



PATENTS ACT 1977

APPLICANT Edward Ernest Jakeman

ISSUE Whether patent application GB 1119452.9 complies
with Section 1(1)(b) and 18(3)

HEARING OFFICER J Pullen

DECISION

Introduction

- 1 Patent application GB 1119452.9 relating to a wheelchair with lever operated propulsion units was filed by Mr Edward Ernest Jakeman on 10 November 2011, claiming priority from GB 1019025.4 which was filed on 11 November 2010. The application was published on 23 May 2012 as GB 2485654.
- 2 Despite several rounds of correspondence between the examiner and the Mr Jakeman the application did not appear to be making progress towards grant. Mr Jakeman was advised that it was proposed to refuse the application under section 18(3) of the Patents Act for failure to make observations or to amend the application to comply with the requirements of the Act and he was offered an opportunity to be heard.
- 3 The matter came before me on 18 August 2015 for a decision on the papers. I can confirm I have taken into account all correspondence contained on the dossier.

The application

- 4 The application relates to a wheelchair propelled by a left and right lever-operated, manual propulsion units and further comprising: low-level inclined cushioned seating; a longitudinally adjustable and pivoting footrest; unobstructed side boarding; a manually operated low-torque cable winch that can be used in combination with a winch anchorage to lift the wheelchair into a vehicle; progressive rear-wheel brakes operated from the levers of the manual propulsion units; the ability to steer the chair using differential braking; and lap and shoulder belts
- 5 There is only one independent claim in the application which reads:

1. An invalid wheelchair incorporating left-hand and right-hand manual propulsion installations, each said installation comprising: a lever-operated oscillating manual drive-input unit and a rotary conversion unit, which unit converts oscillating rotary motion to continuous rotary motion in a number of user-selectable drive modes, said propulsion installations separately driving the left-hand and right-hand rear road-contacting wheels via chain-and-sprocket transmissions in a manner such that a pulling action by the user induces forward movement of the wheelchair, said propulsion installation further providing ease of propulsion in forward and reverse drive through inbuilt favourable Mechanical Advantage, propulsive steering, freewheeling (overrun facility), an immobilisation facility, neutral and low-gear drive facilities and convenient positioning of controls and of drive-input levers, said wheelchair incorporating further features to facilitate unassisted use of the wheelchair by persons having physical impediments or limitations, said further facilities comprising: low-level, inclined cushioned seating providing, in conjunction with a platform footrest, unobstructed, facile, boarding/exiting from either side, suitability of the wheelchair for transportation by a conventional hatch-back motor car having folding or removable rear seats, suitability of the wheelchair for loading into, and unloading from, a conventional hatch-back car, manually operated, low-torque, loading/unloading cable-winch permanently installed into the wheelchair, removable or permanent winch-cable anchorage for attachment to a hatch-back car, progressive rear wheel brakes operated from the propulsion levers, each with independent actuation facility, steering by differential braking, longitudinally adjustable pivoting, platform footrest, user lap-and-shoulder seat belt

The law

- 6 The relevant sections of the Patents Act 1977 (“the Act”) are referred to below.
- 7 Section 1(1) deals with the conditions that must be met for a patent to be granted. It states that:

A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say -

- (a) the invention is new;*
- (b) it involves an inventive step;***
- (c) it is capable of industrial application;*
- (d) the grant of a patent for it is not excluded by subsections (2) and (3) or section 4A below; and references in this Act to a patentable invention shall be construed accordingly.*

- 8 Section 3 then sets out how the presence of an inventive step is determined:

An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).

- 9 Section 18(3) refers to the issuing of an examination report where an application does not comply with the requirements of the Act and Rules:

*If the examiner reports that any of those requirements are not complied with, the comptroller shall give the applicant an opportunity within a specified period **to make observations on the report and to amend the application so as to comply with those requirements** (subject, however, to section 76 below), and if the applicant fails to satisfy the comptroller that those*

requirements are complied with, or to amend the application so as to comply with them, the comptroller may refuse the application.

Discussion

10 In the examination report of 17 December 2014, objections were raised to the lack of inventive step of claims 1 to 14, under section 1(1)(b) of the Act. The issues of clarity of the application and further searching were deferred at this stage.

11 In explaining the inventive step objection the examiner set out a number of points, firstly that

“Our examination guidance provides that where a claim includes a number of elements which provide their own function independently from each other that we should consider whether each independent element is novel and inventive on its own and that if none of the independent elements are novel and inventive then the overall claim should be considered a non inventive combination of individually not novel or inventive features.”

12 He followed this by identifying the following independent features of claim 1:

- 1.) *Separate left and right hand lever operated oscillating drive input units with forward and reverse drive and neutral and low gear drive facilities.*
- 2.) *A freewheeling mechanism.*
- 3.) *An immobilisation mechanism.*
- 4.) *Convenient positioning of controls.*
- 5.) *Low level seating.*
- 6.) *Unobstructed exits on both sides.*
- 7.) *A compact configuration such that it will fit in a hatchback car.*
- 8.) *A manually operated loading winch.*
- 9.) *Independent progressive brakes.*
- 10.) *A longitudinal adjustable pivoting footrest.*
- 11.) *A lap and shoulder seat belt.*

13 He then went on to explain why the independent features were not novel or inventive in light of several citations which were found during the search stage and what is known in the art. He concluded by explaining that in his opinion *“...claim 1 is a non inventive combination of independently functioning elements which are individually not novel and inventive.”*

14 Mr Jakeman responded in his letter of 23 December 2014, that *“Claim 1 already describes every element which I consider to be novel and inventive... and I request that you now confirm refusal of the patent.”*

15 In the examination report of 30 January 2015, the examiner again requested comments or amendments in relation to the obviousness objection of 17 December 2014, and in response, in his letter of 17 February 2015, Mr Jakeman stated that *“I do not intend to file any amendments to the application and await the verdict of the I.P.O. as to the grant of patent or rejection of the application as it stands”*.

16 A further report to the same effect was sent by the examiner on 29 April 2015, and a similar response was received from Mr Jakeman on 12 May 2015. A final

examination report and offer of hearing was sent on 14 July 2015, and the hearing was accepted in the letter of 17 July 2015.

- 17 I can find nothing in the correspondence which constitutes an attempt by Mr Jakeman to progress the application towards grant. This is despite several attempts by the examiner to elicit a suitable response, including clear guidance as to how to proceed.
- 18 As set out in the paragraphs above, there are no arguments or amendments from Mr Jakeman to be considered in relation to the inventive step objection. Therefore, I have reviewed the inventive step objection and am in agreement with the examiner that claim 1 lacks an inventive step as it is a collocation of features each independently performing its proper function.

Conclusion

- 19 I find that Mr Jakeman has failed to satisfy the Comptroller, by supplying observations or amending the application, that the inventive step objection has been overcome. I therefore refuse the application for failure to comply with sections 1(1)(b) and 18(3) of the Act.
- 20 Where a saving amendment may be possible, it is common to offer the applicant the opportunity to make such amendments and then to remit the application back to the examiner for further substantive examination. However, in this case I have not reviewed the application to identify any possible saving amendments, nor will I offer an opportunity to amend, as Mr Jakeman has made no attempt to respond to the issues raised in each of the examination reports.

Appeal

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

J Pullen

Deputy Director, acting for the Comptroller