

OPINION UNDER SECTION 74A

Patent	GB 2500838
Proprietor(s)	Levolux A T Limited
Exclusive Licensee	
Requester	Franks & Co Limited
Observer(s)	Albright IP
Date Opinion issued	02 April 2015

The Request

1. The Comptroller has been requested to issue an opinion as to whether a solar shading assembly (the Product) described and illustrated in the request would infringe GB 2500838 (the Patent). The Patent was granted on 26 November 2013 and remains in force. The request was made by Franks & Co Limited on behalf of Maple Sunscreening Limited.
2. Observations were received from Albright IP and the requester filed observations in reply.

The Product

3. The Product which is the subject of the request is a solar-shading louver¹ assembly as illustrated in the Annexes accompanying the request. The drawings from Annex 1 are reproduced below (figure 1).

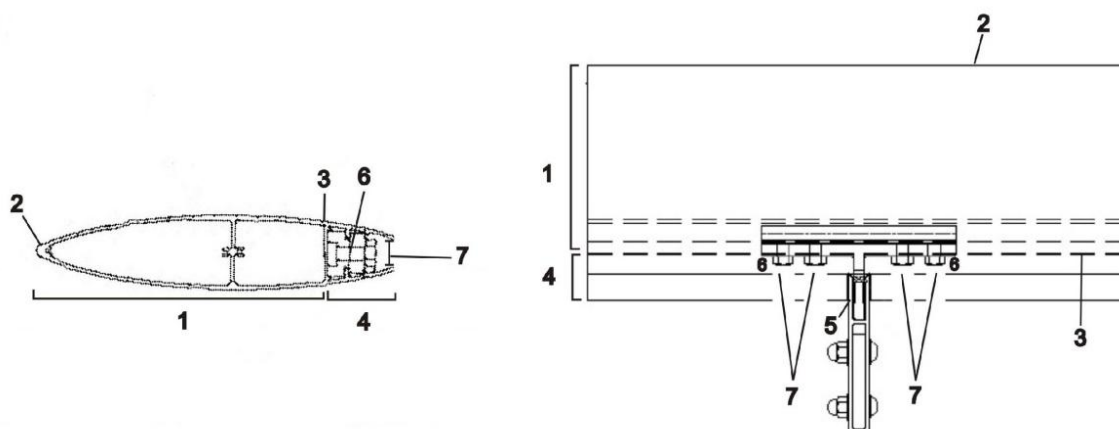


Figure 1 – Solar shading assembly of Annex 1 of the request

¹ Although *louvre* is the normal UK English spelling, I have used *louver* for consistency with the Patent.

4. The louver assembly comprises a louver member (1), a bracket (5) for fixing the louver member to a supporting structure, and a cap element (4) which is fixed to the rear (3) of the louver member. The cap element is designed to cover the bracket (5) where it is attached to the rear of the louver member by fastening means (6). The louver member is also provided with apertures (7).

Observations

5. The observations start by referring to a pending court claim for infringement which was not identified in the request and then claim that the request is not of the actual product identified in the infringement proceedings and that the request is therefore ambiguous. The observations in reply indicate that the infringement proceedings were started after the request was made and that the subject of the request differs from the product identified in those proceedings. The requester is free to direct the request to any product they wish and it does not have to be an actual product but may be a hypothetical product. I will form my Opinion based on the information provided in the request.
6. The observations go on to identify a number of apparent inconsistencies between the two drawings provided in Annex 1 of the request (figure 1). These inconsistencies relate largely to the accuracy and location of the cross-sectioning. In general terms I believe the skilled person would have no trouble in reconciling the lateral cross-sectional view with the plan view and would understand that certain features are omitted for clarity, e.g. that part of the cap in the cross-section view which extends behind the aperture.
7. One inconsistency identified relates essentially to the position of the bolts. In the cross-section view they extend some distance from the rear of the louver member (3). In the plan view they appear to be tightened right up against it. My presumption is that the rear of the louver member (3) has been misidentified in the plan view and is more likely to be at the double-dashed (=) line and the numeral 3 in this view identifies the position of the bracket. There is no apparent access to the interior of the louver member which would allow the bracket to be located there. This also means that the louver member (1) is narrower than indicated and the cap (4) is wider than indicated in the plan view. However, such an arrangement seems to me to correspond more closely with the relative dimensions of the cross-section view, bearing in mind that the cross-section view does not show the full extent of the cap. It does not help that the two views are to different scales.
8. A further inconsistency identified by the observer relates to the apparent double aperture shown in the plan view. In my view the two lower continuous longitudinal lines which include the apertures are intended to show the both the extreme edge of the cap (bottom line) and also the point where it transitions from being substantially straight to curved. As the single aperture extends through both these lines a gap is shown in both of them to indicate this. Ideally this would be indicated by a U shaped line joining the apertures.
9. On the whole I am content that there are no serious inconsistencies in the figures of the annexes.

Infringement

10. Section 60 Patents Act 1977 (the Act) governs what constitutes infringement of a patent; Section 60(1) relates to direct infringement and reads as follows:

(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.

The Patent

11. The Patent is directed to a solar-shading assembly with a hidden fastening device. Figure 2 illustrates the invention. It comprises a louver member (14), a bracket (18) for attaching the louver member to a support (12) and a cap (16) for covering a fastener (20) used to fix the bracket to the louver member. The cap is designed to cover the fastener and hide it from view. For clarity, figure 2 below shows the cap installed on the louver member to only one side of the bracket.

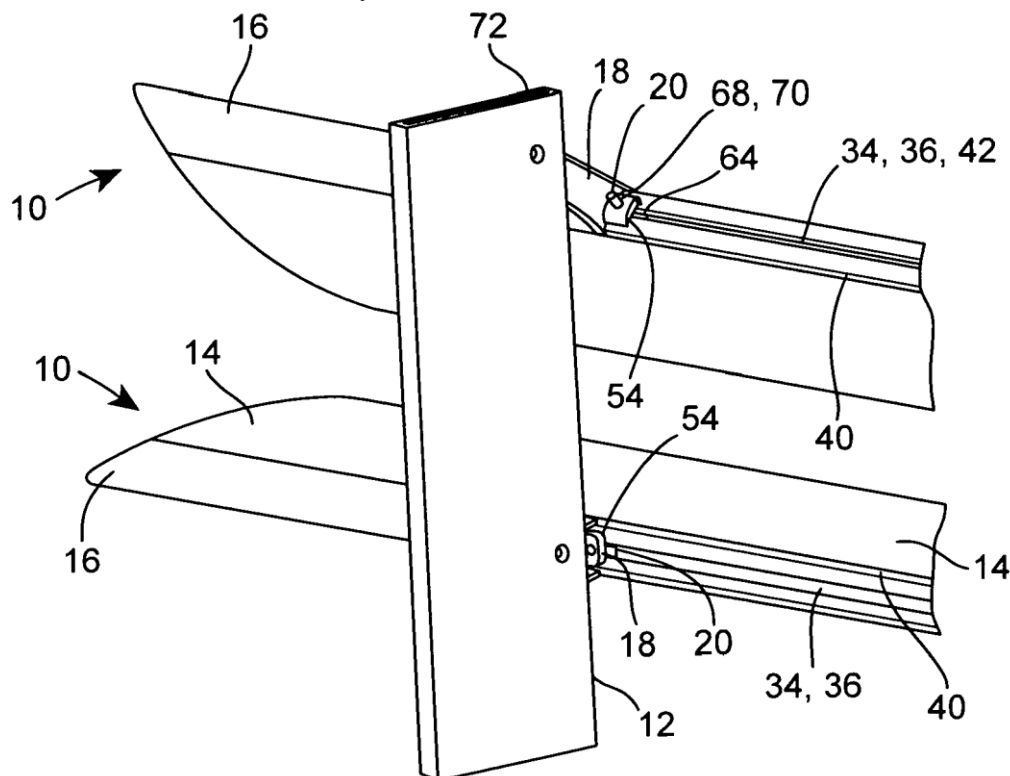


Figure 2 - Solar shading assembly of the Patent

12. The scope of the invention is defined by the claims. There are two independent claims, 1 and 15, which read as follows:

1. *A solar-shading assembly for fastening to a support mullion, the assembly comprising a louver including an elongate louver member having longitudinal front and rear edges, and an elongate cap element for extending along and covering the rear edge of the louver member, a bracket which is connectable to the support mullion, and a fastening device for connecting the bracket to the rear edge of the louver member, the fastening device including a fastener and an anchor element, the in use fastener being hidden internally within the louver, whereby the fastener is entirely overlapped by the cap element.*

15. *A method of concealing a fastener of a fastening device for interconnecting a louver and a bracket for connection to a support mullion, the method comprising the step of encasing the fastener by a louver member and an elongate cap element covering a rear edge of the louver member, wherein the fastener is spaced from a mullion connector of the bracket so as to be being hidden internally within the louver, whereby the fastener is entirely overlapped by the cap element.*

Claim Construction

13. The claims must be construed purposively following the well known House of Lords authority on claim construction *Kirin-Amgen v Hoechst Marion Roussel and others*². This requires that I interpret the claims in the light of the description and drawings, to decide what a person skilled in the art would have understood the patentee to have used the language of the claim to mean.

14. The person skilled in the art is considered to a designer of solar shades, in particular of solar shade louvers.

15. The majority of both of the claims is considered straightforward to construe. The issue relates to the final two clauses. In claim 1 these read as follows:

the in use fastener being hidden internally within the louver, whereby the fastener is entirely overlapped by the cap element.

16. The corresponding part of claim 15 reads:

wherein the fastener is spaced from a mullion connector of the bracket so as to be being hidden internally within the louver, whereby the fastener is entirely overlapped by the cap element.

17. The requester has put forward an interpretation of these parts of the claims based on dictionary definitions of certain of the terms. The observer in response has apparently used the same dictionary definitions to arrive at a different interpretation. I have not found this analysis particularly helpful.

18. I shall consider first the requirement that the fastener must be entirely overlapped by the cap element, which is common to claims 1 and 15. Based on the drawings it is

² *Kirin-Amgen v Hoechst Marion Roussel and others* [2005] RPC 9.

evident that that the cap extends completely over and extends beyond the fastener and that this is how *entirely overlapped* is to be interpreted. The use of the word *entirely* is to distinguish the arrangement from one in which the cap *partially* overlaps the fastener.

19. The requester has made much of the word *cover* derived from the particular dictionary definition provided of the word *overlap* “*extend over so as to cover partly*” and combined this with the word *entirely* to suggest it should be interpreted as “*extend over so as to cover completely*”. I consider that this places too much emphasis on the word *cover* and appears to be exactly the sort of *meticulous verbal analysis* criticised by Lord Diplock in *Catnic*³. The Shorter Oxford English Dictionary⁴ provides the following relevant definitions of *overlap* which are considered to place less emphasis on the word *cover*:

“*overlap: to lap over; to overlie partially; to cover and extend beyond*”

20. Provided one applies the normal meaning of *overlap* as modified by the word *entirely* to distinguish it from an arrangement in which the cap only partially overlies the fastener, I consider that this phrase can be construed as written.
21. Turning now to the further requirement that the fastener is hidden internally within the louver, the requester has once again based their interpretation of this clause on the dictionary definition of the word *hidden*. As above I do not consider that this is particularly helpful. I must arrive at a purposive construction based on what the skilled person would have understood the patentee to mean. For that I must look at the specification as a whole.
22. On reading the Patent it is apparent that the patentee, when referring to the fact that the cap hides the fastener, consistently uses the phrase “*hidden from view*”. The only exceptions are in the claims, the first line of the description, which is considered to be an introductory statement, the summary of the invention which corresponds to the claims, and in the penultimate paragraph which is considered to be a summary. Additionally, the introduction states that “*architects prefer to have as few of the fixings and fasteners on view as possible*”. The penultimate paragraph also specifies that “The fastening device is held internally within the louver ... and can thus be hidden from view”, and this sentence explicitly links *held internally* with *hidden from view*. I consider that the skilled person, when reading the specification would understand that the reference to *hidden* in the claims was to be understood as requiring the fastener was *hidden from view*, and the claims should be construed accordingly.
23. Furthermore, I consider that the phrase *hidden from view* does not mean that there are obscure angles from which it can be seen but rather it means it cannot be seen save for particularly close inspection. I.e. it is the distance of the view rather than the angle which is important. The specification teaches generally that the cap fully covers the fastening devices but nevertheless indicates that gaps may exist (e.g. substantially abutting – page 6, line 17). Accordingly I consider that the intention of the invention is to hide the fastening from any normal viewing location, whether that be above or below the louvers, but they are not necessarily hidden if inspected closely. I would also observe that such louvers are typically installed across the whole height and width of the outside of a window such that they are viewable from a wide range of angles.

³ *Catnic Components Ltd. v. Hill & Smith Ltd.* [1982] R.P.C. 183

⁴ “The Shorter Oxford English Dictionary”, Revised Third Edition, Oxford, 1973.

24. The last part of claim 15 differs from the corresponding part of claim 1 in that it specifies

the fastener is spaced from a mullion connector of the bracket so as to be being hidden internally within the louver

25. I do not believe this difference has any effect on the way claim 15 should be construed. This wording makes clear that the fastener is hidden by the cap element rather than the bracket by being spaced from the mullion portion of the bracket. However, this also follows from the requirement that the cap entirely overlaps the fastener. I.e. it is apparent that the fastener must be spaced from the mullion portion of the bracket in order for the cap to entirely overlap it.
26. There is a further difference between claims 1 and 15 and that is claim 15 does not refer to a fastening device comprising a fastener and an anchor element, but only to a fastener. For the avoidance of doubt the fasteners of these claims are considered to relate to the same feature.

Analysis

27. As I understand it the requester admits that the Product has all the features of the initial parts of these claims. There certainly does not appear to be any argument suggesting there are any differences other than in the last two clauses of the claims. I would observe that the drawings do not clearly show a fastening device including a fastener *and* an anchor element but it is presumed that the bolts shown are fastened to captive nuts in the rear of the louver member and such nuts would constitute an anchor element.
28. The significant difference between the Product and the solar shade louver assembly of the Patent is the presence of apertures (7 - Figure 1) in the cap element which coincide with the fasteners. The requester admits that these apertures are larger than the heads of the fasteners, although as pointed out by the observer that is not at all clear from the drawings in figure 1 above. The requester has also supplied photographs of the cap elements (Annexes 2 and 3) in which the apertures can be seen. The photograph from Annex 2 is reproduced below.



Figure 3 - Photograph of cap elements of the Product from Annex 2 of the request.

29. I consider that the cap elements entirely overlap the fasteners. That seems self-evident from the locations of the apertures which coincide with the fasteners.
30. I do not consider that the presence of the apertures has any effect on the overlap. I agree with the observer that “irrespective of the apertures, it entirely overlaps the fastener”.
31. The final point I need to decide is whether or not the presence of the holes hides the fasteners from view when viewed from a normal viewing distance, or conversely, whether or not the fasteners can be seen when viewed normally.
32. In this respect there seems to be one vital piece of information missing from that provided, and that is the overall size of the louvers. In general it would seem that, provided the relative dimensions all remained equal, the larger the louver is, the more likely it will be that the fasteners could be viewed through the apertures from a normal viewing distance, at least so long as the distance from the louver to a window outside which it was installed remained roughly the same.
33. No photograph has been provided showing the installed arrangement which might have helped me decide whether or not the fasteners were hidden.
34. In the absence of this information I am reluctant to form a definitive opinion. However, based on the apparent closeness between the edges of the apertures and the ends of the fasteners as illustrated in Annex 1 (figure 1 above), the fact that the apertures are larger than the heads of the fasteners and the size of the apertures relative to the rest of the cap as shown in Annex 2 (figure 3), it seems likely that the fasteners would be viewable from a normal viewing distance. If true, the Product would not fall within the scope of claim 1. If the product does not fall within the scope of claim 1 then there can be no infringing actions in relation to it.
35. Alternatively, if the Product were modified either so that the fasteners were recessed deep inside the cap element or so that the apertures were smaller than the heads of the fasteners, then it would seem likely that the fasteners would be hidden from view. Such an arrangement might therefore fall within the scope of claim 1 in which case the Patent would be infringed. This arrangement would also appear to fall within the scope of claims 2, 3, 4, 6, 7, 8, 11, 13 and 16. (There is insufficient detail for me to make any assessment of any of the other claims).

Opinion

36. I am somewhat reluctant to form a definitive Opinion based on the lack of information relating in particular to the actual size of the Product, and/or the lack of a photograph showing the installed arrangement. Nevertheless, based on a rudimentary judgement and taking particular account of the fact that the apertures are larger than the heads of the fasteners and that the heads of the fasteners appear close to the edges of the apertures, I consider that the fasteners would not be hidden from view. The Product does not therefore fall within the scope of claim 1 and any relevant actions in relation to it do not infringe GB 2500838.

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.

Matthew Jefferson
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.