

OPINION UNDER SECTION 74A

Patent	GB 2416286
Proprietor(s)	Mr John Pemberton
Exclusive Licensee	
Requester	Mr John Pemberton, on 2 July 2009
Observer(s)	Mr John Michael Pryce
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 Frenzee Ltd, which itself is the subject of a patent application, published as GB 2454097 A. The request is accompanied by comments from Mr Pemberton and a print-out of a page from Frenzee's website, showing the Frenzee „Big Daddy Pot' for sale. The website mentions patent application GB 0721014.9, from which GB 2454097 claims priority. Mr Pemberton has also asked that I consider Frenzee's patent application

Observations

2. Observations were received from Barker Brettell LLP on behalf of Frenzee Ltd. The observations comprise a letter addressing Mr Pemberton's request.

Observations in reply

3. Observations in reply were received from Mr Pemberton. These observations included Mr Pemberton's comments regarding the observations from Barker Brettell LLP and a copy of figures 10 and 11 of Mr Pemberton's patent.

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 Frenzee Big Daddy Pot

8. The Frenzee Big Daddy Pot dispenser, on which the opinion is sought, is described in patent application GB 2454097. The application was filed on 27 October 2008 with a priority date of 26 October 2007. It has not yet been granted.

9. In response, Mrs Barker Brettell LLP, on behalf of Frenzee Ltd, draws only one distinction between the dispensers, that “both the big daddy pot and the patent application pot do not have a closure”.
10. In his observations in reply, Mr Pemberton counters these assertions at length. He addresses the issue of the closure by stating that “take away the weights and the doors and lever from my device and you are left with virtually the same model as my own that shall work in the same way that Frenzee’s model will”.

Infringement

11. For there to be an infringement, the Frenzee device must have all of the features of the invention as defined by claim 1 of GB 2416286 B.
12. In order to decide whether the Frenzee 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 Frenzee device.
14. As the closure is the only feature under dispute I shall begin there. Claim 1 is defined by „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’.
15. Both containers clearly have an opening, otherwise the bait would not be able to be put into or distributed from the container.
16. The closure 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 the Frenzee patent and the print-out of the object from Frenzee’s website, that the alleged infringing item has no such closure. Indeed Mr Pemberton, in his observations in reply, writes “take away the weights and the doors and lever from my device and you are left with virtually the same model as my own that shall work in the same way that Frenzee’s model will”, thereby conceding that there is no such closure.

17. Therefore, while the Frenzee dispenser appears to comprise most of the features of the device as defined in claim 1, it is crucially lacking a closure of any kind. Therefore, as not all of the features defined by claim 1 are present, it does not infringe claim 1.
18. As claims 2-22 are all ultimately appendant to claim 1, they are also not infringed by the Frenzee dispenser.

Opinion

19. I conclude that, from the evidence in front of me, the dispenser produced by Frenzee Ltd does not infringe GB 2416286 B. Furthermore, the dispenser shown in Frenzee Ltd's patent, GB 2454097 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

20. 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