

OPINION UNDER SECTION 74A

Patent	EP 2184725 B1
Proprietor(s)	PHYCO TRADING B.V.
Exclusive Licensee	
Requester	BOULT WADE TENNANT
Observer(s)	
Date Opinion issued	09 May 2016

The request

1. The comptroller has been requested to issue an opinion as to whether EP2184725 B1 (the Patent) is infringed by a TETRA Detector Unit “the Unit”. A description of the Unit and relevant facts and comments are provided. The request is by Patent Attorneys Boulton Wade Tennant on behalf of an unnamed third party. The request specifically asks whether the following acts would constitute an infringement of the patent:
 - (i) Disposing of the Unit in the United Kingdom
 - (ii) Making the Unit in the United Kingdom
 - (iii) Offering to dispose the Unit in the United Kingdom
 - (iv) Using the Unit in the United Kingdom
 - (v) Importing the Unit into the United Kingdom
 - (vi) Keeping the Unit in the United Kingdom
 - (vii) Providing a system including the Unit and fixed and mobile emergency service units equipped with TETRA receivers
 - (viii) Supplying or offering to supply the Unit in the United Kingdom for use in detecting TETRA signals from fixed and/or mobile emergency service units in the United Kingdom.

Observations

2. No observations have been filed.

Earlier Opinion 16/15

3. An earlier Opinion was issued in relation to the validity of the patent in view of a number of prior art documents. The patent was found to be valid. A particular construction of the claims was arrived at and the requester has stated that although a different construction is not sought, the construction relied on in this Opinion should be made clear.

The Patent

4. The Patent was filed on 11 November 2009 with a priority date of 11 November 2008, was granted on 23 October 2013 and is still in force. It relates to an emergency service warning system which is arranged to warn users of the approach of emergency services such as ambulances, police or fire brigade vehicles or staff.
5. Emergency services communicate over an emergency service communication network using mobile (“movable”) transmitters (T) such as walkie-talkies. These connect to base stations or “stationary emergency service communication devices (M)”. The radio signals transmitted by the movable transmitters comprise encoded digital signals including at least one signal which is periodically transmitted (“with constant period, for instance of one or a few seconds”). The warning system comprises a user receiver (R) which is arranged to detect these periodic signals and so identify the presence of the emergency service.
6. The patent has 15 claims. Claims 1 and 10 are independent system and method claims with corresponding features. As such any discussion in relation to claim 1 will apply equally to claim 10. Claim 1 reads as follows:

An emergency service warning system, arranged to warn a user of the approach of emergency services, provided with:

-at least one movable emergency service transmitter (T); and

-at least one receiver (R), arranged to receive signals transmitted by the emergency service transmitter (T);

-at least one stationary emergency service communication device (M) adapted to communicate with said emergency service transmitter (T), characterized in that

-the stationary emergency service transmitter (M) and movable emergency service transmitters (T) utilize different communication bands;

-whereby the communication between the stationary emergency service communication device and the movable emergency service transmitters (T) utilizes encoded digital emergency service signals and the emergency service signals (S) comprise at least one signal transmitted periodically by the transmitter (T); and

-the user receiver (R) is arranged to detect said periodic signals for the purpose of detection of the movable transmitter (T) and to deliver a warning

signal upon detection of said emergency service signal (S) without deciphering a possible content of the emergency service signals.

The law on infringement

7. Section 60 of the Act states that:

(1) 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;

(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.

2) 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.

8. In order to determine whether the Unit described in the request infringes the claims of the patent under section 60(1), I must first construe the claims and then determine whether the Unit (or the Unit in combination with fixed and mobile emergency service units equipped with TETRA transceivers) has all the features of the claims so construed. If not, I will then consider whether there is infringement under section 60(2).

Claim construction

9. I must 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.

10. 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.

11. 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.

12. Claim 1 is generally straightforward to construe. The only point needing comment is the requirement of the user receiver to “*detect said periodic signals for the purpose of detection of the movable transmitter (T)*”. The description states that there is “at least one signal periodically transmitted by the transmitter T (with a constant period, for instance of one or a few seconds)” and that the user receiver R “is arranged to detect, for instance to recognize, the periodic signals, for the purpose of detection of the respective transmitter T” (paragraph 34). Paragraph 54 goes on to state that “the processor 8 may be arranged to recognize a period (of transmitted emergency service signals) in the digitized signal and to produce a warning signal as soon as the processor recognizes such a period”. Therefore I consider that the skilled person would construe “*detect said periodic signals for the purpose of detection of the movable transmitter (T)*” to mean that specific periodic signals must be detected and recognized as periodic signals rather than merely being detected along with other signals. In other words they must be distinguished as repeating signals of constant period rather than merely successive signals detected at a particular frequency in successive timeslots. This is the construction put on claim 1 in Opinion 16/15.

Does the Unit infringe?

13. The Unit is described as an RF power detector optimised for the task of TETRA uplink signal detection and providing logging and alert signals to the user. Technical details are provided including a block diagram for the unit. The Unit detects and samples a signal in the TETRA frequency band. If the sampled signal is above a predefined threshold, an output signal is triggered on the first detection with no further analysis. The Unit is described as being incapable of detecting periodic signals as described in the patent. Specifically the Unit cannot measure the timing nature (the time between repetition and its duration) of a detected signal. Furthermore it is stated that the Analogue to Digital Converter (ADC) is not accurate

enough to measure the period of a detected signal and is not used to do so. The Unit functionality is described as equivalent to documents D1 and D2 submitted in relation to Opinion 16/15 (which were found not to invalidate the patent).

14. From the evidence provided, I must conclude that the Unit does not and cannot *“detect said periodic signals for the purpose of detection of the movable transmitter (T)”* according to my construction and as required by claim 1. Claim 1 is therefore not infringed under section 60(1) by the Unit in combination with fixed and mobile emergency service units equipped with TETRA transceivers. Method claim 10 is, for the same reason, not infringed. The Unit does not infringe under section 60(2) as it does not and cannot provide a means for putting the invention into effect.

Opinion

15. I consider that the Unit as described in the request does not infringe the claims of EP2184725.

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.

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.