

PATENTS ACT 1977

APPLICANT Thomas R Cann

ISSUE Whether patent application
GB 2457647A should be refused
for lack of novelty

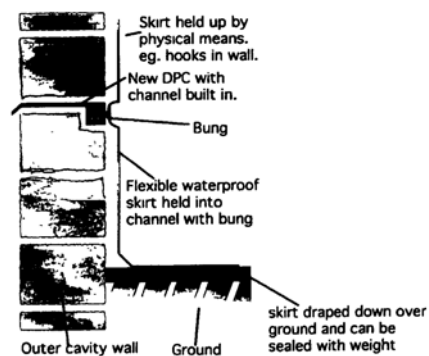
HEARING OFFICER Stephen Probert

The applicant, Mr Cann, represented himself at the hearing

Hearing date: 17th October 2012

ORAL DECISION

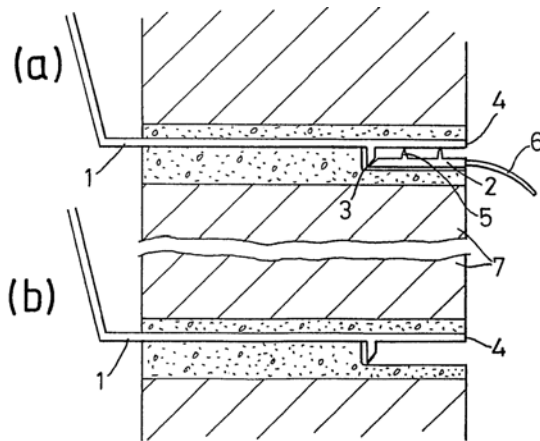
- 1 The invention described in the application, and explained to me by Mr Cann at the hearing, is a flood protection system comprising two elements: a fixing channel suitable for attaching to the edge of a damp proof membrane, and a flood skirt with a fixing bead that is a watertight fit in the fixing channel. The main attraction of the invention is to provide flood protection above the level of the damp proof membrane in a wall. Figure B from the application (below) illustrates the invention well.



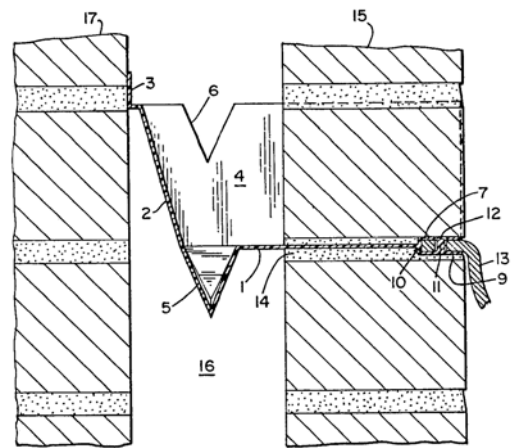
- 2 The examiner has reported that the invention is not new. This is because the claim is drafted very broadly, and the examiner considers that three earlier patent documents fall within the scope of the claim.
- 3 There is only one claim in the application. It has been amended during the examination process and now reads as follows:—

1. A damp proof connector channel that is fitted to a conventional damp proof course in a building which allows another damp proof membrane to be fixed to it on a permanent or temporary basis and will maintain the integrity of the whole damp proof area thus providing a barrier against rising water.

- 4 After describing to me how his invention works, Mr Cann said that it is very different to the arrangements shown in the three cited patent specifications. Two of the cited specifications (GB 2263288A & GB 2193516A) relate to cavity trays with external-facing connector strips for receiving eg. lead flashing. As Mr Cann said, the lead flashing that would be used with these cavity trays would hang down from the connector, and would not provide any protection against flood water rising above the damp proof course. The cavity trays typically look like this:-



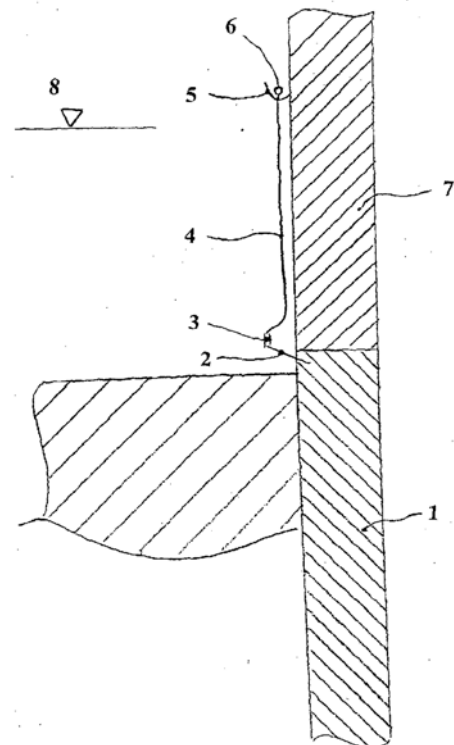
GB2263288A Fig. 2



GB2193516A Fig. 3

- 5 The third specification (EP 1528187A1) relates to a flood protection system in which a connector for receiving a flood skirt is attached to a portion of a building that is already damp proof — ie. it doesn't attach to the edge of a damp proof membrane.

- 6 I accepted Mr Cann's analysis of these cited specifications. It appears to me that the problem is not that Mr Cann's invention (as described) is disclosed in these earlier documents, but rather that the scope of his claim is so broad that it encompasses all three disclosures, and possibly others too. As a result, the claim is anticipated.



EP1528187A1 Fig. 1

The Law

- 7 Section 1(1) of the Patents Act says that a patent may be granted only in respect of an invention if it is new.
- 8 Section 2 explains what 'new' means:-

(1) An invention shall be taken to be new if it does not form part of the state of the art.

(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 125(1) sets out the meaning of an invention as being that specified in a claim, as interpreted by the description and any drawings. It 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.”

10 In its current form, the claim defines a connector channel that is fitted to a conventional damp proof course (which need not be a damp proof membrane), and into which a damp proof membrane (eg. flood skirt) may be permanently or temporarily fixed. As such, I believe it is anticipated by all three of the cited specifications. For example, it would be possible to attach a waterproof membrane into the channel of either of the known cavity tray examples (GB 2263288A or GB 2193516A) and hold the membrane up above the damp proof course to provide a barrier against rising flood water. I noted also that the third citation, EP 1528187A1, shows a connector channel fitted to a damp proof course (NB. not a membrane) with a flood skirt (4) attached and in just such a position.

11 For these reasons I consider that the invention **as claimed** in this application is not new — ie. because the scope of the claim encompasses a connector channel such as is described in each of the three cited specifications.

12 However, it was clear to me that it should be possible to amend the claim in such a way as to define a new and non-obvious invention. An example of a suitable claim had in fact been proposed during the examination process. I therefore allowed Mr Cann a period of three weeks in which to amend the claim to overcome the novelty objection. I also reminded Mr Cann that it would be necessary to make some minor consequential amendments to the description of his invention to ensure that it is consistent with an amended claim. Mr Cann will also need to extend the compliance period which expired on 7 September 2012.

Summary

13 At the end of the compliance period, this application was not in order. Therefore, unless the compliance period is extended, and the existing claim is amended to overcome the lack of novelty, **on or before 7 November 2012**, this application will be refused under section 18(3) for failure to comply with section 1(1)(a). On the other hand, if the claim is amended to follow the example given in the examination report of 30 December 2011, then the application shall be remitted to the examiner in order to be sent to grant.

Appeal

- 14 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

S PROBERT

Deputy Director acting for the Comptroller