

PATENTS ACT 1977

IN THE MATTER OF an application
under section 72 by Silkbill Limited
for the revocation of Patent No GB2240558
in the name of Ash & Lacy Building
Products Limited

DECISION

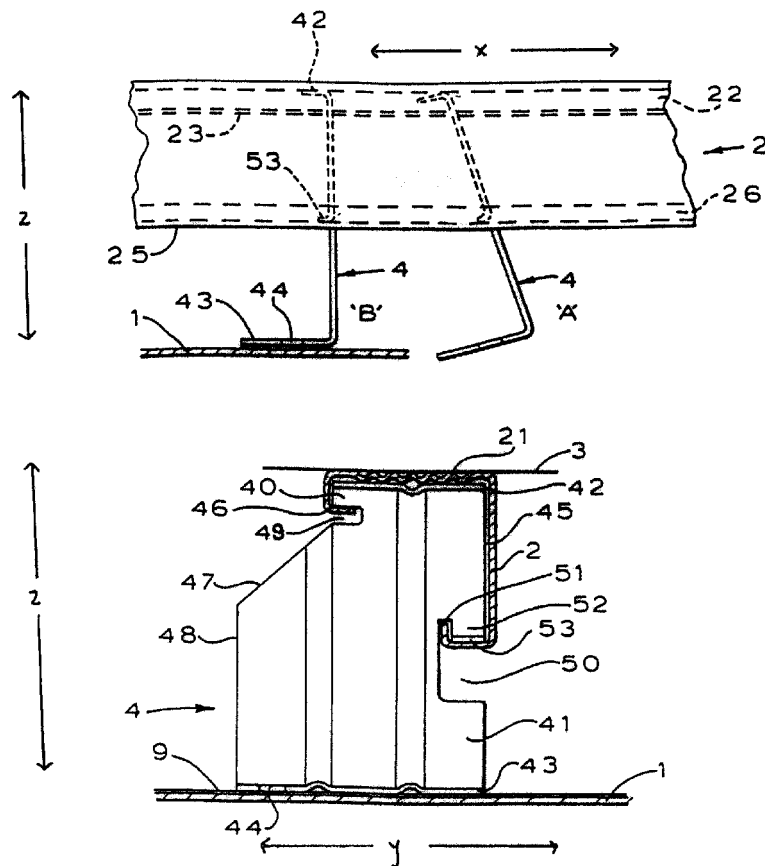
Introduction

1. On 21 March 2000 Silkbill Ltd initiated proceedings under section 71 of the Patents Act 1977 for a declaration of non-infringement of any of the claims of Patent No GB2240558, in the name of Ash & Lacy Building Products Ltd., by a roofing system which they intended to produce, samples of the products being exhibited. Following the filing of the patentee's evidence in answer in which they gave a particular, and disputed, interpretation to the last clause of claim 1 of their patent, Silkbill Ltd initiated these revocation proceedings under section 72 of the Patents Act 1977. Subsequently the parties agreed to settle their dispute and the applicant for revocation withdrew unconditionally from the proceedings.
2. Where, as in this case, an applicant withdraws from the revocation proceedings it is long-standing practice that the Comptroller considers whether she should accept the notice of withdrawal or whether there are questions which should be considered further in the public interest. In the present case a central issue is the construction of claim 1 and, at first instance in *Glaverbel v British Coal* [1994] RPC 443, it was held that, to construe the specification to determine the scope of the claims, the specification:-
“must be read as a whole in the light of the surrounding circumstances as at the date of publication of the specification ... and without regard to the alleged subsequent infringement or the subjective thoughts, intentions, purposes, or opinions of the patentee or its witnesses, or the subsequent conduct of the patentee,”
Therefore, before considering the revocation action, it is necessary to determine the scope of the claims and in particular the meaning to be given to the disputed clause of claim 1.

The patent

3. The patent relates to an arrangement for supporting a membrane spaced from a primary structural member such as a wall or a roof. As shown in the figures which are taken from the patent specification (but with axes added) and which represent one embodiment of the invention, a system is described in which, with the length of support member 2 disposed along the x axis, bracket 4 is slid along member 2 at an angle to the vertical (z) axis, as shown at 'A', until it reaches its required position. It is then rotated about the y axis to a vertical disposition, as shown at 'B', to provide a spacer between the structural member 1 and membrane 3. In this position abutment 53 prevents rotation of the bracket about the z axis. This obviates the disadvantage of the prior art in which the bracket was inserted vertically but at an angle to the x axis and then twisted (about the z axis) to bring

it into position, and hence could rotate and work loose.



4. Claim 1 of the granted patent reads :-

“A wall or roofing sub-structure comprises a membrane carried by a support member, said membrane and said support member being spaced apart from a primary wall or roof structural member, wherein said sub-structure includes a support member having an angled cross section defining a hollow interior and a bracket spacer element means having a first portion in locking engagement with said hollow interior of said support member and a second portion for securing to said primary structural member;
said bracket element being formed of a sheet material having opposed edge portions and an upper face extending between said edge portions, said edge portions including first and second slots, directed inwardly thereof, said slots and said upper face and/or said edge portions defining first and second tongue portions;
said support member having a support head to which said membrane is secured and first and second receiving members in which said first and second tongue members of said bracket are received,
said first portion of said bracket further including an integral anti-rotating element acting between a said receiving member and an internal portion of said support member whereby rotation of said bracket normal to the longitudinal axis of said support member is prevented.”

Interpretation of claim

5. The extent of protection provided under the Act is defined by Section 125(1) which reads:-

“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.”

6. I note that, since the bracket is inserted into the support member by rotation about the y axis, this permitted rotation is itself about an axis which is normal to the longitudinal axis of the support member. At the Court of Appeal in *Glaverbel v British Coal* [1995] RPC 255 it was stated :-

“If there is any uncertainty as to the meaning of the claim then recourse might be had to the body of the specification to resolve that uncertainty.”

Hence it is legitimate to refer to the specification to resolve any ambiguities in the construction of the claim 1 and it is clear from reading the description that the axis about which rotation is prevented is the axis normal to the plane in which the head 21 of the support member lies, i.e. the axis which I have called the z axis.

7. The patentee, having argued in the section 71 proceedings that the wording of the clause in dispute permitted some rotation of the bracket, has argued in these proceedings that the clause should be interpreted purposively to mean that only sufficient rotation (about the z axis) to allow the bracket and support member to come apart is prevented. However I can see no grounds to support such an interpretation. In the patent in suit rotation about the axis in question plays no part in the assembly of the support member and bracket - engagement and disengagement is achieved by rotation about the y axis - and hence there is no reason why these constructional constraints should be read into the clause. Furthermore the problem identified with the prior art which this patent seeks to overcome is that “the bracket may be caused to rotate and thereby become loose and allow relative movement”. This seems to me to be identifying as the problem to be resolved the prevention of the amount of rotation that would result in a somewhat rickety construction rather than the larger amount of rotation that would result in separation of the two parts. The particular description makes it quite clear that rotation about the z axis is prevented in all the embodiments. In my view a person of ordinary skill in the relevant art having read the description would construe the claim giving the language used its normal meaning; that the anti-rotating member referred to in the last clause of claim 1 is such that substantially no rotation of the bracket about the z axis is permitted.

Decision

8. Having determined that the last clause in claim 1 should be given the above interpretation I have reviewed the papers and considered the objections raised by the applicants. I conclude that a case for revocation has not been made and accordingly I make no order for revocation of the patent. Since both parties have indicated that they do not wish to

pursue an award for costs, I make no order for costs.

Dated this day of April 2001

MRS J A WILSON
Deputy Director, acting for the Comptroller

THE PATENT OFFICE