Patents Act 1977 **Opinion Number** **03/25**

OPINION UNDER SECTION 74A

Patent	GB2612649
Proprietor(s)	JCC LIGHTING PRODUCTS LIMITED
Exclusive Licensee	
Requester	Bryers Intellectual Property Ltd
Observer(s)	
Date Opinion issued	30 May 2025

The request

1. The comptroller has been requested to issue an opinion as to whether GB2612649 (hereafter the Patent) is valid. The Request asks whether the Patent is inventive over several prior art documents. There is also an assertion that "Claim 1 defining the fastening element in terms of function renders the scope of claim 1 unclear and indefinite and unjustifiably broad in view of the original disclosure and the alleged contribution to the state of the art.".

2. The Request makes reference to seven prior art items.

D1 - A 'YL08 Light' which is shown in two web references. The first web page has no clear date information, whilst the second has an upload date of 09th August 2021.

https://nbyuanhui.en.made-in-china.com/product/kZwxjFcddlWy/China-CE-RoHS-36W-1500mm-China-New-Design-IP65-Driver-Die-Cast-PC-Housing-LED-Wall-Mounting-Lights.html

https://www.facebook.com/b2b.made.in.china/videos/get-this-high-quality-light-for-homes-facilities-and-offices/2273608132771474/

D2 - 'LED Tri-proof light' from Ledlucky Lighting shown in a video which has an upload date of 18th March 2020.

https://www.youtube.com/watch?app=desktop&v=K1opvBey4cw

D3 - US 2014/0313727 A1 (published 23rd October 2014)
D4 - JP 2015-005437A (published 08th January 2015)
D5 - JP 2009-190582A (published 27th August 2009)

D6 - US 3847423 A (published 12th November 1974)
D7 - US 3328579 A (published 27th June 1967)

3. The Patent was filed on 09th November 2021 with no priority claim, so all of D1-7 (barring the undated web page) form part of the state of the art according to Section 2(2) of the Patents Act and can be considered when assessing inventive step.

4. D1 was included in third party observations submitted on 02nd September 2024 and considered during pre-grant examination.

Observations

5. Observations were received on 04th April 2025 (hereafter the Observations) and Observations in Reply were received on 16th April 2025 (hereafter the Reply).

Should the Opinion Request be Accepted

6. Insofar as the Request asks questions regarding the inventiveness of the Patent in light of D2-D7 it is making a new validity argument and can be accepted.

7. In general, a request for an Opinion will not be accepted where it repeats arguments already considered pre-grant. Since D1 was included in third party observations made pre-grant and considered in some exam reports inventive step arguments relating to D1 have, on the face of it, been considered pre-grant.

8. The Request refers to a Intellectual Property Office (IPO) hearing decision *Kohn*[1] which discusses circumstances where an opinion request can be accepted despite pre-grant consideration and argues that the request for an opinion based upon D1 should be accepted because the pre-grant decision that claim 1 was inventive over D1 was "clearly perverse, in the sense that no reasonable person could have reached it."

9. Kohn sets out an exhaustive legal history from the underlying legal basis in Section 74A(3)(b) of the Act through several IPO hearing decisions. I will summarise the elements relevant to the Requester's argument below.

10. Firstly, Section 74A(3)(b) of the Act states:-

> *(3) The comptroller shall issue an opinion if requested to do so under subsection (1) above, but shall not do so—*
> *(a) …*
> *(b) if for any reason he considers it inappropriate in all the circumstances to do so.*

11. The original reference to 'clearly perverse' is actually found in *Automation*[2] as quoted

[1] *Kohn & Associates PLLC* [BL O/310/21]. Full text available from https://www.ipo.gov.uk/p-challenge-decision-results/o31021.pdf
[2] *Automation Conveyors Limited* [BL O/0370/07]. For full text see https://www.ipo.gov.uk/p-challenge-

in *Kohn* (emphasis original):-

> *33* ***Having said that, I have to acknowledge the possibility that a decision by an examiner to discount a citation might be shown to have been clearly perverse, in the sense that no reasonable person could have reached it. Only in such a case might it be appropriate to reconsider the citation in an opinion as there could be said to be a new argument.***

12. *Kohn* then includes several paragraphs where the application of the 'clearly perverse' question is discussed which I think provide useful practical guidance. (Emphasis added, except in the quoted section):-

> *29 I note that Mr Austin refers to the decision to discount JNP as "perverse". However as noted above, the relevant part of the Automation decision, paragraph 33, refers to the need to show that the decision by an examiner to discount a citation is "clearly perverse, in the sense that no reasonable person could have reached it." It does strike me that the Hearing Officer in Automation did choose their words carefully when they wrote "clearly perverse" and also reinforced this by indicating that this relates to a decision that "no reasonable person" could make****. I am satisfied that what the Hearing Officer had in mind was indeed an exceptional circumstance and that they were acknowledging that, although not likely, the possibility could not be eliminated completely. I also consider that "clearly perverse" is a level above "perverse" and that this is intended to allow for a very rare occurence****. In support of this, I think it is important to take account of what the hearing officer said in preceding paragraph 32 (my emphasis added), i.e.*
>
> > *"It is an intrinsic part of the substantive examination process to assess the novelty and obviousness of the claims, as properly construed, in the light of the prior art. In this context, "prior art" means documents cited in the search report (at least under category "X" or "Y", which indicate possible relevance to novelty or inventive step) as well as material which has come to the examiner's attention in some other way.* ***I think it reasonable to suppose in general that the examiner will have done his or her job properly in the absence of indication to the contrary, and I see no reason why this assumption should not apply even if the examiner has decided not to raise objection on the basis of any of the citations at substantive examination****."*
>
> *From this I consider that the Hearing Officer was satisfied that, unless there is a very clear reason not to, one can assume that the examiner will have carried out their role properly in assessing the novelty and inventive step of an application including when they decide not to pursue an objection as the examination process proceeds.*
>
> *30 As the Hearing Officer also pointed out in Automation, by contrast with a decision resulting from proceedings before the Comptroller which sets down*

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decision-results/o37007.pdf

the reasons why the Hearing officer acting for the Comptroller has come to the conclusion they have in refusing or accepting, in whole or in part, a patent application, this is not the situation in relation to the normal pre-grant examination process. As set down in paragraph 30, "in pre-grant examination there is no corresponding window on the mind of the examiner" and "Although it may be possible to draw inferences from a sequence of correspondence, the examiner rarely gives an explanation as to why a particular line of argument or objection has been dropped. This is particularly true in relation to a decision not to pursue a citation made in a search report.".

31 I believe that this sets a high bar and that this was in line with the intention of the legislator as they saw it, when the provisions concerning opinions were put in place. ***Thus, while it cannot be discounted completely that a situation might arise concerning an X-document already cited (as in this case) where it would be appropriate to give an opinion, this would indeed be an exceptional circumstance****. I further believe that the Hearing Officer in Automation was right to set a high bar – and I do consider that the use of the phrase 'clearly perverse' – does reinforce this. I can see no reason why I should not adopt the same approach in this case*

13. In the present case the Request quotes the objection raised in the examination report of 06th September 2024, in particular: "I believe this would provide sufficient motivation for the skilled addressee … to consider using an interference fit connector …". The Request then goes on to reproduce the arguments from the letter of 30th October 2024 responding to that exam report.

14. The Request points out that the response to the examination did not specifically address the 'sufficient motivation' point made in the exam report and that the response identifies a different difference between the prior art and the claim from that identified by the examiner.

15. As a result of the above points the Request considers that the grant of the Patent, and therefore the decision that claim 1 demonstrated an inventive step over D1, to be 'clearly perverse'.

16. The Observations argue that inventiveness in light of D1 has been considered pre-grant and the request for an opinion on this point should be refused, along with some supporting discussion contradicting the Request.

17. The Reply then reiterates the original arguments and points out some discrepancies between the arguments made in the Observations and the wording of claim 1.

18. I note that *Automation* discusses the decision of the examiner being 'clearly perverse', rather than any argument made in response to an exam report, and also that we do not have access to the reasoning used by the examiner in reaching their decision, a point discussed in *Kohn*.

19. The Request does not provide evidence or argument attacking the reasoning in the response to the examination report directly, only by reference to differences from the

reasoning in the examination report. The fact that the reasoning in the response to the examination did not directly address each specific point made in the examination report it does not necessarily follow that accepting it is clearly perverse. The reasoning in the response fully addresses the overall inventive step objection raised in the examination and does not on the face of it appear to be reasoning which no reasonable person could accept.

20. Furthermore, the Request does not directly discuss the examiner's reasoning or address the possibility that it might diverge from that presented in the response to the examination report. The arguments in the Request seem to relate to a particular line of reasoning taken to reach the decision rather than the decision itself.

21. As noted in *Kohn*, establishing that a decision is 'clearly perverse' is a high bar. I do not think that the Request has successfully demonstrated that the examiner's decision to not maintain the inventive step objection was 'clearly perverse' whether they accepted the reasoning in the response to the examination report or not. Hence, I do not think that the Request presents a new argument in relation to D1 that can be considered in this Opinion.

22. This leaves the brief 'Other' section of the Request, in particular the assertion.

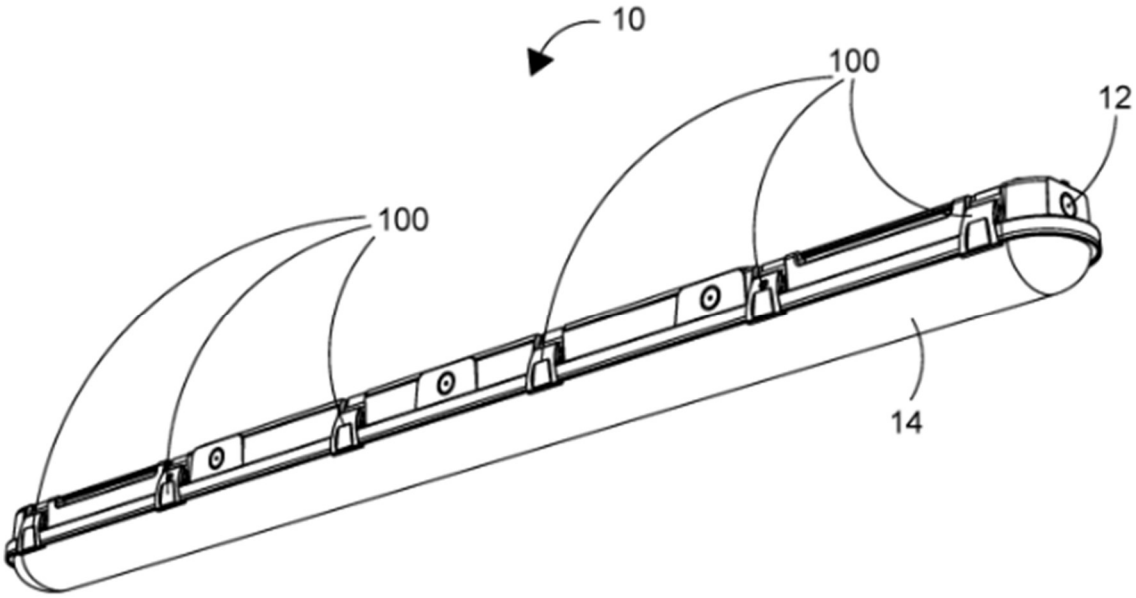
> *"Claim 1 defining the fastening element in terms of function renders the scope of claim 1 unclear and indefinite and unjustifiably broad in view of the original disclosure and the alleged contribution to the state of the art."*

23. It is not readily apparent what the intention of this final passage of the Request is, but some light is thrown on the issue by the Reply. The Reply states 'that it is in the interest of third parties for clarity issues to be highlighted, especially where they relate to the interpretation of the scope of a claim.'. This suggests, in a roundabout way, that the construction of claim 1 is at issue.

24. A lack of clarity is not a ground for invalidity (and therefore not an issue which can be dealt with in an opinion) and the Request has not clearly made out a validity argument in relation to sufficiency (which could have been dealt with in an opinion). Hence, I shall consider the arguments raised only in relation to claim construction.

The Patent

25. The Patent relates to light fittings (10) with embodiments being of the tubular industrial variety. Whilst many aspects of these light fittings are described the claims are particularly focussed on the fastenings (100) which attach the diffuser (14) to the base of the light fitting.



26. The fastenings have two elements, a fastening element (104) which hooks on to the diffuser and a connecting element (102) which provides a connection between the first and the light fitting base. The two elements connect via a hinge rotating around axis B and the connecting element connects to the light fitting base via a hinge with axis A. I note that fastenings similar to this can be seen around the home, typically securing the lids of things like tool-boxes, jars/tins and even the odd beer bottle.

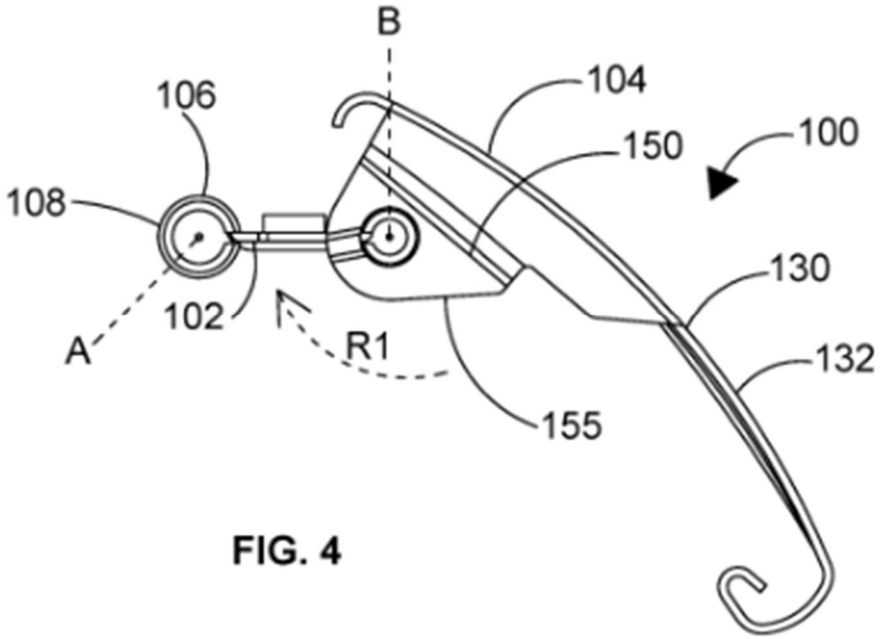
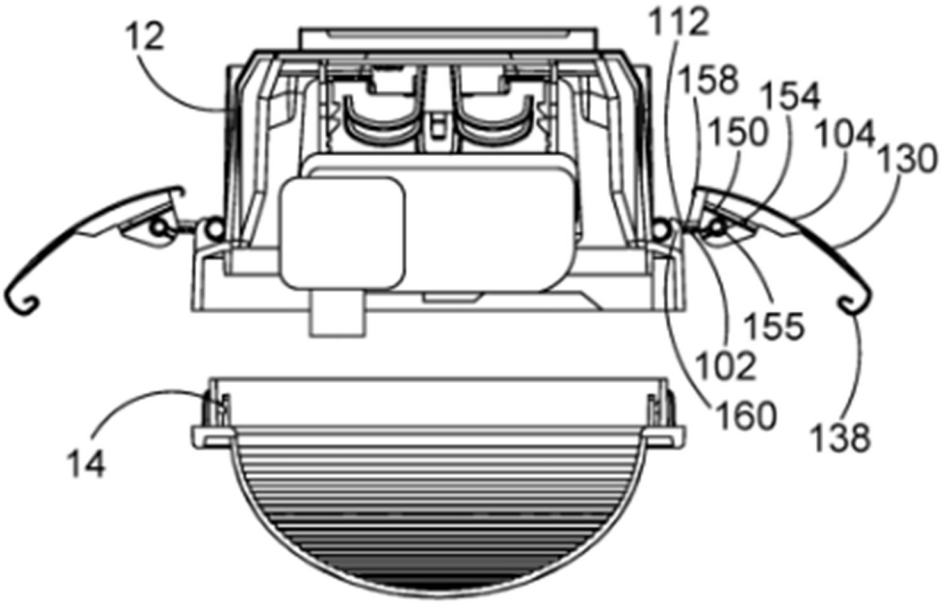


FIG. 4

27. The invention is particularly focussed on fastenings which ‘stick out’ to the side when ‘undeployed’ to provide clear access when attaching a diffuser, as can be seen in the figure below.



28. This is achieved by having a small ridge (154) on the fastening element (104) which catches on the edge of the connecting element (102) and thereby prevents rotation until sufficient rotational force is applied to snap one past the other.

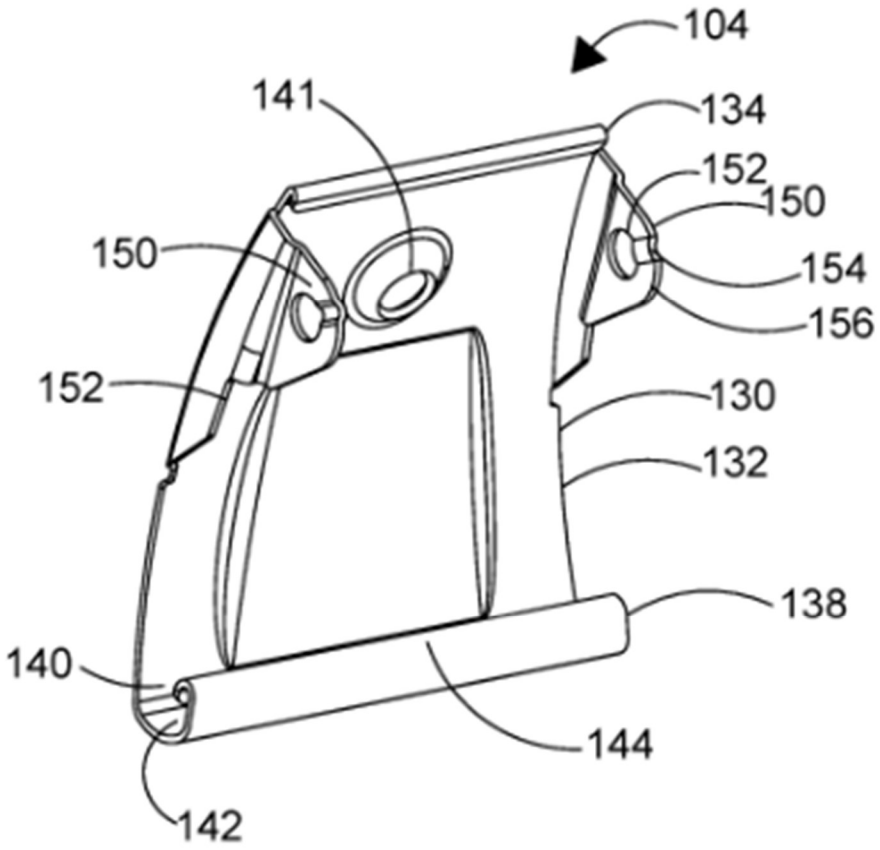


FIG. 7

29. The Patent has a single independent claim 1, with a claim 17 being to a light fitting

having a base as per the previous claims. Claim 1 specifies

> *A base of a light fixture, the base comprising:*
>
> *a body; and*
>
> *a device for securing a diffuser of a light fixture to the base, the device having:*
>
> *a first element pivotably connected to the base about a first axis; and*
>
> *a fastening element pivotably attached to the first element about a second axis such that the fastening element is pivotable with respect to the first element between an undeployed position and a deployed position where in use the fastening element attaches the diffuser to the base,*
>
> *wherein the fastening element is pivotably attached to the first element with an interference fit which limits rotation of the fastening element relative to the first element until a pre-determined rotational force is applied to the fastening element.*

Construction

30. Before I can determine an opinion as to the validity of the patent, I must first construe the claims. This means interpreting the claims in light of the description and drawings as instructed by section 125(1) of the Patents Act:

> *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.*

31. 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 decisions of the High Court in *Mylan v Yeda*[3] and the Court of Appeal in *Actavis v ICOS*[4] .

32. The Request quotes and adopts a definition of the person skilled in the art (hereafter skilled person) originally presented in the response to the examination report dated 30th October 2024, namely 'a designer of lighting and light fixtures and their common general knowledge in that role would be in relation to lighting and light fixtures', and the Observations acknowledge this definition. In the Reply the requester points out that the skilled person's common general knowledge 'does not exclude basic

[3] *Generics UK Ltd (t/a Mylan) v Yeda Research and Dev. Co. Ltd & Others* [2017] EWHC 2629 (Pat)
[4] *Actavis Group PTC EHF v ICOS Corporation &* Ors [2017] EWCA Civ 1671

knowledge or experience they have derived in everyday life (which is part of their background knowledge relevant to their technical competence).'.

33. Thus, there seems to be agreement as to who the skilled person is and, largely, on their common general knowledge. The areas of disagreement regarding common general knowledge do not have a bearing on claim construction, therefore I will deal with them below.

34. The Request, Observations and Reply do not explicitly discuss the construction of the claims and seem to be largely in agreement as to what is claimed. However, I think that some terms in the claims are worthy of discussion for clarity.

35. There is agreement in the Request and Observations that the prior art shows a light fixture with fasteners having two pivotably connected elements. Therefore, further discussion of the construction of these features of the claim is not necessary for this Opinion.

36. The Request, under 'Other', seems to take issue with claim 1 not specifying the presence of the diffuser and with the open ended definition of the diffuser fastening/attachment.

37. Whilst the fastening/attachment is defined in an open ended manner the skilled reader should be readily able to distinguish between things which do and do not fall within the scope of this feature of the claim. Hence, I think that claim 1 can be clearly construed in this regard.

38. I do not think that the lack of a diffuser in claim 1 leads to any construction issue. The argument in the Reply that the diffuser need not be a light fitting diffuser is not plausible when the claims are construed with due regard for the description and drawings.

39. The term 'interference fit' is not explicitly defined in the application. My understanding is that it is a known term applied where parts are mated together to produce a joint held together by friction (see e.g. https://en.wikipedia.org/wiki/Interference_fit). The embodiments disclose a fastening element with a ridge which should catch upon/interfere with the edge of the connecting element somewhere along their range of relative rotation. This does not clearly fit within the accepted meaning of the term, hence a construction of 'interference fit' derived from the disclosure is necessary. Whilst the embodiment has interference provided at a specific point by ridge (154) I think that the term should be construed broadly to cover elements fitted together such that they interfere with each other through catching, rubbing or similar at at least one point in their range of relative rotation.

40. Claim 1 specifies that the interference fit should 'limit rotation … until a pre-determined rotational force is applied'. The embodiments of the invention show the fastening element being held out sideways in order to keep it out of the way of diffuser installation. From this I think that the pre-determined rotational force must be sufficiently large that the fastening element would have limited rotation under its own weight. Otherwise, the 'until' in claim 1 makes no sense since any force due to weight is always present (barring contrived scenarios involving lights moving in/out of

zero gravity environments).

Validity – Inventive Step

The Law

41. Section 1(1) of the Act reads:

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

42. Section 2(2) of the Patents Act 1977 states:

> *The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.*

43. Section 3 of the Patents Act 1977 states:

> *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).*

44. To determine whether or not an invention defined in a particular claim is inventive over the prior art, I will rely on the principles established in *Pozzoli*[5], in which the well known *Windsurfing*[6] steps were reformulated:

> *(1)(a) Identify the notional "person skilled in the art";*
> *(1)(b) Identify the relevant common general knowledge of that person;*
> *(2) Identify the inventive concept of the claim in question or if that cannot readily be 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, determine whether those differences constitute steps which would have been obvious to the person skilled in the art.*

45. I will apply the recommended four step approach to the validity question raised in the Request.

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[5] *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588
[6] *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

The skilled person

46. The person skilled in the art/skilled person has been discussed above and there is agreement that it is a designer of lighting and light fixtures.

The common general knowledge

47. The skilled person's common general knowledge is generally agreed to be that of a designer of lighting and light fixtures, but there is some discussion around whether and to what extent this includes knowledge of torque/friction hinges which would fall within the scope of an interference fit as construed above.

48. The Request refers to documents D3-D5 which disclose torque hinges used in lighting contexts. D3 discloses a spotlight with a torque hinge which maintains a set direction for the spotlight. D4 discloses a stage type spotlight with blades mounted on the front which can be used to block the light from certain directions. The blades are mounted on torque hinges such that the blades will maintain a position once set. D5 discloses light fitting for use in a vehicle where a diffuser is mounted using a torque hinge which is intended to interact with a retaining catch to limit vibrations caused by vehicle movement.

49. The Request asserts that such torque hinges would fall within the scope of the skilled person's common general knowledge. The argument is made initially without reference to D3-D5 using stiff hinges on doors or container lids as examples showing that torque hinges are known generally. D3-D5 are then introduced later in a separate argument.

50. The Observations argue that the stiff door/container hinge examples do not suggest that torque hinges would be common general knowledge in the lighting art. The Observations are do not specifically comment about whether D3-D5 show that torque hinges are common general knowledge in the lighting art. The Observations present one argument that the objection based upon D3-D5 relies upon hindsight without directly saying that torque hinges are not common general knowledge. The Observations make a second argument that there is an inventive step due to the delay in using interference fits in light diffuser fastenings which seems to rely upon torque hinges being common general knowledge.

51. The Reply then reiterates that torque hinges are known generally and the skilled person would know of them from broader experience.

52. Considering all of these arguments it is my opinion that the Request has presented sufficient evidence to show that torque hinges in general are commonly known both generally and specifically in the lighting art. However, no evidence has been shown of the use of torque hinges in two-element fastenings similar to that claimed whether in the lighting art or elsewhere. Hence, it is my opinion that the use of torque hinges in two-element fastenings are not part of the skilled person's common general knowledge.

53. Whilst the prior art is discussed in terms of torque hinges, hereafter I will simply refer to interference fits for convenience and clarity on the basis that torque hinges would fall within the scope of interference fits as construed above.

Identifying the inventive concept

54. Claim 1 has been construed above.

55. The Request adopts an ‘inventive concept’ from the pre-grant correspondence where the fastening can be held in an undeployed position where it would not get in the way of someone installing a diffuser. However, claim 1 does not explicitly specify that the fastening will be held in an undeployed position or a position which does not get in the way of diffuser installation.

56. From my construction of the ‘pre-determined force’ it follows that the interference fit will hold the fastening element in some position.

57. Whilst all fastenings of this type hold themselves stably in the ‘deployed’ position, whether attaching a diffuser or keeping closed some container, the interference fit may still work to hold the fastening in the deployed position. Hence, I think that no limitation on a held position can be assumed.

58. Hence, it is my opinion that the inventive concept is a light fitting with diffuser fastenings made up of two pivotable elements wherein an interference fit between the elements can hold them in some position until a rotational force is applied.

Difference from the prior art

59. The Request asserts that D2 discloses a light fixture with diffuser fastening made from two elements which are pivotably attached to each other and one of which is pivotably attached to the light fixture base.

60. The Observations accept that this is disclosed by D2, and also provide a data sheet for another light fixture which the Observations say discloses a similar light fixture with similar diffuser fastenings.

61. The Request identifies the difference between D2 and claim 1 to be the use of “an interference fit which limits rotation … until a predetermined rotational force is applied …” and the Observations mostly agree on this point but reiterate that it is specifically the pivot between the first and fastening elements that has the interference fit.

62. Hence, the Request and Observations substantially agree upon what is disclosed by the prior art and what the difference between the prior art and claim 1 is. When considering obviousness I will consider initially whether interference fits in general would be obvious and then consider the pivot specific aspect if necessary.

Do the differences constitute obvious steps?

63. The Request makes an initial argument that using an interference fit would be an obvious step to take starting from D2 with little explanation. The argument seems to be that the skilled person knows about torque hinges and hence it is obvious to use them.

64. Then in a discussion of D3-D5 the Request says

> *The Requester submits that a designer of lighting and light fixtures (notional skilled person) at the priority date who wished for the fastening elements of the base to be held out of the way when positioning the diffuser against the base would have thought to use friction within the hinge to achieve this objective without exercising any inventive activity.*

65. This seems to make an additional point not present in the argument made in relation to D2, namely that the skilled person wishes to hold the fastening elements out of the way of diffuser positioning. The reasoning why the skilled person wishes this is not clearly set out.

66. The Request also asserts after a discussion of D3-D5 alone that claim 1 is obvious. It is not clear if this is supposed to be a standalone argument or a reiteration of the argument based on D2 when viewed using the knowledge provided by D3-D5. Starting with D3-D5 the skilled person would have to move to a completely different type of light fitting (D3 and D4) or a completely different kind of diffuser mounting (D5) to arrive anywhere near claim 1. These are not plausibly obvious steps to take so I do not think that a standalone argument was intended (and that it would fail if it was).

67. The Request notes (e.g. in the passage relating to *Pozzoli* step 2 spanning pages 5 and 6) that claim 1 does not specify that the fastening element is held in an undeployed position or in a position where it would not interfere with installation of a diffuser, which were prominent aspects of pre-grant arguments. Whilst this could potentially point to claim 1 lacking obviousness due to a lack of technical advantage, the point was not developed and has thus not been argued sufficiently for me to properly reach an opinion on it.

68. The Observations argue that the skilled person would not automatically adapt the clips of D2 to include torque hinges, with the presumed implication that the step of adaptation would not be obvious.

69. The Observations also introduce a line of argument that light fittings with two-part fastenings have been known for several years and that torque hinges have been known for several years and that the fact they have not been combined previously suggests that the combination is inventive and not obvious.

70. The Reply reiterates the original arguments but with the reasoning originally applied to D3-D5 also mentioned when discussing D2

> *Therefore, the notional skilled person looking to provide "one or more securing clips/devices which secure a lighting diffuser to the base of the light fixture, but which can be held in an "undeployed" position as to avoid getting in the way of the installer when they are bring the diffuser into engagement with the base" could be expected to have been aware of the use of torque or friction hinges in the field of lighting and light fixtures, as discussed above*

71. The argument in the Request could be thought of in terms of whether interference fits are 'lying in the road' or perhaps being something that would be selected through normal workshop design.

72. The Request does show that interference fits in general are commonly known in the lighting art through D3-D5. However, none of the submissions show an interference fit being used in a two-element fastening in any field, let alone in lighting. Thus, the skilled person would have to simply take the known interference fit and adopt it within a two-element fastening, something which the lack of evidence suggests this is by no means a normal or routine behaviour.

73. Hence, I do not think the evidence indicates that interference fit two-part fastenings are lying in the road to be adopted or something common enough that it would be selected as part of routine workshop practice. Hence, in my opinion the argument made in the Request does not establish that claim 1 is obvious in light of D2.

74. The revised argument made in the Reply relies upon the skilled person wishing to have the fastening element held out of the way of diffuser installation, which leads to the question of whether that wish existed in the mind of the skilled person.

75. I note that the issue of fastening elements getting in the way of diffuser positioning is raised in the Patent rather than in of the any prior art documents. The Request does not provide evidence that it was known in the art at the priority date of the Patent that fastening element/diffuser interference was causing installation problems. Indeed, the Request does not even seem to explicitly assert or discuss this issue. It is simply taken as a starting point for the argument without justification.

76. The Observations make an argument, at '5. Delay and Inventive Step', that because both two-element fastenings used to attach diffusers and interference fits in general had been known for several years before the priority date of the Patent the decision to combine them together represents an inventive step. In this regard the Observations state (p5 lns 36-39)

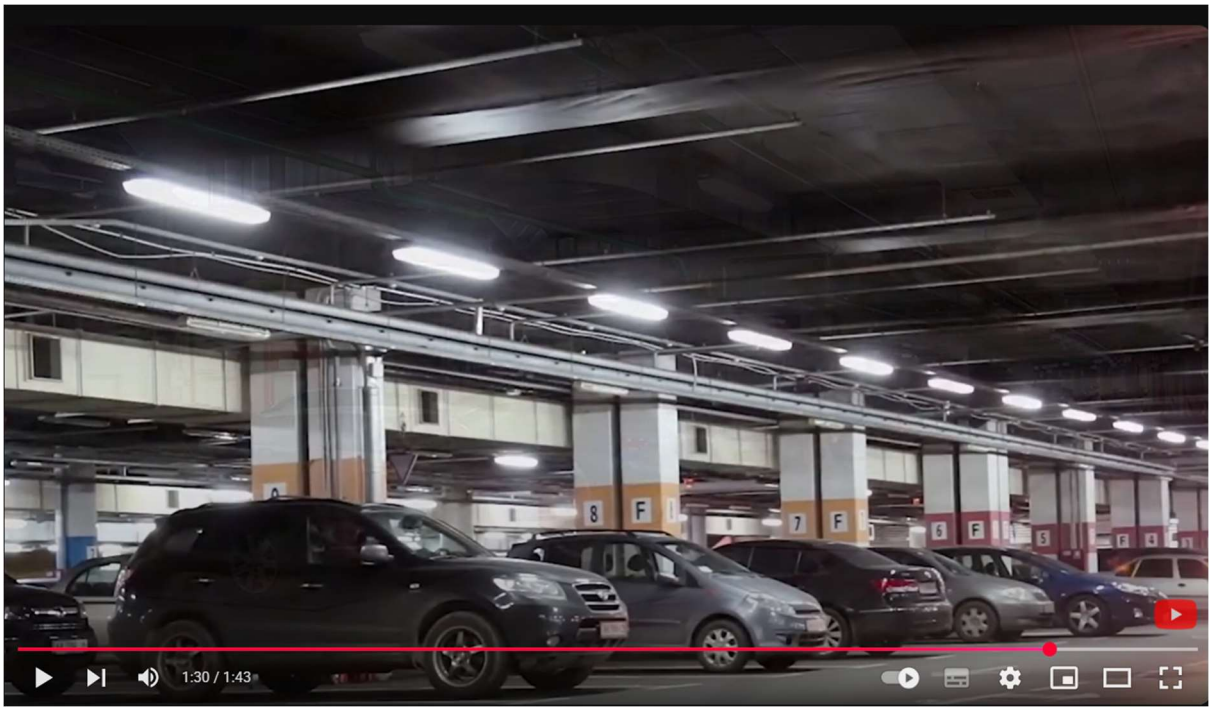
> *Therefore, if documents D3-D5 are considered to be disclosures of interference fits then at very least it can be said that the Patentee has solved a long-established problem in the lighting field using means others could have used but did not.*

77. However, this section does not mention fastening element/diffuser interference and it is not apparent whether the 'long-established problem' is that of fastening element/diffuser interference or of how to hold a fastening element in a desired position.

78. Whilst the 'delay' argument in the Observations gives me some pause, I think overall that the evidence and argument provided is insufficient to establish that the skilled person's knowledge at the priority date of the Patent would have included fastening element/diffuser interference was a problem that needed to be solved.

79. Would the problem have been apparent to the skilled person from watching the video of D2?

80. The latter part of the video of D2 shows lights installed in a 'normal' diffuser down arrangement (e.g. at 1:30)



81. Conversely, the close-up shots mostly show the light fixture in a diffuser up arrangement (e.g 0:17)

82. In this diffuser up orientation the fastenings clearly fall away under gravity and do not get in the way of diffuser installation.

83. There are no shots of ‘undeployed’ fastenings in a diffuser down orientation, but a ‘deployed’ fastening is shown in this orientation (0:07).

84. From this it can be envisaged how the fastenings would behave if undeployed and hanging loose.

85. The picture shows that the light fixture base has a lip around it and the first element of the fastening is attached near the inner edge of the lip. When undeployed that first element will almost certainly fall outwards to lie across the lip. If the first element is shorter than the lip the fastening element will rest against the corner of the lip with its bottom end angled slightly outwards. If the fastening element is longer than the lip it will lie flat on the lip with the fastening element hanging substantially vertically downwards.

86. Were the light fixture to be mounted along a wall the lower fastenings would fall away, similar to the diffuser up condition, and the upper fastening would probably have a stable position resting on the top of the base.

87. In each circumstance the fastening element is likely to rest outside the width of the diffuser. I do not think that the skilled person looking at this would conclude that the undeployed fastening elements of D2 would interfere with the installation of the diffuser to a problematic extent.

88. Hence, from the evidence provided I do not think that the skilled person would, as stated in the Request and Reply, ‘wish’ to or ‘look to’ hold the fastening elements out of the way of the diffuser to a greater extent than already happens in D2.

89. The Request does not suggest any alternative basis which would motivate the skilled person to want to hold the fastening element at some position or use an interference fit for some other reason. Similarly, I can see nothing in the video of D2 which suggests a problem or some other thing which would motivate the skilled person to wish to hold the fastening element.

90. Absent the problem identified in the Patent or other motivation I do not think that it

would be obvious to the skilled person to try using a two-element fastening with an interference fit in the D2 light fixture and claim 1 is not rendered obvious by D2.

91. Since the above analysis disposes of the arguments made in the Request and Reply without need to reference the 'delay' issue raised in the Observations I do not think that it is necessary to explore the 'delay' issue further.

92. Whilst other approaches to assessing obviousness are known these have not been argued in the Request or Observations and so there is insufficient basis for me to form an opinion on them.

93. Since I do not think that claim 1 is rendered obvious by D2 it is not necessary to specifically consider the obviousness of the dependent claims.

Opinion

94. It is my opinion that claim 1 of the Patent is not obvious in light of D2.

95. It is my opinion that claims 2-17 of the Patent are also not obvious by virtue of their dependence upon claim 1.

Owen Wheeler
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.