

OPINION UNDER SECTION 74A

Patent	EP 2160936
Proprietor(s)	Shane Kelly
Exclusive Licensee	-
Requester	Juzyk
Observer(s)	-
Date Opinion issued	23 February 2016

The request

1. The comptroller has been requested to issue an opinion as to whether EP 2160936 ("the patent") is novel in light of published patent application AU 2007216912 A1.

Observations

2. No observations have been received

The patent

3. The patent was granted with effect from 11 January 2012 with fourteen claims and remains in force. The application was filed on 5 September 2008 and no priority claim was made. Shane Kelly is named as both the inventor and the proprietor.
4. The patent is concerned with an agricultural implement including a number of harrows.

Novelty

5. Section 1(1) of the Act reads:

*A patent may be granted only for an invention in respect of the following conditions are satisfied, that is to say –
(a) the invention is new;*

6. Section 2(1) and (2) of the Act read:

2.-(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.

7. The prior art patent application referred to in the request, AU 2007216912 A1, was published on 10 April 2008, before the earliest date of the patent and therefore forms part of the state of the art according to section 2(2). The inventor is named as Shane Kelly.
8. The contents of the patent and AU 2007216912 A1 appear to be very closely related and they share much of their text and figures. The two patents also claim the same invention as follows: claim 1 of the patent corresponds to claim 8 of AU 2007216912 A1, which depends upon claim 1 therein. Claims 2 to 9, 13 and 14 of the patent correspond to claims 2 to 7 and 9 to 12 respectively of AU 2007216912 A1. Claims 10 to 12 of the patent have no direct equivalents in the claims of AU 2007216912 A1. However, these claims are clearly anticipated by the disclosure found between lines 12 and 22 on page 14 of AU 2007216912 A1 describing figures 4a, 4b and 6 to 12 therein. Thus the content of all of the claims of the patent can be found in AU 2007216912 A1.

Opinion

9. AU 2007216912 A1 forms part of the state of the art in the case of the invention of the patent and discloses the invention as claimed in the patent. It is my opinion that the invention of the patent is not new in view of the disclosure of AU 2007216912 A1.

Application for review

10. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.

Karl Whitfield
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.