



PATENTS ACT 1977

BETWEEN

Jansen Betonwaren B.V.

Claimant

And

Ian Robbie Christie

Defendant

PROCEEDINGS

Reference under section 72 of the Patents Act 1977 in respect of GB2414745 B

HEARING OFFICER

P R Slater

DECISION

- 1 These proceedings relate to a reference under section 72 of the Patents Act 1977 filed on 22 March 2013 by Jansen Betonwaren B.V. (“the claimant”) in respect of GB2414745 B (“the patent”). The patent was filed in the name of Ian Robbie Christie (“the defendant”) on 4 June 2004 and was granted on 15 August 2007.
- 2 The invention relates to the so-called “*EUROBLOCK*”, a self-interlocking building block manufactured primarily from a mix of concrete sand and cement, as well as elastomer and thermoplastics for use in creating flood prevention barriers.
- 3 The claimants’ original statement of grounds filed 22 March 2013 was subsequently amended on 30 May 2013 to take account of post grant amendments which had been made to the specification. The defendants’ counterstatement was filed on 16 August 2013.
- 4 On 18 December 2013, the claimants filed a further amended statement of grounds (“*the re-amended statement*”) together with their evidence-in-chief. The re-amended statement introduced a further ground for revocation that of prior public use of a building block called the “*Legioblock*” which had allegedly been manufactured and sold by Jansen Betonwaren B.V. prior to the filing of the patent in June 2004.

The Patent

- 5 The invention relates to the so-called “EUROBLOCK”, a self-interlocking building block manufactured primarily from a mix of concrete sand and cement, as well as elastomer and thermoplastics for use in creating flood prevention barriers.
- 6 There is very little by way of disclosure contained within the patent. Indeed, the description in its entirety amounts to only three paragraphs of text and a single figure as follows:

“The EURO BLOCK is a new approach to the construction of cement blocks. It is manufactured by primarily using a mix of concrete sand and cement as well as elastomer and thermoplastics. It has four main design features.

The first feature of figure one (item 1) comprises a base in the form of a rectangular block. The second feature of figure one, (item 2) is a top layer in the form of a rectangular block. The third feature of figure one, (item 3) is a female indentation. The fourth feature of figure one (item 4) is a male insert that fits into the female indentation.

The project will be produced in a range of dimensions to cover the various markets and customer requirements. This block can be used with sealant to prevent leakage. The Euroblock is intended to be used in the storage of materials and flood prevention because its main purpose is to prevent the flow of water and other materials by building a simple wall construction. The blocks are built on self-interlocking design are easily erected and dismantled”

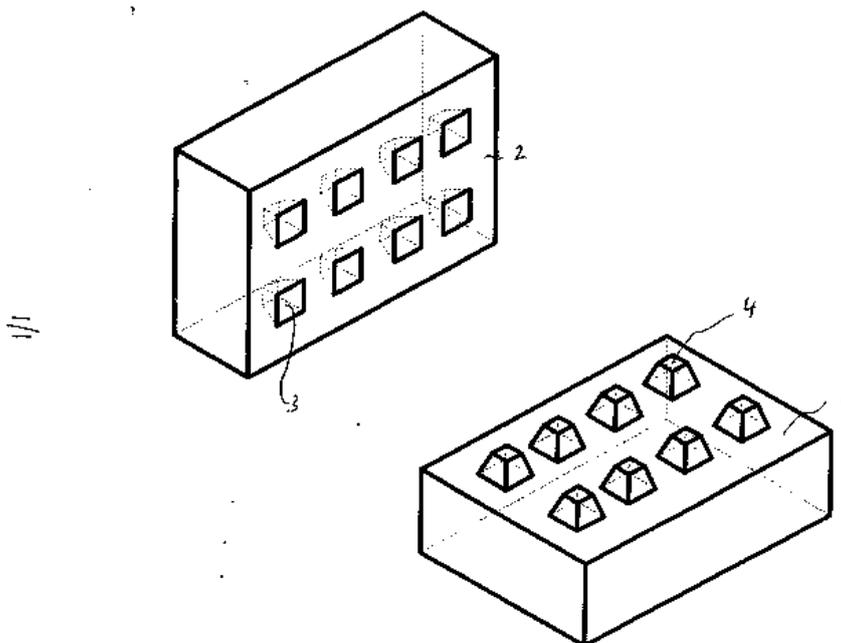


FIG. ONE

7 The patent as granted contains a single independent claim of the *omnibus* type as follows:

1. A building block substantially as described with reference to the drawings.

The Law

8 The Comptroller's powers to revoke a patent on the application of another person are set out in section 72(1) of the Patents Act 1977 ("the Act"), the relevant provisions of which read as follows:

72.-(1) Subject to the following provisions of the Act, the court or the comptroller may by order revoke a patent for an invention on the application of any person ... on (but only on) any of the following grounds, that is to say –

(a) the invention is not a patentable invention;

(b) ...

(c) The specification of the patent does not disclose the invention clearly enough and completely enough for it be performed by a person skilled in the art;

...

9 Clearly part (a) and part (c) are those which apply to these proceedings and they indirectly refer to the need for the patents to meet the requirements of section 1(1) (and of course section 2 and 3) and also of section 14(3).

10 The relevant parts of section 1 state:

1.-(1) 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;

...

11 Sections 2 and 3 define what is meant above by "new" and "inventive step" respectively:

2.-(1) An invention shall be taken to be new if it does not form part of the state of the art.

(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.

(3) The state of the art in the case of an invention to which an application for a patent or a patent published on or after the priority date of that invention, if the following conditions are satisfied, that is to say -

(a) that matter was contained in the application for that other patent both as filed and as published; and

(b) the priority date of that matter is earlier than that of the invention.

(4) ...

3. 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).

12 Section 14(3) sets out the requirement for sufficiency as follows:

14(3) The specification of an application shall disclose the invention in a manner which is clear enough and complete enough for the invention to be performed by a person skilled in the art.

The Claimants' case

13 The claimants, in their statement of grounds of 18 December 2013, have identified three prior-art documents which they allege show that the invention as claimed is not new and involves no inventive step. The documents which they rely on are UK Registered Design 2050395, US6050044 and GB2314861.

14 In summary, the claimant argues that the invention as claimed, at least insofar as it relates to the general arrangement of a building block as shown in figure 1, having interlocking male inserts and female indentations was not new at the date of filing of the patent, and for example, is disclosed in both UK Registered Design 2050395 and US6050044. The former registered design discloses the well known "*LegoTM*" block in which individual blocks have male and female inserts and indentations respectively enabling them to be laid one on top of the other. US6050044 is a further example of a similar type of block used in the construction of real buildings. Whilst neither of these disclosures show inserts or indentations having sloping sides, the claimant argues that this feature involves no inventive step and would be an obvious choice if the intention was to have a building block of the *Lego* type connectable with another in which the inserts and indentations are sloped to facilitate engagement and locking. An example of building blocks, have sloping inserts and indentations is given in GB2314861.

15 The claimants also argue that the patent is invalid by virtue of prior public use of the building block called the *Legioblock* manufactured and sold by Jansen Betonwaren B.V. The *Legioblock* comprises on the top surface eight frustro-pyramidal formations and on the bottom surface, eight correspondingly shaped indentations, allowing multiple such blocks to be easily interconnected in the same manner as shown in the drawing of the patent in suit.

- 16 Finally, they allege that the patent is insufficient as the specification does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art.

The evidence

- 17 The claimants rely on the evidence of Ms. Rinske Daniels and Mr Hans Tourne respectively. Neither of these witnesses has been subject to cross-examination and therefore their evidence stands unchallenged.
- 18 Ms. Rinske Daniels is Commercial Secretary to a subsidiary of Jansen Betonwaren B.V. Her witness statement describes how her company manufactures a product called *Legioblock*, a self-assembly block made of concrete and designed for forming walls or enclosures without the use of mortar. Each block has eight evenly spaced part-pyramidal projections on the top and correspondingly shaped recesses on the bottom so that successive layers of blocks can be used to create a wall or enclosure. Ms Daniels states that her company began making these blocks somewhere between 1998 and 2001. Her witness statement is accompanied by three supporting exhibits. Exhibit 1 - a newsletter "*de Cirkel*" dated June 2002 issued by A Jansen B.V., in which the development of the *Legioblock* is described along with photographs of the blocks themselves; Exhibit 2 – includes several dated photographs showing *Legioblocks* installed at various locations; and Exhibit 3 - a number of customer invoices relating to sales of the *Legioblock*. Verified translations of the relevant parts of the exhibits have also been provided.
- 19 Hans Tourne is Director of Machinefabriek van de Weert, a company whom he says supplied Jansen Betonwaren B.V. with the moulds for producing *Legioblocks* in 1998. Furthermore, he states that he was aware of the fact that they had started producing *Legioblocks* directly after delivery of the moulds and in any case before the filing of the patent in 2004. His witness statement is accompanied by a single exhibit showing a modified drawing of the original moulds dated 15 February 2000 which he says was supplied to Jansen Betonwaren B.V. in 2000.
- 20 The defendant relies on the witness statements of Ian Robbie Christie and Brian George Davidson both of whom have been involved at various stages in the processing of the *Euroblock* patent. Both men deny having been aware of the existence of Jansen Betonwaren B.V. and their *Legioblock* product prior to 2013. Again, these witness statements have not been subject to cross-examination and stand unchallenged.

Claim construction

- 21 Before addressing the issue of novelty and inventive step it is important to ascertain the true scope of the invention as claimed. To do this, I must apply an appropriate construction to the claims.
- 22 Historically, omnibus claims have been notoriously difficult to interpret. Are they very narrow, very broad or somewhere in between? This is exacerbated in the present case by the absence a statement of invention or any other claims which might have provided some useful guidance.

23 So what is meant by “A building block substantially as described with reference to the drawings”? The Courts in the past have tended to give omnibus claims a narrow interpretation limited to the specific embodiments described and depicted in the drawings, and I think this would be a reasonable place to start. In my opinion, the invention as described with reference to figure 1, would seem therefore to have, at the very least, “four main design features” as follows:

“The first feature of figure one (item 1) comprises a base in the form of a rectangular block. The second feature of figure one, (item 2) is a top layer in the form of a rectangular block. The third feature of figure one, (item 3) is a female indentation. The fourth feature of figure one (item 4) is a male insert that fits into the female indentation.”

24 Furthermore, I would go as far as to say that the claim should be limited to the specific embodiment shown in figure 1 where the male inserts and the female indentations are sloped and frustro-pyramidal in shape.

Novelty

25 I will begin by considering the allegation of prior-use as this would appear to be the strongest challenge to the validity of Mr Christie’s patent.

26 I would have to say that there appears to be a striking degree of similarity between the *Legioblock* and that which is the subject of the granted patent. In fact, I would go as far as to say that they appear to be identical in shape and form. The witness statement of Ms. Rinske Daniels is accompanied by a number of exhibits which substantiate this view. For example, in Exhibit 1, the newsletter entitled “*de Cirkel*” and dated June 2002 includes an illustration and a photograph of a concrete building block having male inserts and female indentations which are sloped and frustro-pyramidal in shape. Furthermore, Exhibit 2 contains some additional photographs showing the aforementioned blocks installed at various locations where they can clearly be seen to be identical in shape and form to those envisaged by the granted patent.

27 In addition, the witness statement of Hans Tourne which is accompanied by a single exhibit containing a modified drawing of the original moulds dated 15 February 2000 again shows blocks having the same general shape and form as those illustrated in figure 1 of the patent.

28 The evidence, which I emphasise stands uncontested, therefore suggests that moulds for the *Legioblocks* were being made and supplied to Jansen Betonwaren B.V. in 1998 and in a slightly modified form in 2000. Both witnesses attest to the fact that the company was producing blocks prior to the filing of the patent in 2004. Indeed, Exhibit 3 accompanying the witness statement of Ms. Rinske Daniels supports this view as it contains a number of invoices for the sale of *Legioblocks* which are dated 2003.

29 It is my view, having considered the evidence before me, that the production of the *Legioblock* product constitutes an enabling disclosure made available to the public prior to the filing of the patent in 2004 of concrete building blocks having male inserts and female indentations which are sloped and frustro-pyramidal in shape as are

described and illustrated in figure one of the patent, and that this disclosure renders claim 1 invalid for lack of novelty. I can see nothing in the defendants arguments to convince me otherwise. The fact that neither Mr Christie nor the examiner were aware of the existence of the *Legioblock* product during the examination process provides no defence. The production of the *Legioblock* constitutes a novelty destroying disclosure within the meaning of the Act. Whilst unfortunate, it is not uncommon for relevant prior-art to surface post grant particularly in cases involving prior public disclosure or materials which were not readily available to the examiner at the time of examination such as the newsletter shown in Exhibit 1.

Alternative construction and sufficiency

- 30 It is possible to apply a slightly narrower construction to claim 1 by further limiting its scope not only to the physical shape and form of the blocks as described and illustrated in the drawings but to require them to be manufactured using “*a mix of concrete sand and cement as well as elastomer and thermoplastics*”. This would have the effect of rendering the claim novel over the alleged prior-use as there is nothing in the evidence to suggest that the *Legioblocks* have such a composition.
- 31 However, this is where the issue of sufficiency comes to bear. A patent is said to be invalid “if the specification does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art” (section 72(1)(c) of the 1977 Act). The patent will be insufficient if the skilled person is unable to carry out the claimed invention given the description of it in the specification and common general knowledge (sometimes called “classical insufficiency”). In order to be sufficient the application must include as a minimum something amounting to one embodiment or example that can be put into effect. The second way in which sufficiency can arise is when the disclosure is so ambiguous as to make it impossible to know whether one had worked the invention or not
- 32 *So who is the skilled person and what does he know?* A patent specification is addressed to those likely to have a practical interest in the subject matter of the invention, and such persons are those with practical knowledge and experience of the kind of work in which the invention is intended to be used. The addressee comes to a reading of the specification with the common general knowledge of persons skilled in the relevant art, and he or she reads it knowing that its purpose is to describe and demarcate an invention. The skilled person is unimaginative and has no inventive capacity.
- 33 I am conscious that neither party has addressed the issue of the skilled person in their evidence, so I have little to guide me in this respect. However, I consider that in this case the skilled addressee is someone who is involved in the construction of concrete structures including walls using cement blocks to protect materials from ingress of water and for flood prevention, and that they would have knowledge of the materials, techniques and processes used to manufacture cement blocks.
- 34 *So, is the disclosure sufficient for the skilled person to carry out the invention?* I do not think so. In this case, if I am correct in having further limited the claim to a building block manufactured using “*a mix of concrete sand and cement as well as elastomer and thermoplastics*”, I would have expected to see at least one example, or at least an indication given in the specification of the type of elastomer and

thermoplastics to be used, and the composition of the mixture in terms of the relative amounts of each of the constituents to be used. Whilst I appreciate that the skilled person may have some knowledge of the use of elastomers and thermoplastics or the like in cement based products, I think in the absence of a specific embodiment or any indication whatsoever as to the composition of the mixture or the relative amount of elastomer or thermoplastics present, I do not believe the specification to be sufficient enough for him to carry out the invention without having to exercise a degree of innovation and imagination on his part to determine the effective composition of the mixture required to perform the invention. Indeed, without knowing the reasons for adding an elastomer or thermoplastic to the cement mixture it becomes extremely difficult to select the appropriate materials to achieve what appears to be an unknown objective, and to know whether one had worked the invention or not. Whilst the specification refers to a sealant, I do not think this is the purpose of the elastomer or thermoplastic as it would not appear to be an essential feature of the invention. Therefore, I consider the disclosure to be insufficient as it is both ambiguous and does not provide sufficient enough an enabling disclosure for the skilled person to perform the invention with any degree of certainty.

- 35 The claimants have also identified three prior-art documents, namely UK Registered Design 2050395, US6050044 and GB2314861, which they allege show that the invention as claimed is not new and involves no inventive step. However, having found the patent to be invalid for lack of novelty or sufficiency on the basis of prior public use in the form of the *Legioblock* product, I have no need to consider these documents or to decide this issue.

Conclusion

- 36 I have found GB2414745, on a first construction of the claim (see paragraphs 23 to 24) to be invalid due to a lack of novelty or alternatively on a slightly narrower construction (see paragraph 30) to be invalid due to a lack of a sufficiency in its disclosure. I therefore, order that the patent be revoked unless an appeal is lodged within the time period specified below.

Costs

- 37 I have not yet received any detailed submissions on the question of costs as such and accordingly I make no order in that respect. However, I invite both parties to file any arguments they wish to on the question of costs within two weeks of the date of this decision for my subsequent consideration.

Appeal

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

P R SLATER

Deputy Director acting for the Comptroller