

OPINION UNDER SECTION 74A

Patent	EP 2194807
Proprietor(s)	Michael L. Mcginley
Exclusive Licensee	
Requester	Clevamama
Observer(s)	
Date Opinion issued	04 April 2014

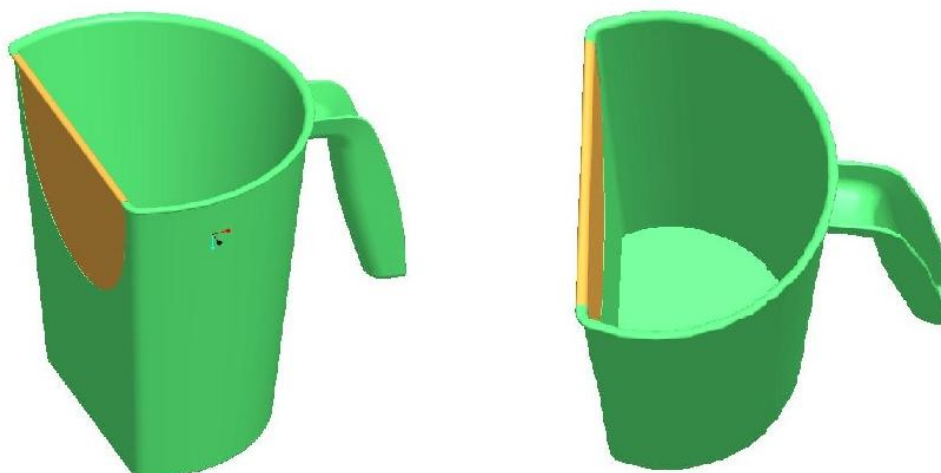
The Request

1. The comptroller has been requested to issue an opinion as to whether the Product described and illustrated in the request would infringe EP 2194807 (the Patent).
2. No observations have been filed in relation to this request.
3. The Patent was granted on 22 May 2013 designating GB and remains in force in the UK. It was originally published as WO 2009/032786 A1.

The Product

4. The Product forming the subject matter of the request is a pitcher (jug) which is illustrated below and described as follows:

“a pitcher comprising a generally rigid continuous side wall, a front portion of which is formed by an inwardly flexible panel forming a portion of the sidewall.”



Infringement

5. Section 60 Patents Act 1977 governs what constitutes infringement of a patent; Section 60(1) reads:

Subject to the provision 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) where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;

(c) where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise.

6. In order to decide whether there is any infringement of the Patent I must first determine whether the pitcher of the request has all the features set out in the claims of the Patent. In the first instance I only need to consider claim 1 (the only independent claim) and only if I find claim 1 infringed do I need to consider the other claims.

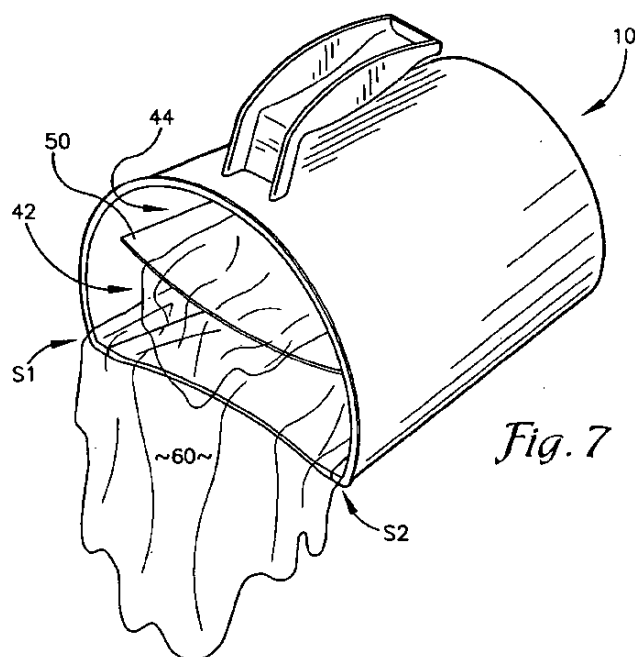
The Patent

7. The Patent discloses a pitcher with a flexible panel intended specifically for rinsing a child's hair with water (illustrated in figures 3 and 6 of the Patent). The flexible panel effectively forms a seal against the child's head to prevent water running down the child's face.
8. Claim 1 of the Patent reads as follows:

Claim 1 - A pitcher (10) comprising a generally rigid continuous side wall (12) terminating in an upper side wall end (14) and a lower side wall end and defining an inward space bounded by said continuous side wall; a bottom closing said lower side wall end with said upper side wall end being generally open; an inwardly flexible panel (28) forming a portion of said side wall and extending to form at least a portion of said upper side wall end, said flexible panel having a generally smooth inward surface for unobstructed fluid flow out of said open upper side wall end;

*and **characterized** in the pitcher has a curved divider (50) spanning said interior and contacting said bottom to define first (44) and second (42) fluid-holding portions of said interior, said divider being curved toward the flexible panel (28) and oriented parallel to said flexible panel, said first and second fluid-holding portions operating to approximately concurrently pour a fluid onto the object pressed against said flexing panel.*

9. I have set the claim out in two parts to show the pre-characterising part (generally describing the prior art) and the characterising part (relating to the new and inventive feature).
10. I do not believe that the person skilled in the art, applying the usual purposive approach to claim construction as described in *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others* [2005] RPC 9, would have any difficulty in understanding claim 1. The requester has not suggested that any particular interpretation or limitation is necessary. As a result I need only to determine whether the product falls within the scope of the claim.
11. I note that the figures of the Patent illustrate three different pitchers but only figures 7 to 9 illustrate the inventive embodiment to which the claims relate, and in particular possess the characterising feature of the claim, i.e. a curved divider. The embodiment of figures 1 to 4 has no divider whilst the embodiment of figures 5 to 6 has a straight divider. Figure 7 (reproduced below) illustrates the characterising feature of the claim which is the provision of a curved divider (50). This is intended to overcome the problem in the prior art whereby the water tends to flow mostly out of the corners (S1, S2 in figure 7) formed when the flexible panel is placed against a child's head.



Assessment

12. I consider that the Product has all the required features of the pre-characterising part of claim 1. However, it does not possess any divider and there is no part that can be construed as such. Accordingly it lacks the characterising feature of claim 1.
13. I therefore agree with the statement in the request that:

“The pitcher does not however include a curved divider spanning the interior, as required by the characterising portion of independent claim 1 of EP2194807.”

14. The Product does not fall within the scope of claim 1 and it does not therefore infringe the Patent.

Opinion

15. I find that the pitcher described and illustrated in the request lacks a divider and it does not therefore fall within the scope of the claims of EP 2194807. Accordingly any acts in relation to the pitcher of the request do not constitute infringement of EP 2194807.

Application for review

16. 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.

Matthew Jefferson
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.