



PATENTS ACT 1977

APPLICANT	Keyfix Limited
ISSUE	Whether GB 2016812.6 complies with section 1(1)(a) of the Patents Act 1977
HEARING OFFICER	Sally Vinall

DECISION

Background

- 1 Patent application GB 2016812.6 ("the application") entitled "Cavity Tray" was filed on 22 October 2020, with an earliest declared priority date of 7 January 2020 in the name of Keyfix Limited. It was published as GB 2590773 A on 7 July 2021.
- 2 The applicant filed amended claims prior to substantive examination. The examiner issued his first examination report on 26 April 2023. Following six rounds of correspondence between the examiner and the applicant's attorneys, and amendment of the claims, the examiner remains of the view that the claimed invention is not novel in light of prior art GB 2588649 A1 (ACS STAINLESS STEEL FIXINGS).
- 3 Third party observations have been filed following the issuance of every examination report.
- 4 With the position unresolved the applicant asked to be heard and the matter came before me at a hearing conducted online on 14 August 2024. The issue of novelty before me was set out in the examiner's pre-hearing report of 10 July 2024. The applicant was represented at the hearing by attorney Mr John Hanna of Hanna IP. I was assisted by Mr Marc Collins. The attorney filed skeleton arguments prior to the hearing for which I am grateful.

Auxiliary Claims

- 5 In addition to providing arguments the skeleton arguments also included amended claims and a further eight potential statements which could be included in independent claim 1. In my view, filing such a large number of potential amendments to the claims for consideration at the hearing is not an efficient use of the tribunals' time and following the guidance in paragraph 18.63.3 of the Manual of Patent Practice I was of the view that I was under no obligation to consider these claims. This is in keeping with previous practice such as was followed in BL O/238/12.

Therefore, I requested Mr Hanna highlight one or two of the proposed amendments to the claims for consideration at the hearing. On the morning of the hearing, the attorney subsequently filed an amended independent claim 1 for consideration along with three further possible amendments to claim 1. In the hearing Mr Hanna requested that this be considered instead of the claims filed with the skeleton arguments. I agreed to accept the latest amended claim 1 and receive oral submissions thereon at the hearing. I also heard argument regarding the three further potential amendments to claim 1 should they be required.

- 6 I note that the proposed amendments considered at the hearing have not been examined. I have considered clarity and support only so far as is necessary to construe the claims to decide the matter of novelty and have not considered other requirements of The Patents Act 1977 ("The Act"). Furthermore I have only considered the relevance of ACS STAINLESS STEEL FIXINGS to the proposed amendments. I have not considered whether the search is complete, nor whether documents previously raised by the examiner are relevant to the claims as amended. I note that features have been removed from the independent claims and therefore should I find in the applicant's favour the application will need to be remitted to the examiner for further examination.

The invention

- 7 The application relates to the field of building construction, and more particularly relates to cavity trays for cavity walls.
- 8 The construction of buildings having cavity walls with an inner leaf, outer leaf and a cavity therebetween is common. In order to prevent thermal bridging between the two leaves of the cavity insulation is also applied in the cavity.
- 9 The application explains that a major problem associated with buildings having cavity walls is dampness. Dampness usually occurs due to penetration of moisture through the masonry of the outer leaf which can then travel across the cavity and permeate the inner leaf of the cavity wall. Dampness may also permeate the inner leaf of the cavity wall by passing through gaps or openings in the cavity for example at a window/door opening or where a floor slab has been inserted. Dampness may also occur at these areas due to condensation arising from thermal bridging at these areas as a result of the gaps or openings. In order to prevent moisture permeating the inner leaf of the cavity wall, damp proof courses such as cavity trays may be installed between the leaves. Such damp proof courses are typically formed of polypropylene due to its water-resistant properties. However, polypropylene is a combustible material and, in case of a fire, combustible materials such as polypropylene enable the spread of smoke and flames through the cavity to subsequent levels/ floors.
- 10 Another problem associated with buildings having cavity walls is differential movement between the two leaves of a cavity wall, in particular where there is an uneven distribution of weight between the two leaves. This uneven distribution of weight typically occurs where the building has multiple floors or where there is a window or door opening. In order to increase structural integrity of such buildings and prevent against differential movement, it is necessary to bridge the cavity between the two leaves with structural supports such as brackets and/or lintels at

wall/floor slab junctions between two levels or above window/door openings. Consequently, damp-proof courses and support brackets/lintels are required within close proximity to each other. Therefore, to prevent thermal bridging in these areas, insulation must be cut and manoeuvred into the space between the damp proof course and the support bracket/lintel. This can be difficult and time consuming and often results in improper installation of insulation, resulting in thermal bridging between the leaves of the cavity wall.

- 11 The application sets out the objectives of the invention are to aid in preventing moisture permeating the inner leaf of a cavity wall, to prevent the spread of smoke, flames and fumes in a cavity of a cavity wall and to prevent thermal bridging between leaves of a cavity wall.
- 12 Figure 1 illustrates a cavity tray 1 for a cavity wall 2 of a building having an arrangement for delivering internal moisture towards the outer leaf of the cavity wall 2. The cavity tray 1 extends into the cavity, supported only by the outer leaf 5 of the cavity wall. This means that the cavity tray 1 prevents the ingress of moisture within the cavity and mitigates the requirement of mechanically fixing the cavity tray 1 to the inner leaf 4 of the cavity wall thereby reducing the amount of time and material used during installation of the cavity tray 1.

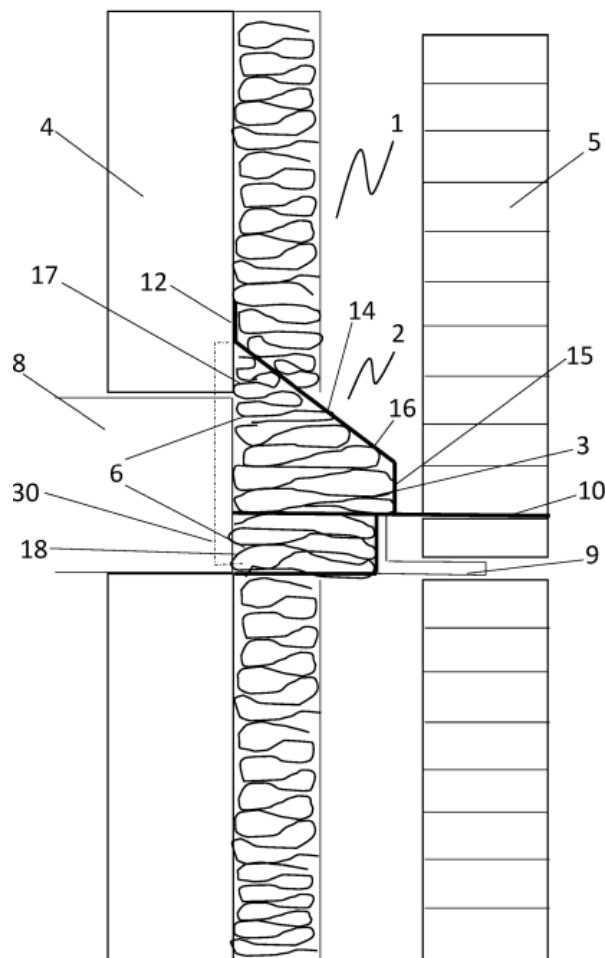
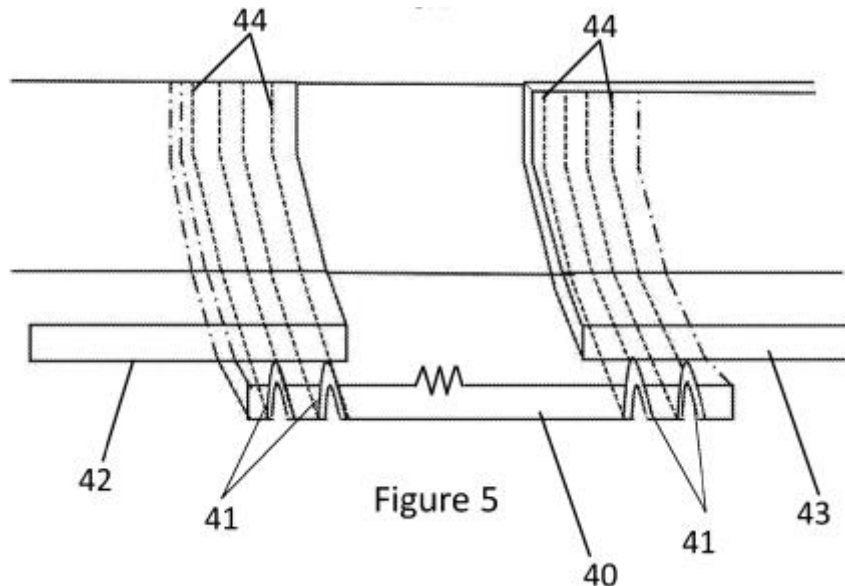


Figure 1

- 13 The cavity tray 1 has a lower portion 10, and upper portion 11 and a middle portion 12. The middle portion 12 extends between the lower portion 10 and the upper

portion 11 for delivering internal moisture towards the outer leaf 5 of a cavity wall 2. The cavity tray 1 may be a one-piece cavity tray.

- 14 The cavity tray 1 has a stop end to prevent internal moisture cascading over the end of the tray for delivering internal moisture towards the outer leaf of a cavity wall 2 into the cavity. The stop end may extend from the upper portion 12 to the lower portion 10.



- 15 The cavity tray may overlap an adjacent cavity tray as shown above in Figure 5. The cavity may include ribs 41 for preventing slippage of the cavity tray 1 relative to the surface or masonry upon which it is mounted.
- 16 As noted above the claims for consideration are those filed on 14 August 2024 and have not been considered by the examiner. They include an amended independent claim 1 along with three further potential amendments which are set out below:

1. *A non-combustible self-supporting cavity tray for a cavity wall of a building comprising a means for delivering internal moisture towards an outer leaf of a cavity wall, the cavity tray being configurable to extend into the cavity, supported only by the outer leaf of the cavity wall; wherein the cavity tray comprises a stop end to prevent internal moisture cascading over a lateral end of the means for delivering internal moisture towards the outer leaf of a cavity wall, into the cavity; wherein the cavity tray with the stop end is configurable to overlap an adjacent cavity tray; and wherein the cavity tray comprises a means for preventing slippage being configurable to engage with mortar to resist movement of the cavity tray relative to the surface upon which it is mounted and/or to ensure a good mortar bond.*

Amendment option 1:

The cavity tray being a one-piece cavity tray.

Amendment option 2:

The stop end comprises a folded portion of a lateral edge of the means for delivering internal moisture towards the outer leaf of a cavity wall.

Amendment option 3:

The stop end extends from an upper portion to a lower portion.

The Law

17 The relevant provisions of the Patents Act for the purposes of this decision are sections 1 and 2 relating to general grounds for patentability and novelty:

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) ...*
- (c) ...*
- (d) ...*

and references in this Act to a patentable invention shall be construed accordingly.

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 relates shall be taken also to comprise matter contained in an application for another patent which was 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.*

18 Section 125 of the Act sets out the extent of the invention as follows:

125.-(1) For the purposes of this Act an invention for a patent which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent

of the protection conferred by a patent or application for a patent shall be determined accordingly.

Claim construction

- 19 Before considering the question of novelty, I will need to construe amended claim 1. In doing so I must interpret the claim in context through the eyes of the person skilled in the art. Ultimately the question is what the person skilled in the art would have understood the patentee to be using the language of the claim to mean. This approach has been confirmed in the High Court in *Mylan*¹ and the Court of Appeal in *Actavis*².
- 20 Mr Hanna helpfully clarified the amendments made regarding the ‘self-supporting’ cavity tray. The cavity tray sits on the outer leaf and requires no further support from or attachment to the inner leaf and pointed to page 2 of the published application for support of this. I am happy to accept that definition although note that this does not preclude the cavity tray contacting or resting against the inner cavity wall but should not be attached to it or specifically required to be supported by it.
- 21 At the hearing Mr Hanna highlighted the “stop end” and what the person skilled in the art would understand the features of a “stop end” to be. Mr Hanna discussed the height of a stop end. Amended claim 1 requires “the cavity tray comprises a stop end to prevent internal moisture cascading over a lateral end of the means for delivering internal moisture towards the outer leaf of a cavity wall, into the cavity”. Mr Hanna argued that use of the word “cascading” teaches the skilled person that the height of the stop end must be more than merely a small lip, rib or flange. It was argued that the word “cascading” implies a reasonable amount of moisture and as such a small lip, rib or flange would not prevent any reasonable amount of moisture from travelling over the end cavity tray. Mr Hanna suggested the wording implies the height of the stop end should be the height of a brick.
- 22 Mr Hanna further referred to the National House Building Council (NHBC) guidance and the section thereof that discusses cavity trays and stop ends. Mr Hanna explained that stop ends are very well known in the art of building construction and the skilled person would know what they were and the features thereof. The NHBC guidance has a technical guidance section titled “Forming stop ends to cavity trays”. The section explains that “Stop ends stop water spilling over the ends of the lintel” and that “A stop end must be of sufficient height to contain water and discharge it safely through a weephole to the external face of the wall. The height must be able to accommodate a small amount of mortar droppings that may collect on the cavity tray during construction”. However, the guidance does not set out any measurements, minimum or otherwise, for the height of a stop end.
- 23 The specification as filed does not include any description of the technical features of a stop end. Furthermore, the figures of the specification as filed do not include a stop end. The specification merely explains that the function of a stop end is to prevent

¹ Generics UK Ltd (t/a Mylan) v Yeda Research and Development Co. Ltd & Anor [2017] EWHC 2629 (Pat)

² Actavis Group & Ors v ICOS Corp & Eli Lilly & Co. [2017] EWCA Civ 1671

internal moisture cascading over the end of the means for delivering internal moisture towards the outer leaf of a cavity wall into the cavity.

- 24 I am minded to agree with Mr Hanna that stop ends are well known in the art of building construction and the skilled person would know what one is. However, I am not persuaded that the use of the word “cascading” limits the scope of the claim in the way suggested by Mr Hanna. In my view, the skilled person would not understand the word “cascading” to imply a certain height to the stop end. However, I do consider the NHBC guidance, which explains that the height of the stop end “must be able to accommodate a small amount of mortar droppings that may collect on the cavity tray during construction”, to teach the skilled person that a small lip, rib or flange would not be of sufficient height to function in containing water if a small amount of mortar were to be dropped onto it.

Priority date and prior art

- 25 The application claims priority from four GB applications, the earliest of which is GB1915276.8 with an earliest date of 22 October 2019. This earliest priority application omits the feature of a stop end which is now included in claim 1 as an essential feature of the invention. The relevant priority application for amended claim 1 is GB2000153.3 which has an earliest date of 7 January 2020. This was not contended at the hearing
- 26 The examiner has relied upon prior art GB 2588649 A1 (ACS STAINLESS STEEL FIXINGS) as anticipating independent claim 1. ACS STAINLESS STEEL FIXINGS was published on 5 May 2021 with an earliest date of 30 October 2019. Therefore, ACS STAINLESS STEEL FIXINGS falls into the s.2(3) field as prior art suitable for use as a novelty citation only.

GB 2588649 A1 (ACS STAINLESS STEEL FIXINGS)

- 27 ACS STAINLESS STEEL FIXINGS discloses a cavity tray system for a cavity wall of a building. The cavity tray system is intended to direct water towards the exterior of the building. Figure 3 below shows the cavity tray system including a first cavity tray 10 and a second cavity tray 20. The first cavity tray 10 has a first planar section 11 which can be provided with a series of holes 12 there-through which allow easy fitting of the first cavity tray 10 to an inner leaf of a cavity wall. The first cavity tray 10 also comprises a second planar section 13.
- 28 The second cavity tray 20 is intended to be positioned below the first cavity tray 10 when the cavity tray system is in use. The second cavity tray 20 comprises an elongate section 21 which, preferably, is so sized and structured that it will allow embedding within the mortar course of an outer leaf of a cavity wall. The elongate section 21 may be provided with a number of holes or elongate slots 23. The provision of such elongate slots 23 allows for the mortar within the mortar course of the outer wall to pass from the lower to upper side of the elongate section 21 and thus ensures reliable and solid fitting of the elongate section 21 within the mortar course in the wall.
- 29 Figure 3 also shows two cavity trays in an overlapping configuration.

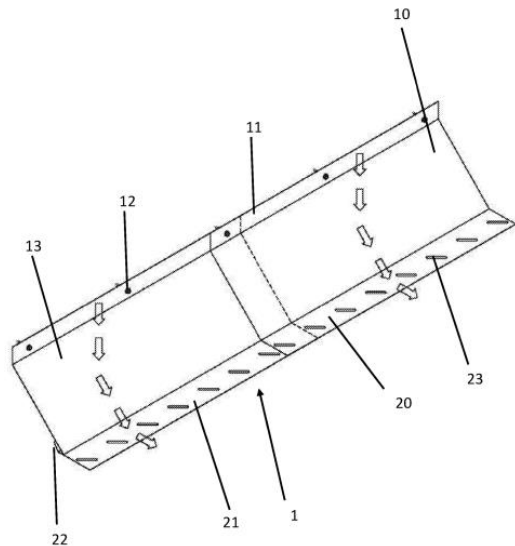


Fig. 3

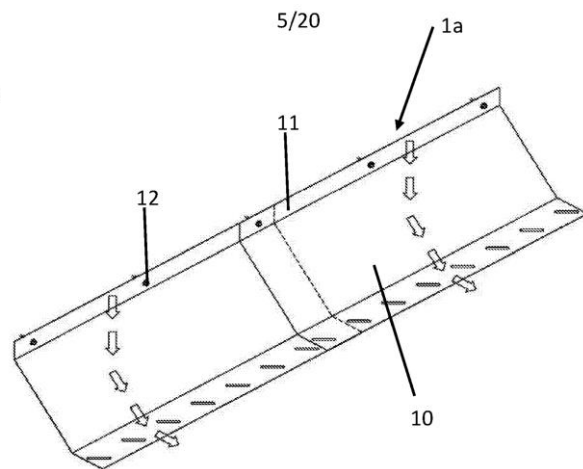


Fig. 5a

- 30 ACS STAINLESS STEEL FIXINGS explains that the two-piece cavity tray system 1 described above may not be desired or useable. In such circumstances, the one-piece cavity tray system 1a as shown in Figure 5a. Figure 5a has all of the above described features: including a second planar section 13 forming a skirt-like structure that is integrated with a first planar section 11 which is to be fitted within the mortar course of a masonry wall, but the second cavity tray 20 is provided by a further section or extension 50, of the second planar section 13.
- 31 On page 9, line 10, ACS STAINLESS STEEL FIXINGS describes the provision of the first planar section 11 as optional in order to simplify the construction of the first cavity tray 10. As shown in Figure 4 below, the first cavity tray 10 is provided by a single angled sheet 13 cooperating with the second cavity tray 20 to guide water and moisture to the outer leaf of the cavity wall.
- 32 Figure 5b below illustrates a further embodiment of the invention. It shows the one-piece cavity tray system of Figure 5a but with the first planar section 11 removed in the same way as Figure 4.

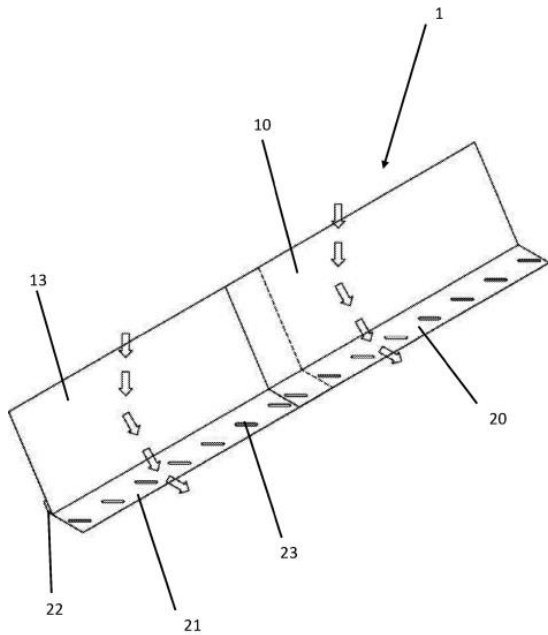


Fig. 4

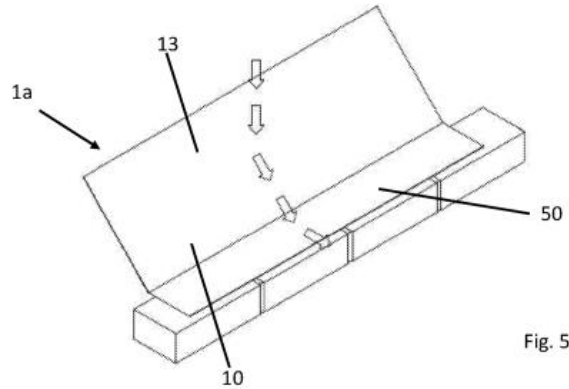


Fig. 5b

33 ACS STAINLESS STEEL FIXINGS provides further embodiments which include flaps 80 to ensure that the liquid which is collected by the cavity tray system is properly guided out of the cavity. Examples of these flaps 80 are illustrated in Figures 13, 14a, 14b and 15.

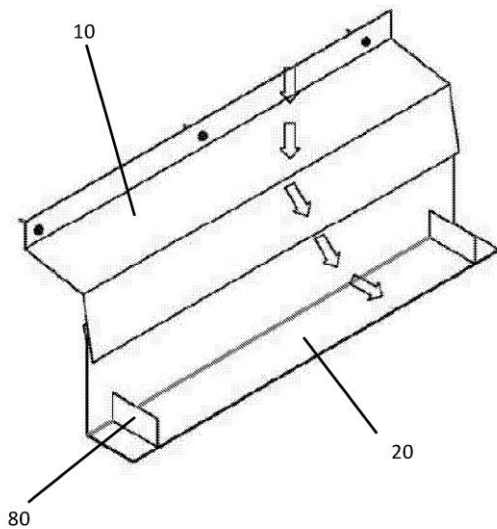


Fig. 13

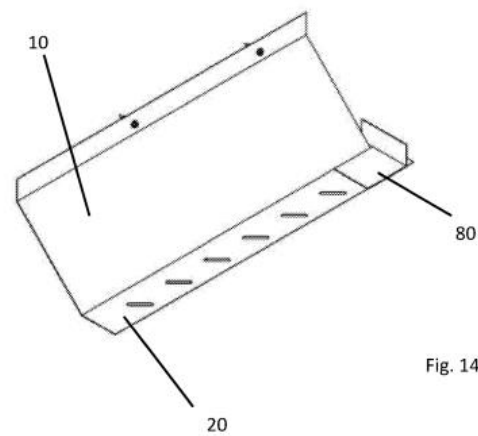


Fig. 14a

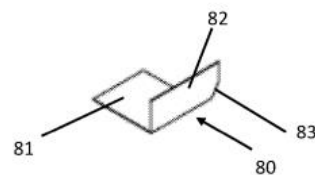
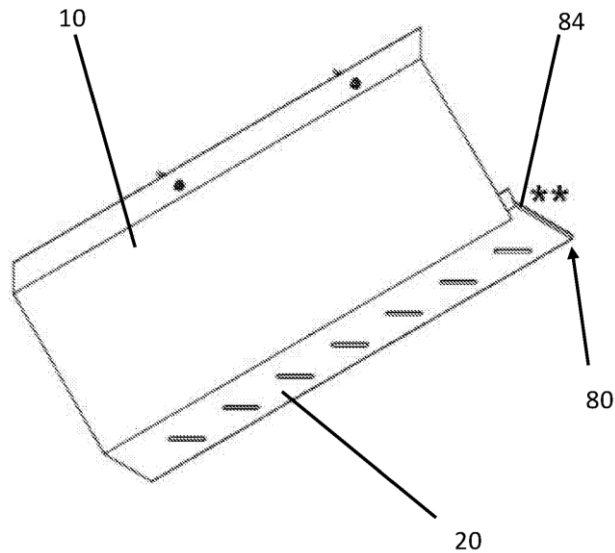


Fig. 14b

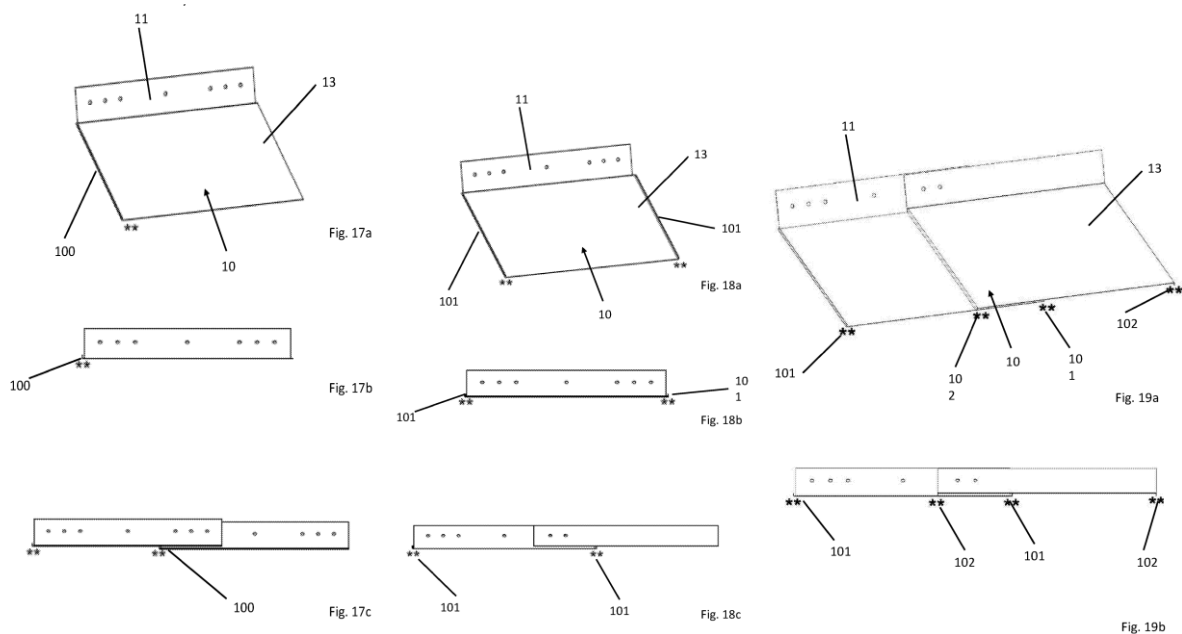
34 Page 14, lines 21-27 describes “the second cavity tray 20 or the extensions 50 in the one-piece cavity tray 1a system may be provided with one or more upwardly extending flaps 80. These upwardly extending flaps 80 extend out of the plane of the second cavity tray 20 or the extensions 50 and will stop liquid movement over the

surface in a lateral direction, instead ensuring that the liquid flows only in the direction of leaving the cavity 2. The upwardly extending flaps 80 may form an integral part of the second cavity tray 20.”

35 Figure 15 shows a further embodiment in which the integral upwardly extending flaps 80 forming part of the second cavity tray 20 described in paragraph 38 are in the form of an integral lip 84. Page 15, lines 11-13 states that the lip 84 “extends upwards in use, out of the plane of the second cavity tray 20 and will also guide liquid out of the cavity 2 to the exterior of the cavity wall 3.”



36 At the hearing, Mr Hanna drew attention to the embodiments of Figures 17a-17c, 18a-18c and 19-19b which include jointing structures to improve the join between adjacent cavity trays when in an overlapping configuration. One or more of the lateral edges of the cavity trays can be provided with a jointing structure which may be in the form of upwardly extending lip or flange 100, 101 or downwardly extending flange 102.



Does ACS STAINLESS STEEL FIXINGS anticipate amended Claim 1?

- 37 Mr Hanna argues that ACS STAINLESS STEEL FIXINGS does not disclose one single embodiment of the cavity tray system disclosing all features of amended independent claim 1. Further, it is argued that combining elements of different embodiments is not necessarily taught to the skilled person. I agree that elements of some embodiments of the cavity tray system are clearly unsuitable for application across all embodiments of the cavity tray system. The question is therefore whether the skilled addressee would understand the teaching of this document such that they would necessarily combine the features disclosed to arrive at the cavity tray of amended claim 1 above. I note, from *General Tire v Firestone*³ that “A signpost, however clear, upon the road to the patentees invention will not suffice. The prior inventor must be clearly shown to have planted his flag at the precise destination before the patentee.”
- 38 Regarding the feature of the cavity tray being “non-combustible”, page 17, lines 20-22 of ACS STAINLESS STEEL FIXINGS explains that “the material making up the elements is of a non-flammable nature”. This is applicable to all embodiments and is not contested.
- 39 Turning to the embodiment illustrated in Figure 5b, there is disclosed a self-supporting cavity tray 1a for a cavity wall of a building comprising a means for delivering internal moisture towards an outer leaf of a cavity wall (planar section 13 and extension 50). The cavity tray is configurable to extend into the cavity, supported only by the outer leaf of the cavity wall. This embodiment explicitly lacks the portion 11 for attaching to the inner cavity wall, which has previously been described as optional, to provide a simplified, one-piece cavity tray which will necessarily be held in position by the lower portion 50 and is thus self-supporting.
- 40 Whilst the slots in portion 50 to engage with the mortar to resist movement of the cavity tray are not shown in this figure, the description does not teach that they are to be omitted and explicitly states that this embodiment provides a tray “in a similar manner to that described above with respect to Fig 5a”. The benefits of the slots have been clearly explained and it is therefore my view that the skilled person would not consider omitting them without a clear reason, beyond their omission in a drawing, to do so.

³ *General Tire & Rubber Company v Firestone Tyre & Rubber Company Limited* [1972] RPC 457 at page 486

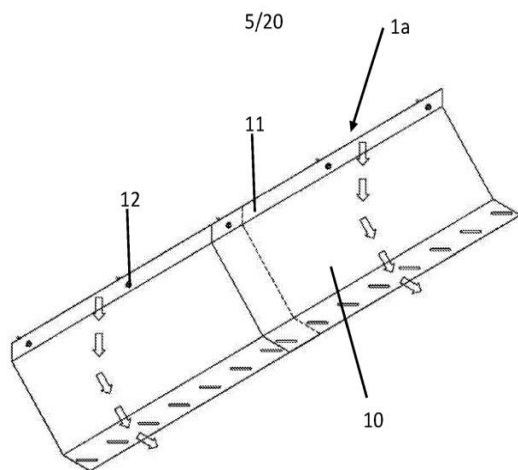


Fig. 5a

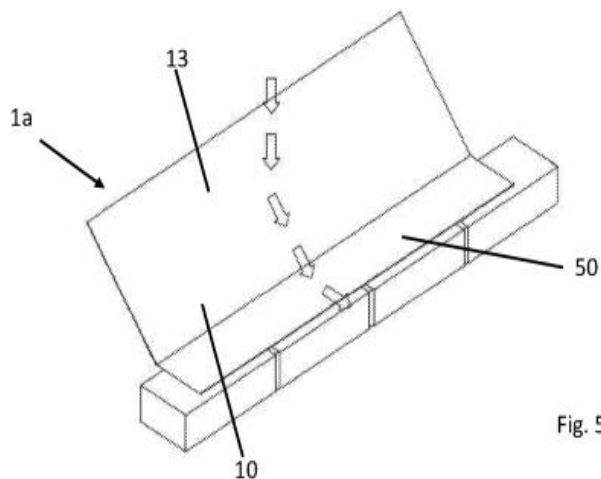


Fig. 5b

- 41 The embodiment of Figure 5b does not show the cavity tray in an overlapping configuration with an adjacent cavity tray. However, as noted above, this embodiment is intended to be similar to the cavity tray of Figure 5a but with the portion 11 removed and thus it is considered clear that the tray of this embodiment is similarly configurable to overlap an adjacent tray, as depicted in figure 5a.
- 42 I therefore consider that the only feature not definitively taught to the skilled addressee when looking at this particular embodiment is that of the stop-ends.
- 43 Mr Hanna highlighted the embodiments of Figures 17a-17c, 18a-18c and 19-19b in ACS STAINLESS STEEL FIXINGS which include jointing structures and he helpfully discussed the various lips and flanges and their relative arrangements to provide the required joint between trays . He further explained their incompatibility for an overlapping configuration of a cavity tray having a stop end as required by claim 1. I do not disagree with Mr Hanna on this point. The lips of these embodiments are clearly arranged to ensure water cannot run between overlapping trays. Whilst the size of these lips is not discussed it would appear that, even should the skilled addressee consider such lips could be made large enough to function as a stop-end, this would be obvious to do rather than clearly and unmistakably disclosed. These embodiments do not, therefore, anticipate the claim.
- 44 However such an argument does not similarly apply to the flap 80 which is to stop liquid movement in a lateral direction. This is clearly intended to function as a stop-end, although it is not called this in the specification. The flap 80 may be provided as part of a lintel tray in Figure 13, a separate piece in figures 14a and b or, in Figure 15, as an integral lip 84.
- 45 In reference to the lintel tray of Figure 13 Mr Hannah pointed out multiple differences, including the arrangement whereby the top portion 10 could not be supported other than by attaching it to the internal cavity wall and that the stop-ends would prevent the tray overlapping an adjacent one, which would not be typical in such an arrangement for a lintel anyway. I agree and do not consider this embodiment anticipates the claim.

- 46 In reference to the arrangements of Figures 14 and 15 Mr Hanna rightly pointed out that the modification whereby portion 11 is removed would not be applicable across all embodiments. In some embodiments the upper tray is clearly not supported by the lower tray and thus removal of the portion by which the upper tray is attached to the inner wall would not be practical. Whilst I appreciate this point, the addition of flap 80 is explicitly in reference to “the second cavity tray 20 or the extensions 50 in the one-piece cavity tray”. These features are depicted in Figures 3-6 and I consider this constitutes a clear direction to the skilled addressee to provide a stop end on these trays in the manner disclosed.
- 47 I note that in the drawings the tray with the flap 80 is not depicted as overlapping adjacent trays and the description with specific reference to Figures 14 and 15 is silent on this issue. However, as above, these trays are explicitly designed to overlap and the stop end is only shown at one end so I consider that the skilled addressee would readily understand that the trays should overlap as depicted in Figure 5a, and would be able to work this in practice. If this is not the case then it would appear that the present application does not clearly support such a feature as it is similarly silent as to how the stop end is to be arranged to allow the trays to overlap.
- 48 I therefore consider that the teaching of this document would lead the skilled person to provide a non-combustible, self-supporting cavity wall tray supported only by the outer leaf of the cavity wall and configurable to overlap an adjacent cavity tray, including a stop end as discussed above. This claim is therefore not novel over ACS STAINLESS STEEL FIXINGS.

Amendment options

- 49 Having found amended claim 1 to be anticipated by ACS STAINLESS STEEL FIXINGS I will now consider the three further amendment options put forward by Mr Hanna at the hearing.

Amendment option 1

- 50 The first amendment option requires “the cavity tray to be a one-piece tray”.
- 51 Figure 5 of ACS STAINLESS STEEL FIXINGS explicitly discloses an embodiment whereby a one-piece cavity tray is provided, Figure 5b demonstrating a self-supporting embodiment of this as discussed above. With regards the stop end, whilst the flap 80 may be a separate piece, page 14 lines 26-27 state that “the upwardly extending flaps 80 may form an integral part of the second cavity tray 20”. Whilst this is discussed in reference to the preferred two-piece embodiment the skilled addressee has already been taught at lines 21-22 that the upwardly extending flaps 80 may be provided for the “second cavity tray 20 or the extensions 50 in the one-piece cavity tray” and would therefore understand such disclosure is equally applicable to the single-piece embodiment.
- 52 An example of this is shown in Figure 15 where the upwardly extending flap 80 is in the form of an integral lip 84 at the end of the second cavity tray 20. Mr Hanna argued that the lip 84 is not of sufficient height to constitute a stop end. Whilst the lip 84 looks like a small lip in Figure 15, dimensions cannot be established from patent drawings. The lip 84 is described as being a form of the flap 80 for guiding liquid out

of the cavity 2 to the exterior of the cavity wall 3. Therefore, I consider lip 84 to be a stop end and this embodiment to anticipate this amendment option.

Amendment option 2

- 53 The second amendment option requires “The stop end comprises a folded portion of a lateral edge of the means for delivering internal moisture towards the outer leaf of a cavity wall”. There was some discussion as to whether the word “portion” implies that the whole edge should be folded, or just a section may be folded up. It was not possible in the hearing to identify wording in the original specification that may clarify this.
- 54 Given this and following on from my consideration of amendment option 1 above, the skilled person is taught by ACS STAINLESS STEEL FIXINGS to provide one-piece cavity trays with planar sections at an angle to one another by folding. Furthermore, the integral lip 84 would appear to be provided by folding a portion of the lateral edge of the second cavity tray 20 or extension 50. As a result, amendment option 2 is also considered to be anticipated by ACS STAINLESS STEEL FIXINGS.

Amendment option 3

- 55 The third amendment option requires “The stop end extends from an upper portion to a lower portion.” The stop end of ACS STAINLESS STEEL FIXINGS extends between the lower portion of the tray (20 or 50) to the upper portion of the tray (sloping portion 13) and therefore, on the face of it, would anticipate this option.
- 56 However there is some difficulty regarding the clarity of this phrase in light of the description, which in the illustrated embodiments includes lower portion 10, intermediate part 15, sloping portion 14 and upper portion 12. Whilst it is not clear which of these portions are essential due to the current wording of the claim, in embodiments the upper and lower portions are separated by an intermediate and/or sloping portion, the stop end extending from the upper portion to the lower portion. Such an arrangement is not disclosed in ACS STAINLESS STEEL FIXINGS where the stop end extends along the edge of extension 50 and a portion of the upper part of the tray, as showing in Figures 14 and 16, but the upper part of the tray is directly adjacent to the lower part. I therefore consider that there is a potential formulation of this amendment option which would be novel over ACS STAINLESS STEEL FIXINGS.

Conclusion

- 57 For all the reasons set out above, I find that amended claim 1, amendment option 1 and amendment option 2 are anticipated by ACS STAINLESS STEEL FIXINGS under section 1(1)(a) of the Patents Act 1977. Whilst there is some uncertainty around construing amendment option 3 I consider in its present form it is also anticipated by ACS STAINLESS STEEL FIXINGS. However, I have found that there is a potential amendment including this feature which would be novel over the prior art.
- 58 I therefore give the applicant two weeks from the date of this decision to make such amendments. If they do I remit the application back to the examiner for further

examination. Otherwise I direct that the application should be refused under Section 18(3).

- 59 I note that the extended compliance date currently stands at 22nd October 2024, having already been extended from 22nd June 2024 and any further extensions beyond this date are discretionary as set out in the Manual of Patent Practice at Section 20.02.

Appeal

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

Sally Vinall

Patent Examination Group Head