

OPINION UNDER SECTION 74A

Patent	EP 2615943 B1
Proprietor(s)	Clifford Steven Petit
Exclusive Licensee	
Requester	Mohun Intellectual Property Limited
Observer(s)	D Young & Co Intellectual Property
Date Opinion issued	04 April 2019

The Request

1. The comptroller has been requested by Mohun Intellectual Property Limited (“the requester”) to issue an opinion as to whether or not the invention in EP 2615943 B1 (“the patent”) involves an inventive step.
2. The requester has provided the following evidence to accompany the request:
D1: EP 2615943 B1 (PETIT) – namely the patent itself
D2: US 4433879 (MORRIS)
D3: US 5340258 (WERNER)
D4: US 4682906 (RÜCKERT)
D5: Forum article regarding fixing furniture to walls available at http://www.woodweb.com/knowledge_base/Fitting_Cabinets_to_Bowed_Walls.html
3. Each of documents D2-D5 have a publication date prior to the priority date of the patent. The requester has shown using Wayback Machine Web archive that D5 was available online from 10 November 2005.

Observations and Observation in reply

4. Observations were received from D Young & Co Intellectual Property on behalf of the proprietor, Clifford Steven Petit (“the observer”). Observations in reply were received from the requester.

Relationship of this Opinion to Opinion 18/18

5. The requester has already had an opinion, Opinion 18/18, on the validity of the patent. In Opinion 18/18 the opinion examiner was of the opinion that independent claim 1 of the patent involved an inventive step based on the evidence before him. D1-D4 were all submitted as part of the earlier opinion request, however D5 was not.

Allowance of the request

6. As an opinion on the validity of the patent has already been issued, this raises the question as to whether the requester is seeking an opinion on any matter that was sufficiently considered by the earlier opinion.

7. Section 74A(3) of the Patents Act 1977 provides that:

(3) The comptroller shall issue an opinion if requested to do so under subsection (1) above, but shall not do so;

(a) in such circumstances as may be prescribed, or

(b) if for any reason he considers it inappropriate in all the circumstances to do so.

8. Rule 94(1) of the Patents Rules 2007 provides that:

(1) The comptroller shall not issue an opinion if—

(a) the request appears to him to be frivolous or vexatious; or

(b) the question upon which the opinion is sought appears to him to have been sufficiently considered in any relevant proceedings.

9. The observer argues that documents D1-D4 have already been considered in the earlier opinion and that the requester is incorrect in stating that the examiner did not consider D2-D4 therein. Therefore this opinion request, from the same requester, asks substantially the same question as the earlier opinion. Further the observer states that D5 is clearly not relevant and should have been included in the earlier request if the requester wanted it to be considered. The observer considers the request to be frivolous and vexatious, and relates to questions already sufficiently considered in the earlier opinion and therefore should be refused.
10. The requester has explained that D5 was not discovered until after the earlier opinion was issued. D5 is relevant to the validity of the claims of the patent and raises new questions not considered by the earlier opinion. The requester argues that the earlier opinion did not review D2-D4 in any substantive manner nor have they been previously examined during prosecution of the European application.
11. I am not persuaded by the observers' argument that D5 is irrelevant. The earlier opinion concluded that the patent is valid as the examiner did not agree with the requester's argument regarding what the patent taught the skilled person to be

“conventional”. Subsequent to the issuance of the earlier opinion the requester has discovered D5 which relates to fitting cabinets to bowed walls by fixing the cabinets to the wall via a cross brace. Without any further analysis of D5 it would appear to be of relevance to the question of whether using a cross brace for fixing was known before the priority date of the patent. D5 therefore presents a new question not considered by the earlier opinion.

12. Looking at the earlier opinion it is clear that the examiner considered D1 in detail and having concluded that the disclosure in D1 did not 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 D1 did not go on to consider D2-D4. Therefore, I agree with the requester that the earlier opinion did not review D2-D4 in any substantive manner and in my opinion it would be unfair to refuse to consider D2-D4 in this opinion. D2-D4 have clearly also not been considered in light of D5.
13. I consider this opinion request to raise new questions and it to be appropriate for me to consider D1-D5 in this opinion.

Incorporation of argument from the earlier opinion

14. In their observations the observer has referred to their observations made on the earlier opinion in respect of D1-D4 noting that:

“We refer to our letter dated 8 August for observations on these documents – all previous observations are maintained. We submit that the invention is clearly not obvious from D1-D4 for the reasons explained in our letter.”
15. The requester has argued the letter from the earlier opinion has not been placed on file in respect of this opinion request. Therefore in accordance with section 5.1 of the Opinions Manual which states opinions are reviewed by an examiner and “...*will be based on careful consideration of all the material before him...*” the earlier letter cannot be taken into account as it has not been submitted in these proceedings.
16. I am not persuaded by the requesters’ argument. Whilst it would have been preferable if the observer had refiled it arguments I nevertheless believe it would be unfair to refuse to consider the argument put forward regarding D1-D4 in the observers’ earlier letter merely. The observer has directly referred to the earlier letter in their observations. The requester and observer are also the same in both this and the earlier opinion and hence will be familiar with the arguments.
17. I would note further that the objective of the Opinions Service is to help parties resolve disputes. I believe the fairest way to proceed, bearing in mind the need not to unfairly burden the proprietor, is to allow the request to proceed but also to allow previous arguments made by the proprietor to treated as being incorporated by reference as requested by the proprietor. This will allow me to give a fully reasoned opinion taking into account all relevant argument put forward by the requester and observer.

The Patent

18. The patent, EP 2615943 B1, is titled "SPACING DEVICE AND METHOD". It was filed on 16th September 2011 with a priority date of 16th September 2010, published on 22nd March 2012 and granted on 25th February 2015. The patent remains in force.
19. 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.
20. 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.

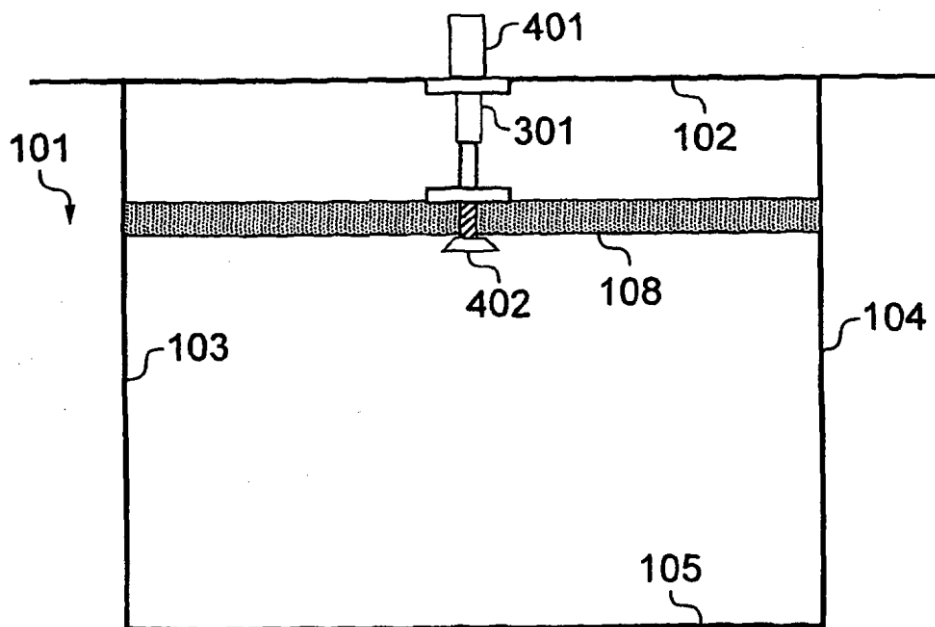


FIG 4D

21. 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.

22. 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.
23. 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.
24. 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).

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

The law

26. 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;

27. 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).

28. 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?

Claim construction

29. 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

¹ *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

² *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

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*³ and the Court of Appeal in *Actavis v ICOS*⁴.

30. 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.

31. The requester argues that there is no explicit requirement for method steps C-F be carried out in any particular order. The requester explains it is clear that step C is required before step D and that step E is required before step F. However the requester argues that steps D and E 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.”

32. The requester also argues that claim 1 does not specify when drilling occurs, and it could happen before the furniture is put into position or whilst the furniture is in position. Again I agree with the requester on this point.

33. The requester further argues that claim 1 does not restrict the size or dimensions of the spacer to be employed, thereby indicating that it may be used on a gap of a few millimetres or of several centimetres. Whilst the claim does not specify the size of the spacer, the claim should nevertheless be read in the context of the application as a whole. I note firstly that the claim requires the spacer to be positioned in the space between the brace 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.

34. In my opinion claim 1 is clear and straightforward and a person skilled in the art would have no difficulty in construing the scope of the claim.

35. I will consider the construction of the dependent claims if necessary following my assessment of the validity of claim 1.

³ *Generics UK Ltd (t/a Mylan) v Yeda Research and Development Co. Ltd & Anor* [2017] EWHC 2629 (Pat)

⁴ *Actavis Group & Ors v ICOS Corp & Eli Lilly & Co.* [2017] EWCA Civ 1671

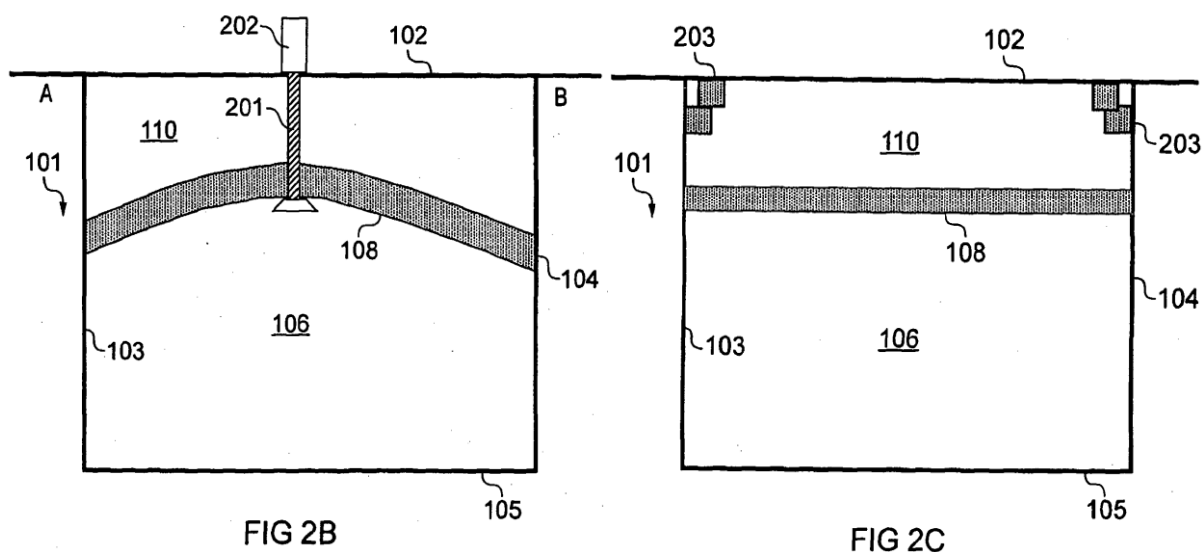
The inventive step argument

36. The inventive step argument advanced by the requester is based on either D1 or D5 being combined with any one of D2-D4. The first of these combinations requires some explanation since the patent (D1) cannot be cited against itself. The requester alleges that figure 2B of the patent, reproduced below, ought to be recognised as prior art. In other words the patent is admitting that the information in these figures is known.

Disclosure of the patent (D1)

37. 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.”



38. The requester has suggested that the solution to the problem of how to fix furniture to the wall without using angled brackets had been known by the skilled person at least four years before the priority date of the patent as evidenced by D5. Thus, the problem was not the avoidance of angled brackets but preventing the cross brace from deforming when installing the furniture at a distance from the fixing surface.
39. As in the earlier opinion, the observer 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 observer 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.

40. The observer 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.
41. 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.
42. 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.
43. 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.
44. Neither the requester nor the observer have contested the definition of the skilled person put forward in the earlier opinion. I am in agreement with this definition and consider the skilled person to be a fitted furniture fitter; the furniture may be kitchen furniture, bedroom furniture, bathroom furniture, etc.; whose expertise is not limited to domestic installations and so his skill will extend to industrial installations also.
45. The patent at paragraph [0036] describes “Figures 2b and 2c provide schematic diagrams illustrating conventional techniques for installing furniture units”.
46. What would the skilled person understand from the disclosure in figures 2B and 2C? Neither the requester nor the observer has argued that the skilled person would not be aware of 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.
47. The argument regarding D1 hinges on whether the skilled person would consider figure 2B to be disclosing fixing the furniture unit to a target wall via the cross brace 108 to be a conventional fixing method. The skilled person would clearly understand that 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.
48. The observer has argued that figure 2B merely illustrates how the cross brace would deform if used as a fixing point. Paragraph [0046] explains that this alternative to using angle brackets at points A, B is undesirable due to the deformation and/or possible failure of the brace upon tightening of the fixing 201.
49. The requester argues that using the cross brace as a fixing point was conventional at the priority date of the patent as admitted by the patent itself with reference to figure 2B. In addition the requester relies upon D5 as evidence that such a method of fixing was known before the priority date of the patent and forming part of the common

general knowledge of the skilled person in the art.

50. Whilst D5 pre-dates the patent and forms part of the prior art, this does not mean that it necessarily forms part of the common general knowledge of the skilled person in the art. In *Raychem Corp's Patents* [1998] RPC 31 Laddie J explained common general knowledge as follows:

"The common general knowledge is the technical background of the notional man in the art against which the prior art must be considered. This is not limited to material he has memorized and has at the front of his mind. It includes all that material in the field he is working in which he knows exists, which he would refer to as a matter of course if he cannot remember it and which he understands is generally regarded as sufficiently reliable to use as a foundation for further work or to help understand the pleaded prior art. This does not mean that everything on the shelf which is capable of being referred to without difficulty is common general knowledge nor does it mean that every word in a common text book is either. In the case of standard textbooks, it is likely that all or most of the main text will be common general knowledge. In many cases common general knowledge will include or be reflected in readily available trade literature which a man in the art would be expected to have at his elbow and regard as basic reliable information."

51. I have no evidence before which suggests D5 to be well-known and falling into the categories discussed above by Laddie J to be forming part of the common general knowledge. D5 is merely an online forum conversation between three furniture fitters and cannot be considered to form part of the common general knowledge of a person skilled in the art. Therefore the skilled person would not interpret the disclosure of figure 2B with D5 in mind.
52. In my opinion, the skilled person, based on their experience and common general knowledge, would consider figure 2B to be disclosing an undesirable method of fixing through the cross brace due to the problems mentioned above rather than a conventional fixing method. The skilled person would not consider figure 2B to clearly disclose that the method 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 argument regarding D1 are based on this assumption I will not consider those arguments further.

Does claim 1 lack an inventive step in light of D5 when combined with any one of D2-D4?

53. The requester has also argued that claim 1 is obvious in light of a combination of D5 with any of D2-D4. To determine whether or not an invention defined in a particular claim is inventive over the prior art, I will use the four-step test outlined above in paragraph 27.

(1)(a) Person skilled in the art

54. As discussed in paragraph 43 above I consider the skilled person to be a fitted furniture fitter; the furniture may be kitchen furniture, bedroom furniture, bathroom

furniture, etc.; whose expertise is not limited to domestic installations and so his skill will extend to industrial installations also.

(1)(b) Common general knowledge

55. The common general knowledge of the skilled person would include well-known methods of installing and fitting furniture including apparatus and devices to aid in such methods.
56. The requester has commented that the skilled person would be familiar with the use of spacing devices that might be suitable for fixing furniture. I agree that the skilled person would be aware of well-known spacing devices but do not agree that this extends to any suitable spacing device, such as those in D2-D4, as being part of their common general knowledge. As discussed above I do not consider D5 to form part of the common general knowledge. With regard to D2-D4 the statement by Sachs LJ in *General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd* [1972] RPC 457 is of particular interest because it sets out the relationship of patent specifications to the common general knowledge (“it is clear that individual patent specifications and their contents do not normally form part of the relevant common general knowledge”). With regard to patent specifications Sachs LJ explained:

“...it is clear that individual patent specifications and their contents do not normally form part of the relevant common general knowledge, though there may be specifications which are so well known amongst those versed in the art that upon evidence of that state of affairs they form part of such knowledge, and also there may occasionally be particular industries (such as that of colour photography) in which the evidence may show that all specifications form part of the relevant knowledge.”

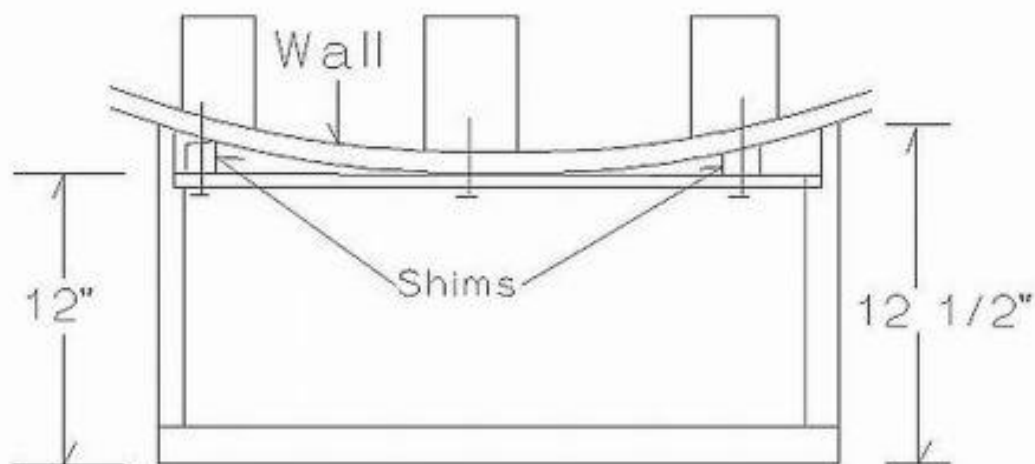
57. I have no evidence before which suggests any of D2-D4 to be patent specifications falling into the categories discussed above by Sachs LJ and thus forming part of the common general knowledge.

(2) Inventive concept of claim 1

58. The inventive concept of claim 1 lies in a method of securing fitted furniture to a target surface using an extendable spacing device having first and second ends for contacting a fixing surface of the furniture and the target surface; and a bore dimensioned to receive a fixing means. It is the extendable nature of the spacing device along an axis of the bore which allows the positioning of the spacing device in the spacing between the fixing surface and target surface when the furniture is in position and also to extend the spacing device to substantially fill the gap once the spacing device is in situ.

The disclosure of D5

59. D5 is an online forum conversation between three furniture fitters. The initial question posed concerned how to fit cabinets to bowed walls and how much recess should be allowed at the rear of the cabinet for any bowing in the wall. Two furniture fitters have provided answers with the first providing a figure reproduced below:



60. The two respondents both propose extending the side panels of the cabinet to allow for the bowing of the wall. As can be seen from the figure shims are then used to fill the gaps between the wall and the rear wall of the cabinet. The cabinet is fixed to the wall through the rear wall using fixing means such as screws. The first respondent states he/she has been using the method of fixing for 15 years.
61. The observer argues that D5 does not disclose a number of features required by claim 1. It is alleged that D5 does not disclose the shims having an internal bore; the shims being extendable; and fixings passing through the shims.
62. There is no mention in D5 of the shims being extendable. The requester does not dispute this. However the requester does not agree that the shims do not have an internal bore through which fixings pass. The requester considers the figure of D5 shown above to be a cross-section view otherwise parts of the fixings that are embedded within the wall studs would not be seen. Therefore it discloses the shims having the fixings passing through them and as a result the shims include an internal bore. The requester explains that if the shims were not fixed in place over time they will move and cause damage to the item of furniture. Therefore the skilled person would fix the shims in place by passing the fixings through the shims to avoid any movement thereof.
63. On balance I find myself in agreement with the requester. The skilled person looking at the figure in D5 would consider it to be a cross-section drawing and as a result to be showing the fixings passing through the shims.
64. I would also add that it is not clear from D5 when the shims are put in place. The method of claim 1 requires the spacing device to be positioned in the spacing whilst the furniture is in position with respect to the target surface. The skilled person upon reading D5 would not, in my opinion, consider it to be disclosing the positioning of the shims after the furniture item is in position on the wall. The shims may be positioned on the rear wall of the furniture or the wall prior to positioning the furniture against the wall as known e.g. in D4.

(3) What differences exist between the matter of D5 and the inventive concept of claim 1?

65. I consider the differences between the disclosure of D5 and claim 1 lie in features iii.b, C and D which read:

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,

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).

(4) Are the differences inventive?

66. The requester has sought to combine D5 with any one of D2-D4 to arrive at the invention of claim 1. The requester consider features iii.b and D to be discloses in each of D2-D4 and in their opinion such combinations would be obvious to a person skilled in the art.
67. The observer disagrees and does not consider the spacing devices disclosed in any of D2-D4 to be suitable for use in fixing the furniture item in D5.
68. Whilst D2 is the only document to explicitly state that the spacing device could be used in furniture, this does not mean that the spacing devices in D3 and D4 are unsuitable for use in the furniture application of D5. What I must consider is whether the skilled person would consider modifying D5 when faced with the disclosure of any of D2-D4 and if so, arrive at the invention of claim 1.
69. D2 discloses a shim or spacer used to provide a close fit of a part or a device in an opening, where the opening is somewhat larger than the device in at least one dimension. The shim has a bore and it is extendable along an axis of the bore. The only example shown of the shim located between two parts is in figure 5, however the shim has a rivet 111 in its bore holding the two shim cams 104, 105 together. The rivet is required to hold to two cams in radial alignment. Such an arrangement would not allow a fixing means to pass through the bore and both parts being spaced by the shim. It is explained that the cams are preadjusted to approximately the correct size before installation. The two cams can only be preadjusted if they are provided with means such as rivet to hold them in radial alignment. The shims shown in figures 1 and 2 have adjustment means 41, 44 on the upper surface of one of the cams. Such an arrangement would also unsuitable as the shim could not be adjusted after positioning it between the furniture and wall. The only embodiment disclosing a shim which could be adjusted once located in the space between the furniture and the wall is shown in figures 3 and 4 which have adjustment means 45, 46 located on the side of the shim. Figures 4 and 5 of D2 are reproduced below. The skilled person is taught by D2 that when installing a shim between two spaced parts would be to use a shim as shown in figures 3 or 4 having adjustment means on a sidewall and

using a holding means such as a rivet located in the bore to hold the two cams in radial alignment for pre-adjustment prior to installation. Thus the skilled person would not consider the shim of D2 suitable for use in the arrangement of D5 since the fixing means could not pass through the rear wall of the furniture, through the bore in the shim and into the wall. Therefore claim 1 is not obvious in light of a combination of D5 with D2.

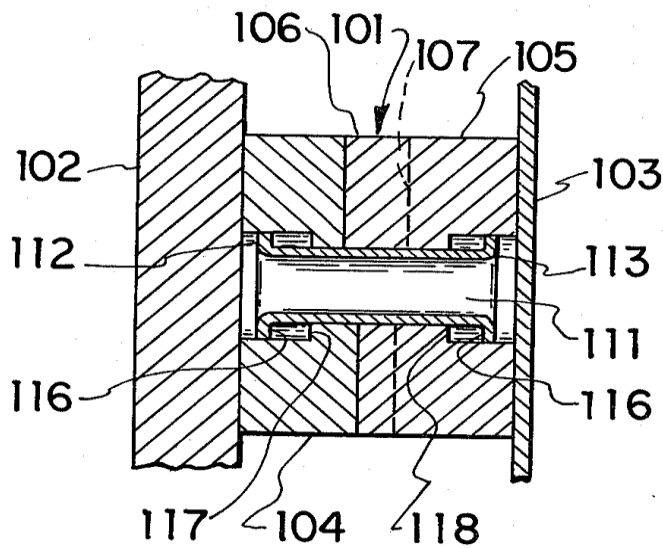


Fig. 5

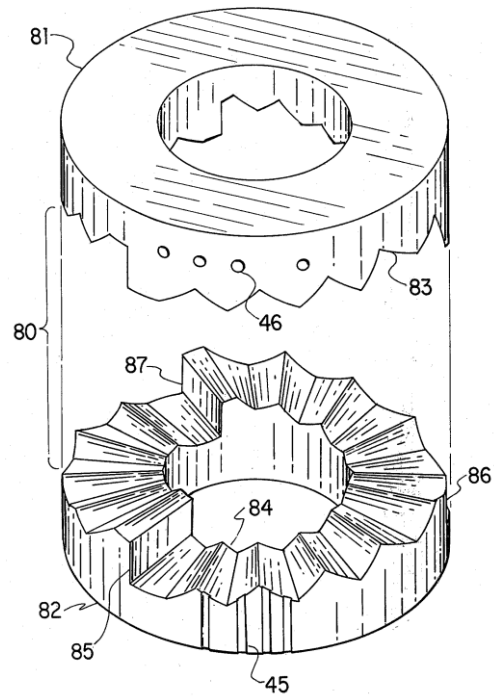


Fig. 4

70. D3 discloses an extendable spacing device having an internal bore that is extendable when positioned between two parts. The spacer is described as a general purpose spacer which can extend to at least 20mm. D3 does not disclose positioning the spacing device between the two parts whilst they are in position relative to one another. The only example given in D3 is of mounting a base 25 of a motor 24 on a platform 27. It is clear that the spacer would need to be placed on the platform 27 prior to the base 26 being placed on the spacer. Figures 6 and 7 of D3 are reproduced below. D3 provides not motivation to the skilled person to position the spacer between two parts whilst the two parts are in position relative to one another. Thus claim 1 is not obvious in light of a combination of D5 with D3.

FIG. 7

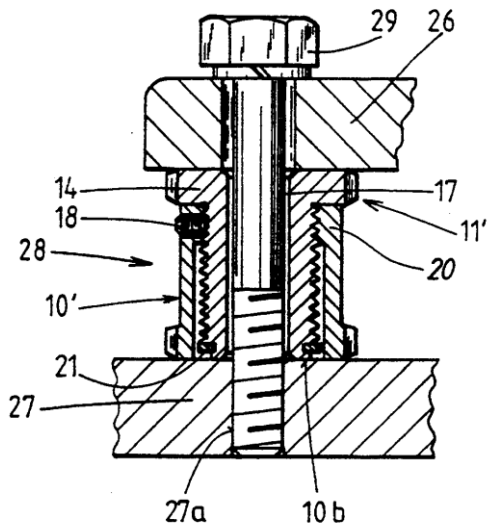
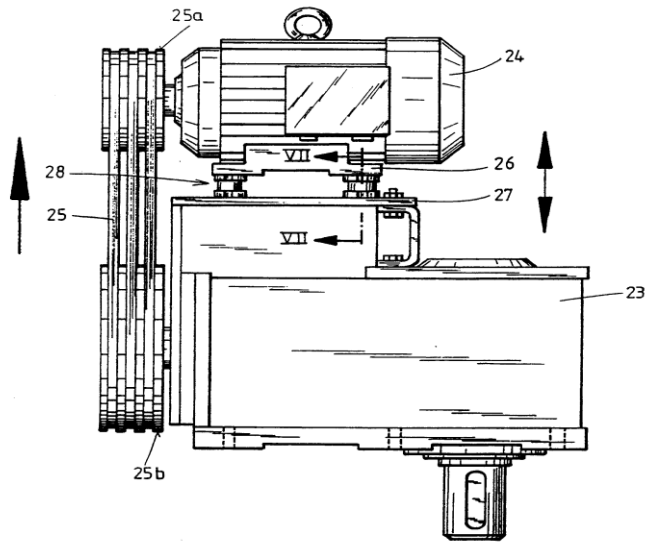
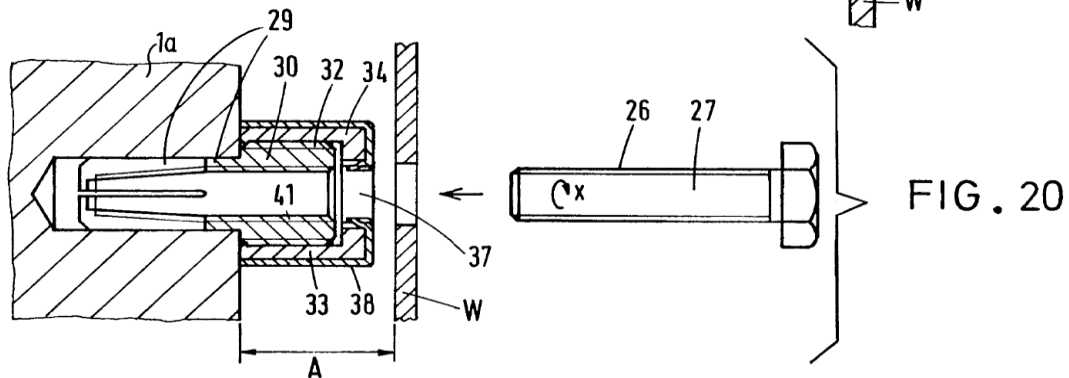
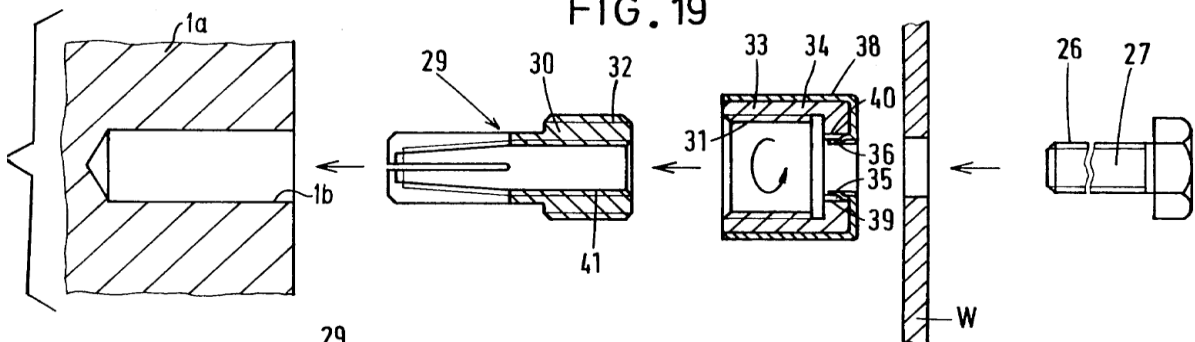


FIG. 6



71. D4 does disclose an extendable spacing device having an internal bore that is extendable when positioned between two parts. However it is clear from the figures of D4 that the spacing device is not located within a space between the two parts after the two parts are positioned relative to one another. The spacer in D4 is embedded within one of the parts e.g. structural part 1a in figures 19-21 reproduced below, before the part is positioned against the wall W. The feature C is not disclosed in D4. Therefore should the skilled person consider modifying D5 in light of D4, he/she would embed the adjustable spacer within the rear wall of the furniture or within the wall prior to positioning the furniture against the wall. Thus claim 1 is not obvious in light of a combination of D5 with D4.

FIG. 19



Conclusion

72. On the basis of the evidence put forward regarding documents 1-5, I am of the opinion that claim 1 of the patent involves an inventive step under section 3 of the UK Patent Act 1977.

Marc Collins
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.