

OPINION UNDER SECTION 74A

Patent	GB 2491421 B
Proprietor(s)	Paul Michael Jones and David Gary Timmins
Exclusive Licensee	
Requester	Paul Michael Jones and David Gary Timmins
Observer(s)	Flying Hire Limited
Date Opinion issued	23 May 2014

The request

1. The Comptroller has received a request from Paul Michael Jones and David Gary Timmins (the proprietors), care of Barker Brettell LLP, to issue an opinion as to whether GB 2491421 B (“the Patent”), in particular claim 1 of the Patent, would be infringed by acts in relation to a lighting tower (“the Device”) which is associated with Flying Hire Limited (“FHL”). The acts in question are the offering for disposal and keeping for disposal or otherwise of the Device.

Observations & Observations in Reply

2. Observations on behalf of FHL have been received. These confirm some technical features of the device which they have offered for hire. FHL have observed that they purchased lighting towers from a third party company and then arranged for their modification to include an automatic lowering feature. Their observations include a statement that “Flying Hire does not sell or manufacture lighting towers.”
3. Flying Hire has stated that it last deployed the device on 20 Aug 2013.
4. In response to the observations, the proprietors’ agent has provided a brief response including an assertion that “the observations appear to constitute an admission of past infringement of the patent.”

Summary of evidence

5. Accompanying the request, the supporting evidential documentation primarily consists of a printout of a webpage <http://www.powergeneratorhire.co.uk/tower-lights/lighting-hire-dawn-to-dusk-photocell-technology> as apparently accessed by the proprietors on 1 October 2013 and apparently as subsequently accessed by the proprietors on 21 February 2014.

6. I have noted the following features and extracts from the webpage:-
- a. "Lighting Tower Hire" appeared at the top of the page in a large font size. This was followed by text in smaller font sizes including "Wind Speed – Auto Control Lowering" and "New feature At Max Rated Speed The Mast Will Lower 50% To Half Mast Thus Allowing Light Spread".
 - b. A photograph showing a wheeled tower light was provided to one side of the page.
 - c. "Auto Raising Coming Soon" appeared in the middle of the webpage in a large font size and underlined. This was followed by text in a smaller font size including "We are able to provide all of the outdoor lighting required by your event" and "WIND speed, the tower light incorporates an innovative lowering system which permanently monitors wind speed. If excessive speeds are reached then the mast lowers to 50% if the wind speed is excessive at 50% then the mast will fully lower" and "call our lighting hire team".
 - d. A photograph showing what clearly appeared to be an anemometer was provided followed by text stating "Wind Speed Monitoring For Machine & Event Safety".

Further information provided in the observations

7. It is noted that further information has been provided in the observations from FHL. The further information includes the following passages:-
- a. "A wind speed sensing unit was purchased ... on the 25/9/11."
 - b. "Advice... led to Flying Hire designing a modification for the tower lights using a critical speed as measured by the sensor to initiate the lowering of the lighting tower."
 - c. "Three tower lights were modified to include an automatic lowering feature which lowered the mast to 50% of the operation height automatically when the wind speed was in excess of a critical speed."
 - d. "Flying Hire modified their website to announce this feature late in 2011."
 - e. In connection with FHL having seen a website including a claim to "the world only wind speed reactive mobile tower light", the observations state "In 2012 Flying Hire contacted Mr Timmins to inform him that his claim on the web site was not true and that Flying Hire already had equivalent equipment."
 - f. "Flying Hire lost faith in the device and deployed it for the last time on the 20/08/13."
8. It has not been necessary or relevant for me to focus on other information in the observations where this has been evidently peripheral to the question of infringement.

The Patent

9. The Patent was filed on 9 August 2011, with no earlier claim to priority.

10. The grant of the Patent was announced on 4 September 2013 along with its publication as GB 2491421 B.

11. Claim 1 of the granted patent reads as follows:

“A mobile light tower comprising a base unit and at least one light connected to the base unit by an extendable mast, the base unit including a power source for powering the at least one light, the extendable mast adapted to move between a retracted position and an extended position, wherein the mobile light tower includes a controller and a wind speed sensor, the controller adapted to lower the extendable mast to an intermediate position, between the retracted position and extended position, when the wind speed sensor determines that a predetermined wind speed is exceeded.”

12. Figures 1 and 2 of the Patent are as follows:

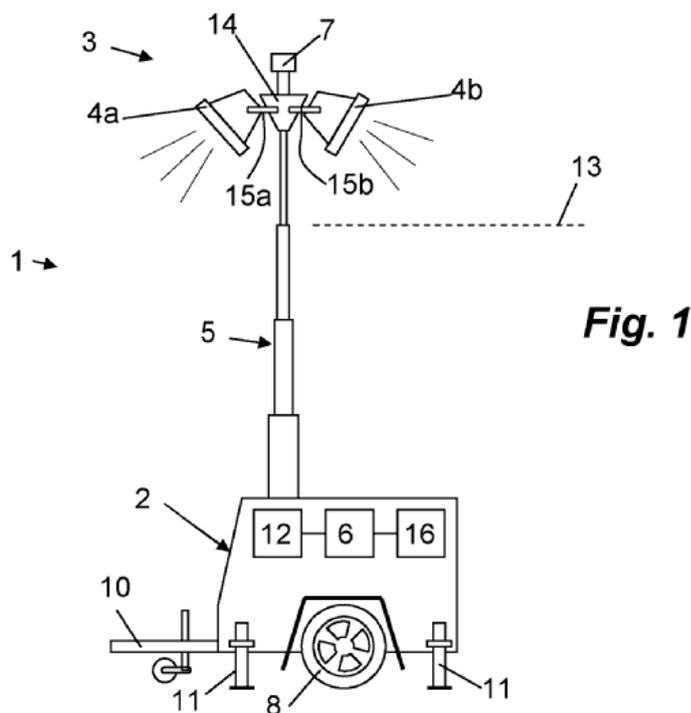


Fig. 1

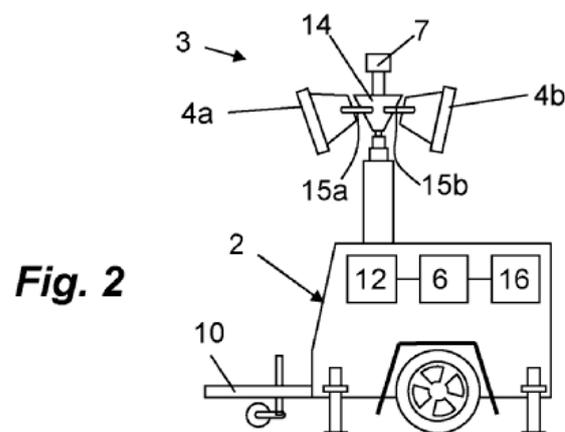


Fig. 2

Claim construction

13. Standard principles of claim construction and case law relating thereto are outlined and referenced in Section 125(1) of the Patents Act and in the corresponding section of the Manual of Patent Practice. Particular aspects of these principles and associated guidance have not been detailed here, as I consider claim 1 to be manifestly unambiguous. No inconsistency with a straightforward construction of claim 1 has been communicated by the proprietors or the observer.
14. I note that integers of claim 1 are as follows:-
 - a. Light tower being mobile and having a base and a light
 - b. Extendable and retractable mast between base and light
 - c. Wind speed sensor
 - d. Controller for lowering the mast to an intermediate position, between retracted & extended positions, when the sensor determines that a predetermined wind speed is exceeded

The law in relation to infringement

15. The following extract from Section 60(1) is particularly relevant

“Subject to the provision of this section, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say -

(a) where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;”

Infringement

16. From the evidence and the observations, the following details of the Device were evident:
 - a. The Device being a mobile light tower comprising a base and light(s)
 - b. The Device clearly having an extendable and retractable mast between its base and light(s)
 - c. A wind speed sensor was provided
 - d. It was advertised that the “innovative lowering system... permanently monitors wind speed” and “if excessive speeds are reached then the mast lowers to 50%”. It is strongly implicit that this requires the presence of a controller. This is further reinforced by FHL’s observation that their modification for the tower lights used a critical speed as measured by the sensor “to initiate the lowering of the lighting tower.”
17. Hence, all of the integers of claim 1 are concluded to have been present in the Device. Thus, it is my opinion that the Device fell squarely within the scope of claim 1 of the Patent.

18. The actions of FHL in relation to the Device appear to have been at least designing a modification to a pre-existing lighting tower, offering the Device for hire and commercial deployment of the Device.
19. In my view, whilst FHL did not sell or manufacture lighting towers per se, the mere acts of a) hiring or offering for hire lighting towers modified to meet the requirements of claim 1, and b) the keeping for commercial deployment of said lighting towers, being acts of commercial purpose, fall squarely within the scope of section 60(1)(a).

Opinion

20. On the basis of the information provided, it is my opinion that the actions of FHL, as described in the request, constitute an infringement of the Patent.

Mark Thwaites
Examiner

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.