



PATENTS ACT 1977

BETWEEN

Cronapress Limited	Proprietor
and	
Industrial Control Systems Limited	Opponents

PROCEEDINGS

Application under section 74B for a review of Opinions 08/12 and 16/12, both in respect of GB2477486.

HEARING OFFICER

Phil Thorpe

DECISION

Introduction

- 1 This is a review of opinion 08/12 (“the first opinion”) and opinion 16/12 (“the second opinion”) under section 74B of the Patents Act 1977 (“the Act”). Both opinions related to GB 2477486 (“the patent”) in the name of Cronapress Ltd. The first opinion, which was requested by Cronapress, concluded that the patent was not infringed by a product known as Strike-Point which was manufactured and sold by Industrial Control Systems Ltd. The second opinion, which was requested by Industrial Control Systems Limited, concluded that the invention in the patent was obvious.
- 2 Cronapress Limited has requested reviews of both opinions under section 74B of the Act. The request that both opinions be set aside is resisted by Industrial Control Systems Limited. The matter came before me at a hearing on 18th March 2014. Mr Richard Gover of Harrison Goddard Foote appeared for Cronapress Limited and Ms Vanda Pichova of Franks & Co. appeared for Industrial Lighting Control Systems Limited.

The Law

- 3 Reviews of opinions are provided for under section 74B. This reads so far as is relevant as follows:

Rules may make provision for a review before the comptroller, on an application by the proprietor or an exclusive licensee of the patent in question, of an opinion under section 74A above.

(2) The rules may, in particular –

(a) prescribe the circumstances in which, and the period within which, an application may be made;

4 Rule 98 of the Patents Rules 2007 sets out the grounds on which a review can be requested. It reads:

(5) The application may be made on the following grounds only-

(a) that the opinion wrongly concluded that the patent in suit was invalid, or was invalid to a limited extent;

(b) that, by reason of its interpretation of the specification of the patent, the opinion wrongly concluded that a particular act did not or would not constitute an infringement of the patent.

5 The purpose and scope of a review under section 74B was clarified by Kitchen J in *DLP Limited*¹ where at paragraph 22 he stated:

In the case of an appeal under rule 77K, the decision the subject of the appeal is itself a review of the opinion of the examiner. More specifically, it is a decision by the Hearing Officer as to whether or not the opinion of the examiner was wrong. I believe that a Hearing Officer, on review, and this court, on appeal, should be sensitive to the nature of this starting point. It was only an expression of an opinion, and one almost certainly reached on incomplete information. Upon considering any particular request, two different examiners may quite reasonably have different opinions. So also, there will be opinions with which a Hearing Officer or a court would not agree but which cannot be characterised as wrong. Such opinions merely represent different views within a range within which reasonable people can differ. For these reasons I believe a Hearing Officer should only decide an opinion was wrong if the examiner has made an error of principle or reached a conclusion that is clearly wrong. Likewise, on appeal, this court should only reverse a decision of a Hearing Officer if he failed to recognise such an error or wrong conclusion in the opinion and so declined to set it aside. Of course this court must give a reasoned decision in relation to the grounds of appeal but I think it is undesirable to go further. It is not the function of this court (nor is it that of the Hearing Officer) to express an opinion on the question the subject of the original request.

6 Consequently, I am required to review the opinions with a view to determining whether the examiner has made errors of principle or reached conclusions that were clearly wrong.

The Patent

7 The invention of GB2477486 relates to an elongate switch which can for example be provided along a wall of a room or corridor in a police station. When pressed, it triggers an alarm to summon assistance.

¹ *DLP Limited* [2007] EWHC 2669

8 Claim 1 of the granted patent reads as follows:

A switch comprising:

an elongate hollow body which is resiliently deformable, the hollow body comprising first and second electrical contact strips arranged so that the contact strips are brought into contact to close the switch when the hollow body is deformed;

an elongate light source coupled to the elongate body along at least part of its length and arranged to shine through at least part of the hollow body to illuminate at least part of the hollow body; and

an elongate channel arranged to support the hollow body and the elongate light source such that the channel partially surrounds the hollow body leaving a portion of the hollow body exposed within an open part of the channel allowing the hollow body to be hit or otherwise manipulated by a user to deform the hollow body within the channel and the elongate light source is positioned between the channel and the hollow body such that light from the elongate light source can pass through the hollow body and through the open part of the channel.

The First Opinion (Opinion 08/12)

9 Cronapress argues that the examiner reached the wrong conclusion in Opinion 8/12 because he erred in his construction of the claim in respect of the expression 'an elongate light source *coupled* (emphasis added) to the hollow body'.

10 The relevant part of the opinion is paragraphs 19-23. These read as follows

"19. Clearly the construction I put on the phrase "*an elongate light source coupled to the hollow body*" will determine whether the product infringes. I am not persuaded by the observer's argument (paragraph 15) that use of the word "coupled" in relation to the corner supports to mean "physically connected" implies that the "coupled" also means the same thing in relation to the light source. The skilled person would I think interpret the word in its context and this context may be different in different parts of the description.

20. Furthermore I am not convinced by the observer's assertion (paragraph 16) that the right hand side of figure 3 shows the light source 48 attached to the hollow body 32. It merely seems to show the light source running behind the hollow body. It is impossible to say whether it is in contact with the hollow body 32 or not.

21. Turning to the description and particularly page 9 lines 29-30 stating:

the light source may be coupled to the channel or activating strip using any conventional manufacturing techniques".

22. This teaches that the light source can be physically attached either to the channel or the hollow body. Page 12 lines 4-6 reinforce this by stating "*light sources extending along the length of the alarm strip may be directly coupled to the channel, or may be secured in other ways beyond a flexible plastic encased lighting strip*". Reading the description from the skilled person's point

of view therefore, it is clear that the light source is positioned in the channel underneath the hollow body and can be attached either to the channel or to the hollow body.

23. Claim1 states that the light source is positioned between the channel and the hollow body and the light source is coupled to the hollow body. If this means “directly attached” to the hollow body then the skilled person may wonder why this limitation is in the claim given the obvious alternative in the description. However the description does seem to use the term “coupled” to mean “directly coupled”. For example it could have said “*the light source may be coupled directly to the hollow body, or (indirectly) via the channel*” but it does not. Furthermore, the patentee is free to choose the language of the claims and may have good reason for such a limitation. I therefore consider that the skilled person would construe “coupled to the hollow body” to mean “physically attached to the hollow body” rather than “linked to the hollow body” via the channel as suggested by the requester.”

- 11 Cronapress submits that the examiner construed the claim too narrowly. It argues that the term ‘*coupled*’ should be construed as not requiring, but also not excluding, a direct physical connection. It argues that the term ‘couple’ is an everyday word whose meaning is unambiguous and requires no special interpretation. It refers to the definition of this term in the Oxford English Dictionary as ‘*to link or combine something with something else*’. In normal usage, the term ‘*coupled*’ does not require a physical contact or connection, but neither does it exclude these alternatives. It goes on to argue that the examiner erred by reading too much into the passage on page 9 of the description. It argues that the skilled person would construe this passage to only mean that the light source and the channel or activating strip are coupled, in the sense that they are linked or combined. No further consideration of the term ‘*coupled*’ would be needed, especially a requirement that there be a physical connection.
- 12 Cronapress argues that the disclosure on page 12, lines 4-6 would not be construed by the skilled person to mean that the light source is only physically attached to the channel. This disclosure, it was submitted, describes only an optional arrangement of the light source which ‘*may be directly coupled*’ to the channel. It further submits that the inclusion of the reference ‘*directly coupled*’ differentiated it from the use of the term ‘*coupled*’ when used on its own. When giving the term ‘coupled’ its unambiguous meaning, the correct construction of claim 1 encompasses any arrangement of coupling between the elongate light source and the hollow body, be there a direct physical connection or otherwise, and also allowed for the possible physical connection between the elongate light source and the elongate channel as set out on page 9 lines 28-30.
- 13 Industrial Control argues that whilst the term ‘*coupled*’ required a certain form of intimacy between objects, for example, railway carriages coupled together, it is how the term is used in the specification which is important. It submits that the disclosure on page 9, lines 28-30, even without making an explicit reference to direct physical connection, should, in light of the use of the phrase ‘*any conventional manufacturing techniques*’, be construed as requiring a physical connection, via the use of screws or similar. It adds also that the claim states that the elongate light source is coupled to the hollow body “along at least part of its length”. Hence if, as Cronapress, argues,

coupled meant also linked to the hollow body by the channel then this reference to “along at least part of its length” would be not make sense.

- 14 As Kitchen J. made clear, the purpose of this review is not for me to give my own opinion on the question that was put before the examiner. Nor is it my role to say whether I agree with the opinion. Rather my role is simply to consider whether the conclusion reached by the examiner was clearly wrong. In this instance I do not believe it was clearly wrong.
- 15 The examiner has set out in the opinion why he came to the conclusion he did. I do not understand Cronapress to be arguing that the examiner did not direct himself correctly in law or that he did not consider the claim in the light of the specification and through the eyes of the skilled person. Indeed the examiner goes to some length to discuss how the term “coupled” is used in the patent and especially in the context of the coupling of the elongate light source to the hollow body. From this he concludes that the requirement in the claim for there to be

“an elongate light source coupled to the elongate body along at least part of its length and arranged to shine through at least part of the hollow body to illuminate at least part of the hollow body;”

requires the elongate light source to be physically coupled to the elongate body. I think this is a reasonable view for him to take given the disclosure in the patent as a whole and in particular the passages he has highlighted in his opinion. This does not mean that another person might not come to a different conclusion, or that that conclusion would be unreasonable. Indeed the likelihood of that in a case such as this where the drafting of the patent is not as precise as it might have been may be high. But what matters is not the breadth of the spectrum of reasonable views but whether the view given by the examiner was outside that spectrum, in other words whether it was clearly wrong. I do not believe it was and hence I can see no reason to set the opinion aside.

The Second Opinion (Opinion 16/12)

- 16 Opinion 16/12 concluded that the patent was obvious to the person skilled in the art in view of prior art identified in the request, these being:

Annex 2: GB2440594 A

Annex 3: <http://youtu.be/7JwC5wzWGNy> uploaded on 20 May 2009.

Annex 4: The Custodial Review, Edition 52, February 2009, pages 22-23, available online at

http://www.custodialreview.co.uk/magazine_pdf/CR52%20for%20web.pdf

- 17 The opinion examiner discusses the question of obviousness in paragraphs 12-32 of his opinion. He starts by setting out the well-established Windsurfing/Pozzoli² approach to determining obviousness. Cronapress accepts that this is the right approach.

² *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59A as restated and elaborated upon in *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

18 There does not appear to be any suggestion that the examiner erred in identifying the notional person skilled in the art. Cronapress argues that none of annexes 2-4 forms part of the common general knowledge. I do not believe that the opinion examiner thought otherwise. In paragraph 14 he clearly states that annexes 2 and 4 do not form part of the common general knowledge. He is silent on annex 3 however it seems clear that he also did not consider this document to be part of the common general knowledge.

19 The next step requires the identification of the inventive concept. The examiner sets this out in paragraph 15 which reads:

“15. According to the patent (page 3 lines 1-5) it was known to use a continuous strip switch as part of an alarm system and which extends along a wall so that it may be hit along any part of its length to activate the alarm. Page 3 lines 9-12 go on to state that the strip switch of the type illustrated in figure 1 (which is taken from GB2440594 – Annex 2) could be used when supported by a metal or plastic channel. The problem addressed by the patent is that with such a switch it would not be apparent to the user that the alarm has been activated when the switch is pressed. According to the patent therefore, the inventive concept is the provision of a switch incorporating an elongate light source arranged to illuminate at least part of the switch when it is pressed. I will also take this to be the inventive concept.”

20 Cronapress argues that the examiner’s assessment of inventive concept is wrong. It points out that whilst one of the advantages of an embodiment of the invention, is that a user may be made aware (through activation of the light source) that an alarm has been activated when the switch is pressed; this was not what is defined in claim 1. Further claim 1 makes no reference to how the illumination may be used. It is instead concerned solely with the construction of the switch.

21 Cronapress goes on to argue that the inventive concept is an elongate switch in which the portion of the switch which must be pressed, in order to activate the switch, can be illuminated without illuminating any other part of the switch. This is referenced on page 4, lines 24-26 and page 15, lines 23-27 of the description. When asked whether this was brought out in claim 1, Mr Gover for Cronapress referred me to the final lines of claim 1 of the patent which read:

‘...the elongate light source is positioned between the channel and the hollow body such that light from the elongate light source can pass through the hollow body and through the open part of the channel.’

22 If light from the elongate light source is passing through the open part of the channel, then according to Mr Gover it must therefore be passing through the portion of the hollow body which is exposed by the channel, which results in the portion of the switch which is illuminated is that portion which is to be hit. The contribution should therefore also include the feature that that the portion of the switch which must be pressed can be illuminated without illuminating any other part of the switch.

23 Industrial Control submits that the inventive concept should be determined by the granted patent which refers to the problem to be addressed, namely how to indicate to a user that the alarm has been triggered when the switch is pressed. Hence it rejected Cronapress assessment of the inventive concept preferring instead the assessment in the opinion.

- 24 I find the arguments of Cronapress slightly more persuasive on this point. I think the examiner has erred in adding a feature into his assessment of the inventive concept that is not warranted by the wording of the claim. This is the requirement that the elongate light source is arranged to illuminate at least part of the switch **when it is pressed**. I would add that the inventive concept suggested by Cronapress is in my view not so obviously correct that it would render any other suggestion, including that of the opinion examiner, as being clearly wrong.
- 25 The opinion examiner considers in paragraphs 17-20 the differences between the three pieces of prior art in Annexes 2-4 and his assessment of the inventive concept.
- 26 The examiner notes correctly in my view that Annex 2 discloses a switch with a hollow body as defined in lines 2-4 of claim 1. Cronapress argues that at the priority date of the application, there was no proper disclosure in Annex 2 of a translucent hollow body. Indeed the particular application to which the hollow body in Annex 2 was directed meant that only a subset of the materials set out in that document was suitable and that did not include any of the translucent materials listed. I am not persuaded by that argument.
- 27 According to the examiner, Annex 3 teaches a wall mounted elongate strip switch, supported by a channel, which when pressed is illuminated from behind by an elongate light source. He goes on to note it is not clear whether the switch in Annex 3 has a hollow body or whether the light source is coupled to the hollow body.
- 28 Cronapress argues that the examiner has read too much into the disclosure of Annex 3. It suggests that all the video of Annex 3 shows is a series of lights, extending from left to right, positioned on top of a black strip. There is nothing to suggest that the lights and the black strip are in any way connected or that the black strip is a channel partially surrounding the elongate light source. It also questions whether the apparatus shown is really a switch, suggesting that the external light activated by the switch may have been activated by someone off camera rather than in response to the person touching the device in the video. Alternatively it argues that the piezo-electric device included in the apparatus is not a switch in the sense that that term would be understood. At most, all that is shown is a piezo-electric device being used to turn the lights off and on. It further argues that the light source does not illuminate through an elongate hollow body as required by claim 1. If the lights were below the hollow body then the lights would not appear as point sources and that there would not be lens glare in the video. Cronapress has provided further evidence for this review in the form of another video purportedly of the same product as shown in Annex 3. Its aim is to demonstrate the nature of the black strip. I attach no weight to this evidence. It is the material that was before the opinion examiner that is relevant in this respect.
- 29 Industrial Control unsurprisingly maintains that the examiner's assessment of Annex 3 is correct in that it discloses an elongate switch supported by a channel, together with a light source, behind the switch, which shines through the switch when the switch is pressed.
- 30 On the disclosure of Annex 3, I have some sympathy with the arguments of Cronapress. I believe that the examiner has read too much into what the video shows. He has wrongly concluded that it shows an elongate switch supported by a

channel. It is in my view not possible to deduce that from the video. The black strip is to my mind just as likely to be a supporting panel or strip onto which the elongate light source is mounted and which extends beyond the elongate light source. I am however satisfied that the examiner's other conclusions as to what this document discloses are not unreasonable.

- 31 I turn next to Annex 4. The examiner states that this discloses a wall mounted elongate strip switch supported by a channel which can be pressed by a person in danger. He goes on to suggest that it also appears to show that the part that can be pressed, or a region bordering that part, is backlit by an elongate light source. He again notes that it is not clear whether the switch has a hollow body or whether the light source is coupled to the hollow body.
- 32 Cronapress argues that the examiner has again erred. In particular he has read far too much into the disclosure. For example there is no clear disclosure of an elongate hollow body, and essentially all that can be discerned from the picture is that there is some other component both above and below the elongate switch. It is not clear that this component is a channel.
- 33 Industrial Control's position is that the examiner was right to take this document as disclosing a supporting channel for an elongate switch.
- 34 On balance I think the examiner's assessment that this document shows an elongate switch supported by a channel is a reasonable one. The examiner was not clearly wrong to suggest that the components above and below the strip switch were part of a channel into which the strip switch is positioned. I would however add that I believe the examiner was wrong to imply from the limited disclosure that the switch was backlit by an elongate light source. There is simply not enough in the disclosure to justify such an assertion.
- 35 The examiner considers whether the differences between the inventive concept and the various disclosures were obvious in paragraphs s 21-28. Paragraphs 24-28 are the most relevant to this review since these explain why the examiner concluded the invention was obvious. These read as follows:

24 It is acknowledged in the patent that hollow body switches of the type disclosed in Annex 2 were known. It is also acknowledged that they were known to be used in an alarm switch by integrating the switch into a supporting channel mounted on a wall, leaving an upper surface exposed to be struck by a user. The patent formulates this as the starting point with the problem being how to indicate to the user that the alarm has been triggered when the switch is pressed. I consider this therefore to be a reasonable starting point from which to determine the question of inventive step.

25. With this as the starting point, would the skilled person be reasonably expected to find Annex 3 or Annex 4 and if found would he be motivated to combine the teachings of either with an alarm switch having a hollow body of the type disclosed in Annex 2?

26. Annexes 3 and 4 lie in the same field as the starting point and so I would reasonably expect them to be found. Annex 4 does not show the light source

illuminating when the switch is pressed (although this is not a requirement of claim 1). It does not clearly show the light source “coupled to the hollow body and arranged to shine through at least part of the hollow body” as required by claim 1. The light source could be sitting adjacent to the switch. Therefore I consider that a combination of Annex 2 and 4 does not disclose the features of claim 1 or render it obvious to the skilled person.

27. Annex 3 discloses an elongate switch supported by a channel as described in claim 1. It also shows a light source behind the switch which shines through the switch when the switch is pressed. Given the stated problem to be addressed, I think the skilled person would find the solution in Annex 3. In other words, in view of Annex 3, it would be obvious to the skilled person to put an elongate light source behind the switch described in the acknowledged prior art of the patent (comprising the switch of Annex 2 supported by a channel) and arrive at claim 1. Claim 1 specifies that the light source is coupled to (as I have construed it physically attached to) the hollow body. This feature is not apparent from Annex 3 but the skilled person would appreciate that the light source should either be attached to the supporting channel or hollow body or both, the variations not being materially important to the inventive concept.

28. The requester has argued obviousness using a combination of Annex 2, 3 and 4, relying on Annex 4 for a disclosure of the supporting channel required by claim 1. However I do not believe Annex 4 is required. As already discussed in paragraph 24 above, the patent clearly acknowledges that Annex 2 combined with a supporting channel as defined in claim 1 was known. The fact that both Annex 3 and Annex 4 disclose a supporting channel for an elongate switch merely reinforces the fact that such supporting channels were well known.”

- 36 Cronapress accepts that Annex 2 could form the starting point for answering whether the differences were obvious, but argues that the question could not be answered by also including those further disclosures taken from the patent in issue.
- 37 It is clear from the above passages from the opinion that the examiner was in part influenced by the patent in issue. In particular he has taken the statement in the patent that

“A continuous strip generally of the form illustrated in figure 1 may be used as part of such an alarm system. The continuous strip switch may be integrated into a metal or plastic channel to support the switch upon the wall, and an upper surface of the switch may be shaped so as to be readily struck by a user in order to activate the switch.”

as indicating that the prior art includes an elongate hollow bodied switch mounted in a channel. But as Cronapress rightly point out, Industrial Control has not provided any evidence of this in its opinion request nor did it base its request on what is acknowledged in the patent in issue. Rather it limited its request to an opinion on obviousness using a combination of Annex 2 with Annex 4 or Annex 2 when combined with Annexes 3 and 4.

- 38 In paragraph 27 the examiner has concluded that the invention of claim 1 is obvious on the basis of the combination of Annex 2 and Annex 3. The examiner has in my view asked the right questions about whether these disclosures can be combined. Cronapress argues that he came to the wrong answers on both of these questions. It argues that a standard literature search would not encompass YouTube and hence the skilled person would not become aware of Annex 3. The examiner clearly thinks otherwise and has in part sought to explain why it would be found. I can see nothing wrong with his reasoning.
- 39 Cronapress also argues that Annex 3 is technically incompatible with the sort of arrangement shown in Annex 2. I am not persuaded that the examiner erred in saying that the skilled man would be minded to combine these pieces of prior art.
- 40 This leads me to the final consideration of whether the combination of the acknowledged prior art with the teachings of Annex 3 supports a case that the invention is obvious. The opinion concluded that it did. Paragraph 27 of the opinion states that Annex 3 discloses an elongate switch supported by a channel as described in claim 1. It also shows a light source behind the switch which shines through the switch when the switch is pressed. I have already explained that the examiner in my view read too much into the disclosure of Annex 3, in particular that it disclosed a channel. As a result I believe that this conclusion that the invention of claim 1 is obvious based on this combination is clearly wrong.
- 41 I would add that I am also of the view that it was wrong for the examiner to comment on whether the disclosure in the patent at issue of what was known was a suitable starting point from which to consider the question of obviousness. This was simply not a question he was asked to give an opinion on.

Conclusion

- 42 I conclude that the examiner did not make an error of principle nor did he reach a conclusion that is clearly wrong in Opinion 08/12. I therefore decide that no reason has been shown to set aside this opinion.
- 43 I conclude however that the examiner did reach an opinion in Opinion 16/12 that was clearly wrong. I therefore set that opinion aside.

Costs

- 44 Both sides indicated that they were content for costs to be awarded in accordance with the comptroller's published scale of costs³. Since the two reviews were of roughly equal size and given that Cronapress was successful with one review and unsuccessful with the other, then it would seem appropriate for each side to bear its own costs.

³ <http://www.ipo.gov.uk/p-manual-hearing-content/chapter-5.htm#costs>

Appeal

45 Any appeal must be lodged within 28 days

P Thorpe

Deputy Director acting for the Comptroller