

OPINION UNDER SECTION 74A

Patent	GB2495158 B
Proprietor(s)	Safety Zone Ltd
Exclusive Licensee	
Requester	Franks & Co Ltd
Observer(s)	
Date Opinion issued	18 December 2014

The request

1. The requester has asked for an opinion on whether products 1, 2 and 3 fall within the scope of GB2495158 B (the patent) and whether the products 1, 2 and 3 would infringe the claims of the patent. The requester has supplied a description of product 1 in the form of a patent claim, an additional paragraph of description for products 1, 2 and 3 and annexes 1 to 4. Annexes 1 to 3 are prior art patent specifications relating to safety devices for aerial lifts and annex 4 is a portion of a user manual for a safety device for an aerial lift.

Observations

2. No observations have been submitted.

The Patent

3. The patent was filed on 15 December 2011. It was granted on 10 September 2014. It relates to a proximity alarm for an aerial lift.
4. Figures 1 and 2 of the patent show an embodiment of the invention.

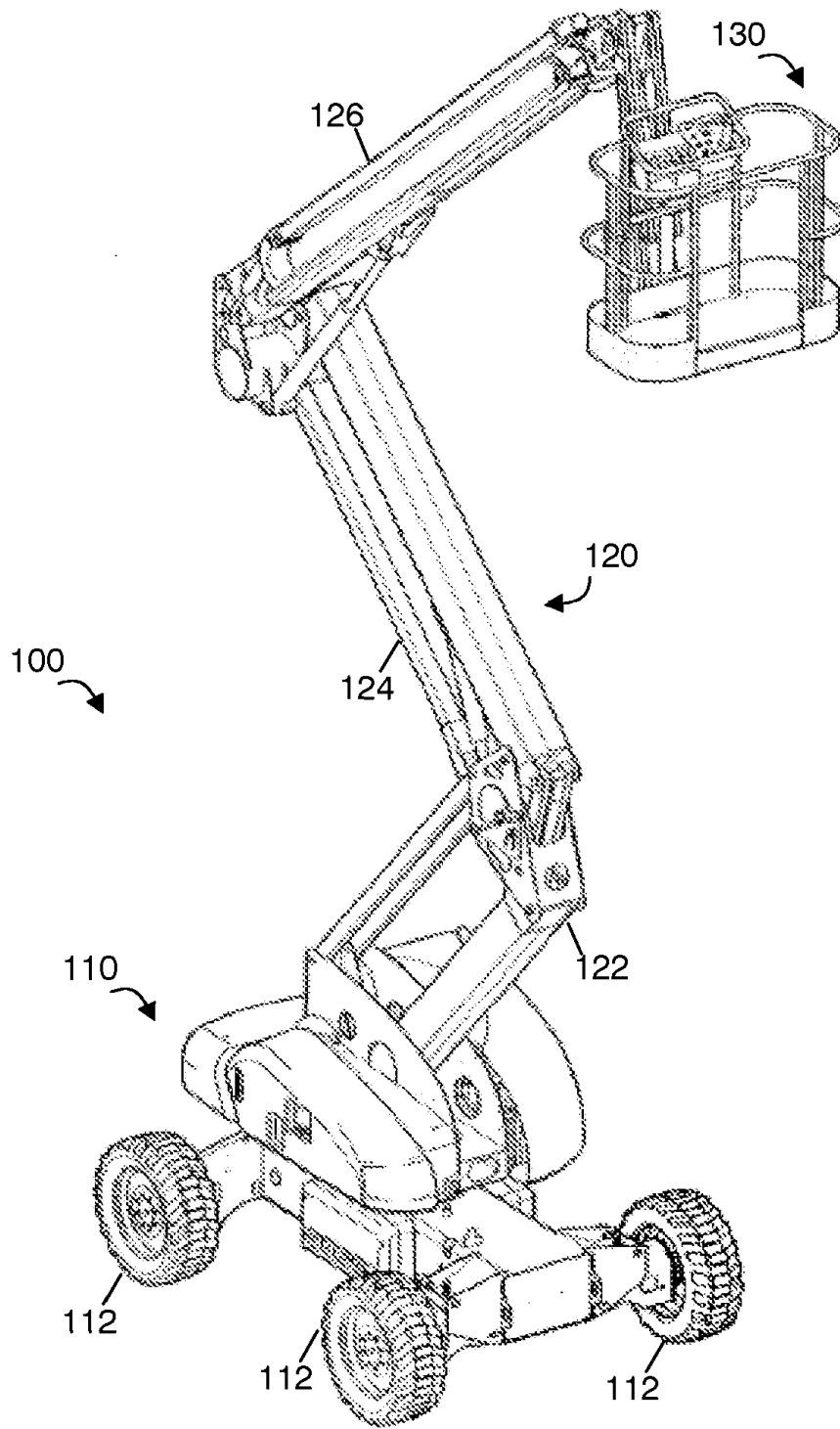


Figure 1

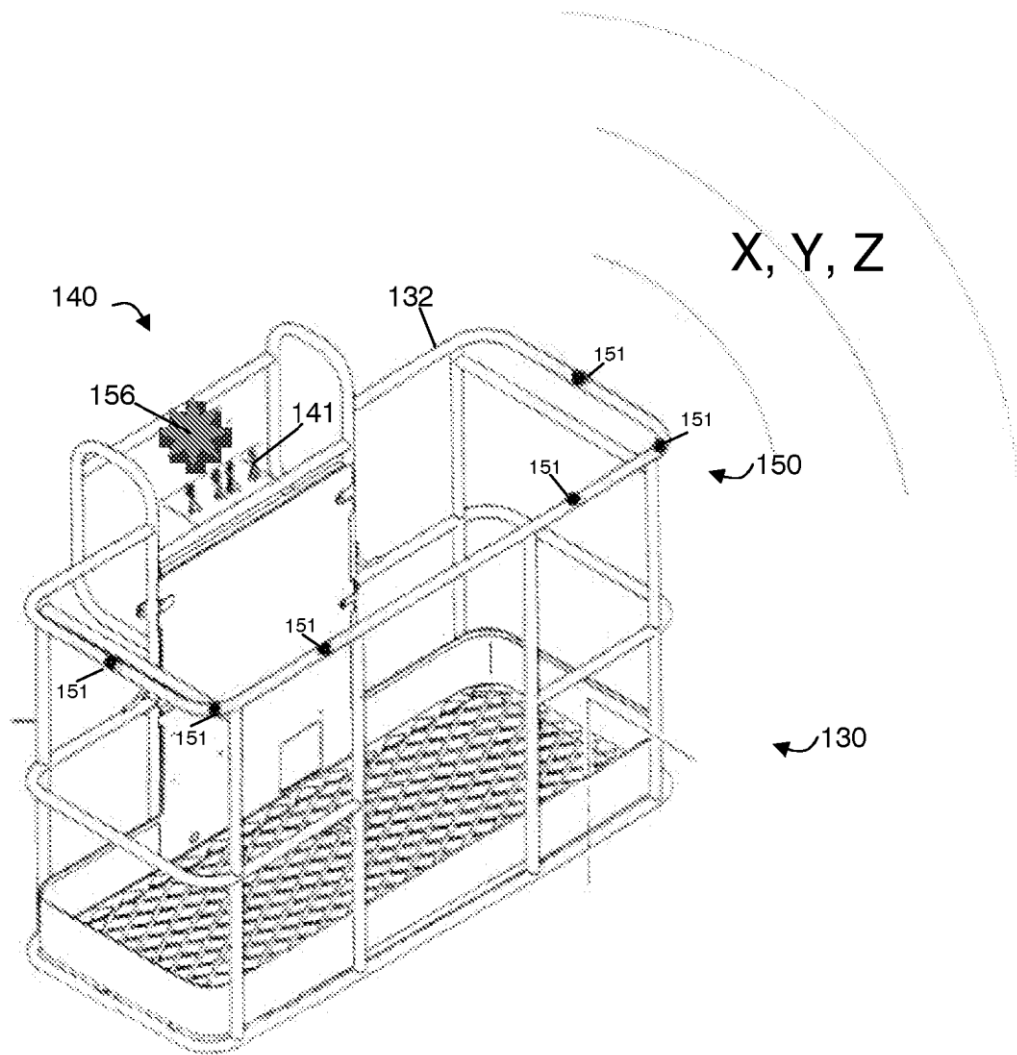


Figure 2

5. The invention is a safety device for an aerial lift of the type shown in figure 1. The safety device comprises a number of proximity sensors 151 attached to the platform 130 of the aerial lift as shown in figure 2. The sensors sense the presence of off-platform objects within a sensing zone X, Y, Z and provide an alarm to an operator of the aerial lift in order to avoid collision with objects when moving the platform.

6. Claim 1 of the patent reads as follows:

A safety device for an aerial lift comprising a moveable platform having a control panel operable to manoeuvre the platform provided near a first side of the platform; the safety device comprising:

proximity sensing means arranged to, in use, remotely sense the presence of off-platform objects within a sensing zone opposite the control

panel, wherein the proximity sensing means comprises one or more proximity sensors, one or more members for mounting the one or more proximity sensors around a protective rail surrounding the platform on at least a side of the platform opposite the control panel, alarm means configured to signal an alarm responsive to the sensing of the presence of an object within the sensing zone by the proximity sensing means and override means operable to deactivate the alarm means, wherein the proximity sensing means is assembled from a kit of parts that is adapted to be retrofitted to the aerial lift, and wherein the proximity sensing means is, in use, communicatively isolated from the control module of the aerial lift.

7. Claim 6 reads:

An aerial lift comprising:

a moveable platform having a control panel operable to manoeuvre the platform provided near a first side of the platform;

a foot switch located adjacent the control panel configured to enable the movement of the platform only when the footswitch is closed; and

a safety device as claimed in any of claim 1-5.

The products 1, 2 and 3

8. Product 1 is described in the request as comprising “a sensor module which is a module intended to be plugged in to a safety device as follows:

A sensor module for use with a safety device for an aerial lift having a basket or cage, the sensor module comprising:

proximity sensors that are removably attachable to the basket or cage (some of which may be attached to the protective rail) therefore intended to be retrofitted,

the sensors provide a detection zone where they detect obstacles outside of the basket or cage,

an operator warning system which functions in response to detected obstacles, and a relay to connect the sensors to a safety device to activate the safety device.

In use, the sensor module is connected to a safety device which:

alerts the operator to the presence of the obstacle, and

prevents movement of the basket or cage.

The sensor module may be assembled from a kit of parts.”

9. Product 1 is further described as consisting of three parts, each having multiple

proximity sensors. One part is to be mounted on or near the control panel of the aerial lift and detects obstacles above the operator. This part also features a reset button (to override the signal sent to the safety device) and warning light. The remaining parts mounted on the rear of the basket detect objects behind and above the operator. Each of the three parts is designed to be plugged in to a safety device of the type seen in annex 4 or similar. Annex 4 describes a safety device for an aerial lift comprising a foot pedal which enables the moveable platform when an operator's foot is placed on it and disables when the foot is removed.

10. Product 2 comprises the sensor module in conjunction with a safety device and is described as an "add-on" which does not function without being connected to the safety device. When the sensor module senses an obstacle it sends a signal to the safety device to become activated. Activation always results in the aerial lift (to which it is connected) being stopped (i.e. movement is prevented). The sensor module has a reset to override the safety device and restore movement.
11. Product 3 comprises an aerial lift with the sensor module and safety device of product 2. In normal use the safety device is connected to the aerial lift and the sensor module is plugged into the safety device.

The law on infringement

12. Section 60(1)(a) of the Act states that:

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;

13. Section 60(2) of the Act states that:

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.

14. In order to determine whether the claims of the patent would be infringed by the product, I must construe the claims of the patent, and then determine whether the product falls within the scope of the claims or relates to an essential element of the invention according to Section 60(2).

Claim construction

15. In construing the claims I shall use the standard principles of claim construction as set out in *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others [2005] RPC 9*. I must put a purposive construction on the claims, interpret them in light of the description and drawings, as instructed by Section 125(1) of the Act and take account of the Protocol to Article 69 of the European Patent Convention. Put simply, and as emphasised by Hoffmann LJ in that judgment, I must decide what a person skilled in the art would have understood the patentee to have used the language of the claims to mean.
16. In this case the person skilled in the art would be someone working in the field of aerial lift design and manufacture and particularly safety devices for aerial lifts.
17. Claims 1 and 6 appear generally straightforward to construe. The critical feature of claim 1, highlighted in the request, is “*wherein the proximity sensing means is, in use, communicatively isolated from the control module of the aerial lift*”. According to the description, the control module controls movement of the platform. Furthermore, lines 29 to 31 on page 3 state that “the safety device is not configured to automatically deactivate the movement of the platform on detection of an object in a sensing zone”. Page 10 lines 12 to 16 describe a shut-down means configured to stop movement of the platform when an object is detected but lines 23 to 26 go on to state that “in contrast to the proximity sensor control module being coupled to and/or comprising a shut-down means, the proximity sensing means of the present invention is communicatively isolated from the control module of the aerial lift”. The reason for this feature, given on page 3 lines 33 to 35, is to allow the safety device to be fitted without having to safety test and approve operation of the modified aerial lift
18. I consider that the skilled person would understand “*wherein the proximity sensing means is, in use, communicatively isolated from the control module of the aerial lift*” to mean that the proximity sensing means and so the safety device is not connected to the control module and so cannot stop movement of the platform when an obstacle is detected. I shall therefore construe this feature in the same way.

Does the product 1, 2 or 3 infringe?

19. In order for product 1, 2 or 3 to directly infringe according to Section 60(1) of the Act, it must have all the features of claim 1. Product 1 is clearly described, in use, as connected to a safety device (forming product 2) so that when an obstacle is detected, movement of the platform is prevented. It is designed to be plugged in to the safety device (which is in turn connected to a control module of an aerial lift) and does not function without being connected to the safety device. This means that the proximity sensing means of product 1 is not “communicatively isolated from the control module of the aerial lift” as required by claim 1. Therefore products 1, 2 or 3 do not directly infringe claims 1 or 6 of the patent.
20. Furthermore I consider that, based on the description submitted, product 1 is not suitable for or intended to be used in isolation from the control module. It would require modification, possibly significant or complex modification for such use. Therefore I consider products 1, 2 or 3 do not provide an essential element of the

invention according to Section 60(2) of the Act and so do not indirectly infringe claims 1 or 6.

Conclusion

21. I conclude that products 1, 2 or 3 would not directly or indirectly infringe claim 1 or 6 of the patent. It follows that dependent claims 2 to 5 would also not be infringed.

Application for review

22. 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.

GARETH GRIFFITHS
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.