Patents Act 1977 **Opinion Number** **16/15**

OPINION UNDER SECTION 74A

Patent	EP 2184725 B1
Proprietor(s)	Phyco Trading B.V.
Exclusive Licensee	
Requester	Boult Wade Tennant
Observer(s)	Vereenigde Octrooibureaux N.V.
Date Opinion issued	29 December 2015

The request

1. The comptroller has been requested to issue an opinion as to whether EP2184725 B1 (the Patent) is invalid for reasons of a lack of novelty and/or inventive step in view of submitted prior art documents numbered D1 to D10. The request is by Patent Attorneys Boult Wade Tennant on behalf of an unnamed third party.

Observations

2. Observations were received from Patent Attorneys Vereenigde Octrooibureaux N.V. on behalf of the patentee. Accompanying the observations was a further document D11.

Observations in reply

3. Observations in reply were received with a further document D12.

Matters to be considered by this Opinion

4. Section 74A of the Patents Act provides for the procedure where the Comptroller can issue, on request, non-binding opinions on questions of validity relating to novelty and inventive step. Any observations should be confined to the issues raised by the request and should not broaden the scope of the opinion by raising new issues. Documents D11 and D12 relate to issues raised by the request rather than new issues so I shall, where necessary, consider them in my Opinion.

5. The observer argues that D1, D2, D5 and D6 are not proven to have been made available to the public before the priority date of the Patent and that their authenticity is questionable. The observer asserts that, according to Case law of the Boards of Appeal of the European Patent Office, any alleged prior use must be proved “up to

the hilt", and this has not been done. Therefore these documents should not be taken into consideration. The requester refutes these assertions by providing D12 which states that the EPO guidance on the standard of proof of internet citations is "the balance of probabilities" The authenticity of the documents and their validity as prior art is also argued.

6. Having reviewed the arguments and evidence, I am minded to consider documents D1, D2, D5 and D6 in this Opinion. The Opinions procedure is intended to be relatively quick and simple, non-binding and based on the submitted evidence. Detailed investigation into the authenticity of submitted evidence is beyond the scope of the Opinions service. Since the documents are not clearly invalid as prior art, then I will assume for the purpose of my opinion that they are valid. I also note only that EPO guidance and case law is not binding on UK law.

The Patent

7. The Patent was filed on 11 November 2009 with a priority date of 11 November 2008, was granted on 23 October 2013 and is still in force. It relates to an emergency service warning system which is arranged to warn users of the approach of emergency services such as ambulances, police or fire brigade vehicles or staff.

8. Emergency services communicate over an emergency service communication network using mobile ("movable") transmitters (T) such as walkie-talkies. These connect to base stations or "stationary emergency service communication devices (M)". The radio signals transmitted by the movable transmitters comprise encoded digital signals including at least one signal which is periodically transmitted ("with constant period, for instance of one or a few seconds"). The warning system comprises a user receiver (R) which is arranged to detect these periodic signals and so identify the presence of the emergency service.

9. The patent has 15 claims. Claims 1 and 10 are independent system and method claims with corresponding features. As such any discussion in relation to claim 1 will apply equally to claim 10. Claim 1 reads as follows:

> *An emergency service warning system, arranged to warn a user of the approach of emergency services, provided with:*
>
> *-at least one movable emergency service transmitter (T); and*
>
> *-at least one receiver (R), arranged to receive signals transmitted by the emergency service transmitter (T);*
>
> *-at least one stationary emergency service communication device (M) adapted to communicate with said emergency service transmitter (T), characterized in that*
>
> *-the stationary emergency service transmitter (M) and movable emergency service transmitters (T) utlilize different communication bands;*
>
> *-whereby the communication between the stationary emergency service communication device and the movable emergency service transmitters (T)*

utilizes encoded digital emergency service signals and the emergency service signals (S) comprise at least one signal transmitted periodically by the transmitter (T); and

-the user receiver (R) is arranged to detect said periodic signals for the purpose of detection of the movable transmitter (T) and to deliver a warning signal upon detection of said emergency service signal (S) without deciphering a possible content of the emergency service signals.

Claim construction

10. Before considering the documents submitted with the request I will need to construe the claims 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 claims, interpret it in the light of the description and drawings as instructed by Section 125(1) 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.

11. Section 125(1) of the Act states that:

> *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. And the Protocol on the Interpretation of Article 69 of the EPC (which corresponds to section 125(1)) states that:

> *Article 69 should not be interpreted in the sense that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Neither should it be interpreted in the sense that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patentee has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patentee with a reasonable degree of certainty for third parties.*

13. Claim 1 appears generally straightforward to construe and there has been no specific discussion put forward by the requestor as to its meaning. I will therefore take each prior art document or combination of documents in turn and consider the arguments submitted by the requestor regarding novelty and inventive step, including any points of construction as they arise.

Does claim 1 lack novelty in view of D1?

14. The requester asserts that claim 1 lacks novelty in view of D1. D1 consists of a printout of an online file describing a TETRA-mobile-stations Detector system and screenshots of log files of detected signals. The associated software folder screenshot is shown in D2. The system appears to scan TETRA frequencies, detect and log sets of successive signal strength values on different frequencies "according to the TETRA timeslot pattern" such that "no signals are overlooked" but without deciphering them. The system can continuously monitor on a particular frequency channel once a transmission is detected.

15. Since the emergency service communication network described in the Patent is preferably based on the TETRA standard (paragraph 28), then I am satisfied that D1 implicitly discloses the features of the first five clauses of claim 1.

16. The requester asserts that continuous monitoring of a frequency means that periodic signals are detected and allows "confirmation that the signal was not a spurious noise response but was a periodic signal". The requester also considers either the lines of the display of logged signals or an audio alert when the received power of the detector is greater than a threshold as a warning signal so that the features of the final clause of claim 1 are also disclosed.

17. The observer argues that the system of D1 is in practice incapable of detecting periodic TETRA signals because the scanner is too slow, it does not distinguish a TETRA signal from other TETRA or non-TETRA signals and does not positively recognize specific periodic signals of the TETRA transmitter. D11 is used to show that the system of D1 is only available as a demo version which does not provide the full capability described in D1.

18. Claim 1 requires the user receiver to "*detect said periodic signals for the purpose of detection of the movable transmitter (T)".* The description states that there is "at least one signal periodically transmitted by the transmitter T (with a constant period, for instance of one or a few seconds)" and that the user receiver R "is arranged to detect, for instance to recognize, the periodic signals, for the purpose of detection of the respective transmitter T" (paragraph 34). Paragraph 54 goes on to state that "the processor 8 may be arranged to recognize a period (of transmitted emergency service signals) in the digitized signal and to produce a warning signal as soon as the processor recognizes such a period". Therefore I consider that the skilled person would construe "*detect said periodic signals for the purpose of detection of the movable transmitter (T)"* to mean that specific periodic signals must be detected and recognized as periodic signals rather than merely being detected along with other signals. In other words they must be distinguished as repeating signals of constant period rather than merely successive signals detected at a particular frequency in successive timeslots.

19. D1 does not appear to recognize or distinguish any periodic signals in the logged signals. D1 simply logs successive measurements "according to the TETRA timeslot pattern". The term "periodic" in claim 1 does not, as I have construed it, relate to the period of a timeslot and so D1 does not, in my opinion, anticipate claim 1.

Does claim 1 lack an inventive step in view of D1

20. To determine whether or not the invention defined in claims 1 is inventive in view of D1, I will rely on the principles established in Pozzoli SPA v BDMO SA [2007] EWCA Civ 588, in which the well known Windsurfing steps were reformulated:

> *(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, determine whether those differences constitute steps which would have been obvious to the person skilled in the art.*

21. The skilled person would be an engineer in the field of radio communications, familiar with common radio standards such as TETRA.

22. The inventive concept of claim 1 is the detection of periodic signals (as I have construed them) transmitted by movable transmitters of an emergency service communication network for the purpose of warning a user of the approach of emergency services.

23. I have already found that the detection of periodic signals is not disclosed in D1. The fourth step requires me to determine whether this feature is an obvious addition or modification. I do not think that it is. D1 merely logs all detected signals at the frequencies of interest. There is nothing to suggest or hint that anything else is required. The ability of D1 to scan and log other non-TETRA frequencies would suggest it is a general purpose detector and there is no need or motivation to detect periodic signals. Therefore I consider Claim 1 to have an inventive step over D1.

Does claim 1 lack a novelty or an inventive step in view of D5 and D6

24. The requester argues that since D5 directly references D6 then they should be considered as a single disclosure showing claim 1 is not novel.

25. D5 is a screen print of an internet discussion forum in which a forum user suggests scanning TETRA bands for relevant signals with equipment described on a further website. A link to the website is provided. D6 shows the details of this further website and describes equipment for scanning and detecting radio signals over a broad band of frequencies.

26. A website such as D5 which simply provides a link another website D6 does not, to my mind, make them effectively a single disclosure. To do so would mean thousands of websites with links to other websites would be one disclosure. Therefore I shall consider D5 and D6 for inventive step only.

27. I can see nothing in D5 or D6 relating to the detection of periodic signals (according

to my construction) and so by the same reasoning as applied to D1, I consider claim 1 to have an inventive step over D5 when combined with D6.

Dependent claims

28. Since I have found independent claim 1 and by analogy independent claim 10 to be novel and inventive over D1, D5 and D6 it follows that the dependent claims 2 to 9 and 11 to 15 are also novel and inventive. I do not need to consider the prior art documents D3, D4, D7, D8 and D9 since they were cited against features of the dependent claims. D10 was relied on to show the use of the TETRA system in the UK and this has not been disputed.

Opinion

29. I consider that the invention as defined in claims 1 to15 of EP2184725 to be novel and inventive in view of the submitted prior art.

GARETH GRIFFITHS
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.