

OPINION UNDER SECTION 74A

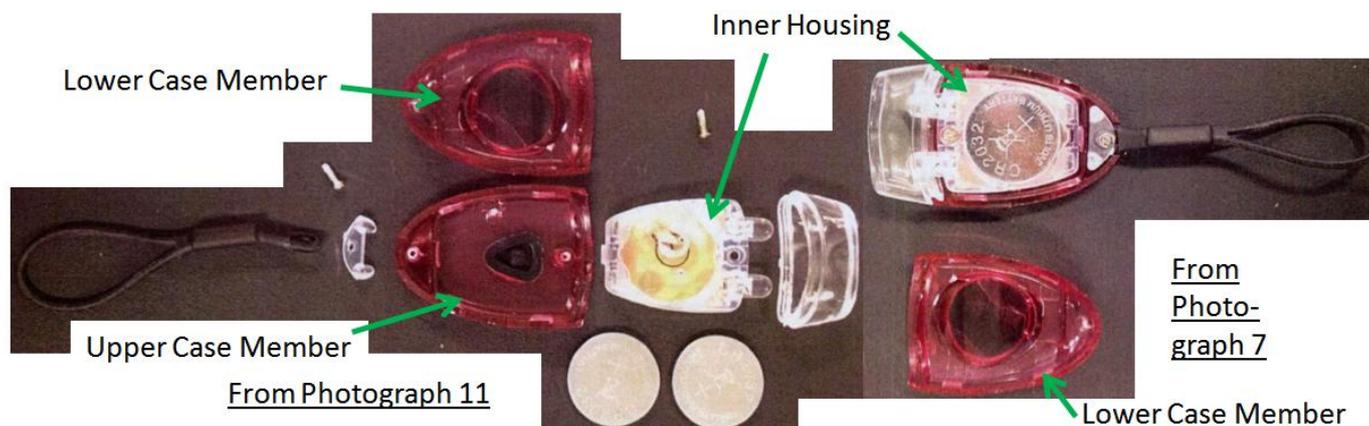
Patent	EP 1291577 B2
Proprietor(s)	UNICO Corporation
Exclusive Licensee	N/A
Requester	VENNER SHIPLEY LLP
Observer(s)	N/A
Date Opinion issued	07 August 2015

The request

1. The Comptroller has been asked by Venner Shipley LLP on behalf of Unico Corp to issue an opinion as to whether acts in relation to a particular electric light (the Product) might infringe EP 1291577 B2 (the Patent), a patent for a small portable flashlight. The Patent was filed on 18 June 2001 and granted on 2 May 2012 and is currently in force. Following the request, no observations have been filed.

Overview of the Product

2. The Product is a light suitable for use by a cyclist, a unit of which has been submitted with the request and which is characterised by the requestor as “Halfords Limited’s Mini Dual LED Bicycle Light” with reference to <http://www.halfords.com/cycling/lights-locks/lights/halfords-mini-dual-led-bike-light-set> . Photographs of the product accompanied the request. The depiction below is a compilation of 2 of the photographs, showing the product in 2 stages of disassembly, with annotations added. (NB “Halfords” is an RTM.)



The Patent

3. Claim 1 of the Patent reads as follows:

“A small portable flashlight, comprising:

a flat main body case including a side surface holding a light emitting body, the main body case holding inside a circuit substrate and a platy battery laminated to and held by the circuit substrate;

an elastic band including a loop portion, and having one end connected to an edge of the main body case and another end at which said loop portion is formed;

holding means for holding the other end of said elastic band at which said loop portion is formed, said holding means formed on an upper portion or a side portion of the main body and capable of holding the loop portion;

a fitting portion formed on a lower portion of the main body for fitting to an object; and an operating part provided in the upper portion of the main body case correspondingly to the fitting portion for a switching operation to turn on and off the light emitting body;

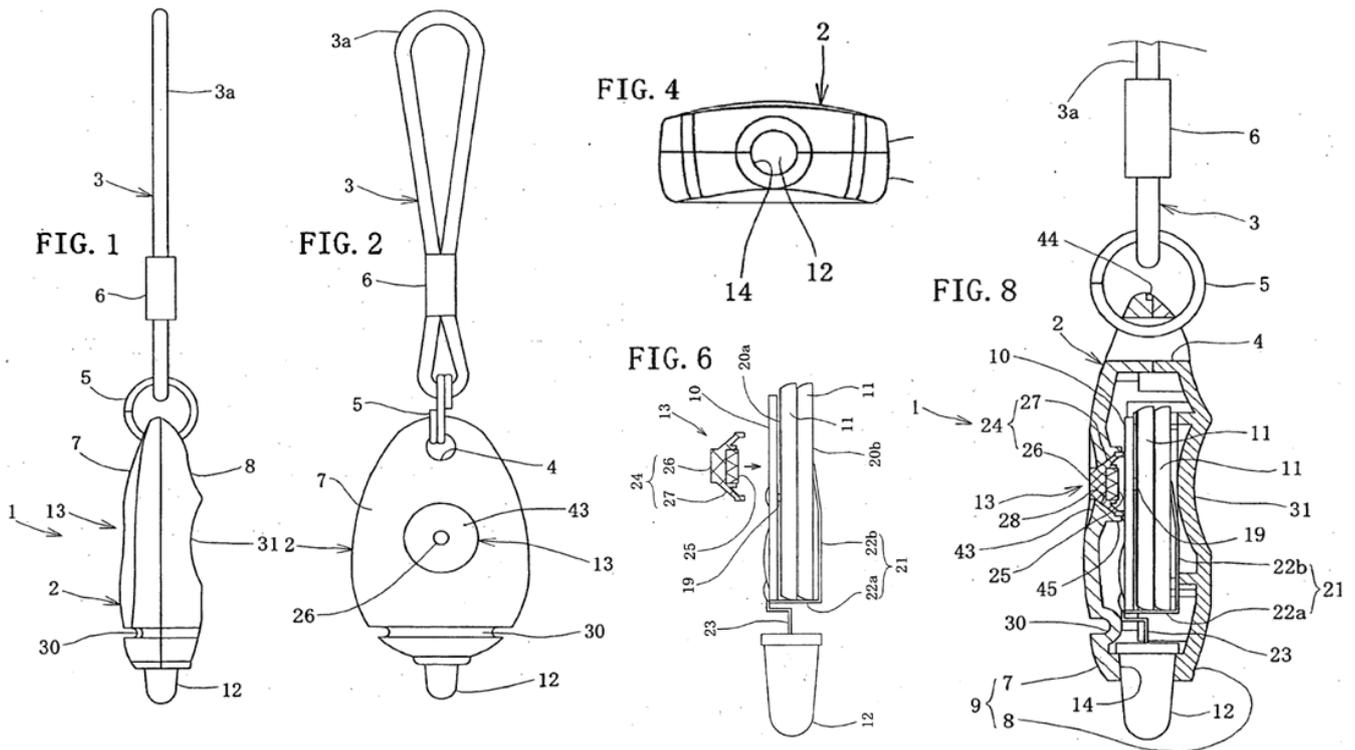
wherein the elastic band can be wound around the object such that the loop portion at the other end is held by said holding means, with the fitting portion fitted onto the object, for holding the main body case on the object; the operating part turning on the light emitting body upon reception of a pressing force applied in a direction to cause the operating part to be backed up by the object;

wherein the holding means is provided by a groove formed on the surface of the main body case or by a ridge or a projection projecting out of the main body case.”

4. Claim 2 of the Patent is appended to claim 1 and is further characterised by the operating part including “a concave recess formed in the upper surface of the main body case; and an operation member projecting within the recess.”

5. Claim 3 of the Patent defines the small portable flashlight of one of claims 1 to 2, wherein “the fitting portion is provided by a recess.”

6. Selected figures from the Patent are copied below. The figures include two disc-like batteries (11). A light emitting body (12) is described as an LED. This is associated with a retaining hole (14). A main body (2) is shown including a main body case (9) provided by an upper member (7) and a lower member (8).



Claim construction

7. The standard principles of claim construction were set out by Lord Hoffman in *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others* [2005] RPC 9 (see paragraphs 32-52). The key point made in that judgment was that the approach in construing a claim should be to establish “what a person skilled in the art would have thought the patentee was using the language of the claim to mean”. In *Mayne Pharma v Pharmacia Italia SpA* [2005] EWCA Civ 137, Jacob LJ further summarised the principles of claim construction and further guidance is provided by Pumfrey J in *Halliburton v Smith* [2006] RPC 2. In particular, as outlined in Section 125(1) of the Patents Act,

“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.”

8. For the purposes of claim construction, I have taken the notional skilled person to be at least a person familiar with the technology of electric torches, small illumination devices and battery compartments for small devices such as handheld devices.
9. The term “platy battery” is used in the specification including claim 1. In the absence of clear references in the Patent to battery materials, I considered it to be unreasonable to construe that “platy” may have been an abbreviation for “platinum”. In contrast, the description includes various passages (eg paras 29 & 42) relating to the disk-like shape of the batteries and it is known that “platy” can mean “plate-like” (eg in a small number abstracts for patent applications relating to batteries). Hence, it is reasonable construe “platy” as meaning “plate-like or disk-like”.

10. In claim 1, the expression “battery laminated to and held by the circuit substrate” is construed to include within its scope a situation where the circuit substrate contributes indirectly to the holding of the battery, wherein “laminated” means “layered or stacked”.
11. An essential feature of the invention according to claim 1 is that it comprises a light emitting body. No grounds were found for construing that the claims restrict the flashlight to comprising no more than one light emitting body.
12. The main body case is defined as being “flat”. Considering figures 1 & 8 of the Patent, it is construed that a case having slight curvature or undulation and which is not a significant order of magnitude thinner than its width or length may still fall within the scope of being a flat case.
13. As will become apparent, construction of the terms and expressions in the above manner would not eventually be critical to the outcome of this Opinion, but the above considerations been included here to provide an insight into how claim construction was approached.

Infringement

14. The opinion request relates to the Product as outlined above and it has been requested that the Opinion relates to claims 1 to 3 of the Patent with respect to possible infringement.
15. The first three integers of claim 1 have been compared to the Product as follows. When considering features of the Product, I have examined the sample flashlight provided, I have considered in detail the photographs supplied with the request and I have checked the web link (URL) referenced in paragraph 2 above.

(a) A small portable flashlight

The Product is clearly a small portable flashlight so feature “a” is satisfied.

(b) a flat main body case

The Product clearly has a flat main body case, with reference to the manner in which the word “flat” is construed (see previous section of this Opinion).

It also merits consideration that the Product includes an inner housing which could be called a “case”. This would not appear to be suitable for use as a main body case according to the Patent, as it lacks provision for various essential features, such as the operating means, the elastic band support and upper and lower case members. Therefore, applying this integer to the Product, I can only take the main body case to mean its outer case.

(c) including a side surface holding a light emitting body

In the embodiment of the Patent, a front side of the main body case holds a light emitting body. This is depicted and described as being achieved via a hole (14) in the front side of the main body case. “The upper member 7 and the lower member 8 have their front side surfaces formed with a retaining hole 14 capable of holding the light emitting body 12 as exposed to the outside.” (from para 40). This is entirely consistent with the way this integer is worded in claim 1.

In the Product, light emitting bodies are held by an inner housing. This inner

housing is shown in the photographic depiction above (under Overview of the Product). In photograph 7, it can be seen that the positions at which the light emitting bodies are held in the Product lie significantly inboard relative to any side surface of the main body case. No individual side surface of the main body case of the Product directly supports or holds a light emitting body. Also, no side surface of the main body case appears to have any definable role in indirectly supporting either light emitting body.

It is noted that in the Product, the main body case does support a front cover. However, this is not a light emitting body and is not integral with a light emitting body. Instead, it is a light transmitting body.

Hence, the Product does not have a main body case side surface holding a light emitting body and thus does not have this feature (integer c) of the Patent.

16. Claims 1-3 include further integers. However, it has been established that integer "c" is missing from the Product. Having identified this significant difference between the Patent and the Product, there is no cause to consider these further integers.

Opinion

17. On the basis of the information provided, it is my opinion that acts in relation to the Product would not infringe claim 1 of the Patent. I also conclude that it follows that dependent claims 2 & 3 would not be infringed.

Application for review

18. 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.

Mark Thwaites
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.