



**PATENTS ACT 1977**

APPLICANT

Neil Ims

ISSUE

Whether patent application number  
GB 1001647.5 complies with sections  
1(1) and 14(5)

HEARING OFFICER

Mrs S E Chalmers

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**DECISION**

**Introduction**

- 1 Patent application GB 1001647.5 entitled “Moveable enclosed dog wash” was filed on 2 February 2010 with no priority claim. The application was accorded “Green Channel” status (and thus subject to accelerated processing) and was published as GB 2464424A on 21 April 2010. The examiner has maintained throughout that the invention claimed lacks novelty, does not involve an inventive step and is not clear. In response, rather than file amendments, Mr Ims has chosen to submit arguments disputing these objections, which he is of course entitled to do.
- 2 Despite a number of attempts by the Office to arrange a hearing, Mr Ims has declined to express a preference on the options available to him, namely, a hearing in person, a telephone hearing or a decision on the papers. In particular, he has repeatedly disputed whether the Comptroller has the power to delegate his authority to designated IPO officials (“Hearing Officers”) as provided for in Section 74 of the Deregulation and Contracting Out Act 1994, which states that the Comptroller “may authorise an officer of his to exercise any function of his which conferred by or under any enactment”<sup>1</sup>.
- 3 The latest deadline set by the Office has now passed and, in the absence of a reply from Mr Ims and as foreshadowed in the last Office letter, the matter has come to me for a decision on the papers.

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<sup>1</sup> The full authorisation is reproduced at paragraph 130.05 of the Manual of Patent Practice at <http://www.ipo.gov.uk/practice-sec-130.pdf>

## The application

- 4 The application is concerned with a self-service movable enclosed dog wash that is formed from a shipping container. The invention is stated to be more environmentally friendly than existing arrangements as it cuts down water wastage and is more convenient for the dog owner since no prior appointments eg with a grooming salon, are required.

## The claims

- 5 I have made my decision based on the claims as filed. There are 4 claims as follows:
1. *A shipping container as a dog wash and a means for transporting said dog wash, comprising a moveable enclosure and internal dog wash layout.*
  2. *A shipping container according to claim 1, in which external doghouse architecture and art are substantially comprised of wood or wood effect exterior panels, apex roof, and a flat black arch-shaped illusion of an opening at the front.*
  3. *A shipping container according to claim 2, in which internal layout is substantially comprised of low profile dog steps, prep station, wash station and dry station each having composite soft-impact surfaces, overhead lighting and safety components.*
  4. *A shipping container according to claim 3, with internal dog wash ambience.*

## The Law

- 6 The examiner has maintained that the invention claimed lacks novelty, does not involve an inventive step and is not clear. To avoid over- complicating things, I would not normally use patent jargon or refer to sections of the Patents Act 1977<sup>2</sup> in a decision where the applicant is unrepresented. However, it is clear from the correspondence that Mr Ims is comfortable with legal terminology so I will do so to make plain the legal basis for the objections addressed by this decision.
- 7 Section 1(1) states that a patent may be granted (amongst other things) only for an invention that is new and involves an inventive step.
- 8 Section 2 defines what is meant by new or “novelty” to use the legal term:
- 2(1) An invention shall be taken to be new if it does not form part of the state of the art.  
2(2) 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.*
- 9 Section 3 defines what is meant by “inventive step”:
- 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*
- 10 In other words, anything that was made public prior to the filing date of the

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<sup>2</sup> <http://www.ipo.gov.uk/patentsact1977.pdf>

application, regardless of the country, language or medium, can be used to dispute whether the invention claimed is new or inventive. “Involve an inventive step” means that the invention, when compared with what is already known, would not be obvious to someone with a good knowledge and experience of the subject. For example, an invention would be obvious if the only difference between it and what was known was the result of applying common general knowledge or adding a feature which was well known.

- 11 Section 14 sets out various requirements for a patent application. Specifically, the relevant parts of section 14(5) state:

*14(5) The claim or claims shall -  
(a) define the matter for which the applicant seeks protection;  
(b) be clear and concise;  
(c)...;  
(d) ...*

- 12 The purpose of these legal requirements is to ensure that a third party can be certain what is protected by the patent and so avoid infringing the rights of the patentee.
- 13 Mr Ims has also made reference in his correspondence to UK precedent case law to support his assertion that he is entitled to grant of a patent. I do not propose to review these precedents in detail since I do not consider they are relevant to the facts of the current application.
- 14 Mr Ims is correct in saying that the UK has a “first to file” patent system; however, the act of filing of a patent application for an invention does not, in itself, confer an automatic entitlement to the grant of a patent. In particular, it is not enough that the applicant is the first to file a patent application for a new invention. To get a patent, that patent application – and specifically the invention as claimed – must meet all the requirements of UK patent law. The purpose of this decision is to decide whether Mr Ims’ application does or does not do that.

### **Clarity**

- 15 I shall start by considering whether the claims clearly define the invention for which Mr Ims seeks protection.
- 16 The examiner considers that claim 1 is unclear but, as far as it can be understood, is not restricted to a shipping container; rather it claims any movable enclosure containing dog wash facilities. The applicant disagrees and is of the view that the claims relate to a shipping container which is fitted out with internal dog washing facilities. From the correspondence, Mr Ims also seems to be arguing that the internal layout of the dog wash is essential to the invention although this is at odds with the description on page 1 which says that: *“Preferably the unit is comprised of at least one prep, one wash and one dry station”*.
- 17 Claim 1 specifies: “A shipping container as a dog wash and a means for transporting said dog wash, comprising a moveable enclosure and internal dog wash layout”. The phrase “... as a dog wash and a means for transporting said

dog wash, ...”, in my view, seems to be simply describing the function of the shipping container ie what is it used for, rather than relating to any technical features. On a straightforward reading, the subject of the claim is therefore “a shipping container” (which is consistent with Mr Ims’ argument). The claim then goes on to say that this shipping container comprises (or includes) “a moveable enclosure and internal dog wash facilities”. However, this wording is inconsistent with the statement on page 2 which states that “*the moveable enclosed dog wash is preferably constructed from readily available shipping containers, although the enclosure can be fabricated from scratch using suitable materials*”.

- 18 Although the crux of the invention appears to be the conversion of a shipping container to a dog washing facility, the inconsistency between claim 1 as presently worded and the description means that the precise scope of all of the claims is unclear. This inconsistency casts doubt on the scope of the claims although it would appear from the correspondence that the applicant’s intention is that the shipping container and the movable enclosure are the same thing. In particular, claim 4 which is defined in terms of an intangible, rather than a physical feature, is meaningless as “ambience” is something which is subjective to the individual rather than being capable of precise definition. I therefore find that the claims lack clarity.

### **Novelty**

- 19 I have found the scope of claim 1 is such that it covers any movable enclosure which includes dog washing means. On the basis of that wording, the examiner has objected that the invention set out in the claims is not new (lacks novelty) with regard to the following documents:

(Doc A) <http://www.dogwashonline.com/modular.htm> (Page dated as available from 14/09/07)

(Doc B) WO 93/13653 (JACQUES) See especially figures

(Doc C) JP 2004016155 (HIRAO) See especially WPI abstract Accession No. 2004-113890 [12] and figures

(Doc D) FR 2747011(BARRAIRON) See especially WPI abstract Accession No. 2004-113890 [12] and figures

- 20 All four documents listed above show movable enclosures that are equipped with dog washing facilities. The enclosures are movable so as to be located in a convenient location. Washing and drying stations (with the exception of Doc C), lighting and electricity points are common features in the enclosures. Doc A describes a free-standing modular dog wash facility fitted out with a single washing and drying area. It has an apex roof, aluminium framed glass windows, clad steel walls and an open entrance that can be transported on a trailer. Doc B describes a mobile cabin with made of steel clad with painted wood fitted out with separate washing and drying facilities. Doc C describes a greenhouse-like structure with an apex roof fitted out as a dog wash although there appear to be no drying means. Doc D describes a cabinet made, for example, of steel comprising separate dog washing and drying facilities and

which appears to be movable. In addition, Docs A, B and D all describe a self-serve coin-operated dog wash facility as envisaged in the application.

- 21 I therefore find that the claimed invention is not new. However, if the claims (and description) were restricted to “a movable enclosure comprising a shipping container containing dog wash facilities” or to “a shipping container containing dog wash facilities”, then they would meet the novelty requirement. However, these amended claims would also need to involve an inventive step and, for completeness, I shall now go on to consider this issue.

### **Inventive step**

- 22 When considering whether the claims involve an inventive step, current practice dictates that I must apply the four-step test set out by the Court of Appeal in *Windsurfing*<sup>3</sup> and restated by that Court in *Pozzoli*<sup>4</sup>. These steps are:

(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, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?

- 23 Starting with step 1(a), I have identified the notional person skilled in the art to be someone such as a dog owner, the owner of a dog washing facility or kennels, or somebody who runs a pet care business. I have identified that the common general knowledge of that person would be all matters concerned with the care and upbringing of dogs and the facilities and tools required to do this (step 1(b)).
- 24 For the purpose of this decision and because claim 1 is not clear, I will base my assessment on a theoretical version of claim 1 which is restricted to shipping containers containing dog washing facilities. I have identified this as the inventive concept in accordance with step 2.
- 25 Moving on to step 3, I consider the following matter represents the “state of the art”:
- a) Mobile dog washes are well known and are discussed in the above paragraphs under “Novelty”.
  - b) The conversion of shipping containers to houses, self contained units, cafes, decontamination units and animal housing amongst other things is

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<sup>3</sup> *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd* [1985] RPC 59

<sup>4</sup> *Pozzoli SpA v BDMO SA* [2007] EWHC Civ 588

very well known. The following website is an example of many available which show converted containers:

[http://www.1stcontainers.co.uk/conversions.aspx?gclid=COy49p\\_H2aECFVVo4wod0nNAIA](http://www.1stcontainers.co.uk/conversions.aspx?gclid=COy49p_H2aECFVVo4wod0nNAIA)

The website states that “containers can be converted for virtually any requirement”.

- c) WO 00/78129, which was cited by the examiner, discloses a shipping container converted into animal accommodation. This conversion includes a water supply and drainage facilities.

26 The differences between the matter forming the state of the art and the invention are:

- a) Whilst it is known to convert shipping containers for alternative uses, including conversion into an animal facility, a shipping container has never been converted into a dog wash facility.
- b) Whilst it known to have portable dog washes, the units used are usually specifically fabricated for that purpose.

27 Finally, to answer the question posed in step 4: In my opinion, taking these differences into account, a notional person skilled in the art wanting to create a mobile dog wash facility would not be undertaking any degree of invention in converting a shipping container to provide such a facility.

28 I therefore find the claimed invention lacks an inventive step.

### **Conclusion**

29 I have found that the claims as currently worded lack clarity and, in so far as they can be understood, also lack novelty and do not involve an inventive step. I have read the specification carefully but am unable to identify any saving amendment. I therefore refuse the application.

### **Appeal**

30 If Mr Ims disagrees with my decision, he has a right of appeal to the Patents Court. Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days of the date of this decision.

**MRS S E CHALMERS**

Deputy Director acting for the Comptroller