Patents Act 1977 **Opinion Number** **06/21**

OPINION UNDER SECTION 74A

Patent	GB 2408886 B
Proprietor(s)	SpySystems Ltd
Exclusive Licensee	
Requester	Barker Brettell LLP, on behalf of SpySystems Ltd
Observer(s)	
Date Opinion issued	03 August 2021

The request

1. Barker Brettell LLP, acting on behalf of SpySystems ("the proprietor"), has requested the comptroller to issue an opinion as to whether patent GB 2408886 B ("the patent") is infringed by a car having a Tesla Sentry Mode system together with a Tesla Mobile App ("Telsa Product"). Specifically, an opinion is requested as to whether there would be contributory infringement under Section 60(2) of the Act by the sale of the car with the Tesla Sentry Mode (without the App). Three enclosures from webpages have been filed in support of the request, including:

   Page A – "Sentry Mode: Guarding Your Tesla" – which discusses the Sentry Mode

   Page B – "Support – Car safety and Security Features" – which discusses, amongst others: Security Alarm, Sentry Mode and Sensors

   Page C – "Tesla App Support" – Which discusses features of the Mobile App.

Observations

2. No Observations were received relating to this opinion.

The Patent

3. The patent relates to a vehicle and security system which enables a user to observe the view captured by a video camera(s) of a detected intruder. The system includes cameras VC1, VC2, VC3, a recording and transmitting unit 30, sensors 36 and hand-held viewing unit 20. Figures 2, 6 (partially) and 7 are reproduced below.

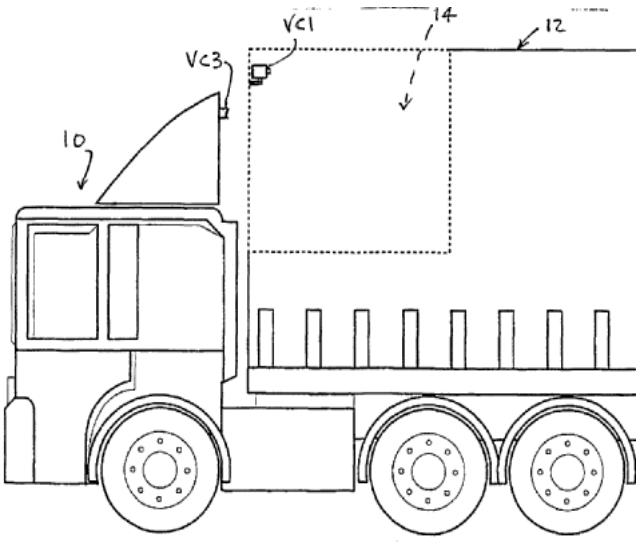

Figure 2

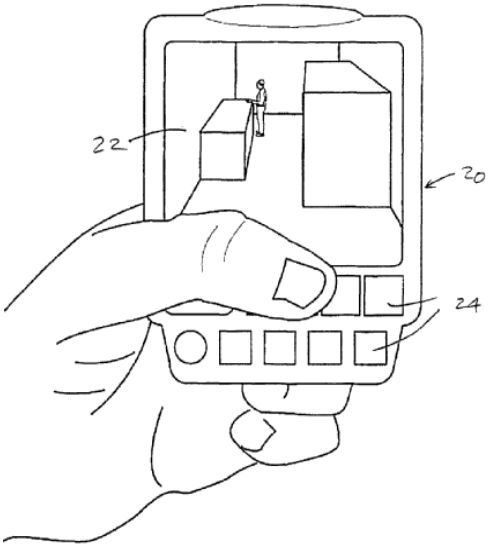

Figure 7

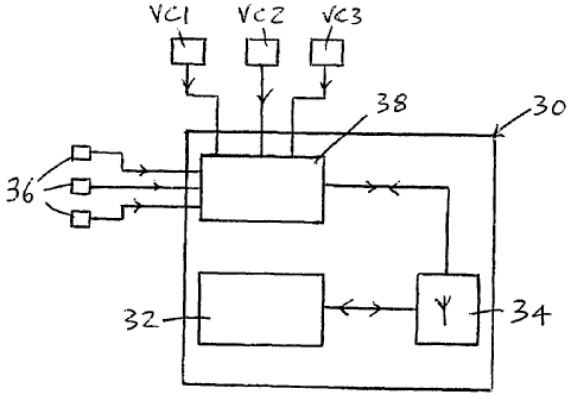

Figure 6

4. The Patent has six claims. Claims 1,2,3&6 are reproduced below:

    1. A road vehicle comprising a security system having at least one video camera for surveilling an interior space of the vehicle or an exterior zone adjacent the vehicle, means for transmitting video signals from said video camera, a portable viewing unit arranged to receive said video signals and display a view captured by said video camera, video recording means provided in said portable viewing unit or installed in another portion of the vehicle, for recording said video signals, and sensing means arranged to detect the presence of an intruder and to transmit an alarm signal, when any intruder is detected, to the portable viewing unit, and to energise an audible alarm of this unit.

    2. A road vehicle as claimed in claim 1, in the one or each sensor is arranged to activate a said video camera and said recording means when any intruder is detected.

    3. A road vehicle as claimed in claims 1 or 2, in which said viewing unit includes control keys for controlling the play back of the recording means.

    6. A road vehicle as claimed in any preceding claim, in which the system is arranged to receive inputs representing one or more vehicle operating

conditions and to record the corresponding data.

Claim Construction

5. Before considering the issues in the request I need to construe the claims of the Patent, that is to say I must interpret it in the light of the description and drawings as instructed by Section 125(1). In doing so I must interpret the claims 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 claims to mean. This approach has been confirmed in the recent decisions of the High Court in Mylan v Yeda[1] and the Court of Appeal in Actavis v ICOS[2].

6. I consider the person skilled in the art to be a designer and/or technician for vehicle security systems.

7. There are a number of points of claim construction which I believe need to be considered in claim 1. Firstly, claim 1 is defined as "a road vehicle comprising ….". However, this is problematic given the subsequently specified features of claim 1 relate to, in particular, *a portable viewing unit* (i.e. features which do not form part of a vehicle*)*. It is my opinion that the person skilled in the art would construe claim 1 as a *vehicle security system*. This interpretation has its basis e.g. in the title, opening paragraph of the specification, and page 3 line 37 – page 4 line 2.

8. The feature of "at least one video camera for surveilling an interior space of the vehicle or an exterior zone adjacent the vehicle" in claim 1 would be construed by the person skilled in the art as a camera positioned anywhere in or on the vehicle such that it can survey the interior space or exterior zone. In particular, I note Figure 2 has cameras positioned both inside and outside the vehicle.

9. Page 3 lines 31-33 and page 4 lines of the description state that the recording and transmitting unit 30 is, in use, installed in the lorry cab / cab of the tractor unit 10. The description or figures do not specifically state where in the cab the recording means is installed. Thus, in claim 1, the feature of the video recording means being installed in "another portion of the vehicle" would be construed by the person skilled in the art simply as the recorder being installed in a portion of the vehicle.

10. Claim 1 also comprises "sensing means arranged to detect the presence of an intruder and to transmit an alarm signal, when an intruder is detected…". Figure 6 and page 4 lines 14-21 discuss that the sensor(s) 36 is a distinct and separate device(s) to the video camera(s) VC1, VC2, VC3, and I believe that the person skilled in the art would construe claim 1 in this way. It is also clear that it is the 'system' rather than the sensor per se which transmits the alarm signal upon detection of an intruder by the sensor(s) – see page 4 lines 18-24.

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[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

Telsa Product

11. Pages A,B and C submitted by the requester provide some information regarding a car having a Tesla Sentry Mode system and also the Tesla Mobile App (such a combination I will refer to as the "Telsa Product"). In particular, Page A gives an overview of the Sentry Mode system, and states:

> "Sentry Mode adds a unique layer of protection to Tesla vehicles by continuously monitoring the environment around a car when it's left unattended. When enabled, Sentry Mode enters a "Standby" state, like many home alarm systems, which uses the car's external cameras to detect potential threats. If a minimal threat is detected, such as someone leaning on a car, Sentry Mode switches to an "Alert" state and displays a message on the touchscreen warning that its cameras are recording. If a more severe threat is detected, such as someone breaking a window, Sentry Mode switches to an "Alarm" state, which activates the car alarm, increases the brightness of the center display, and plays music at maximum volume from the car's audio system.
>
> If a car switches to "Alarm" state, owners will also receive an alert from their Tesla mobile app notifying them that an incident has occurred. They'll be able to download a video recording of an incident (which begins 10 minutes prior to the time a threat was detected) by inserting a formatted USB drive into their car before they enable Sentry Mode."

12. Page B provides customer support and, with regard to the Sentry Mode, states:

> "Sentry Mode is a feature that allows you to monitor suspicious activities around your Tesla when it's parked and locked in specified locations. When suspicious motion is detected, your car will react depending on the severity of the threat.
>
> If a significant threat is detected, the cameras on your car will begin recording, and the alarm system will activate. You will receive an alert from your Tesla app notifying you that an incident has occurred."

13. Page B also discusses intrusion and tilt sensors, and states:

> "**Intrusion Sensors**
>
> All Tesla cars in Europe come equipped with an intrusion sensor as standard. The sensors are inside the car near the rearview mirror and intermittently pulse ultrasonic waves throughout the cabin. The alarm will sound if the signal is disturbed by either intrusion or significant car movement and protects against certain break-in situations that might not be caught otherwise.
>
> **Tilt Sensor**
>
> All Tesla cars in Europe come equipped with a tilt sensor as standard. The sensor is inside the car and embedded into the intrusion sensor module. The alarm will sound if the car is tilted significantly and protects against lifting the car, e.g. to put it onto a trailer."

14. Page C provides customer support for the Tesla App and states:

"Download the Tesla app for iPhone and Android to control and remotely monitor your Tesla products. You can access features. Use your Tesla Account credentials to login.

Download the Tesla app and explore the available features:

Range Status

Check the current range and receive notifications of your car's charge status.

GPS Location

Never forget where you parked your again with GPS location features"

Infringement

15. Section 60 of the Act states that:

(*1) Subject to the provisions of this section, a person infringes a patent for an invention if, but only if, while the patent is in force he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say-*

(a) Where the invention is a product, he makes disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;

(b) Where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;

(c) Where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise.

(2) Subject to the following provisions of this section, a person (other than the proprietor of the patent) also infringes a patent for an invention if, while the patent is in force and without the consent of the proprietor, he supplies or offers to supply in the United Kingdom a person other than a licensee or other person entitled to work the invention with any of the means, relating to an essential element of the invention, for putting the invention into effect when he knows, or it is obvious to a reasonable person in the circumstances, that those means are suitable for putting, and are intended to put, the invention into effect in the United Kingdom.

16. In the Supreme Court in *Actavis v Eli Lilly*[3] Lord Neuberger stated that the problem of infringement is best approached by addressing two issues, each of which is to be considered through the eyes of the notional addressee of the patent in suit, i.e. the person skilled in the relevant art. Those issues are:

(i) does the variant infringe any of the claims as a matter of normal

[3] Actavis UK Limted and others v Eli Lilly and Company [2017] UKSC 48

interpretation; and, if not,

(ii) does the variant nonetheless infringe because it varies from the invention in a way or ways which is or are immaterial?

17. If the answer to either issue is “yes”, there is infringement; otherwise there is not.

18. I would note that the request doesn’t *explicitly* request an opinion of direct infringement under Section 60(1)(a). However, as the requester’s line of argument first considers direct infringement (of a car having a Tesla Sentry Mode system together with a Tesla Mobile App) and then indirect infringement (of a car having a Tesla Sentry Mode system without the App) under Section 60(2) of the Act, I will do likewise.

Arguments

19. The requester argues that a car implementing the Tesla Sentry Mode system in combination with a mobile telephone running the Tesla Mobile App (the “Tesla Product”) falls within the scope of at least claims 1,2,3&6, and thus sale or use of such a combination would be a direct infringement under Section 60(1)(a).

20. As an initial point, I think it is clear that pages A,B and C provided by the requester relate to the same overall product – the Telsa Product – and thus the information in these pages can be considered together for assessing infringement.

21. I will start by asking whether the Tesla Product infringes claim 1 as a matter of normal interpretation? I think it is clear that pages A, B and C show, in general terms at least, a vehicle security system which comprises a camera(s) and sensing means (intrusion sensor; tilt sensor) as discussed in claim 1. Pages A, B and C also disclose the use of a mobile device which receives a notification that a significant incident has occurred at the vehicle.

22. The requester has argued that “the cameras on your car” (discussed on page B) and “which use the car’s external cameras to detect potential threats” (discussed on page A) discloses “at least one camera for surveilling…an exterior zone adjacent the vehicle” in claim 1. I agree. It is my opinion that the “external cameras” would survey an area external to the vehicle.

23. The requester has stated that the “video recording means…installed in another portion of said vehicle, for recording said (video) signals” in claim 1 corresponds to the insertion of a “formatted USB drive into their car before they enable Sentry Mode” on page A. It is my opinion that the USB drive in the car discloses a video recorder in another portion of the vehicle.

24. The requester has further argued that the portable viewing unit is arranged to receive video signals and display a captured camera view as per claim 1, as page A states “They’ll be able to download a video recording of an incident”. However, the Tesla Product is not stated in pages A, B or C as providing and displaying the captured camera view *on the mobile device* – rather the recorded camera view is ‘downloaded’ via a USB drive. Thus it is my opinion, from the information provided to me, that the Tesla Product does not have this feature of claim 1.

25. The requester also considers that the "sensing means arranged to detect the presence of an intruder and to transmit an alarm signal, when an intruder is detected…" in claim 1 can be found in the Tesla Product in that "if a more severe threat is detected, such as someone braking a window, Sentry Mode switches to an alarm state" (page A) an that "If a car switches to "Alarm" state, owners will also receive an alert from their Tesla mobile app notifying them that an incident has occurred" (page A) and "You will receive an alert from your Tesla app notifying you that an incident has occurred" (page B).

26. It is clear that the Tesla car has intrusion sensors which generate an alarm (page B). It is also clear that the user receives an alarm signal at their mobile app following detection of a severe threat (page A). It is, however, not apparent from the generalised disclosure in pages A, B or C that an alarm signal is sent to the mobile app *when the sensor(s)* detects an intruder. In particular, I would note that page A states:

> "When enabled, Sentry Mode enters a "Standby" state, like many home alarm systems, which uses the car's external cameras to detect potential threats." (my emphasis)

27. Thus it would appear that it is the external cameras which detect the minimal/severe threats, and cause the receiving of an alert at the mobile device, rather than the sensing means. Thus it is my opinion, based on the information provide to me, that the Tesla Product does not have this feature of claim 1.

28. Claim 1 states that the system transmits an alarm signal to the portable viewing unit "to energise an audible alarm of this unit". The requester states that the alert in the Tesla Product "will presumably cause the mobile phone to make a noise", and ask that I take judicial notice[4] of the fact that "app alerts are generally configured to generate an audible alert". I agree that that apps on phones *generally* generate an audible alert – but they do not *necessarily* provide an audible alert for all notifications – in other words it is not *implicit* that the notification in the Telsa Mobile App energises an audible alarm. Consequently, the Tesla Product does not have this feature of claim 1.

29. Therefore I am of the opinion that the Tesla Product – i.e. a car implementing the Tesla Mode system in combination with a mobile phone with the Telsa App – does not infringe claim 1 as a matter of normal interpretation.

30. The second issue to be addressed is asking whether the variant provided by the Tesla Product varies in a way(s) which is immaterial? The court in Actavis UK Limited provided a reformulation of the three questions in *Improver*[5] to provide guidelines or helpful assistance in connection with this second issue. These reformulated questions are:

> (i) Notwithstanding that it is not within the literal meaning of the relevant

[4] Judicial notice is a rule in the law of evidence that allows a fact to be introduced into evidence if the truth of that fact is so notorious or well known, or so authoritatively attested, that it cannot reasonably be doubted.

[5] Improver [1990] FSR 181

claim(s) of the patent, does the variant achieve substantially the same result in substantially the same way as the invention, i.e. the inventive concept revealed by the patent?

(ii) Would it be obvious to the person skilled in the art, reading the patent at the priority date, but knowing that the variant achieves substantially the same result as the invention, that it does so in substantially the same way as the invention?

(iii) Would such a reader of the patent have concluded that the patentee nonetheless intended that strict compliance with the literal meaning of the relevant claim(s) of the patent was an essential requirement of the invention?

31. In order to establish infringement in a case where there is no literal infringement, a patentee would have to establish that the answer to the first two questions was “yes” and that the answer to the third question was “no”.

32. I think the issue of whether there is immaterial difference can be answered by looking at the first of these questions. It is my opinion that the inventive concept lies in notifying, providing and displaying on a portable device vehicle camera(s) views captured as a result of a sensor(s) detecting an intruder. Based on the information provided to me, it is my opinion that the Tesla Product does not achieve this – as the cameras detect the intruder (for which a notification is provided) and the captured camera views are provided to a USB drive.

33. Therefore, it is my opinion that the Tesla Product does not vary from the Patent in a way(s) that is immaterial.

34. Given that the Tesla Product does not infringe claim 1 of the Patent, consideration of claims 2,3&6 is not strictly necessary. However, I would note that pages A, B and C do not explicitly state that the sensor activates the camera and/or recording means and thus the features of claim 2 are not found in the Tesla Product; nor is there any disclosure in pages A, B or C of a user interface for viewing playback (claim 3).

35. Furthermore, as the Tesla Product does not infringe claim 1 of the Patent under Section 60(1)(a) I do not see how the sale of a Tesla car (without the App) would be an essential element of the invention, for putting the invention into effect, and thus the car does not infringe the Patent under Section 60(2) of the Act.

Opinion

36. It is my opinion that the Tesla Product as specified in the request does not fall within the scope of claim 1 as a matter of normal interpretation, nor does the Tesla Product vary from the Patent in a way that is immaterial. Accordingly, it is my opinion that neither the Tesla Product or the Tesla car infringes GB 2408886 B under Section 60(1)(a) or Section 60(2) of the Act.

Application for review

37. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.

Benjamin Widdows
Examiner

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.