

OPINION UNDER SECTION 74A

Patent	GB 2491525
Proprietor(s)	Michael Bern Rothschild
Exclusive Licensee	
Requester	Michael Bern Rothschild
Observer(s)	British Gas
Date Opinion issued	09 April 2014

The request

1. The comptroller has been requested by Mr Michael Benn Rothschild to issue an opinion as to whether the importing, selling and installing of “Hive Active Heating” systems amounts to an infringement of GB 2491525 (the Patent). The requester believes that British Gas trading as British Gas Services Limited and British Gas New Heating Limited may be infringing the Patent. The request includes a print-out of a number of pages from the “hivehome” website, detailing the Hive Active Heating system.
2. I have received observations from Mathys and Squire on behalf of British Gas, which asserts that there is no infringement of the granted patent, to which Mr Rothschild has provided observations in reply. I shall therefore need to come to a view of the scope of protection offered by the patent and determine whether the Hive Active Heating system would fall within that scope.

The Patent

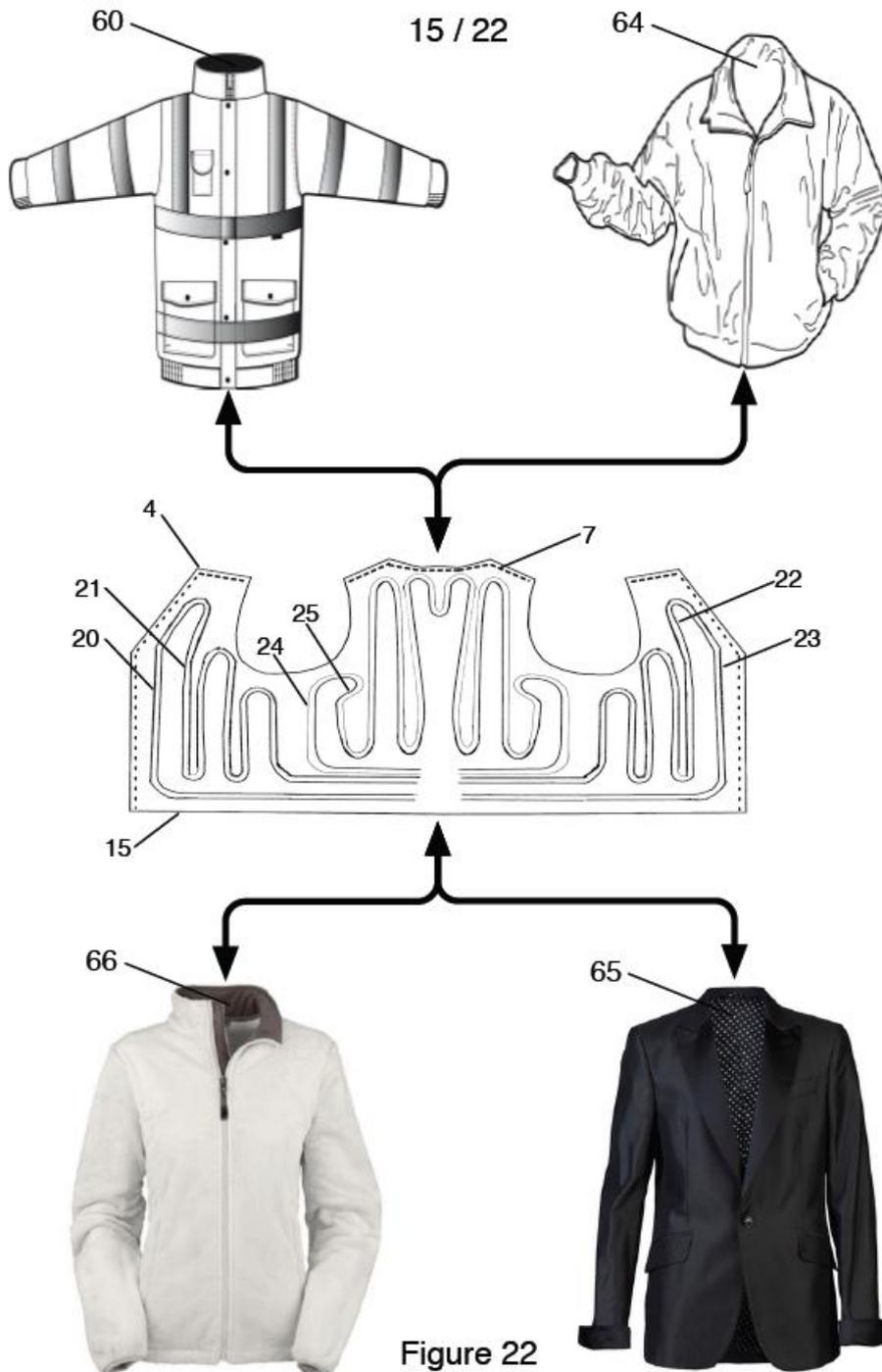
3. The Patent relates to what it describes as:

a complete autonomous heating solution that can be embedded (fitted within) in almost an unlimited type of structured garments with a lining. The autonomous heated interlining is powered by embedded wirelessly rechargeable power cells, which the wearer never needs to manipulate in any manner. Simply placing the garment either on a charging hanger or in a charging cabinet recharges the power cells; simply sitting in a specially designed wireless charging seat can also recharge the garment. The wireless inductive charging method is both simple to operate with virtually no user intervention and is completely safe as it operates by using lower power magnetic waves. The garment charging cycle stops automatically, and

provided the garment is placed on the special charging hanger the garment should always be charged and ready for immediate use.

The present invention is controlled wirelessly either from the wearer's mobile telephone or laptop/pc/tablet/iPad® via WiFi® or Bluetooth® connection using either a web browser or specifically written control application (Mobile App.)

Possible applications of this are shown for example in figure 22



The law

4. 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) ...

(c) ...

5. It is perhaps also at this point to remember that the protection offered by a Patent relates to the invention which is defined in the claim as set out in Section 125(1) which reads [my emphasis in bold]:

*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.***

6. I shall therefore need to consider whether the product described as the “Hive Active Heating” system provides each of the features required by the claim. To the extent that I shall need to construe the claim for the purpose of this opinion, I will of course need to follow the principles set out in *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others* [2005] RPC 9.

The Product

7. The Hive active system provides a thermostat, hub, receiver and is managed using an app. The Hive app, is according to the website available to download free and lets you control your heating and hot water from your phone, using the hub to relay various controls to your central heating and hot water system.

Analysis

8. Claim 1 requires:

*A autonomous heated interlining comprising:
at least four heating channels that are configured to be capable of individual control and isolation from each other,*

wherein each heating channel of at least a majority of said heating

channels are configured for control with its direct adjacent heating channel to offer a redundancy failure control system, adjacent heating channels being configured as primary and secondary channel pairs;

a plurality of embedded prismatic power cells or a plurality of embedded abs battery cell casings containing power cells;

a plurality of embedded inductive charging coils distributed throughout the interlining structure connected to a charging control circuit responsible for charging and charging management of the embedded power cells;

a embedded microcontroller permanently affixed in a receptacle incorporating wireless connectivity and connected to the plurality of heating channels via a embedded mosfet heating controller circuit;

a plurality of embedded temperature sensors located in corresponding regions configured to sense primary and secondary heating channel outputs which are interfaced to the embedded microcontroller.

9. The request also highlights claims 41-45, which are dependent claims, therefore requiring all of the features of claim 1, and adding additional requirements about the data transfer.
10. The request argues that the Patent clearly claims the use of an app on a mobile phone (smart phone) for controlling the heat setting of the “autonomous heated interlining” and highlights part of claim 1, as I have also done above.
11. The request makes no specific assertion that the “Hive Active Heating” system provides the remaining features of claim 1. For the avoidance of doubt, having looked at the web pages cited in the request, I have found no evidence that the “Hive Active Heating” system provides all of these other features.
12. Instead, the request argues that it would be obvious to a skilled person in the art to further use the App suggested in the Patent for residential and or commercial heating control. The test for obviousness of course relates to Section 1(1)(b), which regulates those applications which can be granted, and of course whether a granted patent is valid. This is quite separate from the question of infringement, and the scope of protection defined by Section 125. I am therefore unable to re-interpret the claim as the request invites me to do to include inventions that do not fall within the scope of the claim.

Opinion

13. It is my opinion, based on the evidence before me that the “Hive Active Heating” system does not provide all of the features required by the claim. Consequently, the disposal, making of an offer to dispose, use, import or keeping the product within the UK would not amount to an infringement of UK Patent 2491525.

Application for review

14. 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.

Robert Shorthouse
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.