

**OPINION UNDER SECTION 74A**

Patent	EP (UK) 1743972 B1
Proprietor(s)	Heinrich Wüster
Exclusive Licensee	
Requester	Heinrich Wüster
Observer(s)	Addis Housewares Limited
Date Opinion issued	<u>01 August 2019</u>

**The Request**

1. The Comptroller has been requested by Heinrich Wüster (the Requester) to issue an Opinion on whether their patent EP (UK) 1743972 B1 (the Patent) is infringed by the manufacture or importation of the Addis Easi Lift Rotary Aired (the Addis Aired). The following documents were filed with the request:

Annex 1: EP (UK) 1743972 B1;

Annex 2: English translation of European Patent No. EP 1743972 B1<sup>1</sup>;

Annex 3: Images of the Addis Aired taken from web page at <https://www.addis.co.uk/easi-lift-rotary-airer-46m.asp>;

Annex 4: Screenshots from video of the Addis Aired at <https://www.youtube.com/watch?v=NeVD6ADfB4I>

Annex 5: Annotated images of the Addis Aired.

2. Observations were received from Wynne-Jones IP Ltd representing Addis Housewares Limited (the Observer), on 10<sup>th</sup> June 2019. Observations in reply were received from the Requester on 18<sup>th</sup> June 2019.

3. Neither the Requester nor the Observer contest the validity of the English translation of the Patent provided at Annex 2 of the request. I will therefore proceed based on this translation.

**The Patent**

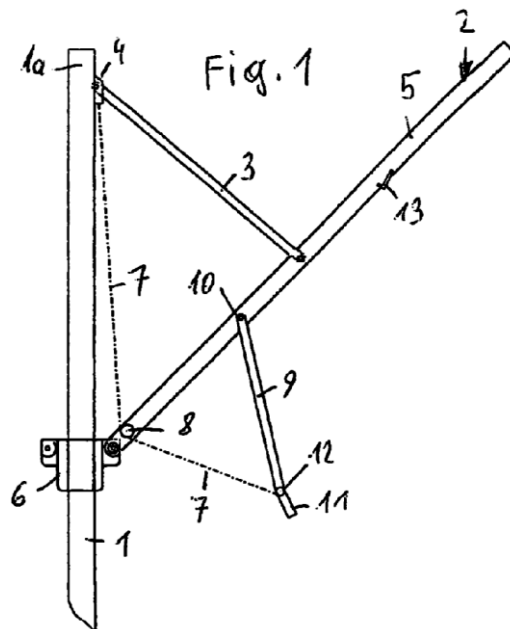
4. The patent entitled "Schirmartiger Wäschetrockner mit

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<sup>1</sup> Annex A is entitled English translation of European Patent No. EP 1743974 B1. EP 1743974 B1 however relates to a press device and therefore seems erroneous.

Betätigungsvorrichtung”, translated as “Umbrella-shaped clothes-drying rack” has an earliest priority date of 14<sup>th</sup> July 2005 and was granted on 17<sup>th</sup> January 2007. The patent remains in force.

5. The Patent relates to a domestic rotary laundry drier that is movable between a folded state and a deployed state by vertical movement of a sleeve 6 arranged on an upright tube 1. The figure below shows the drier in an intermediate state between the folded state and the deployed state. Movement of the sleeve, as is conventional with this type of drier, causes a plurality of carrier arms 5 to extend outwards. The carrier arms carry wires on which laundry may be fixed to air or dry. The drier is characterised by an activation device comprising a hoisting line 7 and an opening lever 9 which allows the user to easily lift the central sleeve and move the laundry drier into the deployed position via operation of the opening lever. The drier achieves this by way of the opening lever and an idler pulley 8 cooperating to provide a force multiplication.



6. The patent has 23 claims with claim 1 being the only independent claim, all other claims are dependent on claim 1. Claim 1, with the breakdown used by both the Requester and the Observer, is as follows;

- F1.1 Umbrella-like washing dryer,
- F1.2 wherein a central upright tube (1, 59,78) carries, for the washing line, a multiple-arm carrier frame (2)
- F1.3 which can be unfolded by means of an activation device and which can be secured in the unfolded state,
- F1.4 and which has supporting arms (3) which are arranged in a star-like manner and which are movably connected to the upper end portion (1a) of the upright tube (1),
- F1.5 and washing line carrier arms (5) which are arranged in a star-like manner, which are connected in an articulated manner to the lower ends of the supporting arms (3) and articulated to a lower sleeve (6)

- F1.6 which can be displaced along the upright tube (1,59, 78), and which can be supported by the upright tube (1,59, 78),
- F1.7 the activation device being provided with a hoisting line (7) which is anchored with the upper end thereof to the upper end portion (1a) of the upright tube (1, 59, 78) and
- F1.8 which extends downwards parallel with the upright tube (1, 59, 78) and
- F1.9 which is redirected away from the upright tube (1, 59, 78) at the lower sleeve (6) of the carrier frame (2),
- F1.10 characterised in that the activation device has an opening lever (9, 27, 49, 52, 67) which is provided with a free activation end and
- F1.11 which is coupled to the hoisting line (7) by means of a line engagement element (12) which is adjacent to the activation end, and
- F1.12 which is articulated to a washing line carrier arm (5) above the lower sleeve (6) and
- F1.13 which can be pivoted from a downwardly-directed lower position into an upwardly-directed upper position in order to unfold the carrier frame (2).

## Claim construction

7. Before I can determine whether there would be infringement of the claims of the Patent I must first construe them. This means interpreting the claims in light of the description and drawings as instructed by section 125(1) which reads:

*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.*

8. 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 claim to mean. This approach has been confirmed in the decisions of the High Court in *Mylan v Yeda*<sup>2</sup> and the Court of Appeal in *Actavis v ICOS*<sup>3</sup>

9. The Requester suggests that the skilled person would be a designer of simple mechanical household products such as rotary washing lines. This has not been challenged by the Observer. I am also content to accept this though I would add that the skilled person would be aware of the known problems arising from using rotary dryers as well as the commonly used solutions that would adopt the mechanical advantage afforded by well-known and rudimentary systems such as levers, pulleys, etc.

10. The Requester and Observer however disagree on the construction of several

<sup>2</sup> Generics UK Ltd (t/a Mylan) v Yeda Research and Development Co. Ltd & Anor [2017] EWHC 2629 (Pat)

<sup>3</sup> Actavis Group & Ors v ICOS Corp & Eli Lilly & Co. [2017] EWCA Civ 1671

aspects of claim 1. These are the requirement in F1.7 that the hoisting line “*is anchored with the upper end thereof to the upper end portion of the upright tube*”; the requirements in F1.8 and 1.9 relating to the routing of the hoisting line and the requirement that the line is *coupled* to the lever in F1.11. There seems to be no dispute regarding the remaining elements of the claim, which I find to be generally clear and straightforward to construe.

11. The Observer states that the use of the term “*thereof*” in F1.7 casts doubt on its intended meaning. It contends that it is not clear whether the claim requires an upper end of the hoisting line to be anchored to an upper end of the upright tube, or alternatively that the hoisting line is to be anchored with an upper end of the activation device. The Observer favours the latter. I do not agree. I find F1.7 to be clear and the Observer’s proposed construction of F1.7 to be unnatural. In my opinion the reader would understand F1.7 to mean that an upper end of the hoisting line is anchored to the upper portion of the upright tube.

12. The Observer contends that the coupling between the hoisting line and the opening lever required by F1.11 should be construed as a “*fixed*” coupling. The Requester asserts rather that the skilled person would not interpret the term “*coupled to*” as “*fixedly coupled to*”, further asserting that there is nothing in the Patent that would support such a restriction.

13. F1.11 requires that the hoisting line be *coupled* to the free activation end of the opening lever by way of a line *engagement* element. The terms “*coupled*” and “*engagement*” are crucial to understanding the scope of the claim. Unfortunately, there is no explicit teaching in the Patent regarding these terms and although I am familiar with the standard definition of each term I am cautious over applying a literal definition devoid of any relevant context.

14. The dryer set out in the patent is unfolded by the user moving the activation lever from a downwardly directed lower position into an upwardly directed upper position. The movement of the lever is translated into movement of the lower sleeve by means of the hoisting line. The claim and the description clearly provide for a first upper end of the hoisting line to be anchored at the upper end of the upright tube. The claim and description further provide for the line to extend downwardly from the upper end of the upright tube and then to be redirected away from the tube at the lower sleeve and for it to be coupled with the lever by means of a line engagement element. The description provides several embodiments. In some of these the line effectively terminates at the line engagement element whilst in at least one the description notes that the line is constructed as a sling (“*Schlinge*” in German) with two strands extending down either side of the upright tube. Each strand then passes over a separate pulley located on either side of the carrier arm and then extend out to the lever where they engage with one of two engagement elements on the lever.

15. Taking account of this particular embodiment I do not believe that the claim should be construed such that it requires one end of the line to be anchored to the lever. Instead I believe the skilled person would have understood the patentee to have chosen the term “*coupled to*” to mean that the line engages with the lever in such a way as to enable rotation of the lever to be translated into upward movement of the sleeve by means of the line.

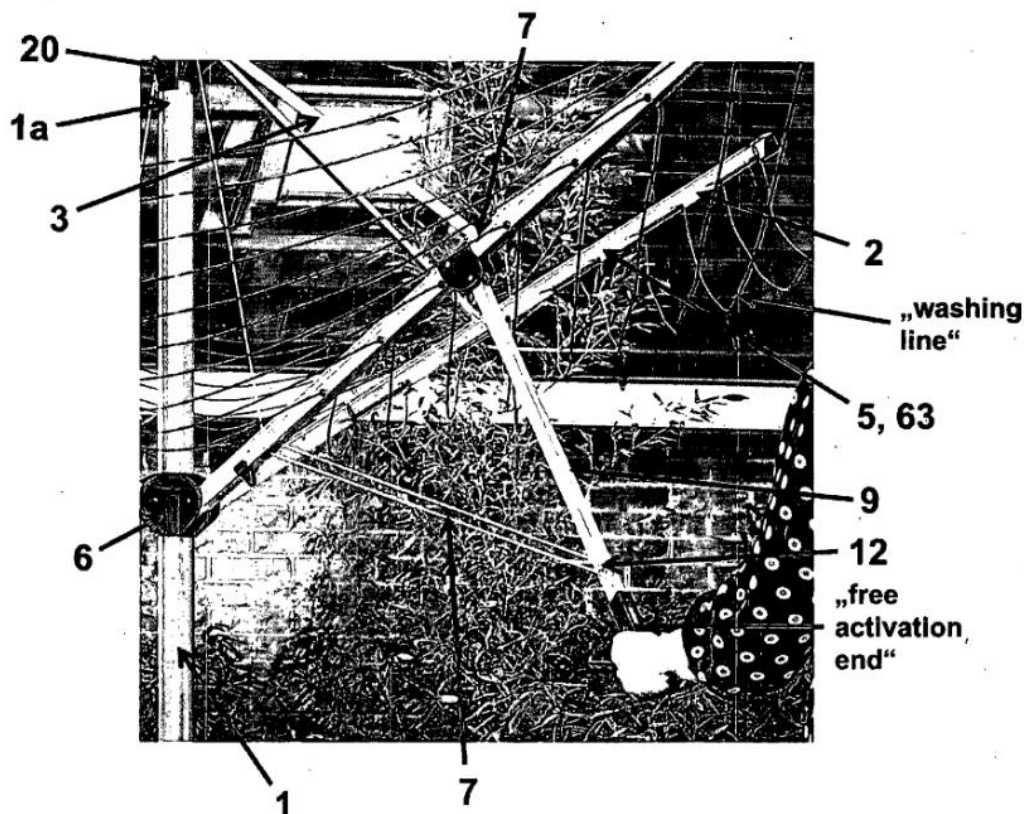
16. As noted the requester and observer also disagree on the construction to be applied to F1.8 and F1.9 which require the hoisting line to extend downwards (from the upper end of the upright tube) parallel with the upright tube and to be redirected away from the upright tube at the lower sleeve of the carrier frame.

17. The Observer identifies that in the patent the hoisting line extends downwards 'substantially' parallel with the upright tube, rather than strictly parallel, and additionally that this relationship is maintained throughout the operation of the dryer. The Requester agrees that a literal interpretation of 'parallel' is not appropriate and that the everyday understanding ought to be adopted. The Requester however contends that the claim should not be construed as requiring the line to remain parallel with the tube throughout the operation of the dryer.

18. The description of the patent discloses several embodiments wherein the hoisting line is arranged parallel to the upright tube and where it maintains this relationship in both a folded state and a deployed state of the dryer. The Patent however additionally discloses embodiments wherein the hoisting line is redirected by a roller 8, spaced apart from a pivoting end of the carrier arm (see figure 1 above). In these embodiments when the dryer is opened, the distance between the sleeve and the upper end of the upright tube decreases and the angle formed between the hoisting line and the upright tube would increase away from a parallel relationship to a point where it is clearly non-parallel. I am satisfied that the patentee did not intend to exclude these embodiments and as such the claim was drafted either with the intention that the line be parallel in at least one of the opened or collapsed states of the dryer or more likely in my opinion, that the reference to parallel should be construed more broadly, i.e. not the strict literal meaning.

### **The Addis Ainer**

19. The Addis Ainer is a rotary ainer which can be operated, as is entirely conventional, between a folded state and a deployed state. The annotated figure below shows the Addis Ainer in an intermediate state between fully folded and fully deployed.



20. The Addis Airer comprises an upright tube 1 that carries a multiple arm carrier frame 2. The carrier frame comprises a plurality of support arms each pivotally fixed to a sleeve 6 and fixed to an upper section of the upright tube by a respective articulated arm 3. The sleeve is slidably engaged with the upright tube and configured such that as the sleeve ascends the upright tube the support arms are moved from being substantially parallel to the upright tube, in the folded position, to substantially oblique to the upright tube, in the deployed position. This similarly describes the operation of a conventional folding rotary airer.

21. The Addis Airer is characterised by its lifting mechanism which comprises a handle 9 that interacts with a hoisting line 7 to raise the sleeve relative to the upright tube. The hoisting line appears to have a first end fixed at an upper portion of the upright tube, and a second end that appears to be fixed at the support arm. The hoisting line extends from the first end, through a guide arranged in the support arm, around a pulley arranged on the lever, adjacent the handle, and terminates at the second end adjacent the guide. The Addis Airer uses the mechanical advantage of the lever and associated pulley to reduce the effort required to deploy the rotary airer.

### Infringement

22. Section 60 of the Act governs what constitutes infringement of a patent:

(1) *Subject to the provisions of this section, a person infringes a patent for an invention if, but only if, while the patent is in force he does any of the following things in the United Kingdom in relation to the invention without the*

*consent of the proprietor of the patent, that is to say-*

*(a) Where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;*

*(b) ...*

*(c) ...*

*(2) Subject to the following provisions of this section, a person (other than the proprietor of the patent) also infringes a patent for an invention if, while the patent is in force and without the consent of the proprietor, he supplies or offers to supply in the United Kingdom a person other than a licensee or other person entitled to work the invention with any of the means, relating to an essential element of the invention, for putting the invention into effect when he knows, or it is obvious to a reasonable person in the circumstances, that those means are suitable for putting, and are intended to put, the invention into effect in the United Kingdom.*

23. In *Actavis v Eli Lilly*<sup>4</sup>, Lord Neuberger states that the problem of infringement is best approached by addressing two issues, each of which is to be considered through the eyes of the notional addressee of the patent in suit, i.e. the person skilled in the relevant art. Those issues are:

*(i) does the variant infringe any of the claims as a matter of normal interpretation; and, if not,*

*(ii) does the variant nonetheless infringe because it varies from the invention in a way or ways which is or are immaterial?*

24. If the answer is “yes” to either question there is infringement; otherwise there is not.

### **Does the Addis Ainer infringe the Patent as a matter of normal interpretation?**

25. The Observer alleges that the Addis Ainer is distinguished from the Patent for the following reasons;

a. the Addis Ainer does not comprise a fixed coupling between the hoisting line and the lever, and

b. the Addis Ainer does not require the hoisting line to extend parallel with the upright tube when in a deployed position. It is noted however that the Observer concedes that the hoisting line is substantially parallel with the upright tube when in the folded position.

26. In addition to these two points, the Observer seeks to rely on a further

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<sup>4</sup> *Actavis UK Limited and Others v Eli Lilly and Company* [2017] UKSC 48

distinction between the Addis Ainer and the Patent regarding the anchor position of the hoisting line and the upright tube. I have already considered this matter above and have concluded that this argument is based on an unnatural and inappropriate construction of the claim. I shall not consider this particular argument any further.

27. The hoisting line in the Addis Ainer is as noted not fixed to the opening lever but rather is fed around a pulley located on the lever and then anchored on one of the carrier arms. The coupling of the line to the lever does however still enable the rotation of the lever to be translated by the line into movement of the sleeve and as such falls within the scope of the claim as I have interpreted it. In addition, I am also satisfied that the hoisting line in the Addis Ainer does extend downwardly parallel to the upright tube as I have construed that requirement. I am therefore of the opinion that the Addis Ainer infringes the patent as a matter of normal construction.

### **Does the Addis Ainer infringe the Patent due to immaterial variation?**

28. Both the requester and observer have made observations on possible infringement under the second immaterial variation test of *Actavis v Eli Lilly*. In case I am wrong on my conclusion that the Addis Ainer infringes under a normal interpretation of claim 1, I will briefly consider the reformulated “*improver questions*” namely<sup>5</sup>;

- i) *Notwithstanding that it is not within the literal meaning of the relevant claim(s) of the patent, does the variant achieve substantially the same result in substantially the same way as the invention, ie the inventive concept revealed by the patent?*
- ii) *Would it be obvious to the person skilled in the art, reading the patent at the priority date, but knowing that the variant achieves substantially the same result as the invention, that it does so in substantially the same way as the invention?*
- iii) *Would such a reader of the patent have concluded that the patentee nonetheless intended that strict compliance with the literal meaning of the relevant claim(s) of the patent was an essential requirement of the invention?*

29. To establish infringement, where there is no infringement under normal construction, the answer to question i) and ii) must be yes and the answer to question iii) must be no.

30. In this instance it is assumed that I am wrong to construe the claim as not requiring the hoisting line to be fixed to the lever and/or that the line should extend substantially parallel to the upright tube throughout the operation of unfolding the dryer. In that case the Addis Ainer would be a variant as the hoisting line is not fixed to the lever. Further, or alternatively, if F1.8 and F1.9 should be construed as requiring the hoisting line to remain parallel to the upright post throughout the operation of the dryer then the Addis Ainer would also represent a variant.

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<sup>5</sup> *Improver* [1990] FSR 181



31. Both the invention in issue and the Addis Ainer however achieve substantially the same result in the same way; in other words, easier deployment of a laundry ainer using a line anchored at one end to the upper part of the upright post and coupled to a rotatable lever which is rotated to deploy the dryer from a collapsed state. That the Addis Ainer has the additional feature of the lever mounted pulley system which provides a different mechanical advantage does not in my opinion change the result nor the basic way that the opening of the ainer is made easier. This would be obvious to the person skilled in the art. Therefore I would answer the first two questions in the affirmative. For the reasons discussed above I also believe that the patentee did not require a strict literal interpretation of the claims so the answer to the final question would be in the negative. This would then have led me to concluded that the Addis Ainer does infringe because it varies from the invention in ways which are immaterial.

### **Opinion**

32. It is my Opinion that the Addis Ainer of the request does fall within the scope of claim 1 of the Patent as a matter of normal interpretation. Accordingly, it is my opinion that the Addis Ainer does infringe EP (UK) 1743972 B1

Sean OConnor  
Examiner

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### **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.*