

OPINION UNDER SECTION 74A

Patent	GB 2575303 B
Proprietor(s)	Wrapid Manufacturing Limited
Exclusive Licensee	
Requester	Woodmansterne Publications Limited
Observer(s)	Appleyard Lees (On behalf of the proprietor)
Date Opinion issued	11 October 2021

The Request

1. The comptroller has been requested by Woodmansterne Publications Limited (“the requester”) to issue a validity opinion in respect GB 2575303 B (“the patent”) in the name of Wrapid Manufacturing Limited.
2. The request was received on 13 July 2021 and was accompanied by a statement explaining the request. The statement includes Exhibits A-D. The requester has also provided the following documents accompanying the request:

D1: US 4997126 A

D2: Witness statement of Benjamin Seth Woodmansterne

3. The request asks for an opinion on whether the claims of the patent lack an inventive step over common general knowledge. Each of documents D1-D2 and Exhibits A-D has a publication date prior to the priority date or were available to the public prior to the priority date of the patent and form part of the state of the art under Section 2(2).

Observations and Observation in reply

4. Observations were received from Appleyard Lees (“the observer”) on behalf of the proprietor, Wrapid Manufacturing Limited. Observations in reply were received from the requester. The observations in reply also included a further witness statement of Adam Osborne along with further Exhibits E-G.

Allowance of the request

5. The observer has asked me to refuse the request for an opinion on the basis of

section 74A(3)(b) of the Act and/or Rule 94(1)(b) of the Patent Rules 2007 as the question of whether the claims lack an inventive step in light of common general knowledge has already been considered in detail by the examiner before grant of the patent.

6. Section 74A(3) of the Patents Act 1977 provides that:

(3) The comptroller shall issue an opinion if requested to do so under subsection (1) above, but shall not do so;

(a) in such circumstances as may be prescribed, or

(b) if for any reason he considers it inappropriate in all the circumstances to do so.

7. Rule 94(1) of the Patents Rules 2007 provides that:

(1) The comptroller shall not issue an opinion if—

(a) the request appears to him to be frivolous or vexatious; or

(b) the question upon which the opinion is sought appears to him to have been sufficiently considered in any relevant proceedings.

8. Rule 94(1)(b) requires that the question upon which opinion is sought appears to have been sufficiently considered in any relevant proceedings for the opinion request to be refused. What constitutes “relevant proceedings” is set out in section 3.3 of the Opinions manual¹ which states that “normal pre-grant examination of applications at the IPO or EPO does not constitute a relevant proceeding under Rule 92”. Therefore, whilst the examiner has considered inventive step, including what she considered to be common general knowledge, during the normal pre-grant examination stage this does not constitute a relevant proceeding under rule 92 and as such I cannot refuse the opinion request under rule 94(1)(b).

9. However, section 3.4 of the Opinions manual explains that an opinion request should be refused if the request does no more than repeat arguments already considered pre-grant. Allowing such a request is considered inappropriate and should be refused under section 74A(3)(b). Therefore, is the request merely repeating arguments already considered pre-grant?

10. The observer argues that the examiner considered D1 and whether the invention was inventive in light of the common general knowledge during the examination process.

11. The requester considers reconsideration of D1 as part of this opinion to be allowable as a different inventive step argument based on different evidence of the common general knowledge has been presented. Although D1 was considered by the examiner in the original examination process during her assessment of common general knowledge, it has not been assessed in the light of the requester’s argument relating to what constitutes the common general knowledge of the skilled person. I

¹ <https://www.gov.uk/government/publications/opinions-manual/opinions-manual>

consider this to be a new question and it to be appropriate for me to reconsider D1 in this opinion.

12. The requester argues that the examiner only considered whether the invention was inventive in light of prior art documents in combination with the common general knowledge. Whereas, the requester seeks an opinion on whether the claims lack an inventive step over common general knowledge alone. Furthermore, the requester argues that the common general knowledge as put forward by themselves was not considered by the examiner.
13. The examiner will have inevitably considered inventive step in the light of common general knowledge whoever that will be on the basis of the examiners understanding of CGK at that time. The requester has put forward its view of the CGK with what it claims are supporting documents. I accept that this is not clearly the CGK as considered by the examiner hence on balance I conclude that it would not be inappropriate to consider it here.
14. Therefore, I consider the request for an opinion on the question of whether the claims of the patent lack an inventive step over common general knowledge alone to be allowable.
15. I turn now to the observations in reply. The opinion process is intended to be a simple process involving three rounds of submissions – the request, observations and observations in reply. Whereas here a request for an opinion on validity is made by a party who is not the proprietor of the patent then it is important to note that the proprietor only has the one opportunity to comment on the observations provided by the requestor. It is therefore only fair that the requester puts its full case forward at the outset and that a strict approach is taken to observation in reply. In this instance the proprietor has for example disputed what is shown in Exhibit A submitted with the request. The request in its observations in reply has sought to introduce a new exhibit, Exhibit E showing a different greeting card assembly to that shown in Exhibit A as a way of addressing the observations. This does not constitute observations in reply. Rather it introduces new material into the process on which the proprietor has no opportunity to respond. Similarly Exhibits F and G together with the accompanying witness statement from Mr Osborne introduce new material which does not constitute observations in reply. Rather they are an attempt to bolster the quality of the material submitted in the request. I will therefore not consider Exhibits E-G or the witness statement of Mr Osborne in the following opinion.

The Patent

16. The Patent is titled “Greeting card assembly”. It was filed on 5th July 2018, published on 8th January 2020 and granted on 12th May 2021. The patent remains in force.
17. The Patent relates to a greeting card assembly, and a method of manufacturing the same. Greeting cards are supplied with a matching envelope. Typically, in a retail environment, the greeting cards are displayed on a display unit comprising a plurality of compartments (referred to in the art as "pockets"). Each pocket comprises a plurality of a particular greeting card, with a plurality of the matching envelopes being disposed loose behind the greeting cards. However, difficulties arise in that

customers may inadvertently (or in some cases deliberately) select an envelope that is not the matching envelope or that envelopes and cards become separated.

18. One solution to this problem is to wrap the card and envelope in transparent plastic (e.g. polypropylene) in order to ensure that the card and envelope do not become separated when on display in store. However, there has recently been a desire to minimise the use of plastics in retail packaging.
19. Therefore, it is an aim of the invention to provide a greeting card assembly that overcomes the above-mentioned disadvantages, and to provide a means of ensuring that a greeting card and matching envelope remain together in a retail environment, whilst minimising the use of plastic.
20. A greeting card assembly 100 comprises a greeting card 110, an envelope 120 and a peelable adhesive label 130. The greeting card 110 is formed of a front panel 112 and a rear panel 113, which are articulated so as to allow the card 110 to open and shut. In particular, the panels 112/113 are hingedly connected to one another along the hinge 111. The envelope 120 is sized to match the card 110, and so consequently has dimensions that are slightly larger (e.g. around 5mm in width and length) than the card 110.
21. The greeting card assembly 100 comprises the greeting card 110, the envelope 120 located between the pair of neighbouring joined panels 112, 113 of the greeting card and a peelable adhesive label 130 secured to the card to hold the greeting card shut and retain the envelope in the card. The label is attached to the outer faces of the front 112b and back of the card 113b, and to a protruding part 123 of the envelope 120.

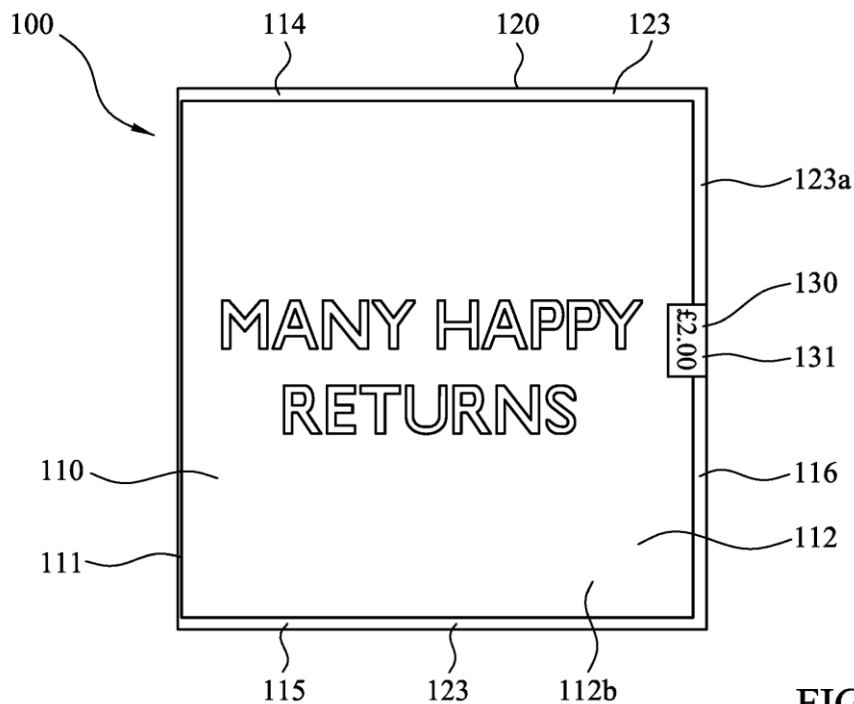


FIG. 1

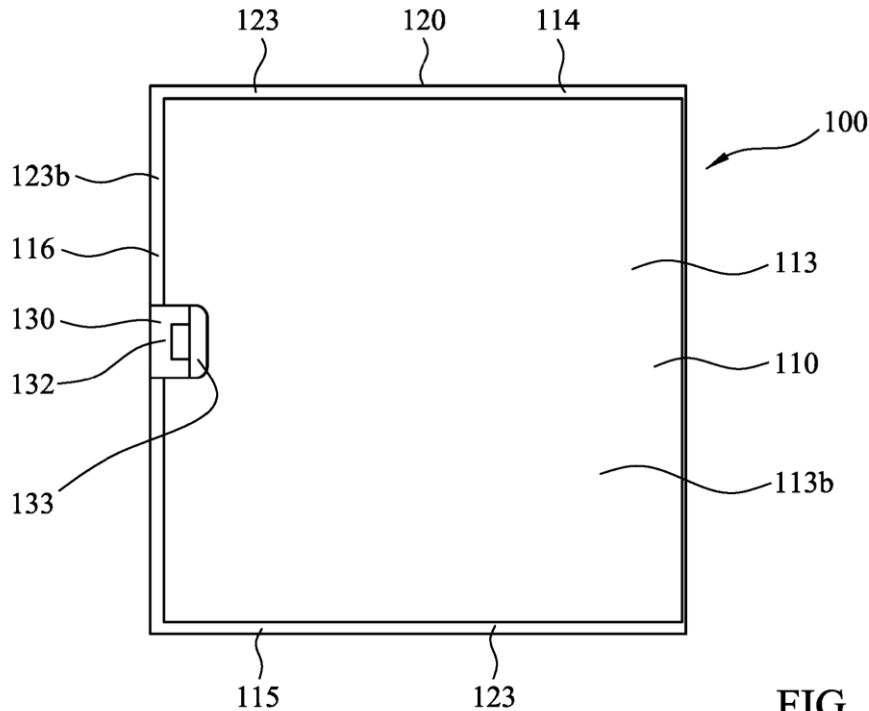


FIG. 2

22. Accordingly, the label 130 secures the panels 112, 113 to one another, thereby holding the card 110 shut and trapping the envelope 120 between the panels 112, 113. In addition, the label 130 is attached to the protruding part 123 of the envelope 120, further ensuring the envelope 120 remains between the panels 112, 113. When a user wishes to remove the envelope 120 from between the panels 112, 113, the label 130 is simply peeled off (e.g. by grasping the pull tab 133) and discarded.

23. The patent has thirteen claims including independent claims 1 and 9. Independent claims 1 and 9 of the Patent read:

1. A greeting card assembly comprising:

a greeting card comprising a plurality of articulated panels;

an envelope for the greeting card disposed between a pair of neighbouring articulated panels; and

a peelable adhesive label secured to an outwardly-facing surface of a first panel and an outwardly-facing surface of a second panel of the plurality of articulated panels of the greeting card so as to hold the greeting card shut, thereby retaining the envelope between the neighbouring articulated panels,

wherein the peelable adhesive label is secured to a protruding part of the envelope that protrudes from the greeting card.

9. A method of manufacturing a greeting card assembly, the method comprising:

inserting an envelope between a pair of neighbouring articulated panels of a

greeting card;

securing a peelable adhesive label to the outwardly-facing surface of the first panel and the outwardly-facing surface of the second panel of the plurality of articulated panels of the greeting card so as to hold the greeting card shut, and retain the envelope between the neighbouring articulated panels,

the method further comprising securing the peelable adhesive label to the protruding part of the envelope that protrudes from the greeting card.

24. I will consider the inventiveness of the dependent claims should that become necessary after my assessment of independent claims 1 and 9.

Claim construction

25. Before considering the inventive step issues raised in the request, I need to construe the claims of the patent – that is to say, I must interpret them in the light of the description and drawings as instructed by Section 125(1):

125(1) 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.

26. In doing so I must interpret the claims in context through the eyes of the person skilled in the art. Ultimately the question is what the person skilled in the art would have understood the patentee to be using the language of the claims to mean. This approach has been confirmed in the recent decisions of the *High Court in Mylan v Yeda*² and the *Court of Appeal in Actavis v ICOS*³.
27. Neither the requester nor the observer has put forward any argument concerning the construction of the claims. I also have no issue with the claims and consider them to be clear when read in light of the description and drawings. In my opinion the skilled person would have no issue with understanding the meaning of claims.

The law

28. Section 1(1)(a) and (b) of the Patents Act (henceforth ‘the Act’) reads:

1(1) A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say –
(a) the invention is new;
(b) it involves an inventive step;

² *Generics UK Ltd (t/a Mylan) v Yeda Research and Development Co. Ltd & Anor* [2017] EWHC 2629 (Pat)

³ *Actavis Group & Ors v ICOS Corp & Eli Lilly & Co.* [2017] EWCA Civ 1671

29. The provisions in relation to inventive step are found in section 3 which states:

3. An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).

30. The Court of Appeal in *Windsurfing*⁴ formulated a four-step approach for assessing whether an invention is obvious to a person skilled in the art. This approach was restated and elaborated upon by the Court of Appeal in *Pozzoli*⁵. Here, Jacob LJ reformulated the *Windsurfing* approach as follows:

(1)(a) Identify the notional "person skilled in the art"

(1)(b) Identify the common general knowledge of that person;

(2) Identify the inventive concept of the claim in question or if that cannot be readily done, construe it;

(3) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed.

(4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps that would have been obvious to the person skilled in the art or do they require any degree of invention?

31. I will begin by considering the validity of the invention as defined by claim 1. Only if I find it to be invalid will I consider the dependent claims.

Inventive step

32. The requester has also argued that independent claims 1 and 9 lack an inventive step over the common general knowledge of a person skilled in the art. To determine whether or not an invention as defined in claims 1 and 9 is inventive over the common general knowledge of a person skilled in the art, I will use the four-step test outlined above in paragraph 29.

(1)(a) Person skilled in the art

33. I agree with the observer that the relevant skilled person is a person engaged in the manufacture and packaging of greetings cards.

(1)(b) Common general knowledge

34. As an opinion is sought on whether the claims of the patent are inventive over the common general knowledge of the skilled person, the crux of the argument lies in what constitutes the CGK of the skilled person at the filing date of the patent.

35. In *Raychem Corp's Patents* [1998] RPC 31 Laddie J explained common general knowledge as follows:

⁴ *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

⁵ *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

“The common general knowledge is the technical background of the notional man in the art against which the prior art must be considered. This is not limited to material he has memorized and has at the front of his mind. It includes all that material in the field he is working in which he knows exists, which he would refer to as a matter of course if he cannot remember it and which he understands is generally regarded as sufficiently reliable to use as a foundation for further work or to help understand the pleaded prior art. This does not mean that everything on the shelf which is capable of being referred to without difficulty is common general knowledge nor does it mean that every word in a common text book is either. In the case of standard textbooks, it is likely that all or most of the main text will be common general knowledge. In many cases common general knowledge will include or be reflected in readily available trade literature which a man in the art would be expected to have at his elbow and regard as basic reliable information.”

36. There is agreement between the requester and observer that the skilled person would have knowledge of the manufacture of greetings cards and how they would be assembled, packaged and displayed. The observer explains that the patent itself in paragraphs [02]-[06] identifies that greeting cards are typically supplied with a matching envelope and may be wrapped in transparent plastic to prevent separation of the card and envelope. To my mind, it is clear that this would all form part of the CGK of the skilled person.
37. Exhibit A (reproduced below) shows greeting card which is packaged with an envelope inside the cards and wrapped in transparent plastic to prevent separation of the card and envelope. Furthermore, the exhibit shows the use of a peelable adhesive label to hold multiple cards together.
38. In my view, what is disclosed in Exhibits A form part of CGK of the skilled person at the filing date of the patent.

Exhibit A



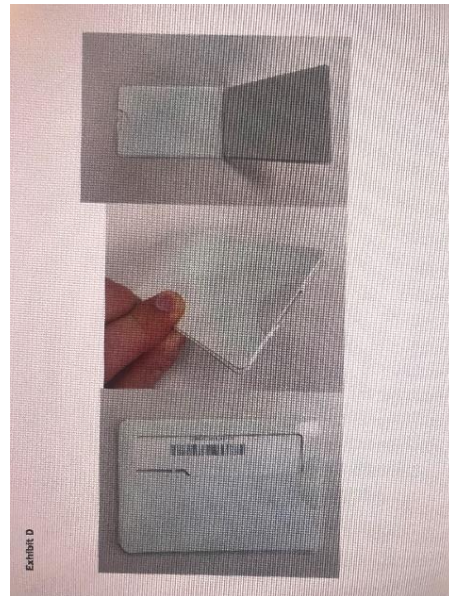
39. Exhibit B (reproduced below) is a document by Advanced Labelling Solutions (ALS) who make labelling machines. This document discloses in-line application of peelable security labels. In Exhibit B and the YouTube⁶ video referenced by the requester the ALS labelling machines are disclosed as labelling CD or DVD cases with security labels.

Exhibit B



40. It is not clear from Exhibit B or the video whether the labelling machines available from ALS before the filing date of the patent are suitable for applying a label to a greeting card assembly as in the patent. However, would the ALS labelling machines, which were used for applying security labels to items such as CD or DVD cases before the filing date of the patent, form part of the CGK of the skilled person?
41. I have no evidence before to suggest that the ALS labelling machines had been used in any aspect of labelling greeting card assemblies prior to the filing date of the patent e.g. in applying the labels to known greetings card assemblies as shown in Exhibit A. I am not persuaded that the skilled person as identified in paragraph 33 would be aware of such labelling machines from a different field for applying labels of a different purpose i.e. security labels to CD/DVD cases. Therefore, I do not consider the ALS machines or similar machines used for applying security labels to other products to form part of the CGK of the skilled person.
42. Exhibits C and D below are photographs of a CD wallet and a sim card wallet available to the public before the filing date of the patent.

⁶ <https://www.youtube.com/watch?v=DHjKGAKDBcU>



43. Both the CD wallet and sim card wallet are fastened at an edge with an adhesive label. There is clearly disagreement between the requester and the observer as to whether such products form part of the CGK of the skilled person. In my opinion they do not. Packaging of products such as CDs and sim cards is in a different field to the manufacture and packaging of greeting card assemblies. They require different considerations for their packaging to manufacturing and packaging greeting card assemblies. The requester argues that the CGK of the skilled person would extend beyond the narrow arena of greeting cards. However, I have no evidence before me, beyond mere assertion, to suggest this. I consider the CGK of the skilled person to be as outlined above in paragraphs 34-36.

44. The requester has also referred to D1 when considering the CGK of the skilled person. I note that the contents of individual patent specifications and isolated documents do not normally form part of the relevant CGK. The statement by Sachs LJ in *General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd* [1972] RPC 457 is of particular interest because it sets out the relationship of patent specifications to the CGK (“it is clear that individual patent specifications and their contents do not normally form part of the relevant common general knowledge”). With regard to patent specifications Sachs LJ explained:

“...it is clear that individual patent specifications and their contents do not normally form part of the relevant common general knowledge, though there may be specifications which are so well known amongst those versed in the art that upon evidence of that state of affairs they form part of such knowledge, and also there may occasionally be particular industries (such as that of colour photography) in which the evidence may show that all specifications form part of the relevant knowledge.”

45. I have no evidence before me which suggests D1 is a patent specification falling into the categories discussed above by Sachs LJ and thus forming part of the CGK.

(2) Identify the inventive concept of claim 1

46. The inventive concept of claims 1 and 9 lies in a greeting card assembly having an

envelope disposed between two panels of a greeting card and applying a peelable label so that it is secured to the outwardly facing surfaces of the panels of the card and a protruding part of the envelope, so that the label holds the card shut and secures the envelope to the card without the use of plastic wrapping.

(3) What differences exist between the CGK of the skilled person and the inventive concept of claims 1 and 9?

47. The CGK of the skilled person does not include applying a peelable label so that it is secured to the outwardly facing surfaces of the panels of the card and a protruding part of the envelope, so that the label holds the card shut and secures the envelope to the card without the use of plastic wrapping.

(4) Are the differences obvious to a person skilled in the art

48. Given the requester alleges the invention to be obvious in light of the CGK of the skilled person, it seems appropriate to consider the following warning made by Floyd J in *Ratiopharm v Napp*⁷ when dealing with obviousness over common general knowledge alone:

158. Fourthly, allegations of obviousness in the light of common general knowledge alone need to be treated with a certain amount of care. They can be favoured by parties attacking the patent because the starting point is not obviously encumbered with inconvenient details of the kind found in documentary disclosures, such as misleading directions or distracting context. It is vitally important to make sure that the whole picture presented by the common general knowledge is considered, and not a partial one.

49. This warning, regarding the dangers of selectivity in deciding what the common general knowledge is, was elaborated upon by the Hearing Officer in *Maxluck Biotechnology's Application*⁸ as follows:

11. However, when deciding what is common general knowledge, one cannot just take those parts of it that support (or rebut) the objection that is being made. To do so opens oneself up to an accusation of ex post facto selection. The notional skilled person comes armed with all the common general knowledge and cannot pick and choose selectively with the benefit of hindsight. Some aspects of the common general knowledge may lead the skilled person from the prior art towards the inventive concept; but equally other aspects of common general knowledge may lead him away from the inventive concept...

50. The warning regarding relying on common general knowledge alone in *Ratiopharm v Napp* was further elaborated upon by Birss J in *Accord Healthcare v Medac*⁹:

⁷ *Ratiopharm GmbH/Sandoz Ltd v Napp Pharmaceutical Holdings Ltd* [2008] EWHC 3070 (Pat)

⁸ *Maxluck Biotechnology's Application* BL O/130/10

⁹ *Accord Healthcare Ltd v Medac Gessellschaft für Klinische Spezialpräparate mbH* [2016] EWHC 24 (Pat)

121. Normally the person attacking validity will rely on a particular concrete document or well defined prior use as a starting point. The fact that such a concrete item of prior art may be part of the common general knowledge is not the point. That is different from an attack based on common general knowledge alone.

122. Many inventions involve a combination of known features. However, a combination of features, all of which individually were common general knowledge, can give rise to a valid patent claim if that combination is new and non-obvious. Patent trials are inevitably ex post facto and a key problem is to identify and avoid hindsight. Combinations of features can pose a particularly acute hindsight problem. The thing about concrete items of prior art, whether they are prior published documents or prior used product or process, is that whatever combination of features that concrete prior art consists of, is not one which was created with hindsight knowledge of the invention.

123. The problem with arguments over common general knowledge alone is that the combination of features relied on is always and necessarily one created with hindsight knowledge of the invention, and worse, is one which the person attacking validity has not been able to find as a pre-existing combination in the concrete prior art. If they had they would have relied on that concrete prior art. Either the combination has not been made in the concrete prior art at all or it only appears with additional inconvenient details. If an invention is not obvious over the concrete prior art which is relied on, the court is entitled to be sceptical that an argument that it is nevertheless obvious over common general knowledge alone is correct.

51. I agree with the observer that it is important to approach the question of inventive step without any knowledge of the invention as claimed. In my view, an issue with considering the inventiveness of the invention is its simplicity. With knowledge of the invention, it is all too easy to think it obvious.
52. The use of peelable labels in the packaging of greeting card assemblies' forms part of the CGK of the skilled person at the filing date of the patent as discussed above. However, the CGK only includes application of the peelable labels to plastic wrapping and not directly to the card and envelopes directly to secure them to one another.
53. I do not consider the CGK to lead the skilled person to apply a peelable label so that it is secured to the outwardly facing surfaces of the panels of the card and a protruding part of the envelope, so that the label holds the card shut and secures the envelope to the card without the use of plastic wrapping without any inventive step. There is simply no evidence to suggest that the skilled person would consider it obvious to do so from the CGK.
54. Furthermore, as explained in the patent not all greeting card assemblies have been packaged in plastic wrapping as in Exhibit A. For many years greeting cards and their envelopes have been provided and displayed unattached to one another. Leading to problem of them becoming separated. As peelable labels and their use in packaging greeting card assemblies have been known for many years, it begs the

question why haven't labels been used to secure the cards and envelopes together before the filing date of the patent? To my mind, the answer has to be, whilst appearing an obvious and very simple solution, it in fact wasn't obvious to do so.

55. Therefore, in my opinion independent claims 1 and 9 are not obvious in light of the CGK of the skilled person.

Dependent claims

56. As I have found independent claims 1 and 9 inventive, by view of their dependency so are dependent claims 2-8 and 10-13.

Conclusion

57. I consider that the invention as defined by claims 1-13 is inventive over the CGK of the skilled person.

Marc Collins
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.