

**PATENTS ACT 1977**

APPLICANT Save Water Limited

ISSUE Whether patent application number  
GB1120217.3 complies with section  
1(1)(a), 1(1)(b) and 76

HEARING OFFICER H Jones

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**DECISION**

**Introduction**

- 1 The application in issue relates to a urinal cap suitable for use with a urinal cleaning block, where the cap is capable of being retrofitted to a urinal waste pipe or outlet and comprises a cap body with a plurality of stems extending downwards from it. The application was filed on 23 November 2011 and published as GB2496870 on 29 May 2013.
- 2 The examiner has argued that the application does not meet the requirements of the Act either through want of novelty or inventive step or through the disclosure of subject matter not contained in the original application (i.e. added matter). The applicant requested a hearing to decide the matter which took place on 18 July 2016. Mr Robert Harris and Mr Joseph Harris attended the hearing on behalf of the applicant, Save Water Limited, bringing with them an example of the urinal cap. Also present were the examiner, Dr Sybren ten Cate, and my assistant Ms Mary Taylor.
- 3 Subsequent to the hearing the applicant sent in a further submission by email dated 19 July 2016 (hereafter "the further submission") which I have considered as part of my analysis below.

**The law**

- 4 The relevant sections of the Act concerning novelty, inventive step and added matter are set out below:

*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;*
- (c) ...*

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

*2(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.*

*2(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.*

*76(2) No amendment of an application for a patent shall be allowed under section 15A(6), 18(3) or 19(1) if it results in the application disclosing matter extending beyond that disclosed in the application as filed.*

## **The application**

5 Claim 1 of the application as amended on 25 April 2016 now reads:

A urinal cap suitable for use with a urinal block, which cap may be retrofitted to a urinal waste pipe or outlet and waste strainer, said cap comprising:

a cover portion defining a cavity for locating a cleaning compound/bacterial block;

a plurality of stems depending from the underside of said cap, said stems being adapted to locate inside said waste outlet;

said cap comprising a plurality of side apertures located in sides of said cover portion;

such that, in operation, urine fluids pass over said cap and through said side apertures and across said cleaning compound/bacterial block, eroding the urinal block, dosing cleaning compound/bacterial block into the waste pipe or outlet;

said cleaning compound/bacterial block is secured in a position within said cap which facilitates activation of said cleaning compound exclusively by administration of urine, avoiding necessity of contact with flushing water, thus allowing for waterless urinal operation.

## **Period for putting the application in order**

6 The prescribed period for putting this application in order expired on 23 May 2016. The applicant has been informed of this on a number of occasions and also that the period could be extended by two months by filing the relevant form and fee. The applicant has not filed the required form or fee and the opportunity to do so has now lapsed. Therefore the period for putting this application in order has expired and there is no avenue available to the applicant to extend this period or to make further amendment to the application.

7 As the period for putting the application in order has expired, the decision for me is whether, on the date the compliance period ended, the application was in fact in

order for grant. If I find that the application was not in order at this point it will be refused.

### **Argument and analysis**

#### **i) Added subject matter**

- 8 Before I address the issues of novelty and inventive step I need to consider the issue of added matter raised by the examiner in relation to the final paragraph of claim 1 as filed on 25 April 2016 in relation to waterless urinal operation. The examiner argues that the disclosure in the specification does not contain any mention of waterless urinal operation but instead refers to reducing the amount of water used by flushing.
- 9 The applicant argued that the cleaning block was only activated by urine, referring me during the hearing and in the further submission to several parts of description which show that the fluid passing under or through the cavity was only urine and not water (such as lines 20-24 of page 5, lines 1-5 of page 6 and line 25 of page 7). The applicant said at the hearing that the attorney who drafted the claims had used fluid as a polite term for urine and that therefore the term "fluid" in the description did not refer to water but only to urine. However, I note that in other places in the description, such as on page 1, line 17, there is an explicit reference to urine, so clearly the attorney has used the word urine where suitable.
- 10 At the hearing and in the further submission the applicant said that it was clear that waterless flushing was intended and that the urine block was only activated by urine because of the passage of text at page 8, lines 21 - 24, of the description which says "the urinal cap is adapted to allow the bulk of the fluid flow to pass under the cover section, so that only a minimal release of bacterial culture takes place. It is advantageous however to allow increased output of the cleaning compound if desired. For this reason yet a further embodiment of the invention provides for increase flow passed [*sic*] the urinal block." However, as I have set out above, the word fluid encompasses both water and urine. Also, it is clear from other parts of the description that some flushing is envisaged. For example, the description says on page 1 starting at line 28 "One of the aims of using bacterial cultures rather than conventional sanitizing products is that the former allows the reduction in the frequency of flushing and hence a saving of water. Relatively small amounts of the bacterial culture blocks are released in every flush" and page 9, line 9 "The arrangements with the elongate slits in the urinal cap allow a greater degree of contact between the water flow and the urinal block." These make it clear that flushing with water would be involved on some occasions. I appreciate that this may not be what the applicant intended but I have to make my decision on the application as filed. I take the view that the specification as originally filed would not have been understood to disclose waterless urinal operation but only that it reduces the amount of water used, so the last paragraph of claim 1 does add matter and therefore is not allowable. I will thus ignore that paragraph in the rest of my analysis of the application.

#### **ii) Novelty**

- 11 The examiner objects to all of the claims on the grounds of lack of novelty with respect to the disclosure of CH 636923 A5 ("Wey"), AU 2010/200379 A1 ("Sizer") and WO 2011/067579 A1 ("Think Water"), which all disclose urinal caps for holding

urinal cleaning blocks. During the hearing I asked the applicant to explain how the claimed invention differed from the urinal caps set out by the examiner.

- 12 The applicant said that the invention is different to the prior art because it is designed to retrofit existing urinals of the type having a waste strainer fitted to the waste outlet. In relation to Wey, the applicant said during correspondence that they urinal cap could not retrofit such existing urinals and at the hearing said that it is only shown as being fitted to an open waste outlet (figure 1). However, I note that the urinal cap set out in claim 1 is not limited to being fitted only to urinals having a waste strainer but can also be fitted to open waste outlets ("which cap may be retrofitted to a urinal waste pipe or outlet and waste strainer"), so the disclosure in Wey cannot be excluded for this reason alone.
- 13 The Think Water document is acknowledged at page 2 of the application as filed, in which it is said that the urinal cap "does not allow for simple fitting to any urinal waste pipe". The applicant set out at the hearing that this was because Think Water disclosed a urinal cap having a single central stem for engaging with a corresponding hole in the centre of the waste strainer, as opposed to the claimed invention which has a multitude of stems fixing it to the waste outlet, thus making it more versatile. However, I note that the description at page 3, line 7, of Think Water says that "two or more stems may be provided" and that such stems are designed to be located in a corresponding aperture or apertures in the waste strainer. Claim 1 specifies that the urinal cap has a "plurality of stems depending from the underside of said cap, said stems being adapted to locate inside said waste outlet", which does not exclude the urinal cap disclosed in Think Water as the applicant suggests. I note again that the urinal cap set out in claim 1 is not limited to being fitted only to urinals having a waste strainer but can also be fitted to open waste outlets.
- 14 In relation to Sizer, the applicant again questioned whether it was suitable for retrofitting to existing urinals. I note that the description at page 9, lines 8 - 10, of Sizer says that "A further advantage is that the apparatus may be used on an outlet without removing the grate, making its use easier from both a practical and a regularity viewpoint." Therefore, it seems that Sizer is also suitable for retrofitting to existing urinals. The applicant also suggests that Sizer differs because it requires a water flush. However, as I have already set out above, I have to ignore the applicant's claim to waterless urinal operation as it adds matter.
- 15 At the hearing the applicant suggested that the claimed invention differed from Think Water in the way the urinal block is secured within the cap. In the further submission the applicant said that holding the urinal block within the cap is described at page 3, lines 12 - 14, of the specification, which says that "Preferably, the stems and the cap form an integral unity. Alternatively the cap and the stems are separate sections. Preferably the cap and stems are directly connected". However, I do not consider that this part of the application describes holding the urinal block in place in the way the applicant suggests. There are only two arrangements for securing the urinal block within the cap described in the application. These are in the description at page 6, lines 11 - 13, where it says "Typically, urinal blocks of this nature are formed in moulds from a liquid composition and allowed to solidify before being removed from the moulds." and at page 8, line 6, where it says "the cap is assemblable by the urging of the cylindrical section of the fitting section into the cleaning compound." The Think Water document describes a similar arrangement on page 5, lines 12 - 16, where it says "Typically, cleaning compounds of this nature are formed in moulds

from a liquid composition and allowed to solidify before being removed from the moulds. Advantageously, the liquid composition could be poured directly into the cavity of the cap and allowed to solidify as part of the final stage manufacturing process." So there is nothing in the applicant's description which fixes the cleaning compound in place and neither is there in Think Water. Therefore, on this point again the applicant's claims are not sufficiently different to the earlier disclosure in Think Water.

- 16 I am satisfied that the urinal caps disclosed in Wey, Think Water and Sizer all disclose each of the features set out in claim 1 of the application currently on file (absent the waterless operation for the reason I have explained above).

iii) Inventive Step

- 17 The examiner also objected to Claim 6 on the basis of inventive step in light of the disclosure CH 636923 A5 (Wey). In light of my conclusion that none of the claims are novel it is not necessary for me to consider the further inventive step objection raised by the examiner in his pre-hearing report.

**Conclusion**

- 18 The applicant came to the hearing with an example of the urinal cap. This allowed me to compare the item itself with what was set out in the application. The applicant agreed during the hearing that they were markedly different and that their intentions did not seem to be set out in the specification filed. Unfortunately, what is disclosed in the description as filed does not support the item shown to me during the hearing. Even if it had, the applicant would not have been able to file an amendment because, as I have set out above, the period for putting this application in order has expired and can no longer be extended.

- 19 I have to base my decision on the application as filed and I have found that claim 1 contains added matter and that the claims lack novelty as required by sections 1(1)(a) of the Act . I therefore refuse this application under section 18(3).

**Appeal**

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

**H JONES**

Deputy Director, acting for the Comptroller