

OPINION UNDER SECTION 74A

Patent	GB 2476858 B
Proprietor(s)	Ronald Stephen Matthey
Exclusive Licensee	
Requester	Acapo AS
Observer(s)	IP21 Limited (On behalf of the proprietor)
Date Opinion issued	23 November 2020

The Request

1. The comptroller has been requested by Acapo AS (“the Requester”) to issue a validity opinion in respect GB 2476858 B (“the Patent”) in the name of Ronald Stephen Matthey.
2. The request was received on 27 April 2020 and was accompanied by a statement explaining the request. The Requester has provided the following documents accompanying the request:

D1: EP 2316721 A1 (published 4 May 2011; priority date 30 October 2009)

D2: EP 2298641 A2 (published 23 March 2011; priority date 11 October 2009)

D3: WO 2005/097591 A1 (published 20 October 2005)

D4: WO 02/20343 A1 (published 14 March 2002)

D5: US 4834437 A (published 30 May 1989)

D6: FR 2469500 A1 (published 22 May 1981)

D7: DE 10041427 A1 (9 August 2001)

D8: NL 1000748 C2 (published 8 January 1997)

D9: Machine translation of FR 2469500 A1

D10: Machine translation of DE 10041427 A1

D11: Copy of the IPRP issued on equivalent application WO 2012/066349 A1

3. The request asks for an opinion on whether claim 1 is lacking novelty over EP 2316721 A1, EP 2298641 A2, WO 2005/097591 A1 or WO 02/20343 A1; whether claim 1 is lacking an inventive step over WO 2005/097591 A1 when taken alone, or in combination with US 4834437 A; whether claim 1 is lacking an inventive step over FR 2469500 A1; and whether the dependent claims are also not novel or inventive over the above prior art.
4. Each of documents D3-D8 has a publication date prior to the priority date of the patent and form part of the state of the art under Section 2(2). However, D1 and D2 were both published after the priority date of the patent but have an earlier declared priority state. Therefore, D1 and D2 form part of the state of the art under Section 2(3) and are only relevant to the novelty of the claims.
5. No opinion is sought in relation to claims 13 and 15 as they are omnibus claims.

Observations and Observation in reply

6. Observations were received from IP21 Limited (“the observer”) on behalf of the proprietor, Ronald Stephen Matthey. Observations in reply were received from the requester.

Matters to be considered by this opinion

7. The Requester has asked me to consider D4 which was listed as background art in the GB search report and therefore previously considered by the UKIPO examiner during pre-grant prosecution of the Patent.
8. 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.
9. The requester has argued that claim 1 lacks novelty in light of D4. It is an intrinsic part of the substantive examination process to assess the novelty and obviousness of the claims, as properly construed, in the light of the prior art. I think it reasonable to suppose in general that the examiner will have done his or her job properly in the absence of indication to the contrary, and I see no reason why this assumption should not apply even if the examiner has decided not to raise objection on the basis of any citations at substantive examination. Therefore, I do not consider the requester to be raising a new question in relation to D4 and it is not appropriate for me reconsider D4 in this opinion.
10. The observer has filed an auxiliary request along with their observations. The auxiliary request includes amended claims along with argument on their validity which they would to be considered should this opinion find one or more of the claims

as granted to be invalid. The Opinion process is intended to be a low cost and quick service. It provides for three well defined rounds of argument i.e. the request, observations and observations in reply. Consequently, for the purposes of this opinion I will not consider the auxiliary request.

Costs

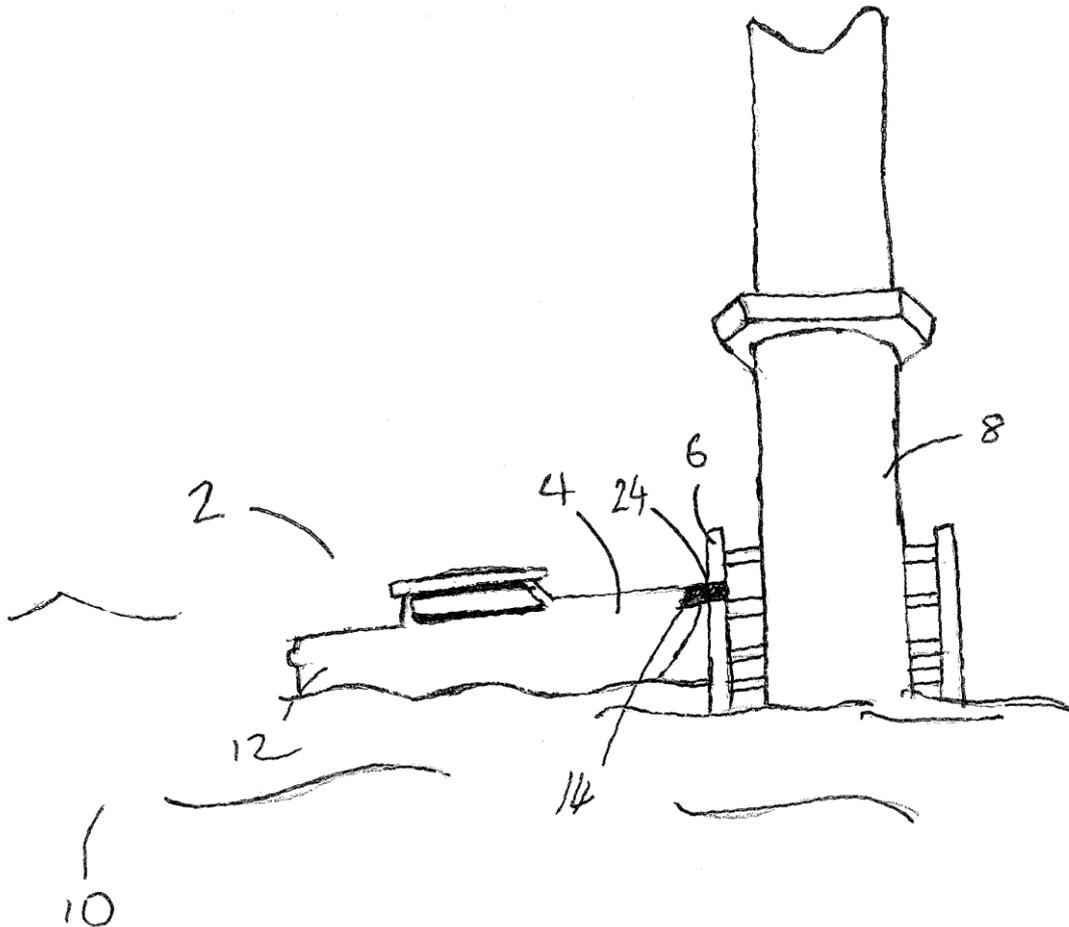
11. The observer has requested costs be awarded in the proprietor's favour. However, costs are not awarded in respect of opinions and so I will not consider any such award to either party.

The Patent

12. The Patent is titled "Jaw apparatus for stabilising a floating craft against a stationary structure". It was filed on 19th November 2010, published on 13th July 2011 and granted on 11th July 2012. The patent remains in force.
13. The Patent relates to apparatus for stabilising a floating craft against a stationary structure. The invention has particular application in relation to offshore structures such as wind turbines. Often these structures are too small to provide full docking facilities for a craft, and as such it is the case that when a structure such as a wind turbine requires renovation and/or repair, it can be problematic to dock with it, and transfer equipment and/or personnel to it. Typically, access to a wind turbine will be via a ladder running along the length of the stem of the turbine, and in order to gain access to the turbine, a craft will have to be very carefully moved up alongside it to the extent that personnel can simply get onto the ladder, or the transfer can be made via a smaller craft such as a dinghy, or via a gangplank. In conditions of all but calm, it can be the case that the old methods are at best difficult and haphazard, and at worst can be dangerous. Further, the use of a dinghy may be impracticable for the transport of heavy equipment.
14. The Patent discusses shortcomings with prior art solutions lying in that the focus has been primarily on alleviating problems related to downwards motion, where a key problem can be that a craft is tossed from side to side relative to a turbine pylon. These sideways motions, either in themselves or in combination with the upwards and downwards motions can be most severe, causing damage to craft, and injury and loss of life to crew thrown from the craft. The crew could also be hit by a returning craft after they have been transferred to the structure. In particular, where wind turbines have landing tubes, it has been known for boats to get stuck on the tubes. The method of the prior art exacerbates this problem by requiring the boat to constantly urge itself towards the pylon. In a current, this urging force can easily be misdirected, resulting in damage and/or injury.
15. The invention seeks to overcome these problems through an apparatus having jaws to exert control over the relative lateral movement of the craft in relation to the stationary object, which makes it less likely for the craft to be become damaged by, or stuck on the stationary object, as has occurred with craft using prior art bow fenders. The provision of jaws, at least one of which is movable, also allows for adjustment of the contact between the craft and the stationary structure, as a

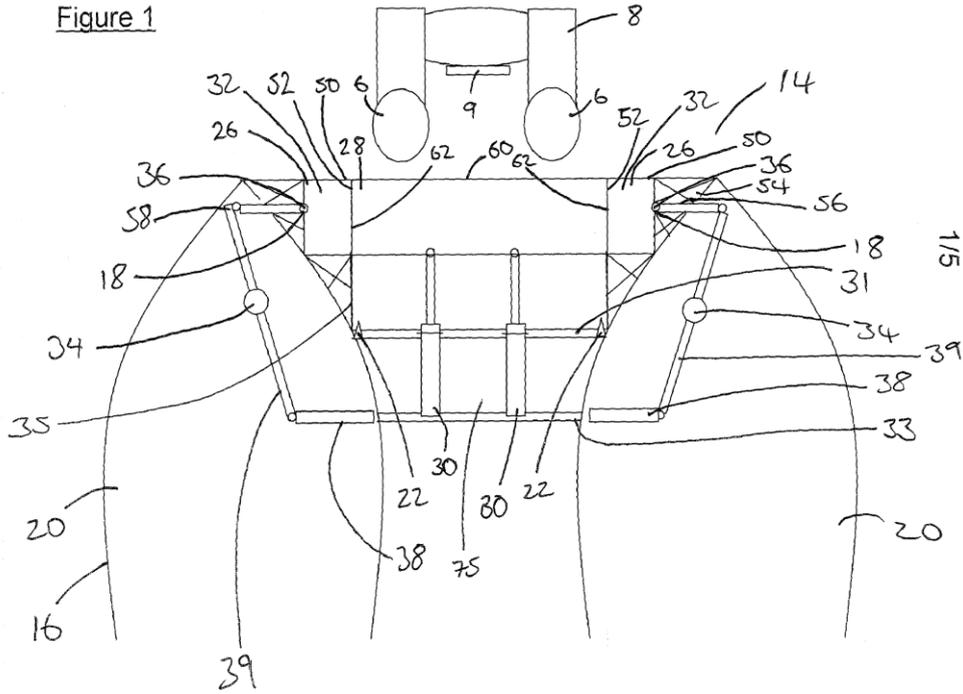
supplement to and independently of any force created by the engine of the craft - thus potentially solving the problem of misdirected engine force.

16. Figure 5 reproduced below shows a craft 2 held relative to an offshore structure 8 by engagement of its bow 4 against a pylon 6 of the offshore structure 8. The bow 4 has on it apparatus of the invention 14, which is visible from the side. The apparatus 14 is aiding the stabilisation of the craft 2 relative to the offshore structure 8, in particular against lateral movement.



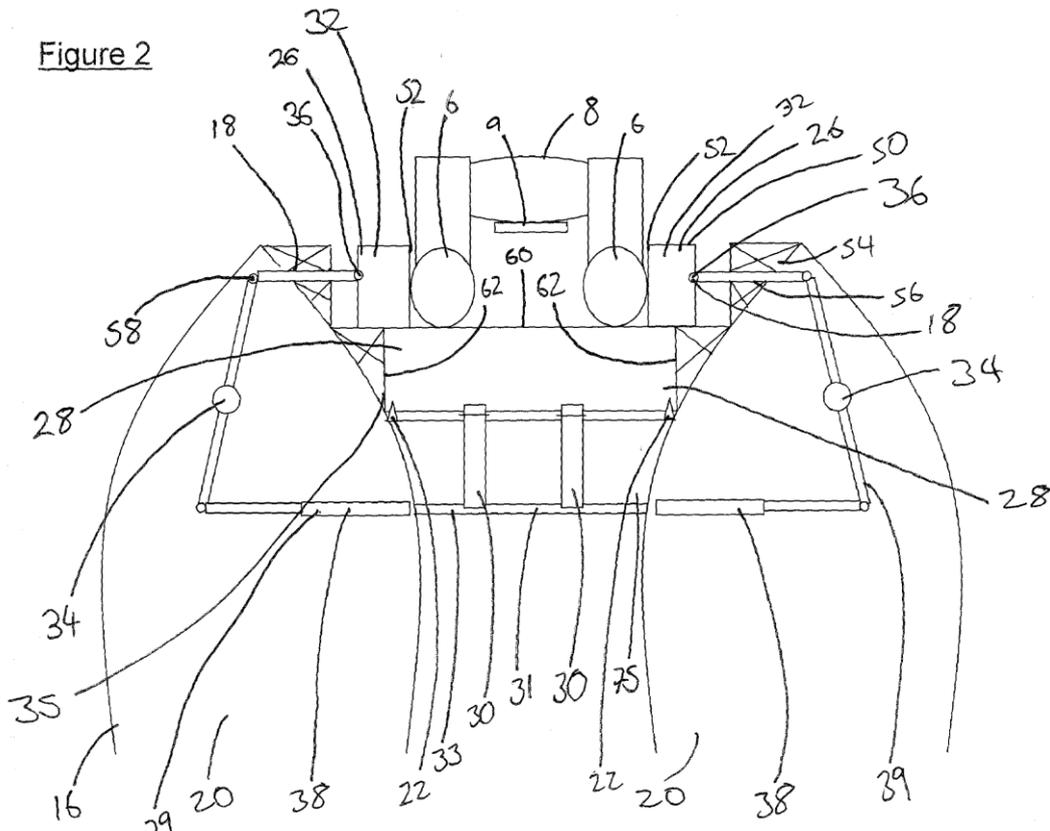
17. In figure 1 below, the apparatus 14 is shown disengaged from the offshore structure 8, which comprises landing tubes 6 and a ladder 9. Here the apparatus 14 has been fitted to a craft 16 which is a catamaran, however the apparatus may be used on crafts with a single hull or a multiple hull.

Figure 1



18. The apparatus 14 comprises jaws 26 and a fender 28. In this embodiment, both of the two jaws 26 and the fender 28 are movable, but in alternative embodiments, the fender 28 and all but one of the jaws 28 may be static. In particular, the fender 28 may be static in the second "retracted" position, shown in figure 2 (see below). The fender 28 is elongate in form and has a structure contacting face 60, and two side faces 62. In figure 1, the fender 28 is in the extended position, but may be moved into the retracted position of figure 2.

Figure 2



19. In use, the craft 16 is moved into a position where it is in contact with, or at least adjacent to, the structure 8, with the structure contacting surface 60 of the fender 28 being brought as close as possible to the structure 8. The fender 28 can then be retracted from the position in figure 1 into the position in figure 2, creating a recess 62. At least a part of the structure 8 may now be accommodated by the recess 62, with the landing tubes 6 partially surrounded. The jaws 26 can now be moved towards one another, thereby moving in front of or across contacting surface 60, with the result that the jaws 26 form at least a steadying, intermittent contact with the structure 8, preferably a continuous contact, and more preferably a frictional fit, or a hold or grip. This serves to steady the craft 2 relative to the structure 8 and allows the transfer of people and equipment.

20. The patent has 15 claims including a single independent claim 1. Claim 1 of the Patent reads:

1. Apparatus for stabilising a floating craft against a stationary structure, said apparatus comprising means of attaching the apparatus to a floating craft, an elongate fender, said fender comprising a structure contacting face, with said apparatus further comprising at least two jaws, each of said jaws comprising a front face and a structure contacting surface, wherein at least one jaw is movable from a first position to a second position and vice versa, in order that said jaws may be positioned in a first open position where the structure contacting surfaces of the jaws are relatively far apart and a second closed position wherein the structure contacting surfaces of the jaws are relatively close together, wherein when said apparatus is positioned such that a suitably sized part of the stationary structure is placed between the jaws, the said jaws can be brought into the closed position, thereby creating craft stabilising contact between the structure contacting surfaces of the jaws and the structure.

21. I will consider the novelty and inventiveness of the dependent claims should that become necessary after my assessment of claim 1.

Claim construction

22. Before considering the novelty, inventive step and infringement issues raised in the request, I need to construe the claims of the patent – that is to say, I must interpret them in the light of the description and drawings as instructed by Section 125(1):

125(1) 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.

23. 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 Yeda¹ and the Court of Appeal in Actavis v ICOS².

24. Neither the requester nor the observer has identified the skilled person. I consider the skilled person to be a designer of mooring/coupling apparatus for coupling floating crafts with offshore stationary structures. I consider such a person would be aware of well-known mooring/coupling apparatus for coupling floating crafts with offshore stationary structures. The skilled person would be aware of well-known types of coupling constructions and the common fixings and parts used in the assembly thereof along with methods of installing and fitting such apparatus including apparatus and devices to aid in such methods.
25. The requester has provided a detailed analysis of every feature of claim 1. The observer contends that is largely unnecessary and the matter turns almost exclusively on the meaning of the term “jaw” and “jaws” because all of the cited documents differ from the patented invention in the same respect, namely the configuration and function of the jaws.
26. I agree with the observer that generally the features of claim 1 are clear and the skilled person would have no issue in understanding the meaning of the claim. However, as highlighted by the observer the relevance of the prior art relied upon by the requester to the validity of claim 1 hinges largely on what the skilled person would understand the feature of a “jaw” or “jaws” to constitute, and to a lesser extent what constitutes “an elongate fender”. I will therefore consider these two features in detail.
27. Claim 1 defines each jaw as comprising “*a front face and a structure contacting surface*”. The observer has argued that what is shown and described in the Patent are jaws with a structure contacting face that contacts the structure laterally only i.e. there is no longitudinal contact between the jaws of the stationary structure. The observer accepts that the language of the claim does not strictly explicitly exclude further longitudinal contact but that the skilled person would understand the patentee’s intention was to describe a jaw having only lateral contact with the structure. The observer contends that a broader interpretation i.e. one in which the jaw engages with the structure with a longitudinal force, is not sustained by the specification as filed. The observer further points towards the technical problem being solved by the invention as directing the skilled person to an understanding of the jaw only having lateral contact with the structure.
28. The requester has explained that a normal understanding of “jaws” is gripping parts i.e. at least two parts clamping an object therebetween. To my mind this a reasonable interpretation of what constitutes “jaws”. The requester further explains that merely because the force applied by the jaws as described in the application do not have a longitudinal component the skilled person would not understand this to be excluded by the language of the claims. If this were the case then the claims of a patent would be limited to the exact embodiment described in the application, which is clearly not the case.

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

29. I find myself in agreement with the requester on this point. Whilst the disclosed embodiment in the patent describes jaws providing lateral contact only, there is no disclosure in the patent that no longitudinal force should be provided by the jaws. In my opinion, the skilled person would not understand the jaws to contact in a lateral direction only i.e. at 90° to the fender. The Patent does discuss the problem of lateral movement of the craft relative to the structure, and this would lead the skilled person to understand the need for jaws of claim 1 to exert lateral forces on the structure to provide stability, however, to my mind, this would not lead the skilled person to understand that **only** lateral forces and no other directional force can be applied by the jaws.
30. The requester has also provided interpretation of what constitutes a “front face” of the jaws. The apparatus is described in the patent as being positionable on the front, side or rear of a vessel. The requester has therefore interpreted “front face” as a face of the jaws which is directed generally in a direction away from the vessel, and thus towards the front of the apparatus, at least for a time during use. Given the disclosure in the Patent, I consider this to be a reasonable interpretation of what the skilled person would understand a “front face” of each jaw to mean.
31. In my opinion the skilled person would understand the jaws to each comprise a front face and a structure contacting surface as defined by claim 1. The jaw being required to at least provide a lateral force to the structure in order to provide stability and control over the relative lateral movement of the craft to the structure.
32. The second point highlighted by the observer is the feature of an “elongate fender”. The observer states that it is clear the fender must comprise a finite length capable of contacting a structure. The requester has provided an interpretation of the elongate fender as “a generally elongate portion (longer in one dimension than another) having thereon at least one surface, which can be flat or non-flat and which contacts the stationary structure at least at a point and intermittently during use of the apparatus”. Both interpretations are consistent with one another and I believe the skilled person would understand an elongate fender to be as defined by the requester in light of the disclosure in the Patent.

The law - Novelty and Inventive step

33. 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;*

34. 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.

2(3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied, that is to say –

(a) that matter was contained in the application for that other patent both as filed and as published; and

(b) the priority date of that matter is earlier than that of the invention.

35. 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).

36. The Court of Appeal in *Windsurfing*³ 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*⁴. 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?

37. I will begin by considering the validity of the invention as defined by claim 1. Only if I find it to be invalid will I consider the dependent claims.

Novelty

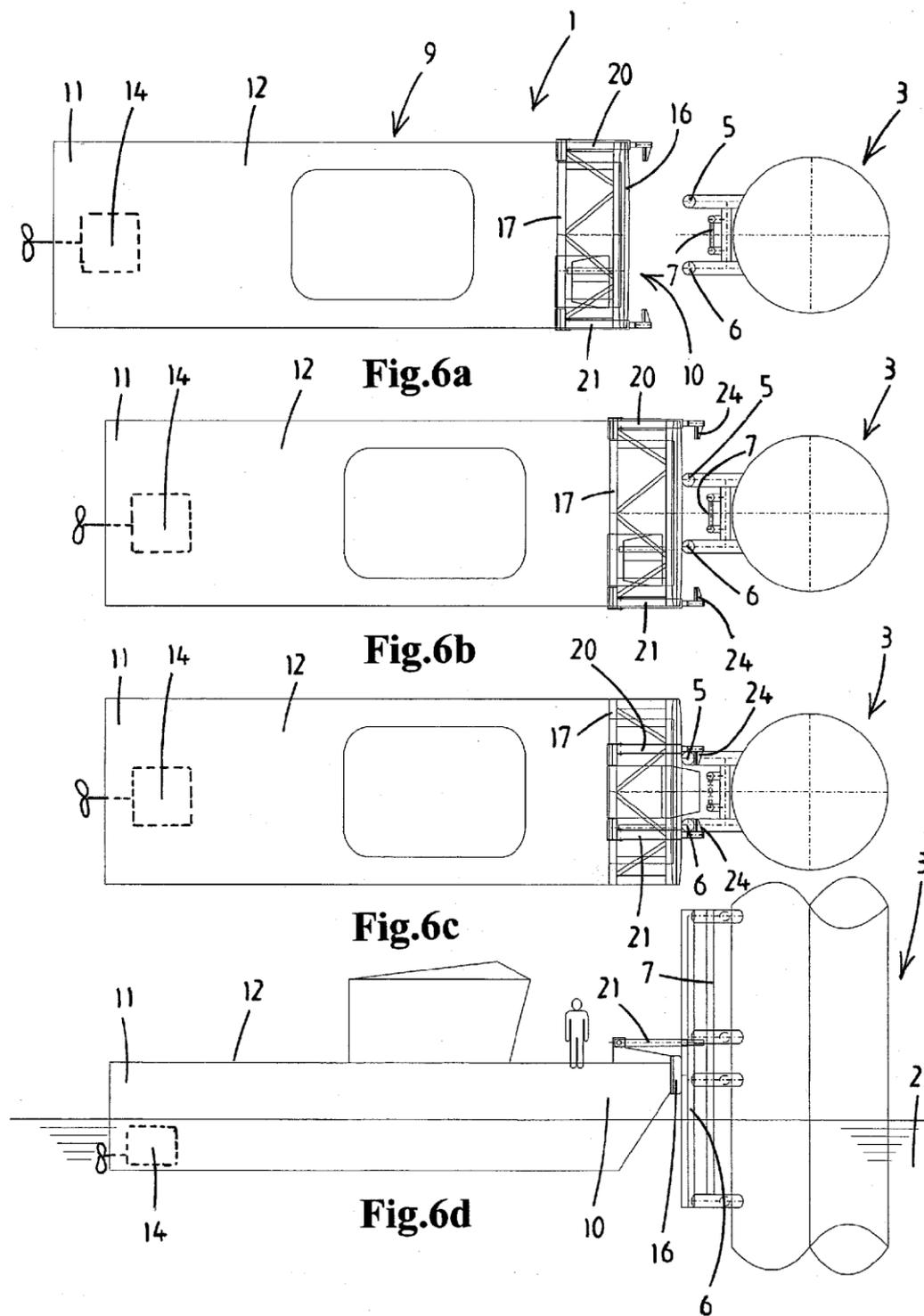
Does D1 have all of the features of claim 1?

38. The requester has argued that the second embodiment disclosed in D1 discloses all of the features of claim 1. The second embodiment is illustrated in figure 6

³ *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

⁴ *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

reproduced below.



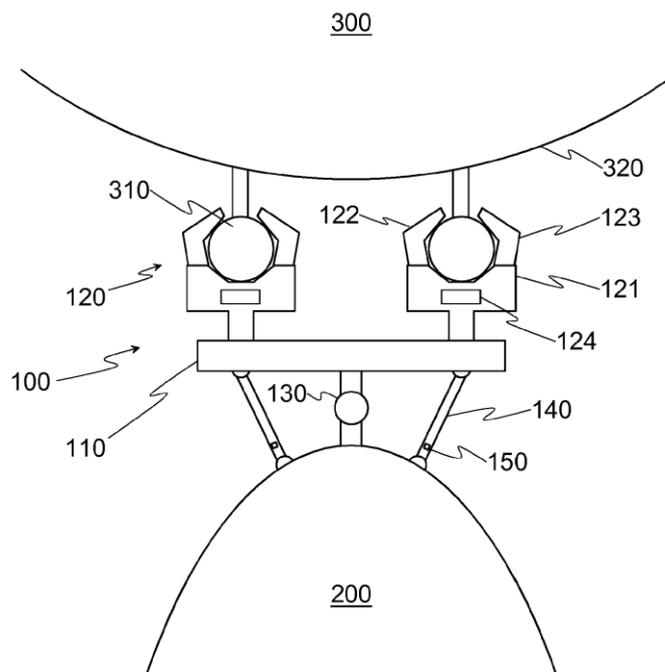
39. D1 relates to an improved apparatus for clamping a vessel 1 to two bumper bars 5, 6 of a wind turbine 3. The vessel is driven towards the bumper bars so that the buffer body 16 presses against them, at which point engagement arms 20, 21 are moved together to clamp the bumper bar and hold the vessel in place.
40. Disagreement between the requester and the observer on the relevance of D1 centres on whether D1 discloses "jaws" as required by the invention. The observer's argument hinges on the interpretation of what is a "jaw" as discussed above in

paragraphs 27-31. The observer contends that the jaws of the invention only provide lateral contact with the structure and as the arms 20, 21 have hooked portion 24 which provide longitudinal force to the structure the arms 20, 21 do not constitute “jaws” as required by claim 1.

41. As set out above I disagree with this reasoning. In my opinion the jaws of claim 1 are required to provide at least a lateral force to the structure in order to stabilise the vessel. As the arms are brought together to clamp the bumper bars they exert a lateral force thereon. The jaws each have a structure contacting surface and front surface and are movable from a first position to a second position as required by claim 1.
42. The body 16 is an elongate fender with a structure contacting face. Therefore, in my opinion, D1 includes all of the features of claim 1.

Does D2 have all of the features of claim 1?

43. D2 discloses a mechanism for mooring a vessel 200 against the landing tubes 310 of a wind turbine 300. The mooring device 100 comprises at least two gripping means 120 for gripping the landing tubes. The gripping means comprise a frame part 121 and gripping arms 122, 123, which are attached in a pivoted manner to the frame part 121. The gripping arms are moveable, whereby the gripping means can be used to grip the landing tubes and to detach from them.



44. The arguments for the relevance of D2 to claim 1 are very similar to those in relation to D1. Again, the observer argues that the gripping arms 122, 123 exert not only a lateral force on the landing tubes and thus are not “jaws” as required by claim 1. For the same reasoning as D1, I disagree and consider the gripping arms to exert a lateral force on the tubes as they are brought together to clamp the tubes. The jaws each have a structure contacting surface and front surface and are movable from a first position to a second position as required by claim 1.

45. There is also disagreement as to whether D2 discloses the feature of an elongate fender. In paragraph 32 above I have agreed with the requester's definition of an elongate fender as understood by the skilled person from the disclosure of the Patent as "a generally elongate portion (longer in one dimension than another) having thereon at least one surface, which can be flat or non-flat and which contacts the stationary structure at least at a point and intermittently during use of the apparatus". Whilst I agree with the observer that the frame 100 and the frame part 110 do not constitute an elongate fender, I do consider that the frame part 121 in itself would. The frame part 121 is generally elongate (as shown in figure 1 above) having a contact surface (curved surface contacts the tubes). The gripping arms move relative to the frame part to grip the tubes in a similar way to the jaws moving relative to the elongate fender to grip the structure as disclosed in the Patent.
46. Therefore, in my opinion, D2 includes all of the features of claim 1.

Dependent claims

47. Having found claim 1 to be invalid in light of D1 and D2 I will now briefly consider the dependent claims which read:

“2 Apparatus according to claim 1, wherein there are two jaws.

3 Apparatus according to claim 1 or claim 2, wherein each of the jaws comprises actuation means, and each can move separately from the other or others.

4 Apparatus according to any of the preceding claims, wherein each of the jaws comprises a pad of resiliently deformable material.

5 Apparatus according to claim 4, wherein each pad is rubber.

6 Apparatus according to any of the preceding claims, wherein the fender can be moved from a first position, in which the structure contacting face of the fender forms a substantially planar surface with the front faces of said jaws, to a second, withdrawn position.

7 Apparatus according to claim 6, wherein when the fender is in the withdrawn position, the jaws can be moved substantially across the structure contacting surface of the said fender.

8 Apparatus according to claim 7, wherein the fender comprises a plurality of side surfaces, wherein the side surfaces of the fender and the structure contacting surfaces of the jaws are so shaped as to fit together when the fender is in the first position.

9 Apparatus according to claim 8, wherein the side surfaces of the fender and the structure contacting faces of the jaws comprise a plurality of interlocking teeth.

10 Apparatus according to any of the preceding claims, wherein the jaws are attached to the rest of the apparatus via ball joints.

11 Apparatus according to any of the preceding claims, wherein the means of actuation of at least a jaw or the fender comprises a pneumatic ram.

12 Apparatus according to any of claims 1 to 10, wherein the means of actuation of at least a jaw or the fender comprises a hydraulic ram.

13 Apparatus substantially as described herein, with reference to and as illustrated by any appropriate combination of the text and/or drawings.

14 A floating craft, comprising apparatus according to any of the preceding claims.

15 A floating craft, comprising apparatus substantially as described herein, with reference to and as illustrated by any appropriate combination of the text and/or drawings.

48. As requested, I am not considering omnibus claims 13 and 15.

49. The requester has argued that the features of dependent claims 2-4, 6-7, 12 and 14 are disclosed in D1 and the features of dependent claims 2 and 14 are disclosed in D2. I agree.

Does D3 have all of the features of claim 1?

50. D3 discloses means for coupling a gangplank 8 extending from the bow of a vessel to a stationary structure comprising a horizontal pipe 9". The gangplank is maneuvered so that it sits on and contacts the horizontal pipe (9' shown in figure 5 below. The gangplank is then caused to slide over the pipe until it is located between jaws 21, 22 which can be actuated to grip the pipe 9".

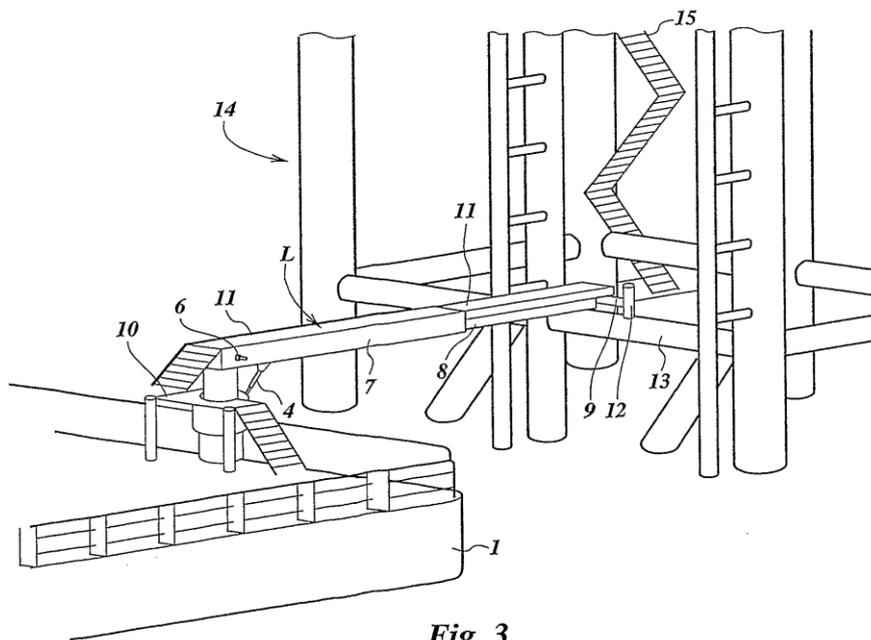


Fig. 3

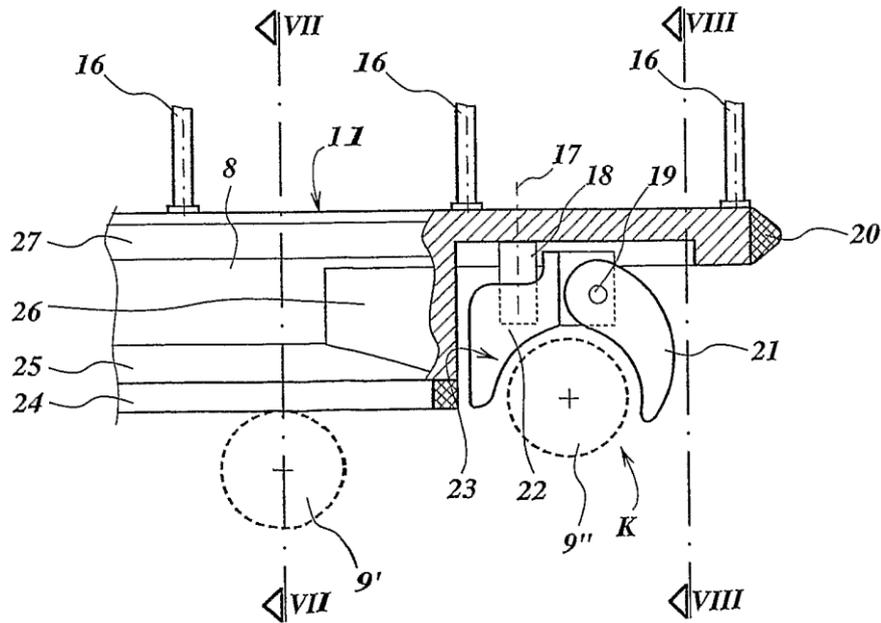


Fig. 5

51. As discussed above in paragraph 31 I consider the skilled person would understand the jaws to each comprise a front face and a structure contacting surface wherein the jaw is required to at least provide a lateral force to the structure in order to provide stability and control over the relative lateral movement of the craft to the structure. I agree with requester that as the gangplank is lowered onto the pipe 9, the jaws 21, 22 grip the pipe from above in a way that implies a longitudinal force with respect to the pipe. The jaws 21, 22 would not appear to be imparting a lateral force on the pipe to stabilise the vessel in the same way as the Patent and in a way the skilled person would understand the jaws to be required to do.
52. Therefore, in my opinion, D3 does not include all of the features of claim 1. However, I would add that I do consider the supporting edge 24 of the gangplank to constitute an elongate fender as required by claim 1.

Inventive step

53. The requester has also argued that claim 1 is lacking an inventive step over D3 when taken alone, or in combination with D5; and that claim 1 is lacking an inventive step over D6. 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 36.

(1)(a) Person skilled in the art

54. As discussed in paragraph 24 above I consider the skilled person to be a designer of mooring/coupling apparatus for coupling floating crafts with offshore stationary structures.

(1)(b) Common general knowledge

55. The common general knowledge of the skilled person would include well-known mooring/coupling apparatus for coupling floating crafts with offshore stationary structures. The skilled person would be aware of well-known types of coupling constructions and the common fixings and parts used in the assembly thereof along with methods of installing and fitting such apparatus including apparatus and devices to aid in such methods.

(2) Inventive concept of claim 1

56. The inventive concept of claim lies in an apparatus for stabilising a floating craft against a stationary structure wherein the apparatus has (i) an elongate fender with a structure contacting face and (ii) at least two jaws, each comprising a front face and a structure contacting surface. At least one of the jaws is movable to allow the jaws to clamp the stationary structure between them. The jaws impart at least a lateral force on the stationary structure to stabilise the craft.

(3) What differences exist between the matter of D3 and the inventive concept of claim 1 and (4) Are the differences inventive?

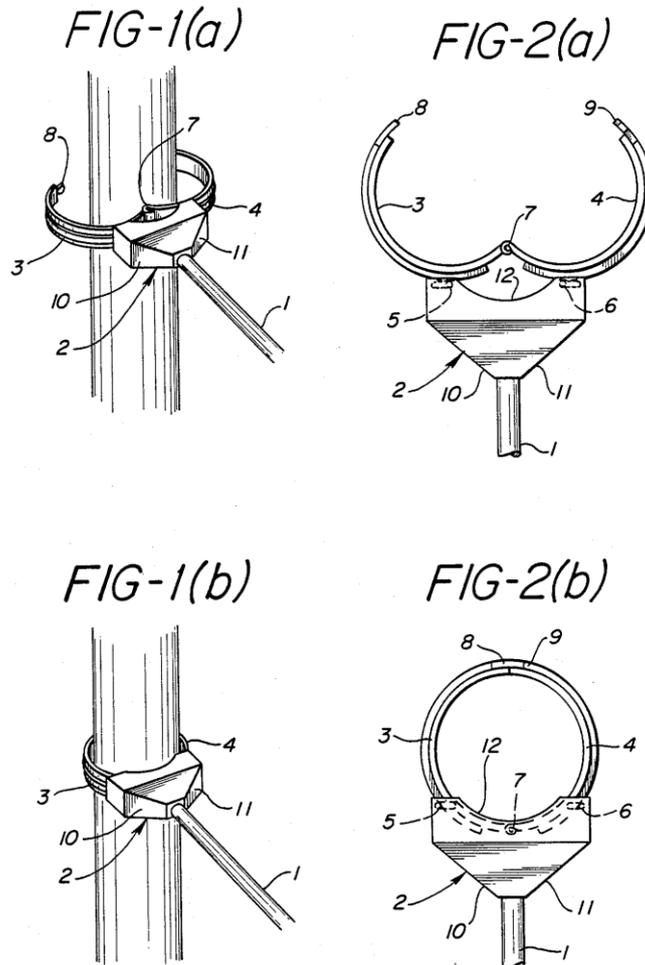
57. The requester has provided argument that claim 1 lacks an inventive step over D3 which centres around D3 being considered to not disclose an elongate fender. However, as discussed above I consider the supporting edge 24 of the gangplank to constitute an elongate fender as required by claim 1 since it contacts the pipe 9 during engagement of the gangplank with the stationary structure. As discussed in the patent:

“the operator lowers the gangplank L until the latter is lying with the supporting edge 24 on the coupling pipe 9, and the lifting cylinder 4 is relieved so that the gangplank L remains with the supporting edge 24 resting by its own weight on the coupling pipe 9”

58. The apparatus of D3 is designed for coupling a gangplank extending from a vessel to a stationary structure comprising a horizontal pipe. The gangplank is lowered and positioned so that the “jaws” 21, 22 grip the pipe 9” from above as shown in figure 5. This is different from the jaws of the Patent which move in a lateral direction to engage vertically orientated landing tubes. In my opinion, the problems addressed by the Patent and D3 are different and it would not be obvious, from the teaching of D3 alone, to modify the apparatus of D3 to include jaws as required by the invention i.e. movable to provide lateral force to provide stability and control over the relative lateral movement of the craft to the structure.
59. The requester has provided argument that if the coupling element of D3 is considered as part of the fender including a structure contacting surface (surface 23) and the clamps 21 as a first jaw, D3 discloses all of the features of claim 1 apart from a second jaw movable towards the first jaw to provide a stabilising effect. The requester considers it obvious to modify D3 to include the required second jaw by simply adding it to the coupling element 22 to enclose the pipe. It is argued that this is obvious merely from D3 alone or when taking D3 in light of D5.

The disclosure of D5

60. D5 relates to methods for docking floating vessels. D5 discloses a grabbing device which includes two movable jaws linked by a bracket or linking mechanism (see figures below).



61. To my mind it is not contentious to say the type of coupling elements disclosed in D5 are well-known and would in all likelihood form part of the common general knowledge of the skilled person. However, I am not convinced that it would merely be obvious, either alone or in light of D5, to add a second jaw to the coupling element 22 in D6 as argued by the requester. I see no motivation for the skilled person to do so as the coupling element 22 and clamps 21 co-operate to grip the pipe. Even if it were obvious to do so, the second jaw would not co-operate with the clamps 21 to provide lateral stability as required by the jaws of claim 1.
62. Therefore, in my opinion claim 1 does not lack an inventive step over D3 when taken alone or in combination with D5.

The disclosure of D6

63. The requester has also argued that claim 1 is obvious in light of D6. D6 relates to a stabilising connector between a floating craft and stationary structure. The requester considers D6 to include all of the features of claim 1 apart from the apparatus

including attachment means suitable for attachment to the floating craft, rather than to the stationary object (see figure below).

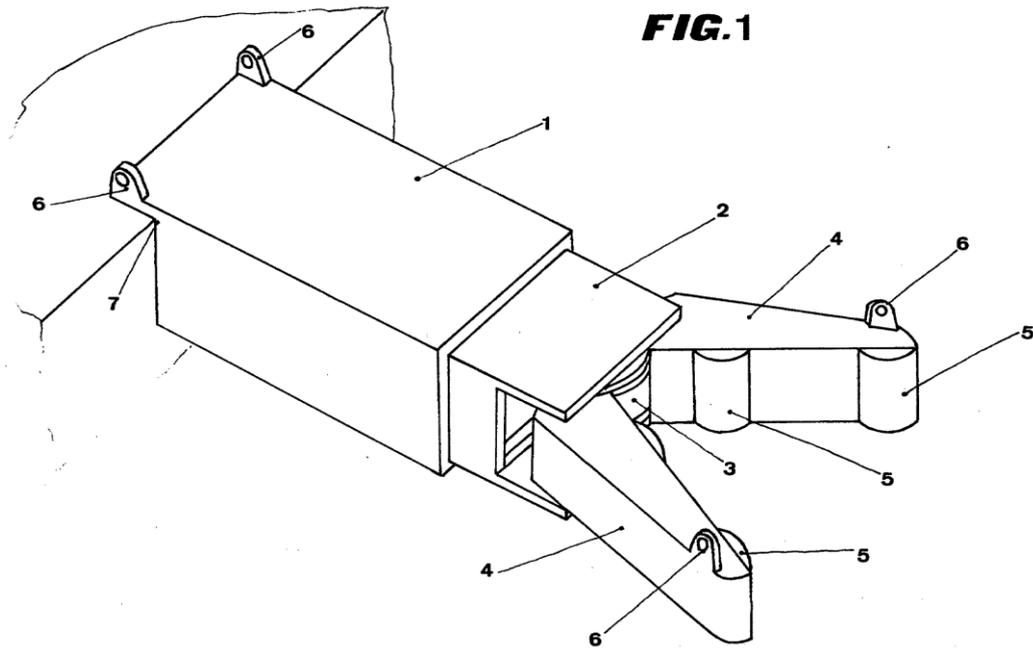


FIG. 1

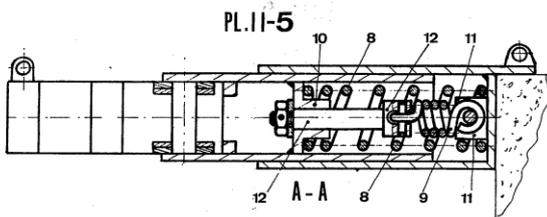


FIG. 2

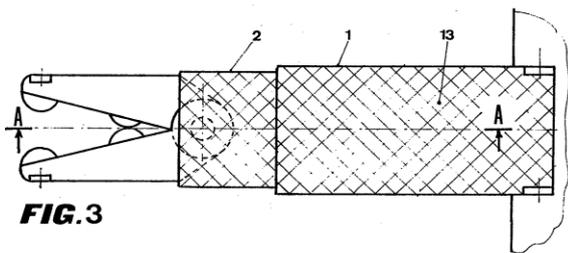


FIG. 3

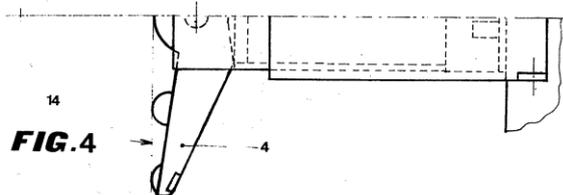


FIG. 4

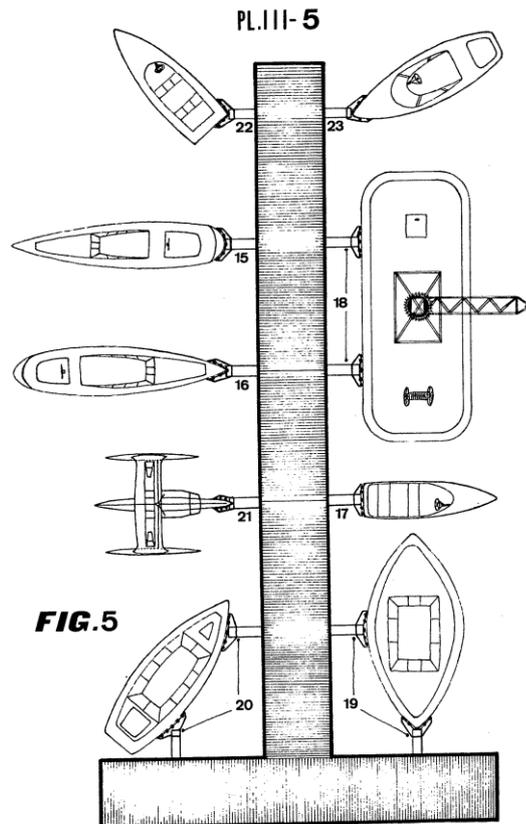


FIG. 5

64. The requester argues that D6 discloses an elongate fender (parts 1, 2) which has a contact surface 3. As can be seen from figures 2-4 above, the circular coupling parts of the arms 4 protrude further from the apparatus than the joint 3. Therefore, in use

the joint 3 will not contact the structure and thus D6 does not disclose an elongate fender as required by claim 1. I have no evidence before which would suggest that modifying D6 to include an elongate fender with a structure contacting face would be obvious to the skilled person. To my mind, it is not. Therefore, in my opinion claim 1 does not lack an inventive step over D6.

Conclusion

65. On the basis of the evidence put forward I am of the opinion that claims 1-4, 6-7, 12 and 14 of the Patent are anticipated by D1 and claims 1-2 and 14 of the Patent are anticipated by D2. Therefore, the Patent is invalid.
66. I am of the opinion that claim 1 of the Patent is novel and inventive in light of what is disclosed in D3, D6 and D3 when taken in combination with D5.

Application for review

67. 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.

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.