

OPINION UNDER SECTION 74A

Patent	EP 2700769 B1
Proprietor(s)	Immospa AG
Exclusive Licensee	
Requester	David Pearce
Observer(s)	
Date Opinion issued	23 January 2018

The request

1. The comptroller has been requested by David Pearce (“the Requester”) to issue an opinion as to whether claims 1-10 of EP 2700769 B1 (“the Patent”) are valid in light of sections of a book.
2. The request was received on 30 October 2017. It was accompanied by a statement supporting the request as well as the relevant extracts from the book. Also provided was an English machine translation of the as-filed description of the Patent.

Observations & Observations in reply

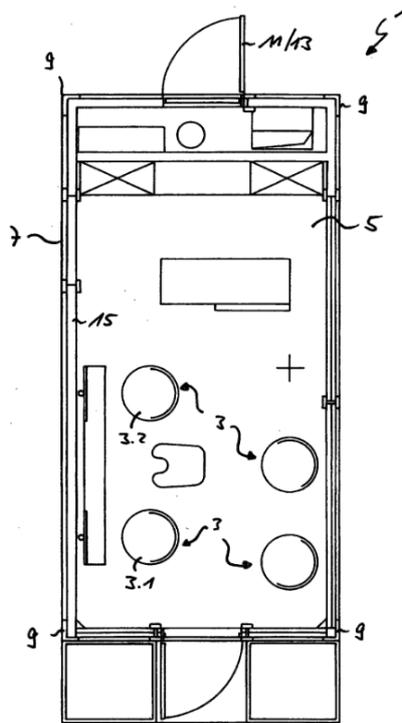
3. Observations were received on 17 November 2017 from an anonymous observer and included copies of two web pages. Arguments based on these web pages regarding the validity of claim 1 of the Patent were also provided. The web pages were not mentioned at all in the original Request and the observations did not refer to the book extracts provided by the Requester. Therefore the observations raise new issues outside the scope of the original Request. Observations are not allowed to broaden the scope of an opinion in this way. Therefore I will not consider these observations in this opinion.
4. There were no observations in reply.

The Patent

5. The Patent entitled ‘Hairdressing salon and mobile building for the same’ is an EP(UK) patent filed on 8 August 2013 with an earliest claimed priority date of 23 August 2012. The Patent was filed in the name of Immospa AG, was granted on 31

August 2016 and is still in force in the UK.

6. The Patent relates to a hairdressing salon 1 including at least one styling station 3 (see the Patent's only Figure reproduced below). In order that the hairdressing salon can be positioned freely in different locations, it is embodied within a room or space 5 that is arranged in a mobile structure 7. The mobile structure is preferably a familiar container box that can be picked up and moved by standard lifting devices. The mobile structure additionally has at least one window 13.



7. The Patent has 10 claims including one independent claim, claim 1, which reads as follows, with the features for convenience separated out.
1. (i) A hairdressing salon (1)
(ii) comprising at least one styling station (3),
(iii) which is embodied in a room (5),
(iv) wherein the room (5) is arranged in a mobile structure (7),
(v) which can be displaced by means of a lifting tool,
(vi) **characterized in that** the mobile structure (7) has at least one window (13).
8. The Requester submits that none of claims 1-10 is both novel and inventive in light of the relevant sections of the book provided by the Requester.

Novelty and Inventive step – the law

9. Section 1(1)(a) and (b) of the Patents Act (henceforth 'the Act') 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;*

10. 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.

11. 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).

12. I will begin by considering the validity of the invention as defined by claim 1. I will then consider the validity of the remaining claims 2-10.

Construction of claims

13. When considering the validity of the claims of the Patent I will first need to construe them. That is to say I must interpret them in the light of the description and drawings as instructed by Section 125(1). In doing so I must interpret the claims in context through the eyes of the person skilled in the art. Ultimately the question is what the person skilled in the art would have understood the patentee to be using the language of the claims to mean.
14. I consider the relevant skilled person to be a construction/design engineer (or a team of such persons) familiar with the adaptation of large mobile structures for different applications.
15. The claims are generally straightforward to construe. There are a few terms, however, that are worthy of consideration. I will consider these terms as I go along in the following sections.

Whether claim 1 lacks novelty in light of the cited prior art

16. The Requester submits that claim 1 is not novel in light of cited prior art. In particular he refers to relevant sections of a book titled 'South African Township Barbershops & Salons', by Simon Weller. The Requester provides a copy of the Title Page of the book that confirms that the book was published in 2011. This date is before both the claimed priority date and filing date of the Patent and therefore I am satisfied that it

forms part of the state of the art according to Section 2(2) of the Act. The Requester also provides a copy of page 8 of the book in which the author describes his experiences in a township in South Africa. The third and final paragraph of this page is most relevant to this opinion and is reproduced in full as follows.

Driving through the township after our meal, I began to notice that one type of business was thriving: barbershops. There were dozens of them housed in an assortment of ramshackle structures and repurposed shipping containers with names like Let's Fix It Barbershop, Try Again Hair Shop and Look Alive Salon. A stunning and enigmatic variety of hand-painted artwork adorned these businesses, illustrating the hairstyles on offer. At the time there was no chance to properly photograph these places, but I promised myself that I would return to South Africa to document this colorful barbershop culture. This book is the fulfillment of that promise.

17. Finally, the Requester also provides a copy of page 9 of the book, which includes a photograph.
18. I will consider the features of claim 1 in turn. In doing so, I will refer to the machine translation of the as-filed description of the Patent, provided by the Requester, rather than the German text of the granted specification.
19. Feature (i) of claim 1 is directed to a hairdressing salon. The paragraph from the book reproduced above clearly refers to a hairdressing salon in the form of a barbershop. The photograph has text referring to it as "Boyz & Girlz Salon Umlazi" and shows what appears to be equipment in a container consistent with a barbershop business. This is supported by the paragraph on page 8 which suggests that the author intended to photograph such places for the book. I note that Umlazi is a township in the Durban area of South Africa. Therefore I consider feature (i) to be disclosed.
20. Feature (ii) requires the hairdressing salon to comprise at least one styling station. The translated description provided for the Patent does not specify the requirements for a 'styling station'. Four styling stations 3, more specifically 3.1, 3.2, are indicated in the Figure of the Patent by circles. The skilled person would appreciate that very little is required to satisfy the requirements of a styling station beyond somewhere for the client to be positioned while their hair is cut and/or styled. The photograph illustrates a number of chairs that would meet this requirement and therefore I consider feature (ii) to be met.
21. Feature (iii) requires the styling station to be embodied in a room. This is clearly the case from the photograph of this disclosure and therefore this feature is anticipated.
22. To satisfy feature (iv), the room must be arranged in a mobile structure. To consider this feature, I first need to construe the term 'mobile structure'. The translated description explains in paragraph [0006] that the 'arrangement of the space in a mobile structure makes it possible to position it freely'. In paragraph [0010] we are told that the mobile structure is 'a simple container' that 'can be loaded onto a transport vehicle and transported to any location'. The Requester has construed this term according to its normal meaning stating it is 'clearly one that would allow the salon to be moved from place to place by lifting and transporting the structure'. I

agree that the skilled person would construe this term in this way.

23. In the disclosure, the author describes the barbershops as follows: 'There were dozens of them housed in an assortment of ramshackle structures and repurposed shipping containers'. Therefore it is clear from this that the barbershop or hairdressing salon may be located in a repurposed shipping container. It is not entirely clear whether the photograph is of a 'repurposed shipping container' or merely 'a ramshackle structure', both possible from the accompanying paragraph. Looking more closely at the photograph, I note the walls and roof of the structure have the characteristic corrugated form of a shipping container and so I am satisfied for the purposes of this opinion that the photograph does indeed feature a repurposed shipping container. There is no specific mention in the text or indication from the photograph that the structure is mobile i.e. would allow the salon to be moved from place to place as construed above. However, I agree with the Requester that it is well known that a shipping container can be displaced by means of a lifting tool. As the Requester points out this is a necessary requirement so that a container can be moved between different modes of transport. I therefore consider the structure here to be mobile and feature (iv) to be met.
24. Feature (v) specifies that the mobile structure can be displaced by means of a lifting tool. As discussed above regarding feature (iv), this is a necessary requirement of a shipping container and therefore feature (v) is also anticipated by this disclosure.
25. The final feature of claim 1, requires the mobile structure to have at least one window. This would not be a standard feature of a shipping container and is not mentioned in the text of the disclosure. The photograph, however, does disclose a window in the structure on the right hand side of the picture. Therefore I consider this feature to be met.
26. I consider the disclosure to meet all the features of claim 1. I therefore consider claim 1 to be not novel in light of this disclosure.

Whether claims 2-10 lack novelty or an inventive step in light of the cited prior art

27. I will now consider the validity of remaining claims 2-10 as requested.
28. Claim 2 reads:

2. The hairdressing salon according to claim 1, characterized in that the mobile structure (7) is a container box.
29. Paragraph [0010] of the translated description describes the mobile structure as 'a simple container'. And further, 'the container box can be loaded onto a transport vehicle and transported to any location'. From this, the skilled person would consider a 'container box' to be a standard container suitable for loading onto an appropriate vehicle. I agree with the Requester that a shipping container as disclosed in the cited book would fall within this term. Therefore claim 2 is not novel.
30. Claim 3 reads:

3. The hairdressing salon according to claim 1 or 2, characterized in that the mobile structure (7) has a movable roof.

31. As the Requester points out there is no support from the description for a 'movable roof'. The only reference to a roof in the description is in paragraph [0011] which states 'the mobile structure 7 ... may have an outer step (not shown) and a walk-on roof (not shown)'. The Requester suggests that the English translation of claim 3 appears to be in error as the German version of claim 3 also points towards a walk-on roof rather than a moveable one. For the purposes of this opinion I will take the meaning of this term to be a 'walk-on' roof i.e. a roof that is capable of being walked on, in keeping with the description and apparently the German text of the claim. However, I note as the Requester points out that an alternative approach may be taken in fully litigated proceedings. I am satisfied that a shipping container will generally have a roof that is capable of being walked on; I therefore consider claim 3 to be anticipated.

32. Claim 4 reads:

4. The hairdressing salon according to claims 1 to 3, characterized in that the mobile structure (7) has at least one door (11).

33. There is no mention in the selected paragraphs of the book or indication in the related photograph that the shipping container has a door. However, a door would be an implicit feature of a hairdressing salon to allow access to staff and clients. Therefore I consider claim 4 to be anticipated.

34. Claim 5 reads:

5. The hairdressing salon according to one of the preceding claims, characterized in that the room (5) has a first (3.1) and a second styling station (3.2).

35. As discussed above, the skilled person would appreciate that very little is required to satisfy the requirements of a styling station beyond somewhere for the client to be positioned while their hair is cut and/or styled. The photograph illustrates a number of chairs spaced around the container that would meet this requirement and therefore claim 5 is not new.

36. Claim 6 reads:

6. The hairdressing salon according to claim 5, characterized in that the first styling station (3.1) is arranged on a wall (15) of the room (5) and the second styling station (3.2) is arranged on a second wall of the room (5) opposite the first wall (15).

37. From the photograph chairs can be seen to be positioned adjacent opposite walls of the room. This is sufficient to meet the terms of claim 6.

38. Claim 7 reads:

7. The hairdressing salon according to one of claims 3 to 6, characterized in that an outside staircase is arranged on the mobile structure (5).

39. The only reference to an outside staircase in the Patent is in paragraph [0011] of the description that states 'the mobile structure ... may have an outer step (not shown)'. Despite the limited assistance from the description, the meaning of this feature would be clear to the skilled person. There is no mention in the cited disclosure of the refurbished shipping container having an outside staircase. This would not be a standard feature of a refurbished shipping container. Therefore claim 7 is novel in light of this disclosure.

40. I will now consider briefly whether claim 7 involves an inventive step. The skilled person would be aware that a shipping container has a roof that is suitable for walking on as discussed above. As the Requester suggests, the skilled person would consider including an outside staircase to allow access to the roof. The skilled person would be well aware of how to carry out such a modification and could do so without exercising any inventive ingenuity. Therefore the invention of claim 7 is obvious in light of the disclosure and common general knowledge. Thus claim 7 lacks the required inventive step.

41. Claim 8 reads:

8. The hairdressing salon according to claim 7, characterized in that the outside staircase leads to the roof of the mobile structure (7).

42. Following the arguments already outlined for claim 7, claim 8 also lacks the necessary inventive step.

43. Claim 9 reads:

9. A mobile structure for a hairdressing salon according to one of claims 1 to 7.

44. Claim 9 must be construed as a mobile structure *suitable for* a hairdressing salon according to one of claims 1 to 7. It has already been established above that the shipping container of the disclosure has been refurbished to form a hairdressing salon that meets the terms of claim 1. Therefore claim 9 is anticipated.

45. Finally, claim 10 reads:

10. A public cultural space comprising a structure according to preceding claim 9.

46. The term 'public cultural space' is not specifically defined in the as-filed description of the Patent. Paragraph [0001] merely recites this claim. Paragraph [0006] states that 'The arrangement of the space in a mobile structure makes it possible to position it freely'. And further, 'Criteria for the selection of the site may be of a non-technical nature. They therefore do not play any role here'. In paragraph [0010] we are told that the container boxes 'can be integrated comfortably into (urban) landscapes'. Paragraph [0015] continues further, 'The cultural landscape can have urban features, such as a square, a street or a park, but can also have pure landscape features such as beach, mountains, meadows and forests.' Therefore the skilled person would realise from this that the term 'public cultural space' is a general expression that relates to any space with access to members of the public. The

space could be anywhere from an urban street to a mountain location. It is implicit that the refurbished container of the disclosure must have been placed in such a space in order for it to be accessible to its customers. Therefore claim 10 is not novel.

47. Therefore, I have found each of claims 2-10 either to be not novel or to lack an inventive step in light of the cited disclosure.

Opinion

48. It is my opinion that the invention of claim 1 of the Patent is not novel in light of the extracts from the book provided by the Requester. It is also my opinion that none of claims 1-10 is both novel and inventive in light of this prior art.

Application for review

49. 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.

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.