



PATENTS ACT 1977

PATENTEE	Ability International Limited
OPPONENT	Monkey Tower Limited
ISSUE	Application to revoke UK Patent GB2432573B under section 72 and an application to amend under section 75
HEARING OFFICER	H Jones

FINAL DECISION

Introduction

- 1 This decision is primarily concerned with the question of whether or not to allow amendment of UK patent GB2432573 under section 75 of the Act, which will allow a final determination to be made as to whether the patent should be revoked under section 72. My interim decision on revocation was issued in August 2013 under the reference [BL O/334/13](#). The application for revocation was filed by Monkey Tower Limited (MTL), who now oppose the proposed amendments.
- 2 The question of whether the patentee should be allowed to propose amendments to the patent under section 75 was considered by the High Court early last year (*Monkey Tower v Ability International*)¹, where Mr Henry Carr QC (sitting as deputy judge) ruled that the patentee, Ability International Limited (AIL), should be allowed to propose amendments to the patent given the circumstances of the case. After amendments were filed, I issued a preliminary decision ([BL O/484/14](#)) concerning the scope of opposition to amendments under section 75 in which I decided the nature of the question to be addressed here, i.e. whether the proposed amendments overcome the various defects identified in my interim decision on revocation and also meet the requirements of section 76 (no added matter). This preliminary decision was not appealed.
- 3 Statements of case have been filed by both sides. Given the nature of the dispute, I suggested to both sides that it would be possible to decide the matter on the basis of written submissions only, without the need for further evidence or oral hearing. This decision is made on the basis of the initial statements and the further written submissions.

The proposed amendments

- 4 Amendment is being proposed to claims 1, 19 and 20, and to the corresponding statements of invention on pages 1, 2 and 4 of the specification. These amendments are

¹ [Monkey Tower Limited v Ability International Limited \[2014\] EWHC 18 \(Pat\)](#)

- 8 The telescopic ladder and scaffold arrangement in US2961060 has two sets of rungs (34) and (35), with rungs (34) being fixed steps associated with the platform arrangement and rungs (35) being movable steps whose number and position vary depending on the position of the platform. In my interim decision on revocation I found that the word “includes” does not require the whole of the mast section to have permanently spaced apart rungs.
- 9 ALL say that the scaffold arrangement set out in the proposed claim 1 must now comprise permanently spaced apart rungs which extend from the base section to the platform. MTL argue that the wording “includes rungs....which enable the workperson to be able to climb from the bottom of the mast means” still does not require the whole of the mast to have permanently spaced apart rungs. They say that US2961060 includes permanently spaced apart rungs and that its rungs allow a workperson to climb from the base of the mast to the platform. As a matter of construction, I agree with MTL on this point.
- 10 Amended claim 1 also requires the mast means to be “offset from the centre of the base section” and be “positioned at the rear of the base section” when in use. ALL’s aim here is to limit the apparatus to the C-shaped or offset configuration discussed in my interim decision on revocation. In paragraph 26 of my decision I said that it should be perfectly possible to encapsulate the offset mast arrangement of the invention into a form of words that is “clear and does not add subject-matter, and to avoid anticipation or be rendered obvious by US2961060”:

“26. I do not agree with MTL on these points. First of all the specification does in fact show the mast as being positioned towards one end of the base as opposed to being at the centre, and this is deliberately so in order to provide the maximum amount of platform space over the desks that can be supported by the base section. The upper and lower struts introduced by proposed amended claims 3 and 4 provide the necessary stability for the mast and platform, but it is the offset position of the mast with respect to the centre of the base which allows the platform to extend significantly over desk areas. I accept that there may be issues concerning the clarity in which the position of the mast is defined with respect to the base section, but that is not to say that there is no basis for making an amendment which seeks to limit the apparatus to the C-shaped (or offset) configuration quite clearly described in the specification. Second, I do not think that the position of the mast is a matter of design choice. Its position towards one end of the base section is important in maximising the amount of platform space over the desks which the base section can support. Finally, although the way in which proposed claim 2 is worded means that D1 can be said to anticipate the invention, i.e. in that the mast in D1 can be said to be positioned adjacent the rear part of the base, I do not consider that document D1 discloses an offset mast for the same purpose and benefits set out in the specification of the patent. On the basis of the evidence submitted as part of these proceedings, I consider that it would be perfectly possible to encapsulate the offset mast arrangement of the invention into a form of words that is clear and does not add subject-matter, and to avoid anticipation or be rendered obvious by document D1.”

- 11 I have already found that US2961060 does not disclose a C-shaped or offset mast configuration and therefore I do not need to revisit this point again here. The question I do need to answer is whether the proposed amendment achieves the objective of clearly describing this C-shaped arrangement without adding subject matter.

- 12 MTL say that the specification as filed does not include the words “offset” and “centre” and that the word “positioned” is not mentioned in relation to the base. They say also that the mast shown in the drawings is not offset and suggest that the proposed amendment could also encompass a z-shaped arrangement not disclosed in the specification as filed. They argue that the proposed amendment adds subject matter through an intermediate generalisation on the basis that that offset mast arrangement was not described as an important feature necessary to the invention in the specification as filed. They refer me to the decision of the Court of Appeal in *LG Philips LCD Co Ltd v Tatung (UK) Ltd & Ors*² which says that subject matter can be added by taking otherwise unidentified features from a drawing and inserting them into a claim (cf. paragraphs 41 and 42). AIL point to the fact that the drawings in *Philips v Tatung* were ambiguous and agree that importing an ambiguous feature into the claims would clearly add matter. They say that there is no ambiguity about the offset position in the present case, which they say could not be clearer from the drawings. AIL refer to page 7 of the specification which provides the following description of the apparatus shown in figure 1: “There are two of the wheels 28 at a front part 32 of the base section 4. There are two of the wheels at a rear part 34 of the base section 4. The rear part 34 of the base section 4 is adjacent the mast means 6.”
- 13 Despite MTL’s arguments to the contrary, I find that the proposed amendment of claim 1 in respect of the C-shaped/offset arrangement overcomes the concerns regarding clarity I had in my interim decision and does not add subject matter beyond that disclosed in the specification as filed. I find that the proposed amendment to claim 1 is allowable. Claims 19 and 20 as proposed to be amended are dependent on claim 1, and I find that these are also allowable.

Conclusion and order

- 14 Claim 1 of the patent as proposed to be amended is clear, does not add subject matter and is not anticipated by US2961060. I therefore:
- allow AIL’s application to amend the patent under section 75(1) and direct that clean amended pages be incorporated into the specification;
 - refuse MTL’s application for revocation.

Costs

- 15 Costs have already been awarded to MTL for their partially successful case for revocation and to AIL for their successful case to strike out parts of MTL’s grounds for opposing amendments under section 75. AIL have been successful in their application to amend the patent under section 75 despite MTL’s opposition and are therefore entitled to an award of costs in their favour. I shall invite parties to make final submissions concerning the quantum of costs taking into account such matters as the standard scale of costs and the protracted nature of these proceedings.

² [2006] EWCA Civ 1774

Appeal

- 16 Any appeal must be lodged within 28 days after the date of this decision.

H Jones

Deputy Director, acting for the Comptroller

**APPARATUS FOR PERMITTING
OVERHEAD ACCESS FOR A WORKPERSON**

This invention relates to apparatus for permitting overhead access for a workperson.

Establishments such for example as corporate businesses often have large open plan offices where space is at a premium. Often desks are located back to back, and the desks are often crowded with computers and other equipment. Workpersons such for example as maintenance operatives often need to access light fittings at ceiling level and services in voids above ceiling tiles. Ladders are generally unsafe and hitherto the usual method of providing the overhead access has been to use scaffolding with bridging platforms which bridge over desk areas below. The scaffolding with its bridging platforms tends to require two, three or four persons to erect and dismantle it safely. The use of so many maintenance persons represents a cost which many businesses find unacceptable.

It is an aim of the present invention to reduce the above mentioned problem.

Accordingly, the present invention provides apparatus for permitting required overhead access for a workperson effecting maintenance in an open plan office and over desks, which apparatus comprises a base section, mast means which in use upstands from the base section, and a platform which is secured to the mast means remote from the base section, and the apparatus being such that in use the platform extends outwardly from the mast means, the base section extends underneath the platform and thereby enables the platform to

be stable when occupied by the workperson, the base section is constructed so that it is able to extend underneath at least desk tops whereby the platform then provides access over desk areas, the mast means is a telescopic mast means which is adjustable in height in order to support the platform at different working heights, and the mast means includes rungs whereby the person which are permanently spaced apart and which enable the workperson to be able to climb from the bottom of the mast means to the platform when the platform is at a desired height, and in which the mast means in use is offset from the centre of the base section and is positioned at a rear part of the base section.

The apparatus of the present invention is especially useful in the above mentioned large open plan offices. The apparatus can however also be used in other environments such for example as factory environments where the base section may be required to extend underneath work benches or other equipment. Depending upon where the overhead access is required, it may not be necessary for the base section to extend underneath anything at all. It is however an advantageous feature of the apparatus of the present invention that the base section is low in height so that it is able to extend underneath many objects as may be required. The apparatus of the present invention is also advantageous in that it can easily be moved to a desired position by a single workperson, and then that workperson is easily able to access the platform. If desired, two or more persons may be employed in moving the apparatus and/or on the platform.

The apparatus may be one in which the platform is permanently secured to the mast means. Alternatively, the platform may be releasably

outer and inner mast portions align for climbing purposes when the outer and inner mast portions overlap.

The mast means may be fixed in position on the base section. Alternatively, the mast means may be a pivotable mast means which is pivotable to a non-use position in which the mast means lays flat on the base section.

The apparatus will usually be one in which the base section includes wheels for enabling the apparatus to be pushed to a desired position. For safety purposes, the wheels may be locked in position by brake means. Any suitable and appropriate brake means may be employed.

The apparatus may be one in which there are two of the wheels at a front part of the base section, and two of the wheels at a the rear part of the base section, ~~the rear part of the base section being adjacent the mast means~~. Preferably, the rear wheels are each mounted on an outrigger support.

The apparatus may include a seat on the platform for enabling the workperson to carry out certain tasks whilst being seated.

Usually, the apparatus will be constructed to be of a narrow size that enables the apparatus to pass through doorways and enter lifts. Such a narrow size of apparatus facilitates its movement and use about buildings by one single workperson.

An embodiment of the invention will now be described solely by way of example and with reference to the accompanying drawings in which:

CLAIMS

1. Apparatus for permitting required overhead access for a workperson effecting maintenance in an open plan office and over desks, which apparatus comprises a base section, mast means which in use upstands from the base section, and a platform which is secured to the mast means remote from the base section, and the apparatus being such that in use the platform extends outwardly from the mast means, the base section extends underneath the platform and thereby enables the platform to be stable when occupied by the workperson, the base section is constructed so that it is able to extend underneath at least desk tops whereby the platform then provides access over desk areas, the mast means is a telescopic mast means which is adjustable in height in order to support the platform at different working heights, and the mast means includes rungs ~~whereby the person is~~ which are permanently spaced apart and which enable the workperson to be able to climb from the bottom of the mast means to the platform when the platform is at a desired height, and in which the mast means in use is offset from the centre of the base section and is positioned at a rear part of the base section.

2. Apparatus according to claim 1 in which the platform is permanently secured to the mast means.

3. Apparatus according to claim 1 in which the platform is releasably secured to the mast means.

4. Apparatus according to claim 3 in which the platform is releasably secured to the mast means by hooks and lock bolts.

18. Apparatus according to claim 17 in which the wheels are able to be locked in position by brake means.

19. Apparatus according to claim 17 or claim 18 in which there are two of the wheels at a front part of the base section, and two of the wheels at a the rear part of the base section, ~~the rear part of the base section being adjacent the mast means.~~

20. Apparatus according to claim 19 and including two extra rear wheel wheels which are each mounted on an outrigger support.

21. Apparatus according to any one of the preceding claims and including a seat on the platform for enabling the workperson to carry out certain tasks whilst being seated.

22. Apparatus according to any one of the preceding claims and which is of a narrow size that enables the apparatus to pass through doorways and enter lifts.

23. Apparatus for permitting overhead access for a workperson, substantially as herein described with reference to the accompanying drawings.

Annex B -

Annex – claims showing conditional amendments sought

1. Apparatus for permitting overhead access for a workperson, which apparatus comprises a base section, mast means which in use upstands from the base section, and a platform which is secured to the mast means remote from the base section, and the apparatus being such that in use the platform extends outwardly from the mast means, the base section extends underneath the platform and thereby enables the platform to be stable when occupied by the workperson, the base section is constructed so that it is able to extend underneath at least desk tops whereby the platform then provides access over desk areas, the mast means is a telescopic mast means which is adjustable in height in order to support the platform at different working heights, and the mast means includes *permanently spaced apart rungs* ~~whereby which enable the person is to be able to climb to the platform when the platform is at a desired height.~~
2. *Apparatus according to claim 1 in which the mast means in use upstands from a rear part of the base section.*
3. *Apparatus according to claim 1 or claim 2 and including support struts which extend between the mast means and the base section.*
4. *Apparatus according to any one of the preceding claims and including support struts which extend between the mast means the platform section.*
- ~~2-5.~~ Apparatus according to ~~claim 1~~ *any one of the preceding claims* in which the platform is permanently secured to the mast means.
- ~~3-6.~~ Apparatus according to ~~claim 1~~ *any one of claims 1-4* in which the platform is releasably secured to the mast means.
- ~~4-7.~~ Apparatus according to claim ~~3-6~~ in which the platform is releasably secured to the mast means by hooks and lock bolts.
- ~~5-8.~~ Apparatus according to any one of the preceding claims in which the platform includes a guard rail.
- ~~6-9.~~ Apparatus according to claim ~~5-8~~ in which the guard rail in a one-piece guard rail.
- ~~7-10.~~ Apparatus according to claim ~~6-9~~ in which the one-piece guard rail is permanently secured to the platform.
- ~~8-11.~~ Apparatus according to claim ~~6-9~~ in which the one-piece guard rail is releasably secured to the platform.
- ~~9-12.~~ Apparatus according to claim ~~8-11~~ in which the one-piece guard rail comprises spigots which fit in sockets on the platform.
- ~~10-13.~~ Apparatus according to claim ~~8-11~~ or claim ~~9-12~~ in which the one-piece guard rail comprises hinges which enable the one-piece guard rail to fold flat when it is removed from the platform.

- 11-14. Apparatus according to any one of the preceding claims in which the mast means comprises an outer mast portion and an inner mast portion.
- 12-15. Apparatus according to claim 11-14 in which the outer mast portion is fixed to the base section, and in which the inner mast portion is extendable and retractable with respect to the outer mast portion.
- 13-16. Apparatus according to claim 11-14 or claim 12-15 and including hand-operated winch means for raising the lowering the mast means.
- 14-17. Apparatus according to any one of claims 11-14 - 13-16 in which the rungs are on both the outer mast portion and the inner mast portion, and in which the rungs on the outer and inner mast portions align for climbing purposes where the outer and inner mast portions overlap.
- 15-18. Apparatus according to any one of the preceding claims in which the mast means is fixed in position on the base section.
- 16-19. Apparatus according to any one of claims 1 - 14-17 in which the mast means is a pivotable mast means which is pivotable to a non-use position in which the mast means lays flat on the base section.
- 17-20. Apparatus according to any one of the preceding claims and in which the base section includes wheels for enabling the apparatus to be pushed to a desired position.
- 18-21. Apparatus according to claim 17-20 in which the wheels are able to be locked in position by brake means.
- 19-22. Apparatus according to claim 17-20 or claim 18-21 in which there are two of the wheels at a front part of the base section, and two of the wheels at a rear part of the base section, the rear part of the base section being adjacent to the mast means.
- 20-23. Apparatus according to claim 19-22 and including two extra rear wheel which are each mounted on an outrigger support.
- 21-24. Apparatus according to any one of the preceding claims and including a seat on the platform for enabling the workperson to carry out certain tasks whilst being seated.
- 22-25. Apparatus according to any one of the preceding claims and which is of a narrow size that enables the apparatus to pass through doorways and enter lifts.
- 23-26. Apparatus for permitting overhead access for a workperson, substantially as herein described with reference to the accompanying drawings.