

OPINION UNDER SECTION 74A

Patent	GB2498297
Proprietor(s)	Clint Martin
Exclusive Licensee	
Requester	Clint Martin
Observer(s)	
Date Opinion issued	15 April 2014

The request

1. The comptroller has been requested to issue an opinion as to whether GB2498297 (the patent) might be infringed by a product known as a "Power V Guard" based upon details provided with the request

Observations

2. No observations were received relating to this opinion.

The patent

3. The patent derives from an international application filed under the provisions of the Patent Cooperation Treaty on 24 October 2011 claiming a priority date of 22 October 2010. It was published on 10 July 2013, granted with effect from 22 October 2013 and remains in force.
4. Entitled anti-vandal system for plant, the patent relates to roller shutters associated with the glazing panels of plant or other machinery. Figures 1 and 3, below, show an anti-vandal system 10 for a cab 12, the system 10 comprising four roller shutters 16 fitted to the roof 18 of the cab 12, the shutter sheets 24 being rolled down in figure 3 to cover the windows 14 of the cab 12.

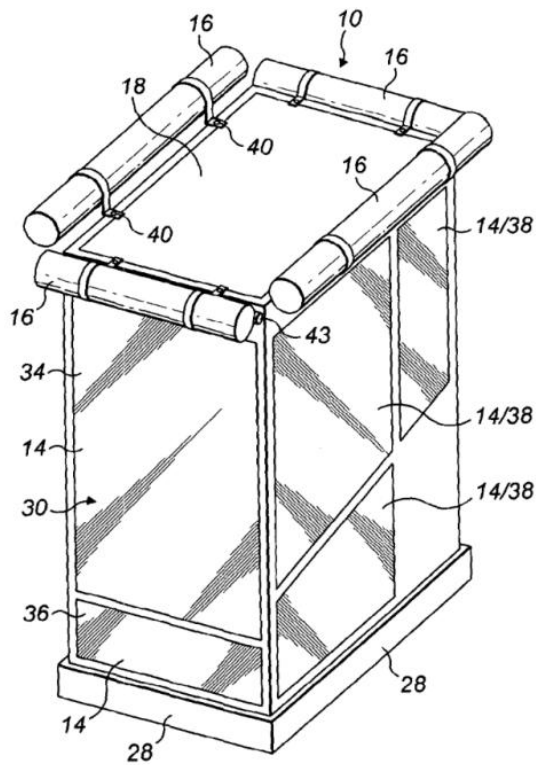


FIG. 1

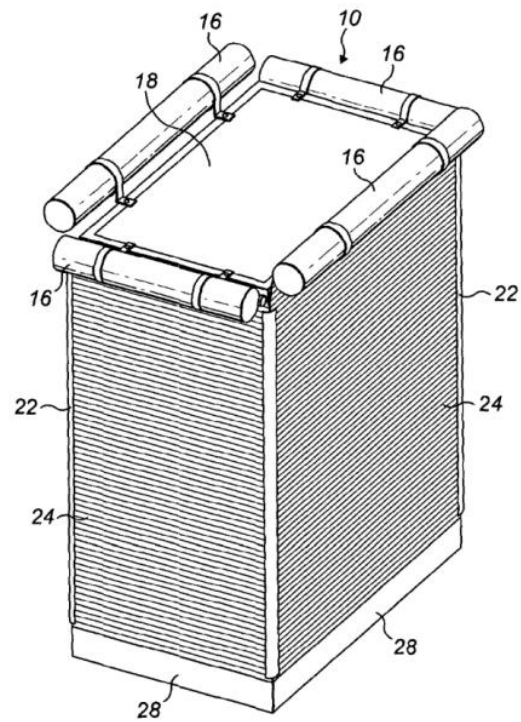


FIG. 3

5. Runners 22 guide the edges of the shutter sheets 24 and, together with clamps or locks, these prevent the shutter sheets being pulled off the cab.

Claim construction

6. Before considering the details put forward in the request I will need to construe the claims of the patent following the well known authority on claim construction which is *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others* [2005] RPC 9. This requires that I put a purposive construction on the claims, interpret it in the light of the description and drawings as instructed by Section 125(1) and take account of the Protocol to Article 69 of the EPC. Simply put, I must decide what a person skilled in the art would have understood the patentee to have used the language of the claim to mean.
7. 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 the protection conferred by a patent or application for a patent shall be determined accordingly.

8. And the Protocol on the Interpretation of Article 69 of the EPC (which corresponds to section 125(1)) states that:

Article 69 should not be interpreted in the sense that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Neither should it be interpreted in the sense that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patentee has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patentee with a reasonable degree of certainty for third parties.

9. Claim 1 is the only independent claim among the seventeen claims, although claim 17 is an omnibus claim. Claim 1 reads as follows:
 1. An anti-vandal system for protecting the cab and glazing panels of plant or other machinery, the anti-vandal system being characterised by a roller shutter associated with each glazing panel of the cab, the or each roller shutter comprising an articulable sheet comprising a plurality of moveably interconnected slats manufactured from aluminium, plastic or steel and being adapted to cover, and extend beyond, a periphery of its associated glazing panel to cover a side of a cab; guide strips associated with the or each roller shutter adapted to inhibit or prevent the articulable sheet or sheets from being distorted away from the glazing panel; and locking means for locking the or each articulable sheet in a deployed position whereby it overlies a glazing panel and a side of the cab.
10. In my view the claim is clear on plain reading and requires no interpretation.

Infringement

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

Allegedly infringing product

12. Details have been provided with the request of one product from K. Rouse Civil

Engineers Ltd apparently trading as European Plant Services. The material provided includes excerpts from the website of European Plant Services referring to a product called Power V Guard, the request asserting that the relevant excerpts were dated 30 May 2013, 20 June 2013 and 1 September 2013. These excerpts take the form of screenshots of the home page of the website of European Plant Services which do not illustrate or describe the Power V Guard product.

13. Further extracts from the website of European Plant Services include a screen shot of a page dedicated to the Power V Guard product and photographs taken from a photo gallery linked to that page, all apparently dated 14 November 2013 (Annexes G and K of the request). A YouTube (RTM) video accessed via the dedicated webpage is also said to have been viewed by the requester's agent on 14 November 2013, the video demonstrating the use of the product. The video is apparently no longer available and no copy or excerpt has been provided.
14. Screenshots of the home page of from the website of European Plant Services apparently dated 3 September 2012 and 13 January 2014 have been provided showing that the reference to the Power V Guard product was absent.
15. I have not independently verified the dates of any of the excerpts from the website of European Plant Services. However, I have no reason to doubt that the dates provided in the request are correct and no observations have been received from K. Rouse Civil Engineers Ltd on this or any other point. Therefore I shall accept for the purposes of my opinion that the Power V Guard product was made, disposed of, offered to be disposed of, used or imported or kept whether for disposal or otherwise by European Plant Services whilst the patent was in force.
16. As the request acknowledges, the Patents Act 1977 makes some provisions that one might characterise as defences or exceptions or from infringement. Section 60(5) sets these out and they include for example private and non-commercial acts and experimental purposes. There seem to be no grounds to suppose that any of these provisions apply in this case and no observations have been provided making such a point.
17. Thus it seems to me that the opinion requested of the Comptroller is simply whether the Power V Guard product shown in the material in Annexes G and K of the request embodies the invention.
18. In the website excerpts the Power V Guard product is described as an anti-vandal system. Various advantages of the system are espoused, but the text includes few technical details. The photographs appear to show a retractable screen mounted above each side of the cab of a tracked excavator. The screens are shown retracted and extending both partially and completely down the sides of the cab, thus:



G1



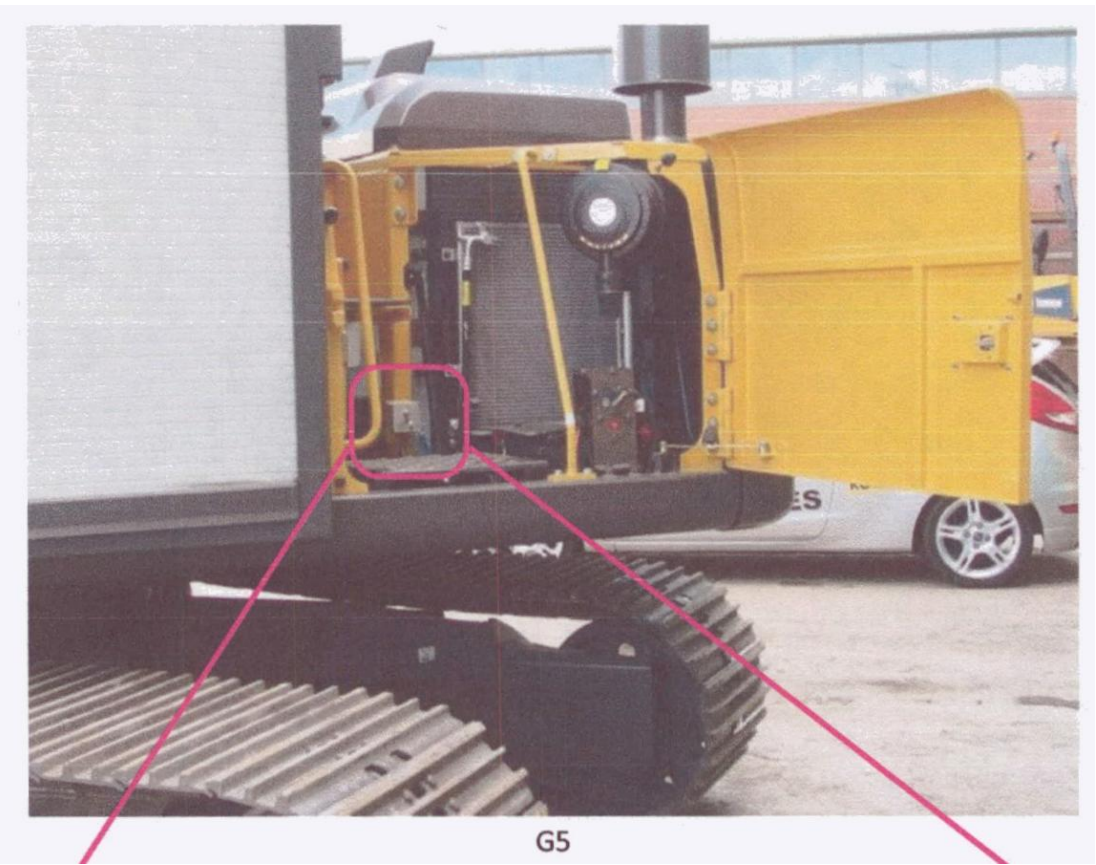
G3



G2



G4



G5

19. Returning to the requirements of claim 1, the Power V guard product is clearly an anti-vandal system for protecting the cab and glazing panels of plant or other machinery. Associated with each glazing panel of the cab is a retractable screen. From the shape of housings into which the screens appear to retract it seems that the screens could be described as roller shutters. The more detailed photograph above appears to show a screen made up of slats which must be articulated to retract into the housing shown. I cannot ascertain the material of the slats, beyond a reference on the dedicated webpage to “strong steel construction” for the system as a whole. However, it seems to me that what is shown is “the or each roller shutter comprising an articulable sheet comprising a plurality of moveably interconnected slats manufactured from aluminium, plastic or steel and being adapted to cover, and extend beyond, a periphery of its associated glazing panel to cover a side of a cab”. Guide strips are apparently provided “associated with the or each roller shutter adapted to inhibit or prevent the articulable sheet or sheets from being distorted away from the glazing panel”. I cannot identify any specific integer that one might characterise as “locking means for locking the or each articulable sheet in a deployed position whereby it overlies a glazing panel and a side of the cab”. However, sensibly it must be the case that the screens shown in the photographs are locked in their deployed position by some means, otherwise the product could not perform its stated function of anti vandal protection.
20. Therefore it is my view that the Power V guard product would infringe the patent.

Karl Whitfield
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.