Patents Act 1977 **Opinion Number** **11/14**

OPINION UNDER SECTION 74A

Patent	GB2426615 B
Proprietor(s)	Charles Richard Whiteman, Conor O'Reilly
Exclusive Licensee	
Requester	Charles Richard Whiteman
Observer(s)	
Date Opinion issued	06 August 2014

The request

1. Mr Whiteman (the requester) has asked for an opinion on whether the marketing of a device known as the Hipkey (RTM) together with Hipkey (RTM) software running on a mobile phone infringes GB2426615 (the patent). The request cites various pages from the Hipkey (RTM) website (http://www.hippih.com) as disclosing the features of claims 2 to 19 of the patent.

Observations

2. No observations have been filed.

The patent

3. The patent was filed on 25 May 2005, granted on 3 March 2010 and is still in force. It relates to an electronic proximity key with alarm function. The key communicates using radio waves with electronic equipment and prevents use of the equipment unless the key is within a pre-selected distance of the equipment. An alarm on the key or electronic equipment is also triggered if a pre-selected distance between them is exceeded.

4. The patent has 19 claims, claim 1 being the only independent claim as follows:

A proximity key system consisting of two parts – a "Key" and "Software" – which prevents electronic equipment from being used unless the Key is within a pre-selected distance from equipment running the software, and which triggers at least one alarm on either the key and/or the equipment running the software, when the distance between the key and the equipment becomes greater than the pre-selected distance.

The law on infringement

5. 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;

6. In order to determine whether the claims of the patent would be infringed by the Hipkey (RTM) device and associated software, I must construe the claims of the patent, and then determine whether the device and software falls within the scope of the claims.

Claim construction

7. 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.

8. I consider that the person skilled in the art would be someone involved in the design and manufacture of proximity alarm systems.

9. Claim 1 is generally straightforward to construe. I shall therefore take each feature of the claim and determine, based on the web page evidence referred to by the requester, whether that feature is present in the Hipkey(RTM) device and software.

Infringement of claim 1

10. The Hipkey (RTM) system comprises an electronic key paired with software (an "app") running on a mobile phone. There are clearly two parts as claimed in claim 1.

11. According to the various demos on the website, the Hipkey (RTM) device or paired mobile phone emits an alarm when a pre-selected distance between them is exceeded. The feature "*which triggers at least one alarm on either the key and/or the equipment running the software, when the distance between the key and the equipment becomes greater than the pre-selected distance*" is therefore present.

12. The remaining feature of claim 1 is "*which prevents electronic equipment from being used unless the Key is within a pre-selected distance from equipment running the software*". The requester has not explicitly discussed claim 1 in his request and I can find nothing on the Hipkey (RTM) website which relates to this feature. I can only

conclude that the Hipkey (RTM) system does not have this feature and so the claim is not infringed.

Infringement of dependent claims 2 to 19

13. The requester has correctly identified many features of claims 2 to 19 in the Hipkey (RTM) system. However, since claims 2 to 19 are all dependent upon claim 1, which I have found not to be infringed, then claims 2 to 19 are also not infringed.

Conclusion

14. I conclude that the Hipkey (RTM) device and software do not infringe claim 1 of the patent as they do not prevent electronic equipment from being used unless the key is within a pre-selected distance from equipment running the software as required by claim 1. It follows that dependent claims 2 to 15 are not infringed.

Application for review

15. 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.