

OPINION UNDER SECTION 74A

Patent	GB 2395121
Proprietor(s)	Mr Jeremy David Lenighan
Exclusive Licensee	
Requester	Bailey Walsh & Co LLP, on 23 October 2006
Observer(s)	
Date Opinion issued	16 January 2007

The request

1. The comptroller has been requested to issue an opinion as to whether patent GB 2395121 ('the patent') in the name of Jeremy David Lenighan is infringed by a walk-in shower installation under the name of Evolution ('the product') by Sovereign Exel Limited ("Sovereign"). The request has been submitted on behalf of the proprietor of the patent by attorneys Bailey Walsh & Co.
2. The requester has also reserved the right to request an opinion on the validity of the patent in the event that Sovereign puts in evidence to challenge the validity of the patent.

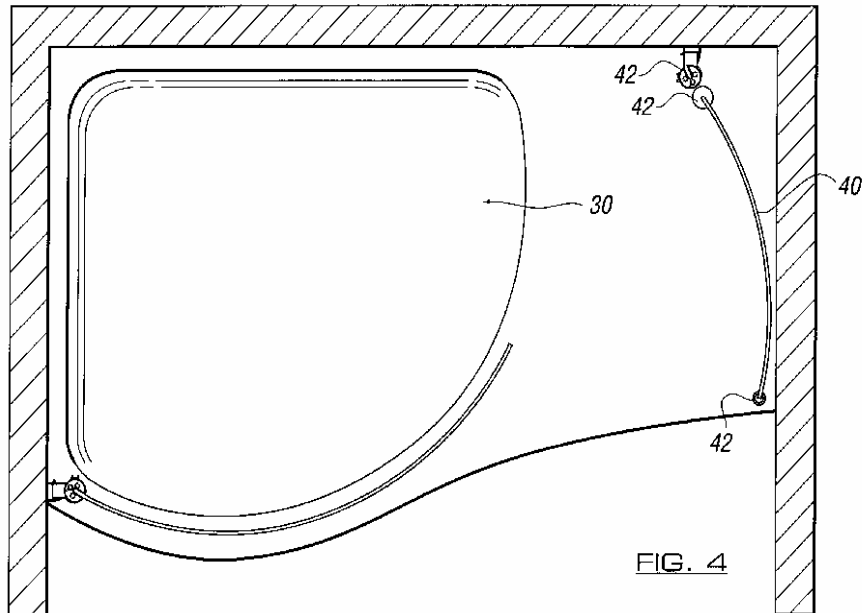
Observations

3. In the event, no observations were received.

The Patent

4. The patent was filed on 12th November 2003, claiming priority from an earlier application GB0226570.0 filed on 14th November 2002. The patent was granted on 12 October 2005 and is still in force.
5. The patent relates to a walk in shower installation, comprising a shower tray having a shower area and an entry area/drying area. The patent seeks to overcome the problem of shower spray leaving the shower area and ultimately the entry/drying area. This is achieved by means of a panel movable between a first open position, which allows access to the shower area from the entry/drying area, and a closed

position in which the panel prevents shower spray from leaving the shower area. Figure 4 of the patent, as reproduced below, shows the panel 40 in the open position.



6. There are fourteen claims but claim 1 is the only completely independent claim and reads as follows:

A walk in shower installation, said walk in shower installation including a shower tray having a shower area and an entry area/drying area defined between at least first and second walls, a shower screen for connection to one of said first and second walls for defining, at least in part, a boundary of said shower area and wherein panel means are provided which are movable between an open position, wherein the panel means are clear of the space between the other of said first and second walls and the shower screen to allow access to said shower area and said entry area/drying area, and a closed position, wherein the panel means are in a position so as to prevent spray from a shower used within the installation from passing out of the shower area space and into the entry area/drying area.

7. As well as claim 1, the requester specifically discusses claim 2 which reads as follows:

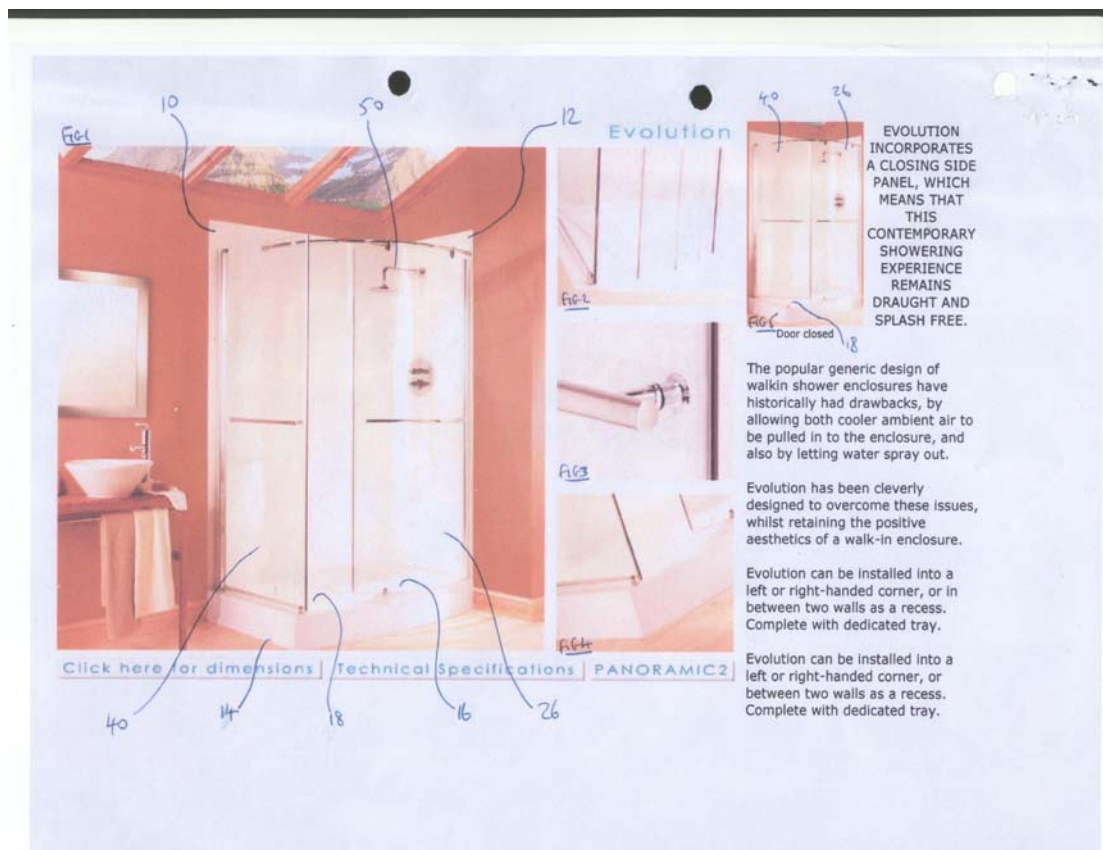
An installation according to claim 1 wherein the panel means are pivotally mounted to the other of said first and second walls.

8. Claim 14 relates to a panel for use in the shower installation of claim 1. The question of infringement of this claim may be somewhat different, but the requester has not in the event referred me to this claim so I will not consider it in this opinion.

The Issues

9. The request comprises a copy of GB 2395121 B, as granted (Appendix 1), an annotated printout of a page from Sovereign's website (Appendix 2 reproduced below) and supporting comments. The requester also refers me to the web site from which the printout is printed:-

http://www.sovereignshowers.co.uk/products_details.asp?ProductID=35



10. With regard to the features of claim 1, the request states that the Sovereign walk-in installation has a shower tray (14) having a shower area (16) and an entry area/drying area (18) defined between at least first and second walls (10, 12), a shower screen (26) for connection to one of said first and second walls for defining, at least in part, a boundary of said shower area and wherein panel means (40) are provided which are movable between an open position (Fig 1),

wherein the panel means (40) are clear of the space between the other of said first and second walls and the shower screen (26) to allow access to said shower area (16) and said entry area/drying area (18), and a closed position (Fig 5), wherein the panel means (40) are in a position so as to prevent spray from a shower (50) used within the installation from passing out of the shower area space (16) and into the entry area/drying area (18).

Construing the claims

11. Before I can determine whether or not the patent is infringed, the scope of the claims must be determined as to whether the product falls within that scope. In accordance with section 125(1), the protection of the claims is determined as that specified in a claim as interpreted by the description and any drawings.
12. The standard principles of claim construction were set out by Lord Hoffmann in *Kirin-Amgen and others v Hoescht Marion Roussel Limited and others* [2005] RPC 9 (see paragraphs 32-52). You must put a purposive construction on claim 1, interpret it in the light of the description and drawings as instructed by section 125(1) and take account of the Protocol to Article 69 of the EPC. In simpler language you must decide what a person skilled in the art would have understood the patentee to have used the language of the claim to mean.
13. I take the person skilled in the art to be a designer of shower installations.
14. Having read claim 1 in the light of the description the following points are the only ones which appear to me to be at issue.
15. The claim is limited to an installation comprising both a shower area and an entry/drying area that is "defined between at least first and second walls". To me these words leave some ambiguity as to whether the walls themselves are included within the scope of the claim. If I turn to the skilled person to resolve these ambiguities, I think that he/she would recognise the likelihood of installing a tray and the necessary screens relative to existing, e.g. tiled, walls, in which case the walls themselves would not be included. This interpretation is consistent with the description, particularly lines 19 to 24 on page 4. In short, it seems to me that the skilled person would regard the claim as including both showers with integral walls and showers installed relative to existing walls.
16. The claim goes on to define the shower area as bounded (at least in

part) by a shower screen. The shower screen is stated as being for connection to one of said first and second walls. I think the skilled person could interpret “for connection” as that there are dedicated connection means included as part of the screen; that would certainly qualify. It could also mean that suitable fixings are provided only on the walls, in which case the screen would merely be a suitable shape and size so that it would be feasible for it to be connected to one of the walls. I conclude that it is this latter, wider interpretation that I must follow.

17. The claim then refers to the shower screen being “for defining, at least in part, a boundary of said shower area”. Again I consider this only to be a screen of suitable shape and size to define the boundary concerned.

Does the product infringe the claims?

18. Having regard to the requester’s comments, with reference to the annotated website page print-out supplied, I think it is indisputable that the product at least comprises:

In Fig.1

A shower tray (14)
A shower area (16)
An entry area/drying area (18)
A shower screen (26)
Panel means (40)

In Fig.5

The panel means (40) is shown in a closed position so as to enclose the shower area bounded by the first and second walls, the shower screen (26) and the panel means (40).

First and second walls (10, 12) are shown in figure 1 but it is not clear whether these are part of the product. From the text of the web page relating to the installation possibilities, however, I think it is probable that the product would be sold without the walls (10,12).

19. Referring to the above-detailed construction of claim 1, in conjunction with the annotated printed website page, Fig.1 shows a walk in shower installation, including a shower tray (14) having a shower area

(16) and an entry area/drying area (18) defined between first and second walls (10, 12). The shower area (16) is bounded in part by a shower screen (26) for connection to one of said first and second walls (particularly wall 12 as annotated). It is not clear whether the product's shower screen is actually connected to the walls, but I conclude that it would almost certainly be so connected as otherwise the structure would be unstable in use. In any case, it is certainly of a size and shape suitable for connection to a wall, which is all I have concluded that claim 1 requires in this respect.

20. Panel means (40) are provided which are movable between an open position (shown in Fig.1) in which the panel means (40) is clear from the space between the edge of the shower screen (26) and the other of said first and second walls (wall 10 as annotated), through which space access to said shower area and said entry area/drying area is thus allowed, and a closed position (shown in Fig.5) wherein the panel means are in a position so as to prevent spray from a shower (50) used within the installation from passing out of the shower area space (16) and into the entry area/drying area (18). This is achieved by virtue of the shower area (16) being enclosed by the first and second walls (10, 12), the shower screen (26) and the panel means (40). Furthermore I note that text on the printed website page itself states "The popular generic design of walk in shower enclosures have historically had drawbacks...by letting water spray out...Evolution has been cleverly designed to overcome these issues...". This to me can only reinforce that the product falls within claim 1 of the patent in this respect.
21. I conclude that the evidence supplied by the requester unambiguously discloses that the Sovereign Evolution product falls entirely within the scope of protection of claim 1, when properly construed.
22. As regards claim 2, although no details of the mounting of the panel means (40) of the product to the respective wall (wall 10 as annotated) are evident from the website page print supplied, it would appear from figure 2, on the face of it, that the panel means must be pivotally mounted. This assessment is based on the fact that the movement between the open position (shown in Fig.1) and the closed position (shown in Fig.5) is achieved by effectively pivoting the panel means (40) substantially about its mounting edge. Thus the product also falls within the scope of claim 2.
23. Although the filed Form 17/77 requests an opinion as regards validity, it is clear from paragraph 6.5 of the request that this would only be needed if there had been observations filed with relevant evidence.

There having been no such observations I do not make any finding as regards validity.

Opinion

24. I conclude that claims 1 and 2 of the patent are infringed. I make no finding on the issue of validity for the reasons given above.

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.

Jim Calvert
Examiner