Patents Act 1977 **Opinion Number** **06/15**

OPINION UNDER SECTION 74A

Patent	GB 2515584 B
Proprietor(s)	Steven Wakefield, Simon Wakefield
Exclusive Licensee	
Requester	Simon L. Barber
Observer(s)	Simon Wakefield
Date Opinion issued	11 August 2015

The request

1. The comptroller has been requested by Mr Simon Barber ("the Requester") to issue an opinion as to whether patent GB2515584 ("the Patent") is valid in light of prior art detailed by the Requester.

2. A request was received from the Requester on 28 April 2015. The request was accompanied by a statement explaining his request as well as four further sections detailing the prior art. The request also included a request for an Opinion on infringement of his own intellectual property namely two registered designs. The Requester was informed that we cannot provide an Opinion on whether a registered design is infringed or not and that the Opinion will be restricted to the validity of the Patent.

Observations & Observations in reply

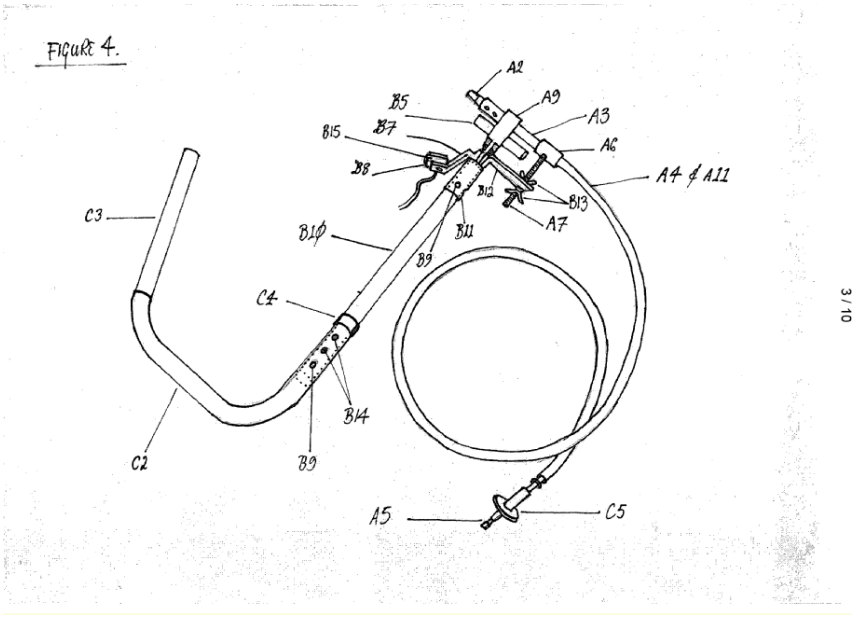
3. Observations were received from one of the proprietors of the Patent Mr Simon Wakefield ("the Observer") on 11 June 2015. Observations in reply were received from the Requester on 27 June 2015.

The Patent

4. The Patent entitled Gain Entry Tool was filed on 23 September 2013 claiming priority from GB application GB1316067.6 dated 10 September 2013. The Patent was granted on 13 May 2015 and is still in force.

5. The Patent relates to a tool for gaining entry to a building by manipulating various locking systems on the inside of the building whilst working on the outside of the

building. The tool has three main configurations. For the purposes of this Opinion we are most interested in the arrangement depicted in Figures 1-4 of the Patent with Figure 4 reproduced below. The tool includes an extendable arm or handle C3, C2, B10. This is connected to the main head of the tool via connector head B11. The main head further includes bracket B12 and threaded stud A7 to allow adjustment of the angle of the head. The head also includes tube A3, housing unit A9 and chuck head A2. A driveshaft A4 is connected to the head via connector A6 and allows tools inserted in chuck head A2 to be rotated from a distance away. A digital camera B8 may be attached to the tool via bracket B7. In practice the head portion is passed through a letter box or similar opening and the driveshaft and handle maintained on the outside. Tools inserted in the chuck head A2 are controlled via the driveshaft to remove screws or manipulate locking devices on the inside of the building.



6. There are 14 claims including one independent claim, claim 1, which reads as follows:

> *1.A tool for gaining 'permitted entry' whilst working from the outside of the building in which the user is able to manipulate numerous types of security locking systems whilst working from the outside, the tool uses a range of arms & adjustable framework by which a viewing device is attached as is a be-spoke flexible arm housed in a fixed adjustable head which is used to manipulate objects using a range of unique attachments.*

7. I will consider first the validity of claim 1. Only if I find it to be invalid will I consider the validity of the dependent claims.

Validity – the law

8. For a patent to be valid it must be both new and involve an inventive step. Section 1(1)(a) & (b) of the Patents Act 1977 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;

9. The relevant provisions in relation to novelty are found in section 2(1) and section 2(2) which read:

> *2(1) An invention shall be taken to be new if it does not form part of the state of the art.*
>
> *2(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.*

10. 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).*

Construction of claim 1

11. I will begin by determining whether claim 1 is novel in light of the disclosed prior art. If I find it to be novel I will then consider whether it involves an inventive step.

12. In order to determine whether claim 1 is novel I first need to construe claim 1 of the Patent following the well known authority on claim construction which is *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others* [2005] RPC 9. This requires that I put a purposive construction on the claim, interpret it in the light of the description and drawings as instructed by section 125(1) of the Act and take account of the Protocol to Article 69 of the EPC. Simply put, I must decide what a person skilled in the art would have understood the patentee to have used the language of the claim to mean.

13. I consider the person skilled in the art to be a person, or a team or persons, familiar with the design, manufacture and use of locksmith tools including those for gaining entry to a building when locked out on the outside.

14. Claim 1 has a number of features. It is useful to break down the claim and consider each feature in turn.

15. (i) "*A tool for gaining 'permitted entry' whilst working from the outside of the building in which the user is able to manipulate numerous types of security locking systems whilst working from the outside*". This feature is straightforward to construe and I consider it to be a tool suitable for gaining entry to a building where the user is able to manipulate different types of locking systems on the inside whilst working from the outside. For example from the description the tool may be passed through a

letterbox and used to turn handles or unlock bolts, latches or security chains. Alternatively the locking mechanism itself can be dismantled by removing connecting screws.

16. (ii) *"the tool uses a range of arms & adjustable framework"*. The term 'range of arms' is not used in the description. The description does, however, refer to an 'extendable arm' which relates to the connecting rods B10, extension rods F2 and portions C2, C3 which form an extendable pole or handle. I therefore interpret this feature as a handle comprising a number of interconnecting rods.

17. (iii) "*by which a viewing device is attached".* From the description the tool includes a viewing device in the form of a digital camera. The camera can be attached to different parts of the tool via a bracket. I interpret this feature as some means, such as a camera, attached to the tool to allow the user to view the inside of the door or building.

18. (iv) "*as is a be-spoke flexible arm".* The flexible arm clearly refers to the flexible driveshaft A4.

19. (v) "*housed in a fixed adjustable head".* In the embodiment the driveshaft A4 passes through the main head of the tool. The head comprises bracket B12, threaded stud A7, connector A6, tube A3, housing unit A9, chuck head A2 and connector head B11. The main adjustable elements seem firstly to be the connector head B11 which is removable and can also be attached to arm portion B10 in different positions via retainer holes B14. Secondly, the angle of the head itself can be adjusted via the bracket B12 and stud A7. Therefore in light of the description I interpret this feature such that the driveshaft passes through a head that is adjustable and then fixable in position.

20. (vi) "*which is used to manipulate objects using a range of unique attachments.*" The skilled person would realise this is referring to the driveshaft A4 which can manipulate objects such as screws by, for example, inserting suitable tools in the chuck head A2. A *range* clearly means more than one. I therefore interpret this feature such that the driveshaft is used to manipulate objects using more than one attachment.

21. In order for the claim to be anticipated (i.e. not novel) all of these features must be disclosed by a single piece of prior art.

Assessment of the prior art

22. The Requester has referred to several pieces of prior art. They comprise three other tools which the Requestor alleges were available commercially to locksmiths at the filing date of the Patent. These are (i) the Requester's own so-called Locksmiths Extreme Letterbox tool; (ii) a tool referred to by the Requester as Paul Souber's Letterbox tool or the Souber (RTM); and (iii) a tool known as Pink's or TradeLocks Letterbox tool. The Requester also refers to an extract from an online blog describing a homemade tool.

23. I will begin by considering (i), the Requester's own Letterbox tool. The Requester

has provided a picture of his Letterbox tool on page 2 of section 1 of the original Opinion request and reproduced below. The tool consists of a handle formed of several rods that can be extended by including further or different length rods. Attached to the handle is an end rod which has an element termed the 'Grippers' on one side. The Grippers is a beak-like structure (as described by the Observer) which can be used for gripping locking devices. On the other side of the head is a flexible drive which passes through the rod and is used to rotate the Grippers and therefore manipulate a locking device from outside a building. Although not shown in this picture, a two-pronged attachment called the 'Wishbone' can be inserted in the Grippers to enable the tool to deal with alternative locking configurations.

24. Referring back to the features of claim 1, this tool is clearly a tool for gaining entry (feature (i)); has a handle with interconnecting rods (feature (ii)); and includes a flexible driveshaft (feature (iv)).

25. Feature (iii) requires there to be a viewing device e.g. a digital camera attached. Reading the submissions from both the Requester and Observer it appears that the tool has been designed so that a camera bracket may be attached if required. However, a camera does not seem to have been supplied with the tool when sold. Therefore on balance I do not consider this feature to have been fully met.

26. Feature (v) requires the driveshaft to pass through a head that is adjustable and then fixable in position. As discussed above the driveshaft in the Requester's Letterbox tool passes through a rod portion that is removable from the handle. In this analysis the head is taken to include the rod and the Grippers which is attached to one side. The key point here to meet the terms of feature (v) is whether the head can be adjusted and then re-fixed in any way. I note that in normal use neither the driveshaft nor the Grippers appears to be removable from the head. Also, the angle of the head cannot be changed. The Requester has argued in his observations in reply that the Grippers can be adjusted to fit over different locking devices such as knobs, levers and handles. However, it seems to me that the 'beak' of the Grippers is merely being pushed open to fit over the locking element in question. It cannot be adjusted and then fixed in position. Once the Grippers is removed from, for example a handle, it will presumably spring back to its original form. The Requester also argues that the Wishbone represents an adjustable feature. However, the Wishbone does not form part of the head and therefore although it is undoubtedly an attachment it does not

render the head adjustable. Therefore in my opinion, the Requester's Letterbox tool does not meet the terms of feature (v) of claim 1.

27. The driveshaft of the Requester's Letterbox tool can clearly be used to manipulate objects as required by feature (vi). However it appears at the time of filing the Patent, that there was only one attachment available, the Wishbone. The Grippers cannot be considered to be an attachment as it is not removable. Therefore this feature is not met as it requires there to be a range (more than one) of attachments.

28. Therefore in summary the Requester's Letterbox tool discloses features (i), (ii) and (iv) but does not disclose features (iii), (v) and (vi). Therefore in my view claim 1 is novel in light of this piece of prior art.

29. As well as being novel, to be valid, an invention must also involve an inventive step. I will therefore now consider whether claim 1 is obvious in light of the Requester's Letterbox tool.

30. The Court of Appeal in *Windsurfing*[1] 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*.[2] Here, Jacob LJ reformulated the *Windsurfing* approach as follows:

> *(1)(a) Identify the notional "person skilled in the art"*
> *(1)(b) Identify the common general knowledge of that person;*
> *(2) Identify the inventive concept of the claim in question or if that cannot be readily 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 that would have been obvious to the person skilled in the art or do they require any degree of invention?*

31. I will therefore use this *Windsurfing/Pozzoli* approach to assess whether claim 1 of the present application involves an inventive step.

32. Regarding steps 1(a) and 1(b) as discussed above, I consider the person skilled in the art to be a person (or a team or persons) familiar with the design, manufacture and use of locksmith tools including those for gaining entry to a building when locked out on the outside. The common general knowledge of that person would include an appreciation of how these tools are used in practice and the common attachments available for such tools.

33. Regarding step 2, I consider the inventive concept of claim 1 as construed above to be: a tool suitable for gaining entry to a building where the user is able to manipulate different types of locking systems on the inside whilst working from the outside, the tool comprising a handle with a number of interconnecting rods; a viewing device; and a flexible driveshaft that passes through a head that is adjustable and then fixable in position such that the driveshaft can manipulate objects using more than

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

one attachment.

34. Referring to the discussion regarding novelty above there are three differences between the prior art (the Requester's Letterbox tool) and the inventive concept of the claim. To carry out steps 3 and 4 I will identify and deal with each of these differences in turn.

35. Firstly, the Requester's Letterbox tool does not disclose a viewing device e.g. a digital camera (feature (iii) of claim 1). However, it is clear that the tool was designed so that a viewing device could be attached if required. As the Observer remarked when referring to pages 30-32 of the Requester's submissions, "One would also be foolish to not know that cameras are also available, not only to locksmiths but to all and sundry and putting them together, would seem the most logical proposition to those in the know." It seems likely to me that the skilled person would readily attach a camera to the head of the Requester's Letterbox tool without exercising any inventive ingenuity. Therefore in my view this feature is obvious.

36. The second difference is that the head of the Requester's Letterbox tool is not adjustable and then fixable in position (feature (v) of claim 1). In order to make the head adjustable it would be necessary to replace the Grippers with a different type of tool head. Alternatively the rod part of the head would need to be replaced with a structure that could be adjusted in some way, for example to allow it to be orientated at different angles. These are not straightforward modifications and to implement them would in my opinion require some ingenuity on behalf of the skilled person. Therefore in my view this feature is not obvious.

37. The third difference is that the driveshaft of the Requester's Letterbox tool does not have more than one attachment (feature (vi) of claim 1). Currently it manipulates objects using either the Grippers or the Wishbone attachment i.e. it has a single attachment. As the Requester has pointed out in his observations in reply "my rotary tool head is capable of turning *all manner* of things without the need to change the head". He argues further that using one head (i.e. the Grippers) for different purposes is an advantage over the tool of the Patent. He also states that the Grippers has changed very little since it was first introduced due to it being efficient and reliable in its current state. Therefore there seems to be very little incentive to provide further attachments. Moreover it is not clear how further attachments could be developed without re-designing or replacing the Grippers which does not seem to be a straightforward task. Therefore in my view this feature is not obvious.

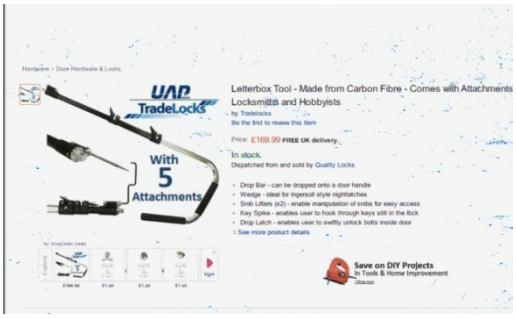
38. Therefore in summary I consider claim 1 to include an inventive step in light of the Requester's Letterbox tool because although feature (iii) is obvious, I regard features (v) and (vi) to be inventive.

39. I will now consider the remaining pieces of prior art.

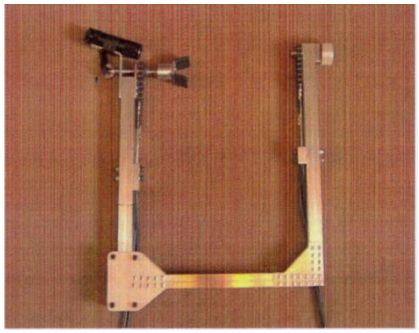
40. The Requester has referred to the so-called Souber (RTM) tool which is photographed on page 3 of section 1 of the Opinion request and reproduced below.

41. This is clearly a locksmith's tool for gaining access to a building from the outside. It also appears to comprise a handle with interconnecting rods as required by claim 1 of the Patent. Although pictured with the Requester's flexible driveshaft, from the submissions provided to me it appears it does not usually comprise a flexible drive. It therefore only appears to disclose features (i) and (ii) of claim 1. Thus it seems less relevant to the claims than the previously-discussed Requester's Letterbox tool.

42. Next, the so-called TradeLocks tool is illustrated on page 10 of section 1 of the Opinion request and reproduced below. Again this is clearly a tool for gaining access to a building from the outside. It also includes a handle with interconnecting rods. However, again it does not include a flexible driveshaft and therefore for the reasons given above claim 1 is both novel and inventive in light of this tool.



43. Finally, the Requester has included a description found on the internet of a homemade tool. The description is in the form of a blog supposedly written in a series of entries during May/June 2011 where the author is discussing the construction of the tool. Several photographs of the tool and its components are provided, one of which is reproduced below.



44. From the blog, the author is clearly constructing a letterbox-type tool for gaining

entry. The tool includes a handle with interconnecting tubes. It also includes a makeshift drive system in the form of a tensioned cable and chain which is used to rotate a tool for manipulating locking devices. Mention is also made of attaching a camera. Finally the author describes making a series of different tools which can be attached to carry out various functions. Therefore, it does on the face of it appear to disclose many of the features of the invention as defined by claim 1. However, it is doubtful whether the drive system is sufficient to meet the terms of the 'flexible arm' (feature (iv)) as it seems to work in a different way to the driveshaft of the Patent. Also, regarding feature (v), the cable and chain in the homemade tool do not pass through the head but instead appear to be wrapped round the gripper-type attachment. Therefore it does not seem to meet the terms of claim 1. It would not appear to be obvious to adapt the tool to meet the requirements of claim 1 as it would involve a complete re-design of, in particular, the drive system.

45. Furthermore, a problem with this blog as a possible anticipatory disclosure, as the Observer points out, is that very little detail is provided on how the components are fitted together and how they work in practice. In *SmithKline Beecham Plc's (Paroxetine Methanesulfonate) Patent [2006] RPC 10*, the House of Lords held there were two requirements for anticipation: prior disclosure and enablement. In the case of enablement the ordinary skilled person must be able to perform the invention which satisfies the requirement of disclosure; in other words they must be able to get it to work. I am not convinced that there is enough information provided in this blog for the skilled person to be able to get the described homemade tool to function as intended.

46. Therefore I consider claim 1 of the Patent to be both novel and inventive in light of the disclosure of the homemade tool.

Opinion

47. Therefore it is my opinion that the Patent is valid in light of the prior art detailed by the Requester.

Susan Dewar
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.