

OPINION UNDER SECTION 74A

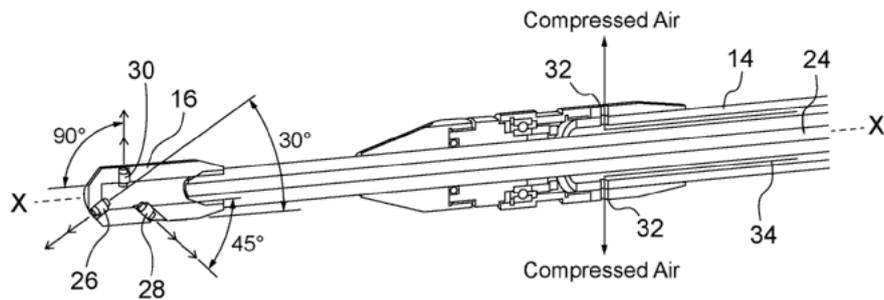
Patent	GB 2575414 B
Proprietor(s)	Close Brewery Rentals Limited
Exclusive Licensee	
Requester	Sapphire IP
Observer(s)	
Date Opinion issued	11 December 2020

The request

1. The Comptroller has been requested by Sapphire IP (the Requestor) to issue an Opinion on whether an act, if done, would constitute an infringement of claim 1 of GB 2575414 B (the Patent), and specifically whether the import, sale, manufacture and/or use of a hypothetical cleaning lance (the product) described by the request on the 1st October 2019 (the infringement date) would constitute an infringement .
2. The infringement date is significant because it is before the filing date of the patent but after the declared priority date. The requester accepts that the product would infringe if the priority claim is valid but contends instead that there is no infringement because the patent is not entitled to the priority date. Hence the only question I need to answer is whether the claim to priority is valid.

The Patent

3. The Patent was filed on the 11th November 2019 and is still in force. The Patent claims priority from GB patent application number 1904537.6 (the Priority Application) which was filed on the 1st April 2019. The Patent is entitled 'Apparatus for sanitisation of brewery containers' and relates to an apparatus and method for cleaning the interior of a brewery container, such as a keg or a barrel, using an ultra-high-pressure (UHP) spray lance.
4. The spray lance, illustrated below, comprises a spray lance body 14, a spray lance head 16 comprising a plurality of washing liquid ejection orifices 26, 28, 30, and a compressed air ejection orifice 32. In use, the spray lance is inserted into a shive hole, spear hole or any other similar aperture formed on the exterior of a brewery container, UHP water jets are then ejected from the plurality of liquid ejection orifices arranged in a head of the lance. Compressed air is additionally ejected onto an internal surface of the container via the compressed air ejection orifice.



5. The Patent asserts that using UHP water jets to clean an interior surface of a brewery container obviates the need for any chemical cleaning media or heat energy and reduces waste effluent. Furthermore, The Patent states that the ejected compressed air forces excess water away from the interior of the cask during the cleaning process and prevents ingress of water and debris into the interior of the spray lance itself.

6. The Patent has a single independent claim relating to an apparatus. There are a further 21 dependent claims. The request is made exclusively regarding claim 1 which reads;

An apparatus for cleaning the internal surfaces of brewery containers, comprising a high-pressure spray lance for application of a washing liquid against internal surfaces of a brewery container; the spray lance comprising:

(i) an elongate spray lance body having a longitudinal axis, and being shaped and dimensioned to facilitate its at least partial introduction into a brewery container;

(ii) a spray lance head provided at a downstream distal end of the spray lance body, the spray lance head comprising a plurality of washing liquid ejection orifices; and

(iii) at least one compressed air ejection orifice provided upstream of said plurality of washing liquid ejection orifices.

The law – Priority date

7. The relevant provision relating to declaration of priority is Section 5(2) of the Patents Act 1977, which reads:

(2) If in or in connection with an application for a patent (the application in suit) a declaration is made, whether by the applicant or any predecessor in title of his, complying with the relevant requirements of rules and specifying one or more earlier relevant applications for the purposes of this section made by the applicant or a predecessor in title of his and the application in suit has a date of filing during the period allowed under subsection (2A)(a) or (b) below, then;

(a) if an invention to which the application in suit relates is supported by matter disclosed in the earlier relevant application or applications, the priority date of that invention shall instead of being the date of filing the application in suit be the date of filing the relevant application in which that matter was disclosed, or, if it was disclosed in more than one relevant application, the earliest of them;

(b) the priority date of any matter contained in the application in suit which was also disclosed in the earlier relevant application or applications shall be the date of filing the relevant application in which that matter was disclosed or, if it was disclosed in more than one relevant application, the earliest of them.

8. The courts have provided some guidance on how to interpret this. In particular, in *Asahi Kasei Kogyo KK's application*¹, the court held that:

"...a description in an earlier application which contains no enabling disclosure will not "support" the invention so as to enable it, as an invention, to claim priority from the date of that application under section 5(2)(a)..."

9. And in *Biogen Inc. v Medeva plc*² it was held that:

"the test of support in section 5(2)(a) of the 1977 Act contains within it both a formal requirement (that there should be descriptive words there which provide support for the claim) and a substantive requirement (that the description should allow the invention to be performed)."

10. In *Unilin Beheer BV v Berry Floor NV*³, Jacob LJ held that:

"The approach is not formulaic: priority is a question about technical disclosure, explicit or implicit. Is there enough in the priority document to give the skilled man essentially the same information as forms the subject of the claim and enables him to work the invention in accordance with that claim?"

Is the Patent entitled to the earlier priority date?

11. The Priority Application was granted on the 10th June 2020 and is titled 'Sanitisation of the interiors of beer casks and kegs with UHP water' and relates to an apparatus and method of cleaning an interior surface of brewery container, such as a keg or barrel, with UHP water. Traditional cleaning methods involve the use of chemicals which may leave a residual taint; the Priority Application negates this problem by spraying UHP water via a cleaning lance at the internal surface of the keg; this is claimed to achieve a high level of surface sanitisation leaving no residual contamination.

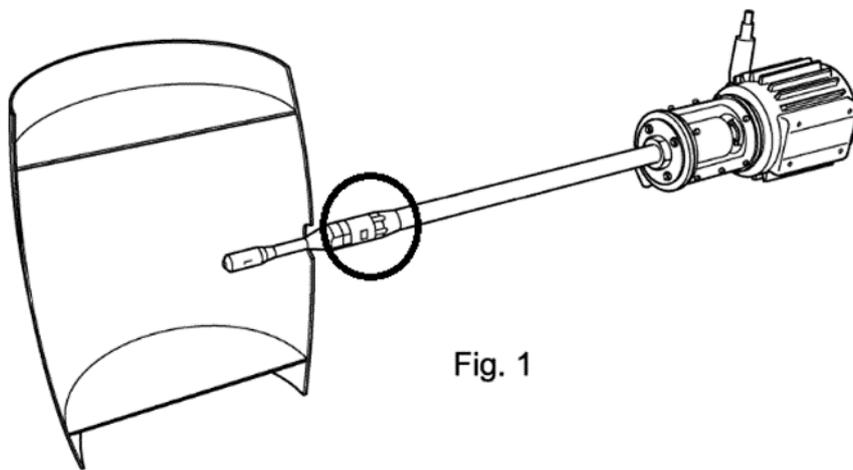
12. The Requestor alleges that, whilst some features of claim 1 of the Patent are set out in the Priority Application, there is no explicit reference to *"...compressed air ejection orifice provided upstream of said plurality of washing liquid ejection orifices..."*.

¹ *Asahi Kasei Kogyo KK's application* [1991] RPC 485

² *Biogen Inc. v Medeva plc* [1997] RPC

³ *Unilin Beheer BV v Berry Floor NV* [2004] EWCA (Civ) 1021

13. The Priority Application discusses a cleaning lance that is used to direct UHP water at an internal surface of a brewery container such as a cask or keg wherein, in use, the lance is inserted through a shive hole, spear hole or any other similar aperture formed on the exterior of the container. The Priority Application is vague with respect to any constructional features of the cleaning lance, and any explicit disclosure is limited only to *a UHP spray cleaning lance having a spray nozzle at the end of a spray arm*. The figure below taken from the Priority Application, modified with the inclusion of the circle, clearly shows the Priority Application cleaning lance being inserted into a shiv hole of a keg; the skilled person would understand the end of the lance inserted into the keg to be the nozzle and longitudinal component extending from the nozzle to be the spray arm.



14. I agree with the Requestor in that there is no explicit disclosure of the compressed air ejection orifice as required by the Patent. However, it does not automatically follow from this that there is no enabling disclosure. In fact, the Requestor suggests that the component that I have circled in the figure above may be understood to be an aperture, and the skilled person would know that this aperture is a compressed air ejection orifice. The Requestor has not identified any other element in the Priority Application that could be used to support claim 1 of the Patent.

15. The Priority Application is silent with respect to the purpose of the component identified by the Requestor. Furthermore, the Priority Application does not discuss any problems associated with the use of UHP water, relating to accumulation of water on the interior surface or ingress of water/debris into the lance itself, or otherwise suggest that compressed air would be used with the disclosed cleaning lance in any way.

16. It is additionally noted that it is well established that matter regarded as obvious to add is not the same thing as matter implicitly disclosed. Therefore, whether it would be obvious to the skilled person to provide a compressed air ejection orifice at the area of the cleaning lance circled above does not influence my assessment.

17. In the absence of any discussion in the Priority Application relating to the problems associated with using UHP water when cleaning brewery containers or any supporting detail regarding the circled component, I am unable to conclude that the said component is anything but some nominal feature. The skilled person, in my opinion, would not understand this component to be a compressed air ejection orifice.

18. It follows that, in the absence of any explicit or alternative implicit enabling disclosure in the Priority Application, the Patent is not properly supported as required by Section 5(2) of the Patent Act 1977.

Opinion

19. It is my opinion that the Patent is not entitled to its claimed priority date, and that therefore the import, sale, manufacture and/or use on the 1st October 2019 of the cleaning lance (the product) described in the request would not infringe the patent.

Sean O'Connor
Examiner

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.