

OPINION UNDER SECTION 74A

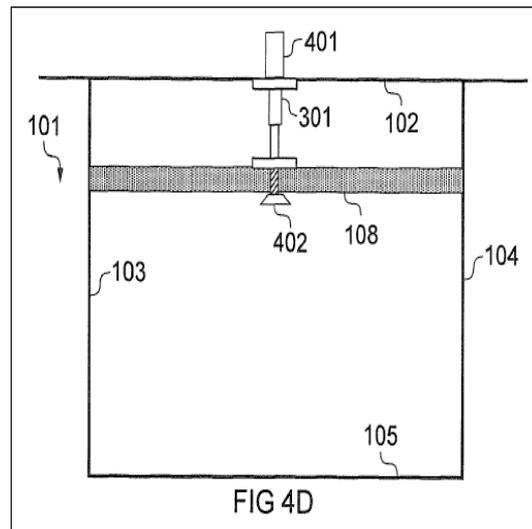
Patent	EP 2615943 B1
Proprietor(s)	Petit, Clifford Steven
Exclusive Licensee	-
Requester	Mohun Intellectual Property Limited
Observer(s)	
Date Opinion issued	16 October 2018

The Request

1. The comptroller has been requested to issue an opinion as to whether or not the invention in EP 2615943 B1 (the patent) involves an inventive step.
2. The request was filed on the 19th July 2018, observations were received from the proprietor on the 8th August 2018 and observations in reply from the requester were received on the 4th September 2018.

The Patent

3. The patent was granted on the 25th February 2015 and remains in force.
4. The patent relates to a method of securing a fitted furniture unit, for example kitchen or bathroom storage cabinets, to a target surface, for example an internal or an external wall.
5. According to the patent a fitter, when installing a furniture unit, would conventionally use angled brackets or similar fixing means at the intersection of furniture sidewalls 103, 104 and a wall 102 (see figure 4D below). The angled bracket would conventionally be secured to either an internal or external surface of the furniture sidewall and the wall.



6. The patent goes on to note that it may be undesirable to use an angled bracket on the external surface of the sidewall due to, for example, the placement of an adjacent side unit. It may also be impracticable to use, whilst the furniture unit is in an installation position, angled brackets on the internal surface of the furniture sidewall due to space limitations within the furniture unit. In this situation the fitter would conventionally mark-up fixing points whilst the furniture is in the installation position, remove the furniture from the installation position so that they are able to fix the brackets to the furniture unit and perform any preparation, for example drilling and plugging, to the wall. The furniture unit is then placed back into the installation position and secured to the wall. Removing and replacing the furniture unit prior to final fixing adds a further process step and also introduces potential misalignment errors where the furniture unit is not accurately repositioned.

7. The patent notes that it is conventional for fitted furniture units to have a cross brace 108. The purpose of the cross brace is to provide lateral rigidity to the furniture unit by spacing apart the sidewalls 103 and 104 at a predetermined distance and resisting tensile and compressive loading. Furthermore, the cross brace is spaced from the rear most edge of the furniture unit sidewalls to accommodate services.

8. The invention set out in the patent provides a spacing device 301 that can be placed in the space between the cross brace and the wall when the furniture unit is in situ. The spacing device is extendable so that it can be adjusted to match the width of the space. The spacing device allows the furniture unit to be secured to the wall using the cross brace 108 without having to remove the furniture unit from the wall once it has been positioned.

9. The patent has 14 claims including a single independent claim 1. Claim 1, using the breakdown provided by the requestor reads as follows:

1. A method of securing fitted furniture (101) to a target surface (102) using a spacing device (301),

A) the spacing device having

i. a first end for contacting one of a fixing surface (108) of the furniture and the target surface,

- ii. a second end for contacting the other of the fixing surface and the target surface and*
- iii. a bore (305) running through the spacing device from the first end to the second end,*
 - iii.a the bore being dimensioned to receive a fixing means (402) for fixing the fixing surface and the target surface together,*
 - iii.b the spacing device and the bore being extendable along an axis of the bore to set a spacing between the fixing surface and the target surface,*

the method comprising:

- B) positioning the furniture (101) with respect to the target surface (102) so that a spacing is provided between the target surface (102) and the fixing surface (108);*
- C) positioning the spacing device (301) in the spacing between the fixing surface (108) and the target surface (102) while the furniture (101) is in position with respect to the target surface (102);*
- D) extending the spacing device (301) and the bore (305) to substantially match the spacing between the target surface (102) and the fixing surface (108),*
- E) passing the fixing means (402) through the fixing surface (108) and the bore (305) of the spacing device (301) and into the target surface (102), and*
- F) tightening the fixing means (402) to secure the furniture (101) to the target surface (102).*

10. I will consider the dependent claims should that become necessary after my assessment of the claim 1.

Claim construction

11. Prior to considering the documents submitted by the requestor I need to construe claim 1 of the patent, that is to say I must interpret it 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. This approach has been confirmed in the recent decisions of the High Court in *Mylan v Yeda*¹ and the Court of Appeal in *Actavis v ICOS*².

¹ *Generics UK Ltd (t/a Mylan) v Yeda Research and Development Co. Ltd & Anor* [2017] EWHC 2629 (Pat)

² *Actavis Group & Ors v ICOS Corp & Eli Lilly & Co.* [2017] EWCA Civ 1671

12. 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 protection conferred by a patent or application for a patent shall be determined accordingly.

13. The requester argues that the method steps C and D could be carried out in any order. I agree with this, particularly in light of paragraph [0011] of the patent which reads:

“It will be appreciated that at least the steps of extending the device and passing the fixing means through it could be conducted in any order.”

14. The requestor further observes that claim 1 of the patent does not limit the width of the spacing between the fixing surface and the target surface to a specific size, therefore the maximum and minimum extension of the spacing device is not limited. Whilst the claim does not specify the size of spacing, the claim should nevertheless be read in the context of the application as a whole. I note firstly that the claim requires the brace to be placed between a surface of the furniture and the target surface. The description also makes clear that the purpose of the spacer is to prevent bowing or distortion of the cross brace. Hence I believe that provided the spacer is of a size to enable it to meet these criteria then it falls within the scope of the claim when construed.

The inventive step argument

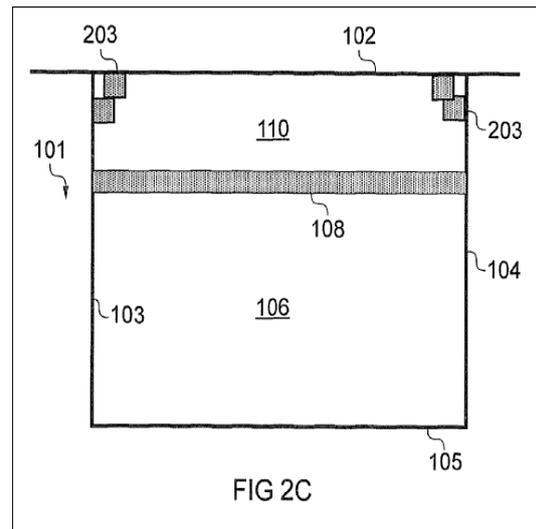
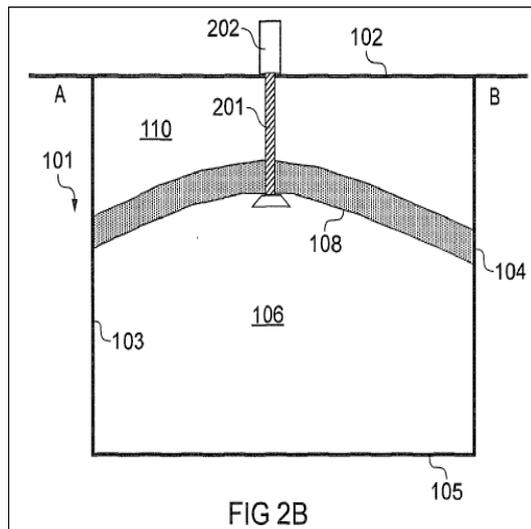
15. The inventive step argument advanced by the requester is based on a combination of the patent (Document 1) with any one of the following documents:

US4433879 (Document 2)

US5340258 (Document 3)

US4682906 (Document 4).

Since the patent clearly cannot be cited against itself, it is necessary to explain what the requester is really basing their request on. Specifically the requester alleges that figure 2B of the patent, reproduced below, as well as figure 2A of the patent ought to be recognised as prior art. In other words the patent is admitting that the information in these figures is known hence it is not necessary for the requester here to provide any further evidence of that which predates the patent.



16. In support of this the requester refers me to a number of paragraphs in the description in particular paragraph [0036] which reads;

“Figures 2b and 2c provide schematic diagrams illustrating conventional techniques for installing furniture units”.

17. The requester additionally refers to paragraph [0013] of the patent, specifically the passage reading;

“Due to the use of the spacing device, the act of fixing the furniture unit to the target surface will not “pull” the furniture towards the wall (and thus out of position) as would conventionally be the case.”

18. The requester alleges that the problem that the patent attempts to resolve is captured at paragraph [0046] of the patent which reads;

“An alternative of positioning a fixing 201 through the cross brace 108 (or through the hardboard back 107) and into a plug 202 in the external wall 102 is also undesirable because as the fixing 201 is tightened into the plug 202, a force between the external wall 102 and the cross brace 108 is exerted which causes the cross brace 108 to bend thereby deforming the cross brace 108 (and consequently the furniture unit itself) or even causing the cross brace 108 to fail which may damage the cabinet 101 irreparably.”

19. The proprietor argues that figure 2B was not available before the priority date of the patent and that the requester’s assessment of the problem is inaccurate. In particular the proprietor maintains that the method of fixing furniture wherein a long bolt is passed through a cross brace and into a wall was not known and thus cannot be regarded as prior art. The proprietor states, referring to the patent, that figure 2B, rather than disclosing a prior art fixing method, merely shows “*some of the considerations associated with securing*” a furniture unit to a wall.

20. The proprietor maintains that the prior art is restricted to fixing fitted furniture to a target wall using angled brackets. The proprietor further argues that the problem the patent sets out to solve is that of negating the inconvenience of fitting angled brackets 203 as disclosed in figure 2C, reproduced above.

21. Figure 2B shows at least one conventional prior art technique for installing a furniture unit to a wall wherein angled brackets are arranged at positions A and B to secure the furniture unit, via furniture sidewalls 103 and 104, to an external wall 102. Figure 2B additionally shows a cross brace 108 and further illustrates how the cross brace would deform if used as a fixing point.

22. Figure 2C shows an alternative prior art technique for installing a furniture unit to a wall wherein angled brackets 203 are fixed between internal surfaces of the furniture sidewalls and a wall.

23. In order to ascertain what was intended by the disclosure it important to identify the skilled person and what they would understand from reading the patent. The skilled person may use his common general knowledge to supplement the explicit teachings of the disclosure.

24. Neither the requester nor the proprietor seem to contest that the skilled person is a fitted furniture fitter; the furniture may be kitchen furniture, bedroom furniture, bathroom furniture, etc.; I see no reason to limit the skilled person expertise to domestic installations and so his skill will extend to industrial installations also.

25. The skilled person would be aware of the conventional arrangements for fixing fitted furniture to a target surface, for example a wall. Such conventional arrangements include angle brackets A, B, 203, placed external or internal to the furniture sidewall as previously discussed.

26. The skilled person would additionally be aware of the function of a furniture cross brace; to provide lateral rigidity to the furniture unit by spacing apart the adjacent sidewalls at a predetermined distance and resist tensile and compressive loading.

27. On considering figure 2B and the description thereof the skilled person, based on their experience and common general knowledge, would understand that any reference to a conventional technique illustrated by figure 2B would be in regard to the fixing points A & B.

28. Hence I do not believe that the disclosure in the patent is such as to clearly show that the idea of fixing the furniture unit to a target wall via a cross brace, or the problems that that may cause, was known at the priority date of the patent. Since the inventive step arguments in the request are all based on the assumption that these were known then I need go no further.

Opinion

29. On the basis of the evidence put forward regarding documents 1-4, I am of the opinion that claim 1 of the patent involves an inventive step under section 3 of the UK Patent Act 1977.

Sean O'Connor
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.