Patents Act 1977 **Opinion Number** **03/22**

OPINION UNDER SECTION 74A

Patent	EP 2923000 B1
Proprietor(s)	Scheys Beton
Exclusive Licensee	
Requester	Lucas & Co.
Observer(s)	
Date Opinion issued	26 April 2022

The Request

1. The Comptroller has been requested by Lucas & Co. ("the requester") to issue an opinion as to whether EP 2923000 B1 ("the patent") is invalid on the grounds of a lack of inventive step and also on whether a product ("the product") infringes the patent. The request was filed on 27 January 2022 and was accompanied by a statement explaining the request. The statement refers to three documents US 5248226 ("D1"), US 3430404 ("D2") and US 6996945 ("D3"). The statement also includes details of the product, including figures depicting a prototype.

Observations

2. No observations were received by the deadline of 28 February 2022.

Validity - Scope of the Opinion

3. The requester has provided their assessment of the inventiveness of each of the claims of the patent from the separate starting points of each of D1, D2 and D3 as the closest prior art. Each document is taken alone (with common general knowledge), D1 is also combined with D2 or D3. I will perform my assessment on the same basis.

The Patent

4. The patent is titled "Stackable concrete block and method for the manufacturing thereof" and relates to stackable blocks and walls formed therefrom. It was filed on 31 October 2013 having a priority date of 31 October 2012 and a European patent designating UK was granted on 29 March 2017. The patent remains in force.

5. A stackable block described in the patent is formed of a concrete base block having at least two continuous holes connecting its upper and lower sides and at least two stones arranged to fit partially into the holes. When the stones are positioned in the top ends of the holes, the resulting stackable block has an upper side provided with at least two peaks formed from the stones and a lower side provided with at least two recesses formed from the continuous holes. The blocks may be stacked to form a wall, with peaks of a lower layer of blocks engaging in recesses of an upper layer of blocks to prevent relative lateral movement of the blocks.

6. The patent describes how similar prior art stackable concrete blocks are typically formed using a mould and are solid, and therefore heavy, and expensive to produce. Other described prior art stackable concrete blocks are hollow and can be pressed on a plate, with peaks on an upper side being produced using a stamp. It is stated that, in this prior art method of manufacture, it is not possible to produce both peaks on an upper side and recesses on a lower side of the blocks.

7. The patent describes how the blocks of the invention are an improvement on prior art blocks, as they comprise both peaks and recesses and can be manufactured by pressing on a plate, making them lighter in weight than blocks manufactured using a mould.

8. Figure 4 of the patent shows a perspective view of a concrete base block of the invention. Figures 9 and 10 respectively show a perspective view and a cross-sectional view of the concrete base block with stones inserted. Figure 11 shows a perspective view of a section of a wall obtained by stacking a number of the concrete blocks. These figures are reproduced below.

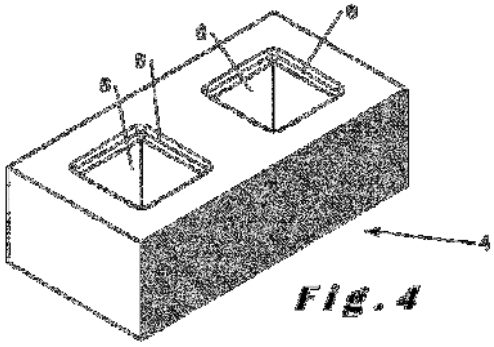

Fig. 4

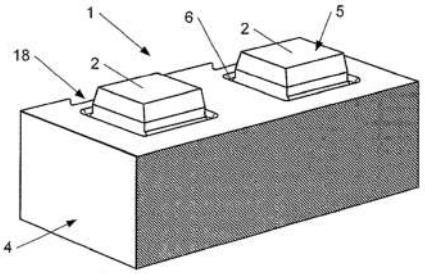

Fig. 9

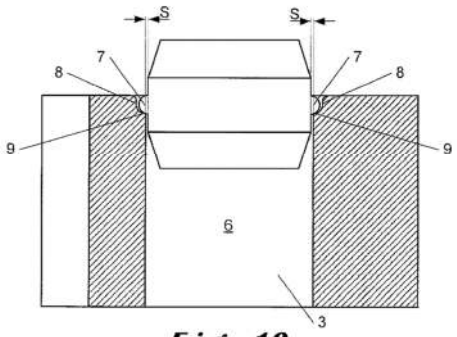

Fig. 10

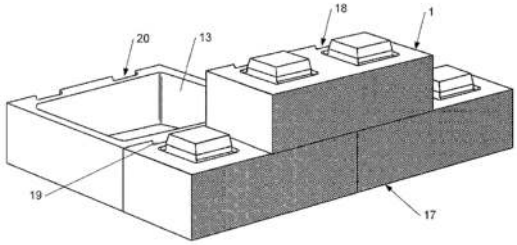

Fig. 11

9. The patent has fifteen claims. Claim 1, which is directed to a concrete block, is the only independent claim. Claim 12 is directed to a set of stones and a base block for composing the concrete block, claim 13 to a method of producing the concrete block and claim 15 to a wall manufactured with the concrete blocks.

10. Claim 1 reads as follows:

> *A concrete block with a upper side provided with at least two peaks and a bottom side provided with at least two recesses that are located right across from said peaks in such a way that a plurality of said concrete blocks, in brickwork bond, in layers, are stackable on top of each other, wherein the peaks on the upper side of a first layer of concrete blocks are engaged in the recesses in the bottom side of the concrete blocks of a second superimposed layer of concrete blocks for mutually fixing both layers of concrete blocks, characterised in that said concrete block is formed by a concrete base block, with at least two continuous holes that connect the upper side of the base block with the bottom side thereof and which form said recesses in the bottom*

side of the concrete block, and by at least two stones that fit into said continuous holes that are located at the top and the bottom and that are provided to form said peaks.

Claim Construction

11. Before considering inventive step, I need to construe the claims of the patent – that is to say, I must interpret them in the light of the description and drawings as instructed by Section 125(1):

> *125(1) For the purposes of this Act an invention for a patent for 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.*

12. 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].

13. The requester has not put forward any arguments concerning the construction of the claims. I do not, however, consider claim 1 to be completely clear without reference to the description and drawings.

14. I note that, while claim 1 is directed to a concrete block, the stones forming a part of the block are not necessarily formed from concrete. This feature is introduced in dependent claim 2.

15. I consider the statement that 'the at least two recesses are located right across from said peaks' when considered in light of the figures indicates that the recesses and the peaks are aligned in a vertical direction.

16. The statement that 'said concrete block is formed by…at least two stones that fit into said continuous holes that are located at the top and the bottom and that are provided to form said peaks' might be read to suggest that the two stones are placed in the top and the bottom of one of the continuous holes. However, it is clear from the description and figures that, in order to form a single concrete block, a stone is placed in the top of each of the two holes of the base block.

17. The meaning of "continuous holes" and of "stone" also requires consideration. Considering first the composition of the stones, I note that the patent states 'when mentioning stones, blocks of stone are meant, whereby the term "stone" should be understood as a hard substance with a mineral composition'. The patent goes on to

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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

state that a stone can, for example, be 'concrete, brick, natural stone or limestone' and 'may, for example, be made out of reinforced concrete'. I consider that the stones are restricted to being formed from a mineral composition, which is taken to encompass concrete, brick, natural stone or limestone.

18. I will now look at the meaning of a "continuous hole". I consider this to be a hole that extends fully from a top surface of the block to a bottom surface. In the preferred embodiment, the holes appear to be depicted as having a square cross-section that is uniform for the entire depth of the hole. Reference is made in the description to the continuous holes having 'a smallest diameter that is larger than 3 cm, preferably larger than 5 cm and more preferably larger than 7 cm', which might suggest a circular cross-section that could vary in diameter through the depth of the holes. To aid in supporting the stones, the holes may be wider at either the bottom or upper side of the block, which may be achieved by the use of conical holes. I consider that the continuous holes are not restricted to having a constant cross-sectional area or a specific cross-sectional shape through their depth.

19. I will also consider whether any restrictions are applied to the shapes of the stones. The stones shown in the figures of the patent appear to exhibit mirror symmetry across a central plane and are appropriately shaped to fit into the apparently uniform square holes. In the absence of an explicit statement to the contrary however, it would seem to me that the only restriction applied to the shape of the stones is that they are suitable for fitting into the top of the continuous holes.

20. I therefore construe claim 1 to be directed to a block with a upper side provided with at least two peaks and a bottom side provided with at least two recesses wherein the block is formed from a concrete base block having at least two through-holes (continuous holes) extending in a vertical direction from a top side to a bottom side of the base block, and at least two further blocks having a mineral composition (stones) shaped to fit into the upper openings of the continuous holes to form the peaks, with the lower openings of the continuous holes forming the recesses.

Prior Art - D1

21. D1 was published before the priority date of the patent and discloses blocks for stacking and corresponding connectors for forming retaining walls. Figures 1, 2 and 3 respectively show the upper surface of a block, the lower surface of a block and a cross-section through a block. Figure 4 shows an embodiment of a connector. Figures 8, 9 and 10 show walls constructed from a plurality of blocks. These figures are reproduced below.

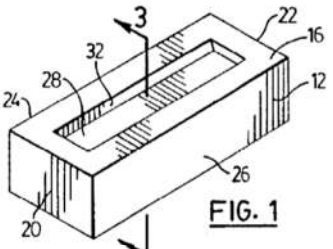


FIG. 1

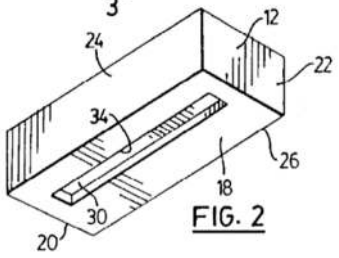


FIG. 2

FIG. 3

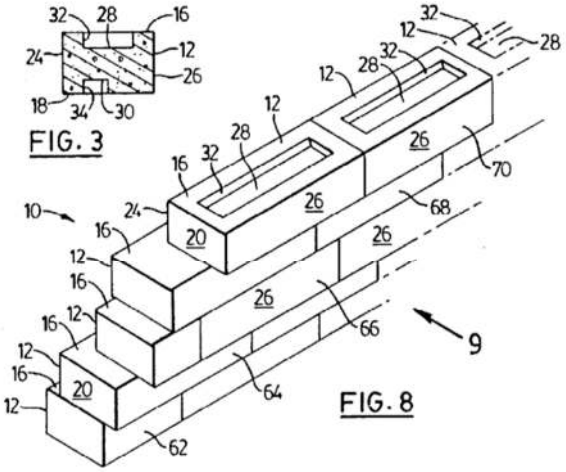


FIG. 8

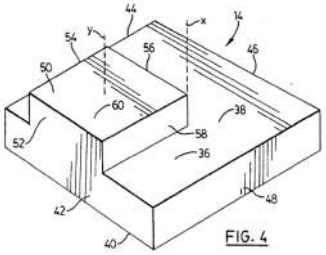


FIG. 4

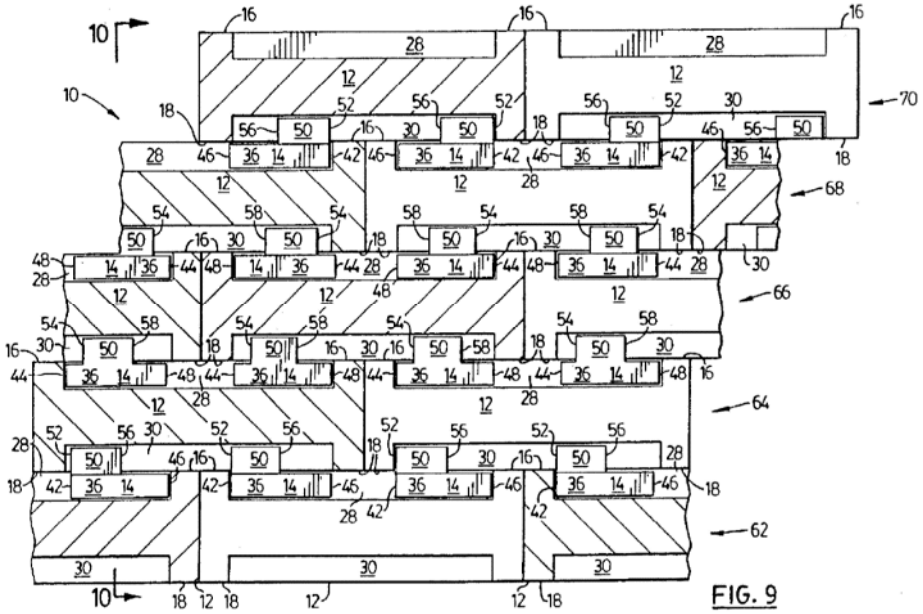


FIG. 9

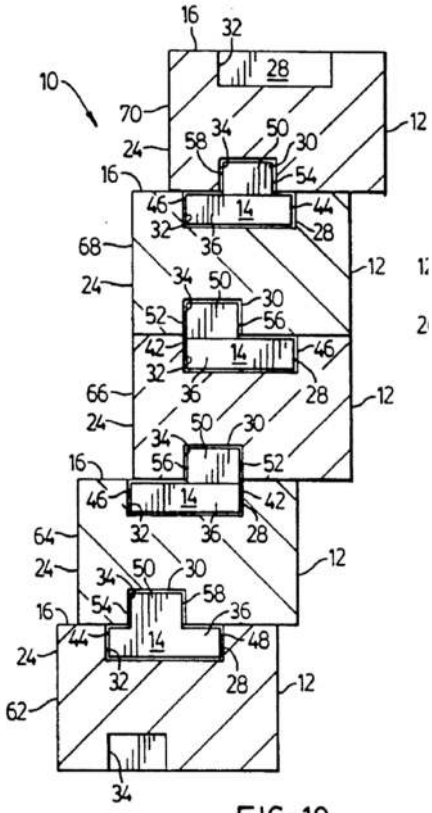


FIG. 10

22. As can be seen in figures 1 and 2 respectively, each block comprises a first recess in its upper surface for receiving a base portion of a connector and a second recess in its lower surface for receiving a projection portion of the connector. The upper and lower recesses are typically of the same length and depth. However, the upper recess has a greater width than the lower recess. As can be seen in figure 3, in an embodiment, an edge of the lower recess appears to be aligned with an edge of the upper recess in the vertical direction.

23. In order to correspond with the sizes of the upper and lower recesses, the base portion of the connector has a larger area than the projection portion, as can be seen in figure 4. A further feature of the connectors is the non-central positioning of the projection portion relative to the base portion.

24. The blocks and connectors of D1 are configured for stacking in an overlapping fashion to form a wall with offsets or setbacks, as shown in figures 8 and 10. This is achieved by positioning the connectors in one of four possible orientations. The use of two connectors per block can be seen in figure 9.

25. Forming the blocks from concrete is disclosed. The preferred material of construction of the connector is concrete, although other materials may be used.

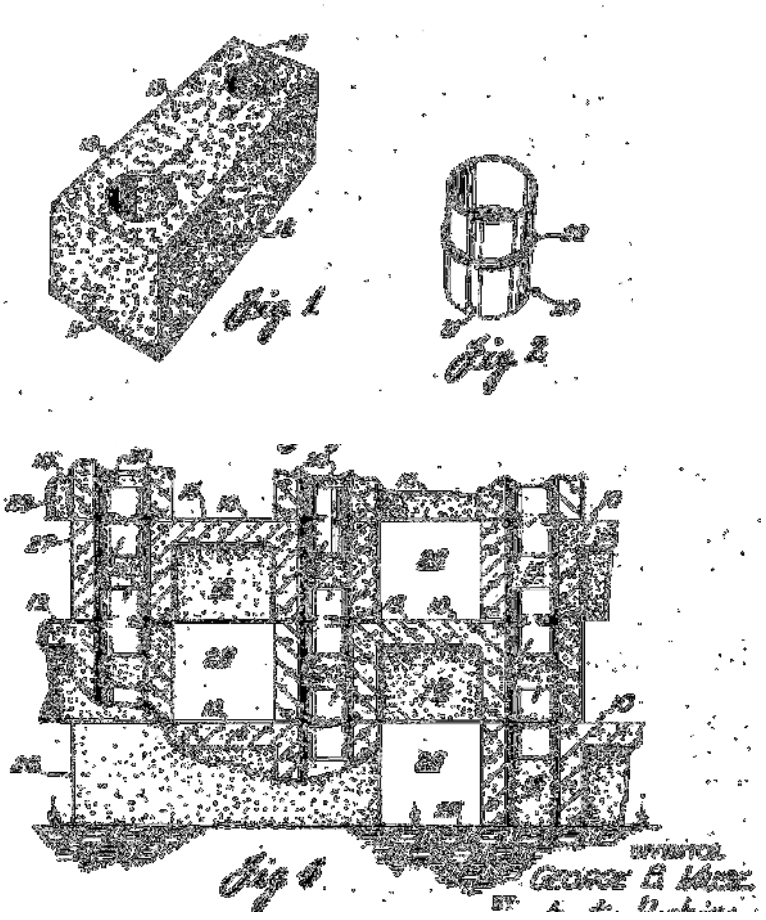
26. D1 states that the recesses 'can be a plurality or series of separate recess formations extending axially longitudinally of the block'. However, there does not seem to be a worked example of how this would function in practice.

Prior Art - D2

27. D2 was published before the priority date of the patent and discloses blocks and sleeves for forming a decorative wall having apertures between blocks. The blocks, which may be formed from concrete or conventional brick substances, comprise two openings extending therethrough from top to bottom, into which the sleeves are inserted. In a preferred embodiment, the sleeves are formed by rolling a strip of metal to form a generally cylindrical configuration with a slot extending along its length. It is also suggested in D2 that the sleeves might be formed from plastic substances. The blocks further comprise a central cavity from the bottom wall into the central portion of the block. The apertures and the cavity function to create a lightweight block.

28. In use, the sleeves are inserted into the two apertures of the block to allow alignment of stacked layers of blocks. Following arrangement of blocks in a stacked construction, mortar is poured through the aligned apertures and sleeves and left to harden.

29. Figures 1, 2 and 4 of D2, respectively showing a block, a sleeve and a decorative wall formed from a plurality of blocks and sleeves, are reproduced below.



Prior Art - D3

30. D3 was published before the priority date of the patent and discloses a mortarless masonry block system for constructing a wall, in which vertically adjacent blocks are interconnected using hollow pegs. The blocks comprise one, two or three apertures extending therethrough between top and bottom surfaces. Pegs of length equal to the height of the blocks extend partly within a lower block and partly within an upper block. Pegs having a length equal to half the height of the blocks are located in the lower half of the bottom blocks to support the longer pegs positioned above. The blocks are formed of any appropriate material such as cement, composite material, stone, clay, shale, plastic, or natural biodegradable material. The pegs are formed from PVC or an alternative material such as plastic, resin, composite material, fibre material, paper products, steel, or aluminium. A filler material or vertical support bars may be positioned in the hollow pegs to further interconnect the blocks.

31. Figures 2 and 3 of D3, respectively showing an exploded view of the block system and a cut-away view of a wall constructed using the block system are reproduced below.

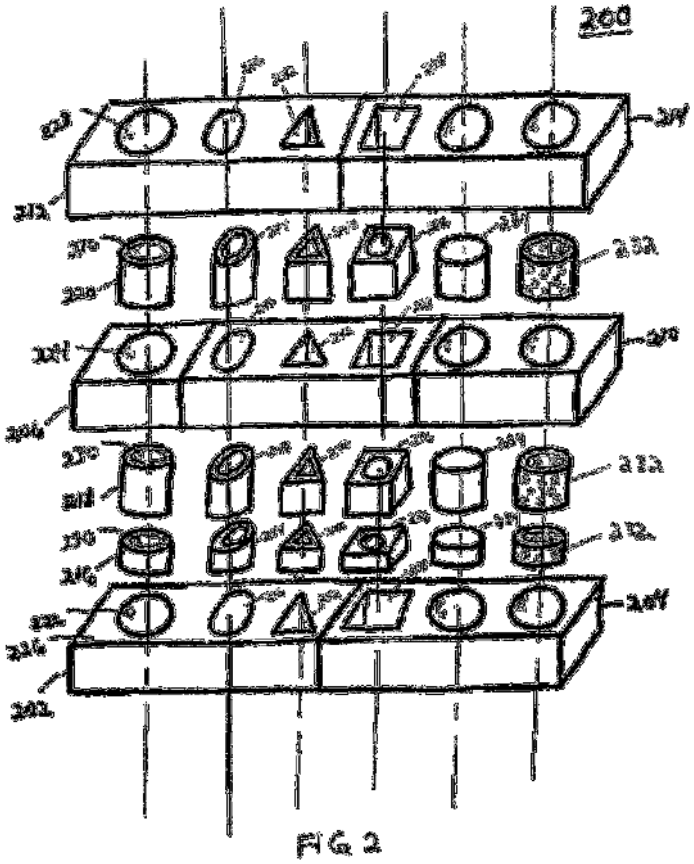


FIG 2

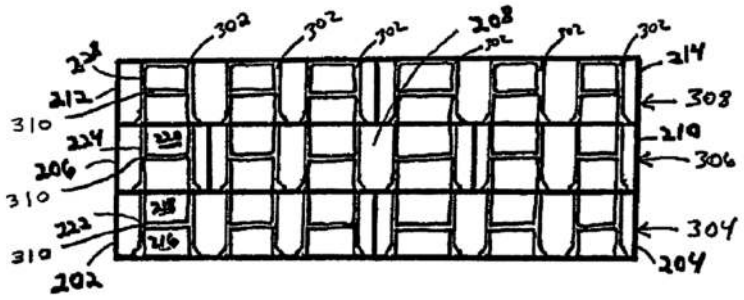


FIG.3

Inventive Step - the Law

32. Section 1(1)(b) of the Act reads:

> *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;*

33. The provisions in relation to inventive step are found in section 3 which states:

> *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).*

34. The Court of Appeal in Windsurfing[3] formulated a four-step approach for assessing whether an invention is obvious to a person skilled in the art. This approach was restated and elaborated upon by the Court of Appeal in Pozzoli[4]. Here, Jacob LJ reformulated the Windsurfing approach as follows:

> *(1)(a) Identify the notional "person skilled in the art" ;*
> *(1)(b) Identify the relevant common general knowledge of that person;*
> *(2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;*
> *(3) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed;*
> *(4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?*

[3] Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd, [1985] RPC 59
[4] Pozzoli SPA v BDMO SA [2007] EWCA Civ 588

Inventive Step - taking D1 as the closest prior art

(1)(a) Person skilled in the art

35. The requester considers that the person skilled in the art 'would be someone well versed in wall construction'. In my view, the skilled person would possess this experience and would be someone working in the design of building blocks and walls.

(1)(b) Common general knowledge

36. The requester defines the relevant common general knowledge as being 'the various materials used/usable and the numerous techniques that can be employed in constructing walls'. I would extend this knowledge to include the design and manufacture of building blocks.

(2) Identify the inventive concept of claim 1

37. The inventive concept of claim 1 lies in constructing the at least two peaks located at the top of the block from separate stones that fit into corresponding continuous holes in a concrete base block, the continuous holes forming the recesses at the bottom of the block.

(3) Identify what differences exist between D1 and the inventive concept of claim 1

38. The requester considers the difference between D1 and the inventive concept of claim 1 to be 'at least two continuous holes that connect an upper side of a concrete base block with a bottom side'. I am in agreement with this assessment.

(4) Does this difference constitute a step which would have been obvious to the person skilled in the art or do they require any degree of invention?

39. The requester points out that 'the introduction of apertures through, or cavities in, building blocks is an effective method for reducing the weight of the block' and that 'various disclosures provided in the background of the patent detail blocks with continuous holes'. They further note that D2 discloses that the apertures, which are continuous holes, also function to create a lightweight block, and that D3 teaches that 'holes…can be placed on any surface of a block as a means for reducing the weight of the block'.

40. The requester also points to the statement in D1 that the recess formations 'can be a plurality or series of separate recess formations extending axially longitudinally of the block'. As already noted, D1 does not appear to provide an enabling disclosure of how this would work in practice. Considering figure 9 in particular, it seems to me that an advantage of a single recess extending along the majority of the length of the block is the flexibility afforded for positioning the connectors in any one of the four possible orientations to produce the wall with offsets or setbacks. Furthermore, altering the single longer recess to form a series of separate recesses would actually add weight to the block, although possibly less than the amount that could be

removed by the inclusion of continuous holes rather than recesses.

41. It is my view that the skilled person looking to reduce the weight of the blocks of D1 might, based on common general knowledge, consider making a continuous hole having generally the same cross-sectional area as the lower recess and widening at the top to the same cross-sectional area as the upper recess.

42. However, I cannot see any motivation for the skilled person to combine the teaching of D1 with that of D2 or D3. D1 is primarily concerned with a system in which the blocks and connectors are configured for stacking in an overlapping fashion to form a wall with offsets or setbacks, using specifically shaped solid connectors to facilitate this. In contrast, the systems of D2 and D3 respectively use sleeves and hollow pegs, rather than solid connectors, to form walls without offsets or setbacks. It is my opinion that claim 1 is inventive over the teaching of D1, either alone or when viewed in combination with D2 or D3. It follows that claims 2 - 15 are also inventive.

Inventive Step - taking D2 as the closest prior art

43. Steps (1)(a), (1)(b) and (2) have already been considered in paragraphs 36 - 38.

(3) Identify what differences exist between D2 and the inventive concept of claim 1

44. The requester considers the difference to be that 'the stones are blocks of a hard substance with a mineral composition'. I consider a more precise statement of the difference to be the use of blocks having a mineral composition in place of metal (or plastic) sleeves.

(4) Does this difference constitute a step which would have been obvious to the person skilled in the art or do they require any degree of invention?

45. The requester suggests that 'the person skilled in the art would inevitably consider making the sleeves out of concrete', as they 'would be well aware that the integrity of metal and plastic is affected when exposed to natural elements' and 'would also notice that the building block, which is made of concrete, was unaffected by the natural elements'. The requester also points to the disclosure in D1 of forming the connectors from concrete, which 'may be a solution for resisting corrosion'.

46. An advantage stated in D2 of making the sleeves from metal and the inclusion of a slot in each sleeve is that they are resilient and can be contracted for insertion into the apertures. It seems to me that a plastic sleeve would be similarly resilient. Despite the resistance of concrete to corrosion or other degradation mechanisms, I do not believe that the skilled person would consider replacing a slotted resilient metal or plastic sleeve with a concrete sleeve. For completeness, I also note my view that the skilled person would not look to combine the teaching of D1 with that of D2. It is my opinion that claim 1 is inventive over the teaching of D2, either alone or when viewed in combination with D1. It follows that claims 2 - 15 are also inventive.

Inventive Step - taking D3 as the closest prior art

47. Steps (1)(a), (1)(b) and (2) have already been considered in paragraphs 36 - 38.

(3) Identify what differences exist between D3 and the inventive concept of claim 1

48. The requester considers the difference to be 'that the base block of the Patent is made from concrete, and that the stones of the Patent are "blocks of a hard substance with a mineral composition" (e.g., concrete)'. Whilst I am generally in agreement with this assessment, I would add that the stones replace the hollow pegs, preferably formed from PVC, of D3.

(4) Does this difference constitute a step which would have been obvious to the person skilled in the art or do they require any degree of invention?

49. In the view of the requester, the teaching of D3 alone would cause the skilled person to 'inevitably arrive at a block being made of concrete', as D3 discloses 'that the blocks may be made, for example, of cement, composite material, stone, clay, shale, etc.' and also 'may be manufactured using a conventional block machine'. I am in agreement with this view.

50. The requester points to the statement in D3 that the hollow pegs may be made from a composite material and asserts that 'the person skilled in the art would inevitably look to create blocks and pegs made from the same composite material'. They further suggest that, as concrete is a composite material, it would be an obvious choice. The requester also considers that the combined teaching of D3 and D1, which discloses using concrete for the blocks and connectors, would cause the skilled person to arrive at using concrete for making both the blocks and the pegs.

51. The full list of materials suggested in D3 for making the hollow pegs is 'plastic, resin, composite material, fiber material, paper products (e.g., corrugated paper), steel, and aluminum'. In the context of this list, I do not believe that the skilled person would read "composite material" as referring to concrete or a similar material, but rather a composite comprising elements from the list, for example plastic and resin. Furthermore, I do not consider that the skilled person would look to the teaching of D1 and, as a result, replace the hollow pegs of D3 with stones. It is therefore my opinion that claim 1 is inventive over the teaching of D3, either alone or in view of D1. It follows that claims 2 - 15 are also inventive.

The Product

52. The product comprises blocks and connectors for wall construction. Each block comprises one or more circular recesses in a top surface thereof and an aperture extending from each recess through the block. Each connector comprises a base portion for fitting into a recess and a protruding portion for fitting into an aperture. Figures A - D, reproduced below, show prototypes of the blocks and connectors formed from wood. The requester indicates that, in practice, the blocks would be formed from concrete and the connectors would be formed from either concrete,

plastic or wood.

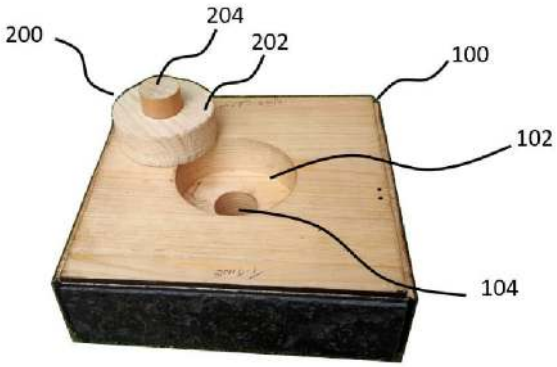


Fig. A – a block with a wood connector

Fig. B – a block with a single circular recess and aperture, and a block with two circular recesses and two apertures, as a first course of blocks

Fig. C - a first course of blocks, with each block fitted with connectors

Fig. D – a second course on top of a first course of blocks, each with fitted connectors

Infringement - the Law

53. Section 60 Patents Act 1977 governs what constitutes infringement of a patent. Section 60(1) reads:

> *Subject to the provision 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.*

54. In the Supreme Court in *Actavis v Eli Lilly*[5], 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 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?*

[5] Actavis UK Limited and Others v Eli Lilly and Company [2017] UKSC 48

55. If the answer to either issue is "yes", there is infringement; otherwise there is not.

56. The second issue to be addressed is whether the variant provided by the product varies in a way that is immaterial. The court in *Actavis* provided a reformulation of the three questions in *Improver*[6] 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 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 claims(s) of the patent was an essential requirement of the invention?*

57. To establish infringement in a case where there is not 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".

Does the product infringe?

58. The requester provides their interpretation of the term "stone". I have already considered the meaning of this term during claim construction and note that the requester and I are in agreement.

59. Considering the block of the product, it is my view that the recess portion combined with the aperture portion forms a continuous hole extending in a vertical direction between the top and bottom faces of the block, albeit with a step change in diameter at the boundary between the recess and aperture. I consider that the lower ends of the apertures form recesses.

60. For the version of the product comprising concrete connectors, it is my opinion that a concrete connector falls within the definition of a "stone", i.e. a hard substance having a mineral composition that can be formed by pressing out of concrete. When the connectors are positioned in the recesses of the block their protruding portions form peaks. It is therefore my view that, when the blocks comprise two recesses, all the claim elements of the patent are present in the product. Consequently, I consider that this product infringes the patent as a matter of normal interpretation.

61. I note that, if the product has only one recess and one connector, not all the claim elements would seem to be present. I will not however take this consideration further, as blocks comprising single recesses and single connectors are not suitable for stacking in the intended fashion and so, in isolation, do not form the described

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product.

62. Turning attention now to the versions of the product comprising plastic or wooden connectors, I do not consider that a plastic or a wooden connector is a stone and so, as a matter of normal interpretation, products comprising plastic or wooden connectors do not infringe the patent.

63. I will now consider the *Actavis* questions to determine whether the product comprising plastic or wooden connectors nonetheless infringes because it varies from the invention in a way or ways which is or are immaterial.

64. In relation to the first question, I note the statement in the patent that 'stones, in comparison to, for example, plastic materials…of the same size, are remarkably cheaper, as well as more rigid, and are more resistant to aging'. The patent also makes reference to the stones absorbing 'large shear forces between the different layers of blocks'. These statements suggest to me that, while plastic connectors could be used to connect the base blocks of the invention, they would not offer the strength and durability of the stones. In my view, it follows that the product comprising plastic connectors would not achieve substantially the same result in substantially the same way as the invention.

65. Turning to the product with wooden connectors, I also consider that strength and durability comparable to that of stones are unlikely to be provided. The product comprising wooden connectors would therefore not achieve substantially the same result in substantially the same way as the invention.

66. Having answered "no" to the first *Actavis* question, I do not need to consider the other two questions. However, I note that in their letter the requester provides their view on the third *Actavis* question. They submit that the reader of the patent would be limited to a strict compliance in their interpretation of "stones" and so the answer to the third *Actavis* question is "yes" when the connectors are made of either plastic or wood. I would like to note here that I am in agreement with this view.

Opinion

67. In my opinion, the invention as defined in claim 1 is inventive in light of documents D1, D2 and D3 when considered alone (with common general knowledge) and in light of D1 when considered in combination with either D2 or D3.

68. It is also my opinion that the product formed using concrete connectors would infringe the patent, while the product formed using either plastic or wooden connectors would not infringe the patent.

Application for review

69. 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.

Karen Payne
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.