-22 are all ultimately appendant to claim 1, they are also not infringed by the Tancho Tackle dispenser.

### **Opinion**

21. I conclude that, from the evidence in front of me, the dispenser produced by Tancho Tackle does not infringe GB 2416286 B. Furthermore, the dispenser shown in Mr Ives’s patent, GB 2450388 A, would not infringe GB 2416286 B were it to be manufactured, disposed of, offered for disposal, used, imported or kept for disposal or otherwise within the United Kingdom.

### **Application for review**

22. 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.

Richard Nicholls  
Examiner