



BL O/021/07

16<sup>th</sup> January 2007

## PATENTS ACT 1977

APPLICANT	Winther Browne & Company Limited
ISSUE	Whether patent application number GB0126507.3 complies with section 1(1)(b)
HEARING OFFICER	John Rowlatt

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## DECISION

### Introduction

- 1 Patent application GB 0126507.3 was filed on 05 November 2001, without priority, in the name of Winther Browne & Company Limited. The application is entitled "Radiator cover or fire surround" and has been published as GB2382869.
- 2 After several rounds of correspondence, the detail of which is set out below, the examiner and applicant could not agree on whether the invention was obvious and a hearing was requested in a fax dated 28 April 2006; in a subsequent telephone call, on 16 May 2006, the applicants had indicated their intention to call upon expert witnesses to provide evidence that there was a long term need and a technical advance. The examiner had made it clear that once he had established the date of an important piece of prior art, which he did on 01 June 2006, he would arrange for a hearing to decide the matter. However, in a letter dated 03 November 2006, before a hearing had been appointed, the applicant wrote that he did not intend to attend a hearing and asked for a decision on the papers.

### The application

- 3 The application relates to a fire surround or radiator cover in which constituent parts, substantially of MDF, are connected together by a particular type of connector. The claims have been amended during prosecution and the latest claim 1, filed with a letter dated 09 March 2006, reads:

"1. A fire surround or radiator cover made of a multiplicity of substantially MDF parts, in which the constituent parts thereof are

equipped with push fit connectors to join individual parts, the said push fit connectors comprising a male spigot, a portion of which is provided with a screw thread, screwed into one part of the fire surround or radiator cover, and a female part comprising a cir-clip mounted in hard plastic material fitted into another part of the fire surround or radiator cover, and in which the spigot has a slot cut in it.”

## **The law**

4 The relevant provision of section 1 is:

1(1). A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say -

- (a) .....
- (b) it involves an inventive step;
- (c) .....
- (d) .....

and this is explained by section 3 which states:

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 and (disregarding section 2(3) above).

5 For current purposes, that last part of section (3) is not significant since all the documents relied upon fall into the section 2(2) area – that is they were published before the priority date of the invention – as will be seen below.

## **The arguments**

6 In his first substantive examination report, on 15 October 2004, the examiner objected that he considered that claims 1, 4 & 5 were not novel in respect of four patent documents (GB1330170, EP0386392, DE2422382 & US2865569) and that claims 2 & 3 were obvious in respect of a further patent document (GB1382236) and known flat pack furniture fastenings; the two remaining ‘omnibus’ claims were directly linked to specific figures. In light of the objections, a full top-up search was deferred.

7 In response, claim 2 was incorporated into claim 1 with argument that the new main claim was not obvious as none of the cited art, particularly what the applicant regarded as the closest (GB1382236), disclosed anything which could be regarded as “a cir-clip mounted in hard plastics material.”

8 The examiner did not accept those arguments and pursued objection that the claim did not include an inventive step, in respect of three of the original five documents (GB1330170, EP0386392 & US2865569), along with an objection to the addition of subject matter in new claim 2 and the corresponding part of

the description. His interpretation was that the invention was characterized simply by the choice of connector and therefore did not appear to be inventive; he considered that such connectors were known in the art. The objection to added matter was that, as amended, the spigot of claim 2 may also have a slot in its other end. Top-up search was again deferred.

- 9 The applicant responded with argument and by the incorporation of the matter of claim 2 of the previous amendment, that “the spigot has a slot cut in at least one end.” This, presumably, was intended to be based on claim 3 as originally filed but included the feature which was subject to the added matter objection. The claim was also limited to the parts being substantially of MDF.
- 10 The arguments presented by the applicant were that none of the three cited documents include push fit connectors whereby those connectors are secure and lock the device in place; however, although it is brought out in the description, I note that such securing and locking does not feature in the claims of the invention – the connectors need merely join the individual parts. In any case, this would seem to be a sensible requirement of any push fit connection. In particular, it was alleged that US2865596 is disassemblable, GB1330170 uses screws and EP0386392 does not disclose the nature of its fitting pins. The applicant also requested that the examiner provide evidence to support his assertion that the connectors were common general knowledge.
- 11 There was also an argument on the advantage of using the particular connectors with parts formed substantially from MDF, namely that “factory fitting” removes, for a DIY enthusiast, the potentially hazardous dust formed when MDF has to be cut.
- 12 The examiner raised again the objection to added matter. As for the connector, although he considered it would be well known, he accepted that it would likely be found in a trade journal or catalogue and not within the range of his search material. However, he warned the applicant that if he was aware of such a publication he should disclose it.
- 13 The applicant’s response reinstated the wording of original claim 3, thus overcoming the objection to added matter. Included with the response was a copy of a product from a trade catalogue (Easyfix) showing the connector (Everfix) but merely with “basis (*sic*) technical instructions.” By that I take it to mean that the applicant considered that there is no specific disclosure of the construction of the cir-clip mounting; that may be so, but its construction would be readily apparent from anyone purchasing a connector. They also considered that the advantage of using such a connector with regard to radiator covers made from MDF could not be foreseen.
- 14 The examiner restated his objection that claims 1-4 were obvious in respect of GB1330170, EP0386392 and the new material provided by the applicant, namely the Everfix connector sold by Hettich UK Ltd. He acknowledged the use of screws to join some of the limbs in the fire surround of GB1330170, but pointed out that some joins were by means of lugs fitting within holes. Similarly, the radiator cover of EP0386392 has parts joined by pins fitting within holes. He considered both to fall within what would be understood as

being a push fit connector. There is no doubt that the invention uses the Everfix connector, but he had yet to establish whether it was known before the priority date of the invention. He also amplified that other forms of push fit connector had long been known in self-assembly MDF furniture. In his opinion, there was no inventive step in using the Everfix connector with either of GB1330170 or EP0386392.

- 15 The examiner contacted the supplier, copied to the applicant, in an effort to establish the date of any patent for the connector. In the copy letter to the applicant he confirmed a telephone conversation, of 16 May 2006, in which the applicant's agent explained that he would contend the inventive step objection on the grounds that there is a long term need and technical advance for MDF radiator covers and fire surrounds to be assembled with this type of connector and that he would be calling on expert witnesses to provide evidence.
- 16 It was established that the Everfix connector embodies the invention of DE9212737U1; this document is dated 19 November 1992 and therefore significantly pre-dates the current application.
- 17 As the applicant has chosen not to attend an oral hearing the sole arguments concerning long term need and technical advance are those present on file.

### **Interpretation**

- 18 The well known structured analysis in the *Windsurfing*<sup>1</sup> judgment leads me to assess the inventive concept behind the present application as being a fire surround or radiator cover formed from a plurality of parts, substantially of MDF, connected by push-fit connectors of the type in which a male spigot has one end screwed into one part, another part having a female connector part, comprising a cir-clip mounted in hard plastic material, which accommodates the other end of the male spigot, that other end having a slot cut in it.
- 19 I take the common general knowledge at the priority date of the invention to be at least the matter cited by the examiner, the Everfix device (DE9212737U1), and that acknowledged by the applicant on page 1, paragraph 2 of his description, including that it is known to fabricate fire surrounds and radiator covers from MDF. I also take it to encompass the very widely known range of connectors used for the self-assembly of wood and MDF furniture.
- 20 There is no dispute concerning DE9212737U1, its date, disclosure or its relevance.
- 21 The applicant does not regard GB1330170 & EP0386392 as relevant prior art because, they suggest, GB1330170 uses screws and EP0386392 does not disclose the nature of its fitting pins. The examiner's opinion, however, is that the lugs fitting within holes of GB1330170 and the pins fitting within holes of EP0386392 are push fit connectors. I agree with the examiner; it is apparent

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<sup>1</sup> *Windsurfing International Inc v Tabur Marine (Great Britain) Ltd* [1985] RPC 59

to me that the connectors as disclosed are not merely for locating the parts but form a genuine join by push fit connection. Those joins may well be not as secure as when using the connector of the invention but, nevertheless, they use push fit connectors which are relevant to the scope of the claims.

- 22 I have no doubt that a fire surround or radiator cover which may be assembled by push fitting parts together falls within the same field as other types of furniture which may be assembled in the same way, and that a skilled person would draw on knowledge of those areas without the need for further ingenuity.
- 23 The examiner's approach was to consider the fire surround and radiator cover of GB1330170 or EP0386392, and the applicants themselves admit that fire surrounds and radiator covers formed from MDF are known; presented with the disclosure of DE9212737U1, embodied as the commercially available Everfix connector, would the skilled person require any degree of invention to use it? To my mind, clearly no. A fire surround or radiator cover is a decorative item of room furniture and the connector is sold in order to connect parts of furniture – it performs in the invention no more than the job it is designed to do; moreover, the Everfix brochure clearly gives sufficient instruction on how the connector is fitted and used. A skilled person would have no doubts whatsoever on how to apply this connector to the parts of the fire surround or radiator cover and would know exactly what would be achieved. The result is a join which is entirely predictable and expected.
- 24 The applicant has argued that the use of the connector of this type demonstrates a long term need and that it has technical advantage. Both points were to be argued by expert witness at oral hearing; however, not only was that opportunity declined, but written expert testimony was eschewed.
- 25 There is no indication of what the long term need might be other than overcoming perceived disadvantages of two particular forms of construction, dowel joints and hinged panels. The applicants admit that a number of (undisclosed) previous systems have been used to join the parts, not just dowel and hinged parts and, except for avoiding the use of glue, hinges and screws, there is no evidence that the industry has struggled over the long term in finding and using alternative connectors.
- 26 The only technical advantage I have been able to ascertain in the proceedings is that factory fitting removes, for a DIY enthusiast, the potentially hazardous dust formed when MDF is cut. Factory fitting of this type was well known to members of the public, well before the priority date, in many forms of flat-pack furniture and would be something thoroughly well known to a person skilled in the art.
- 27 Consequently I consider that, for a person skilled in the art, with knowledge of GB1330170 or EP0386392, the use of the connector of DE9212737U1 is an obvious choice and one which results in an entirely expected join.
- 28 However, even without the examiner's point of view on the use of GB1330170 or EP0386392, there is an argument based on the application itself. As

originally filed, at lines 6-23 of page 1, there is a discussion of prior art constructions. Specifically, and in direct sequence as described, “*Previously fire surrounds and radiator covers have been manufactured from multiple parts.*”, “*Such fire surrounds and radiator covers have been made of many materials primarily wood or in more recent years MDF board.*” and “*In order to join the parts together a number of previously proposed systems have been used. Such systems have included dowel ..*” Clearly, there can be no doubt that dowel constitutes a form of push fit connector. Further, as I have already indicated above, the person skilled in the art would have been very well aware of the various push fit connectors used in a wide variety of self-assembly MDF furniture.

- 29 Consequently, the sole difference between the directly acknowledged state of the art and the invention is the use of the particular push-fit connector. That connector, as disclosed in DE9212737U1, is used in an entirely standard way, according to published instructions, and one which would not tax the ingenuity of a person skilled in the art. Again, the result is entirely as would be expected and it would be an obvious connector to use.

### **Conclusion**

- 30 I have found that the invention is obvious in the light of GB1330170, EP0386392 and DE9212737U1, and, alternatively, in the light the applicant’s own description of the established art and DE9212737U1. I have been unable to find anything in the application which could give the invention an inventive step. I therefore refuse the application under section 18(3) as failing to meet the requirements on inventive step of Section 1.

### **Appeal**

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

**John Rowlatt**

Deputy Director acting for the Comptroller