

**OPINION UNDER SECTION 74A**

Patent	GB 2540900 B
Proprietor(s)	Ventura Wind Energy Limited
Exclusive Licensee	
Requester	Abel and Imray
Observer(s)	ip21 Ltd
Date Opinion issued	03 January 2018

**The request**

1. The comptroller has been requested by Abel and Imray (“the Requester”) to issue an opinion as to whether patent GB 2540900 B (“the Patent”) is valid in the light of certain prior art documents. An opinion is also sought regarding whether amendments made to the claims during prosecution of the Patent have resulted in matter disclosed in the Patent extending beyond that disclosed in the application for the Patent as filed and whether the specification of the Patent discloses the invention clearly enough for it to be performed by a person skilled in the art.
2. The Patent entitled “Temporary maintenance enclosures and methods of maintaining turbine blades” was granted on 4 October 2017 and is still in force. The Patent is a UK national phase application based on International (PCT) Application No. PCT/GB2015/051003 filed on 31 March 2015 and published as WO2015/155507 on 15 October 2015. The Patent claims priority from UK Patent Application No. GB 1406379.6.
3. The request was received on 4 October 2017 and was accompanied by a statement explaining the request along with a number of prior documents and supplementary materials as detailed below:

Exhibit 1a: DE 102010011365 A1

Exhibit 1b: English translation of DE 102010011365 A1

Exhibit 2a: DE 202009002054 U1

Exhibit 2b: English translation of DE 202009002054 U1

Exhibit 3: EP 14752099.3

Exhibit 4: International Preliminary Report on Patentability on PCT Application No. PCT/GB2015/051003.

Exhibit 5: GB 2283046 A

Exhibit 6: US 2006/225960 A1

Exhibit 7: US 2006/291956 A1

Exhibit 8: US 3121470 A

Exhibit 9: US 5038889 A

Exhibit 10: WO 97/48863 A1

## **Observations and observations in reply**

4. Observations were received on 8 November 2017 from ip21 Ltd on behalf of the proprietor, Ventura Wind Energy Limited (“the Observer”). The observations included arguments refuting the allegations of lack of validity, added matter and insufficiency. Observations in reply were received from the Requester on 21 November 2017.

## **Whether the request should be refused**

5. Exhibit 1a was cited by the International Search Authority as an X category citation and was used in the International Preliminary Report on Patentability (IPRP) to dispute the novelty of the invention as defined by the claims as filed.
6. On entry to the national phase amended claims were filed and as is standard practice, it was on these claims that the UK examiner based his substantive examination of the application. Exhibit 1a was not cited in any of the official reports directly issued by the UK examiner.
7. The Requester argues that the UK examiner has not fully assessed the relevance of Exhibit 1a and that therefore the relevance of this document should be considered in this opinion. The Observer argues that in line with Section 3.4 of the Opinions Manual<sup>1</sup> and the decision in *Automation Conveyors Ltd*<sup>2</sup> that as Exhibit 1a was a novelty citation which was referenced in both the International Search and the International Preliminary Report on Patentability it should not be considered as part of this Opinion.
8. In refuting this argument the Requester has emphasised that the Opinions Manual in line with Rule 94(1)(b) of the Patent Rules 2007<sup>3</sup> only seeks to deny the inclusion of a document if that document has been “sufficiently considered” and they have cited two further decisions, *Franks & Co limited* and *Amazon.Com Incorporated*<sup>4</sup> and

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<sup>1</sup> <https://www.gov.uk/government/publications/opinions-manual/opinions-manual>

<sup>2</sup> *Automation Conveyors Ltd* BL O/370/07

<sup>3</sup> <https://www.gov.uk/government/publications/the-patents-rules-2007-and-patents-fees-rules-2007>

<sup>4</sup> *Franks & Co limited* and *Amazon.Com Incorporated* BL O/289/07

Kathryn Naylor<sup>5</sup> to emphasise their point. They further state that no explanation for the divergent approach between the UKIPO and the International Search Authority was provided and that the UK examiners failure to comment on Exhibit 1a was perverse.

9. I am not persuaded by the Requesters argument that the UK examiner has not sufficiently considered Exhibit 1a. The IPRP was brought to the attention of the examiner pre-grant and therefore the examiner would have been aware of Exhibit 1a and would have assessed its relevance to the amended claim set before issuing an examination report. It is not common practice in either the UKIPO or for that matter the EPO to provide a positive affirmation to the applicant that a document has been considered and deemed no longer citable.
10. I am therefore of the opinion that the UK examiner was aware of the novelty objection regarding Exhibit 1a and would have considered Exhibit 1a before granting the Patent. Consequently, taking all the circumstances into account I do not believe it to be appropriate to issue an opinion as to whether the patent lacks novelty with respect to Exhibit 1a. I will also not consider the inventiveness of the claim set with respect to Exhibit 1a in combination with common general knowledge.
11. For completeness it should be noted that Exhibit 2a was cited under novelty in the priority application and was also acknowledged on page 2 of the present application under the section Background to the Invention. However, the question of whether the claims are novel and inventive in light of this document has not been explored and therefore will be covered as part of this Opinion.

## **The Patent**

12. The Patent is concerned with a device and method for facilitating the maintenance and repair of tall structures, in particular wind turbines. Maintenance of tall structures typically relies on cranes, pre-existing platforms or the use of harnesses and ropes, with poor weather conditions being a major factor when selecting appropriate maintenance equipment. The invention disclosed in the Patent is aimed at overcoming the current problems associated with these pre-existing solutions. This is achieved by providing a temporary maintenance enclosure that protects against the weather but is easy to transport, deploy and fix in position.
13. The embodied invention is shown in figures 1 and 2 which are reproduced below for reference. The temporary enclosure 10 comprises a number of collapsible side walls, 11, 12, 17 and 18 which surround the blade 13 of a wind turbine 14. A roof 15 is provided which extends from the side walls to the blade. The roof is provided with an aperture 16 through which the blade can be received. A flexible sheath 19 which extends from the aperture in the roof to the blade seals the enclosure to the blade and prevents water ingress. A platform 21, best seen in figure 2, may be provided within the side walls. The platform may be a pre-existing platform or an integral part of the enclosure. The enclosure may be at least partially inflatable to allow for swift deployment and easier transportation. Preferably suspension means 22 are provided to suspend the enclosure from the wind turbine whilst work is being conducted.

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<sup>5</sup> [Kathryn Naylor BL O/298/07](#)

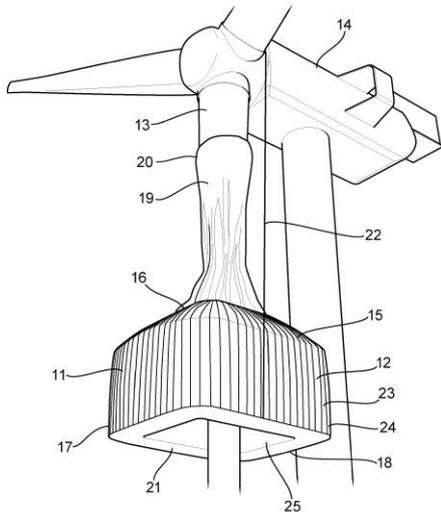


Fig. 1

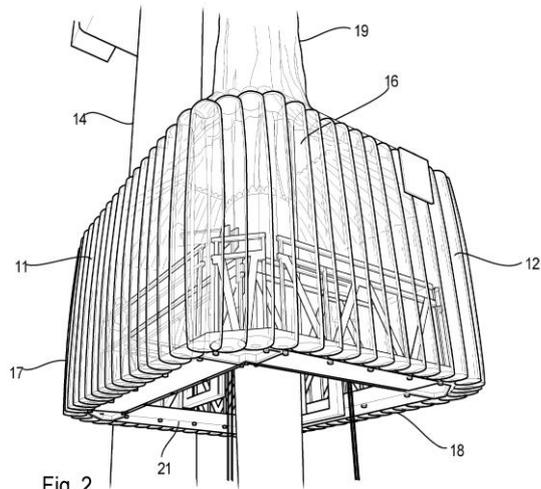


Fig. 2

14. There are 17 claims in the granted patent, claims 1 and 13 being independent claims. As issues relating to the entire claim set are covered by this Opinion I have reproduced them in their entirety below:

1. *A temporary maintenance enclosure for the maintenance of at least part of a turbine blade, said enclosure comprising a number of side walls which substantially surround at least part of a blade in need of maintenance and a roof extending from said side walls towards said blade, wherein said enclosure comprises an aperture through which said blade is received and wherein said enclosure comprises a platform which is bounded by each of said side walls and wherein said side walls are collapsible.*
2. *A temporary maintenance enclosure according to claim 1, wherein the enclosure is at least partially inflatable.*
3. *A temporary maintenance enclosure according to claim 1 or claim 2, wherein said roof is inflatable.*
4. *A temporary maintenance enclosure according to claim 1 or claim 2, wherein said platform is inflatable.*
5. *A temporary maintenance enclosure according to any of the preceding claims, wherein said enclosure incorporates a seal for sealing the enclosure to the blade.*
6. *A temporary maintenance enclosure according to claim 5, wherein the seal is inflatable and is located at the aperture.*
7. *A temporary maintenance enclosure according to claim 5 or claim 6, wherein said seal incorporates a member defining said aperture.*

8. *A temporary maintenance enclosure according to claim 7, wherein said member is inflatable.*
9. *A temporary maintenance enclosure according to any of the preceding claims, wherein said enclosure further comprises suspension means for suspending said enclosure in position relative to said blade.*
10. *A temporary maintenance enclosure according to any of the preceding claims, wherein said side walls and said roof comprise a plurality of inflatable compartments.*
11. *A temporary maintenance enclosure according to claim 10, wherein said inflatable compartments have a tubular configuration.*
12. *A temporary maintenance enclosure according to any of the preceding claims, wherein said platform incorporates a barrier, and said barrier is collapsible.*
13. *A method of maintaining a turbine blade, comprising the steps of:
  - a) *providing a platform on which maintenance of a turbine blade can occur*
  - b) *deploying a temporary maintenance enclosure, said enclosure comprising a number of side walls which substantially surround at least part of a blade, and a roof extending from said side walls towards said blade, said enclosure comprising an aperture through which said blade is received, and wherein said enclosure comprises a platform which is bounded by each of said side walls, and wherein said side walls are collapsible.**
14. *A method according to claim 13, comprising the step of inflating an inflatable portion of said roof.*
15. *A method according to claim 13 or claim 14, comprising the step of inflating an inflatable portion of said platform.*
16. *A method according to any of claims 13 to 15, comprising the steps of providing a seal and sealing said enclosure to said blade.*
17. *A method according to any of claims 13 to 16, comprising the step of at least partially inflating said enclosure.*

15. It is noted that claim 13 is slightly inconsistent within itself, and as a consequence claim 1, as the platform is referred to twice. I do not however consider that this has a material impact on the overall understanding of the claim and thus if claim 1 falls so does claim 13.
16. I will consider the novelty and inventiveness of the dependant claims should that become necessary after my assessment of claim 1.

### **Claim construction**

17. Before considering the documents put forward in the request firstly I need to

construe claim 1 of the Patent, that is to say I must interpret it in the light of the description and drawings as instructed by Section 125(1). In doing so I must interpret the claims in context through the eyes of the person skilled in the art. Ultimately the question is what the person skilled in the art would have understood the patentee to be using the language of the claims to mean.

18. Both the Requester and Observer consider the relevant skilled person to be a designer of temporary maintenance enclosures for maintenance of wind turbine rotor blades. I think that is a reasonable assessment and I will adopt this definition here.
19. Claim 1 is generally straightforward to construe. There are a couple of terms, however, that are worthy of consideration. The most contentious issue appears to be the use of the term "*bounded by*" in reference to the platform's relationship with the side walls that make up the enclosure. The Requester is of the opinion that "bounded" is a broad term which does not teach anything about the relative configurations of the enclosure sidewalls and the platform. As a consequence they surmise that the term includes scenarios wherein the periphery of the platform could be considered to "bound" the platform without the platform being located inside of the side walls. On the other hand the Observer contends that the normal definition of the term would be the platform being located inside and limited by the side walls at its boundary, so that the platform is securely held as an integral part of the enclosure. The requester has refuted this definition of the term stating that bounded does not restrict the claims to enclosures in which the platform is located inside of the side walls.
20. When reading the Patent as a whole there are a few references which aid the construction of this term. There appears to be two different scenarios described, one in which the platform is formed as part of the enclosure (page 6 lines 12-15) and one in which the enclosure can be retro fitted onto an existing platform (page 6 lines 22-26). Taking these references and in the context of the figures I am of the opinion that the term "*bounded by*" falls within an intermediate position between those suggested by the Requester and Observer. That is that the platform is located within the side walls of the enclosure and limited by their boundary, but does not have to form an integral part of the enclosure, nor must the side walls necessarily extend below the platform.
21. Another phrase within claim 1 that merits consideration is "*an enclosure comprising a number of side walls*". The Requester asserts that this must include scenarios in which the enclosure is constructed from a single side wall i.e. a tubular enclosure. I am minded to agree. Although the disclosed embodiment includes four side walls, the description at page 6 clearly envisages the use of any number of side walls and I would construe this to include a single side wall.
22. Finally, I feel that the term "*collapsible*" is also worthy of consideration. The embodied invention utilises inflatable side walls which can clearly be considered collapsible. I consider however that this term is slightly wider reaching than merely inflatable structures. The purpose of the side walls being collapsible is stated at page 7 to be to minimise the size of the enclosure when not in use. This has obvious benefits for the storage and transport of the enclosure. I therefore consider that the term collapsible should be construed to include inflatable structures but should also include constructions that can be otherwise collapsed or reduced in size

for transportation and storage.

### **Does the matter of claim 1 extend beyond what was disclosed in the application as filed?**

23. Section 76(2) of the Act disallows amendment of an application which results in it disclosing matter extending beyond that which it disclosed when filed. When considering in *Bonzel and Schneider (Europe) AG v Intervention Ltd [1991] RPC 553* whether an amendment to the description had the result that a patent as granted disclosed matter which extended beyond that disclosed in the application, Aldous J described his task as:

*(1) to ascertain through the eyes of the skilled addressee what is disclosed, both explicitly and implicitly in the application;*

*(2) to do the same in respect of the patent as granted;*

*(3) to compare the two disclosures and decide whether any subject matter relevant to the invention has been added whether by deletion or addition. The comparison is strict in the sense that subject matter will be added unless such matter is clearly and unambiguously disclosed in the application either explicitly or implicitly.*

24. As summarised by Jacob J. in *Richardson-Vicks Inc.'s Patent [1995] RPC 568*, "the test of added matter is whether a skilled man would, upon looking at the amended specification, learn anything about the invention which he could not learn from the unamended specification."
25. The Requester has asserted that amendments made during prosecution of the application have resulted in granted claims 1, 5, 6, 13 and 16 containing matter which was not contained in the application as filed. An enhanced version of granted claim 1 which highlights the changes that have been made to the claim has been supplied. I agree that this is the most efficient way of showing the changes that have been made to claim 1 so have repeated it below. Additions to the claim are underlined and deletions ~~struck through~~. I will address each part in turn and decide whether the application as filed provides support for the changes that have been made. I will then address the issues raised with highlighted dependant claims.

*A temporary maintenance enclosure for the maintenance of at least part of a turbine blade, said enclosure comprising a number of side walls which substantially surround ~~the circumference of~~ at least part of a blade in need of maintenance and a roof extending from said side walls towards said blade, wherein ~~said roof~~ said enclosure comprises an aperture through which said blade is received and wherein said enclosure comprises a platform which is bounded by each of said side walls and wherein said side walls are collapsible.*

**The enclosure comprise a platform bounded by each of the side walls**

26. As previously discussed I am of the opinion that this term should be construed as the platform being located within the side walls of the enclosure and limited by their

boundary, but not necessarily being an integral part of the enclosure. There is also no requirement for the side walls to extend below the platform.

27. The requester argues that the clause extends beyond what was originally envisaged by the application. They make reference to a letter of 9 November 2016 during the examination of the patent in which the Patentee asserts that support for the inclusion of this term in claim 1 can be found in original claim 6. They argue that claim 6 as filed merely states that *“the enclosure comprises a platform located inside said side walls”*.
28. I cannot disagree that according to the case history this is what happened but I do not think that the UK examiner would have taken this statement at face value. It is implicit that he would have made his own assessment based on the as filed application as a whole.
29. Consequently, before deciding whether this term adds matter I will consider the context of claim 6 in the light of the as filed application and also consider whether there is any additional support for the use of the term *“bounded by”*.
30. There are various references in the as filed application which give context to claim 6. Page 3 line 28 refers to the platform being located inside the side walls of the enclosure and figures 1 and 2 additionally both show platform 21 within the side walls of the enclosure. Further, the paragraph abridging pages 6 and 7 as filed states with reference to figure 2 *“In this preferred embodiment, the platform 21 is bounded by each of the side walls 11, 12, 17 and 18, which extend below and support the platform so that the platform is securely held as part of the enclosure.”*
31. Original claim 7 defined the enclosure to be adapted to fit around a platform, a statement which is supported by the paragraph abridging pages 3 and 4, page 5 lines 1-2 and page 7 lines 19-21.
32. It would appear to me that the purpose of originally filed claims 6 and 7 was to cover the two scenarios of the platform being present within the enclosure and the enclosure being sized to fit around a pre-existing platform. In my mind in both cases the platform would be bounded by the side walls of the enclosure.
33. Consequently, based on how I have construed the term *“bounded by”* I think the originally filed specification provides ample support for this feature and consequently I do not consider this feature to extend the matter of granted claim 1 beyond what was disclosed in the application as filed.

**Wherein said side walls are collapsible.**

34. Original claim 4 provides clear support for the addition of collapsible side walls into claim 1 and I do not consider this feature to extend the matter of granted claim 1 beyond what was disclosed in the application as filed.

**The enclosure has an aperture through which the blade is received**

35. Claim 1 as filed defined *“said roof comprises an aperture through which the blade is received”* thus contrasting the requirement in granted claim 1 for the enclosure to

comprise an aperture through which the blade is received. The Requester argues that there is no disclosure in the application as filed of an enclosure having an aperture located anywhere other than the roof. The Observer argues that in order to receive the blade the enclosure as a whole requires an aperture.

36. It is clear from the figures and the description that there are two apertures in the particular embodiment, one in the roof 16 and one towards the base of the enclosure 25. However it is also clear, as the requester contends, that the application as filed does not disclose either explicitly or implicitly an arrangement where there is not an aperture in the roof. Claim 1, as granted, however now covers such arrangements and therefore the amendment adds matter beyond that which was disclosed in the application as filed.

### **Side walls substantially surround at least part of the blade**

37. Original claim 1 stated “...a number of side walls which substantially surround the circumference of a blade in need of maintenance...” in contrast to granted claim which states “...a number of side walls which substantially surround at least a part of a blade in need of maintenance...”.
38. The figures show the enclosure surrounding the entire circumference of the blade. They also show that the blade is not surrounded along its entire length i.e. the proximal and terminal ends of the blade are not surrounded by the enclosure.
39. Page 6 lines 21-24 describe how the enclosure is designed to move freely up and down the blade. Whilst it is clear that not all the blade needs to be surrounded, there is no disclosure either explicitly or implicitly that the walls do not substantially surround the circumference of the blade. For example there is nothing to suggest an arrangement where the enclosure only surrounds a quarter of the circumference of the blade. Claim 1, as granted, however now covers such arrangements and therefore the amendment adds matter beyond that which was disclosed in the application as filed.

### **Claims 5 and 6**

40. Granted claim 5 defines how the enclosure incorporates a seal for sealing the enclosure to the blade. Granted claim 6, which depends directly from claim 5, defines that the seal is inflatable and located at the aperture.
41. The requester contends that granted claim 5 adds matter since it covers arrangements wherein a seal for sealing the enclosure to the blade is not necessarily provided at the aperture in the roof.
42. Claim 1 as originally filed required an aperture in the roof of the enclosure. Claim 5 as filed, which was dependant on claim 1, defined “...a seal about said aperture...” and it is therefore clear that the aperture being referred to was the aperture in the roof.
43. Further details of the seal are found on page 4 of the as filed application:

*“preferably, said seal incorporates a member defining said aperture. This configuration provides the advantage of effectively sealing to a turbine blade*

*to prevent water entry whilst preventing damaging load from being applied to the blade. Preferably, said member is inflatable.”.*

44. The reference to “*said aperture*” in the above passage is clearly directed to the aperture in the roof. The scope of claim 1 as granted now extends to having an aperture not necessarily in the roof and hence since the application as filed does not disclose either explicitly or implicitly an aperture having a seal, which could also be inflatable, anywhere other than in a roof aperture then claims 5 and 6 also add matter to the application as filed.

### **Claims 13 and 16**

45. For the reasons I have already given above regarding claims 1, 5 and 6, I am also of the opinion that claim 13 and 16 also add matter.

### **Novelty and Inventive step – the law**

46. Section 1(1)(a) and (b) of the Patents Act (henceforth ‘the Act’) reads:

*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) the invention is new;*

*(b) it involves an inventive step;*

47. The relevant provisions in relation to novelty are found in section 2(1) and section 2(2) which read:

*2(1) An invention shall be taken to be new if it does not form part of the state of the art.*

*2(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.*

*2(3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied, that is to say -*

*(a) that matter was contained in the application for that other patent both as filed and as published; and*

*(b) the priority date of that matter is earlier than that of the invention.*

48. The provisions in relation to inventive step are found in 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).*

49. The Court of Appeal in *Windsurfing*<sup>6</sup> formulated a four-step approach for assessing whether an invention is obvious to a person skilled in the art. This approach was restated and elaborated upon by the Court of Appeal in *Pozzoli*<sup>7</sup>. Here, Jacob LJ reformulated the *Windsurfing* approach as follows:

- (1)(a) Identify the notional “person skilled in the art”*
- (1)(b) Identify the common general knowledge of that person;*
- (2) Identify the inventive concept of the claim in question or if that cannot be readily done, construe it;*
- (3) Identify what, if any, differences exist between the matter cited as forming part of the “state of the art” and the inventive concept of the claim or the claim as construed.*
- (4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps that would have been obvious to the person skilled in the art or do they require any degree of invention?*

50. I will begin by considering the validity of the invention as defined by claim 1. Only if I find it to be invalid will I consider claim 13 and the remaining dependent claims.

### **Novelty: Exhibit 2a**

51. Exhibit 2a discloses a protection device for maintenance and repair of wind turbines, in particular the rotor blades 21 of wind turbines. Figure 3 is reproduced below for reference. The protection device comprises a skeleton frame 12, an outer shell 11 and an upper connection 13 which together form an enclosure. Support system 14 secures the enclosure to the rotor hub 23 of the turbine blade. The outer shell of the device surrounds at least a portion of the blade requiring maintenance and the upper connection 13 is sloped with respect to said shell thus providing a roof extending therefrom towards the blade. The upper connection is provided with an aperture for receiving said blade, this being arranged so as to provide a seal around the rotor blade 21, so that no moisture, in particular rain or snow, can penetrate into the working area within said outer shell. A working platform 3 may be arranged within the outer shell. The working platform can be seen in figure 3 to be bounded by the outer shell and according to section [0022] of the unchallenged translated description “... working platform is arranged inside the outer shell... The outer shell completely surrounds the working platform, so that no weather influences the floor of the working platform.”. Section [0042] further notes that “work platform 3 is positioned within the outer casing 11”. Section [0014] of the description specifically states that the device is easily collapsible, this being emphasised by the material of construction which is stated as being a PVC-coated polyamide fabric.

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<sup>6</sup> *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

<sup>7</sup> *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

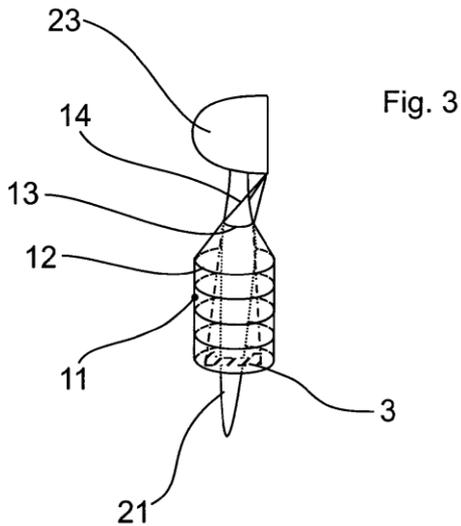


Fig. 3

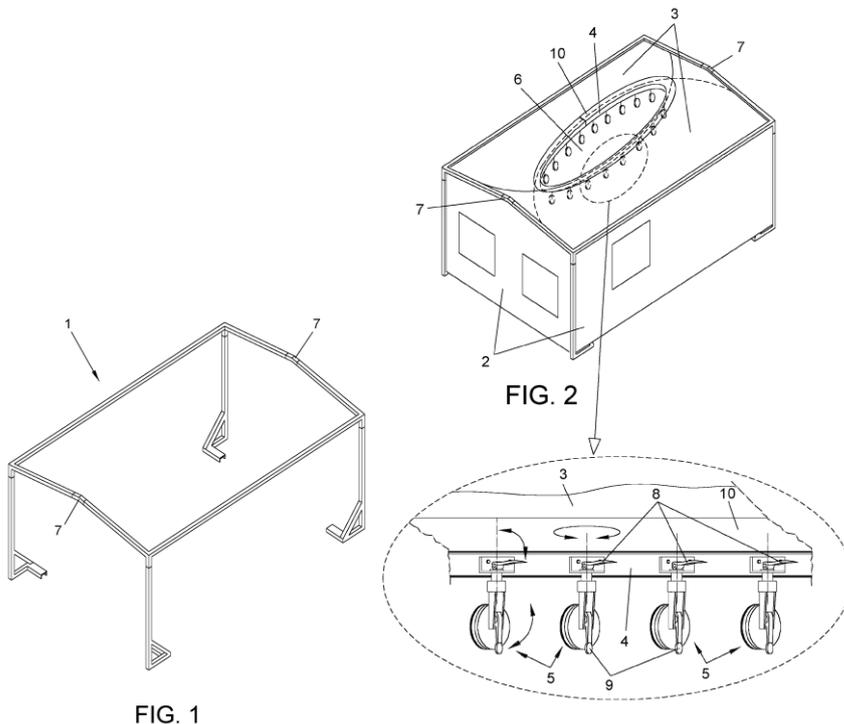
52. The Requester and Observer would appear to be in agreement that Exhibit 2a discloses all the features of claim 1 with the exception of a platform which is bounded by each of said side walls and wherein the side walls are collapsible.
53. As discussed above when construing the claims it was concluded that claim 1 only requires that the enclosure “comprises a number of side walls” and that this includes the possibility of a single side wall within its scope. The outer shell of Exhibit 2a is therefore considered to fall within the scope of the requirement in claim 1 for the enclosure to have “a number of side walls”.
54. The Requester considers that support for the platform being bounded by the side walls can be found in figure 3 and in paragraphs [0022] and [0042] of the description. The Observer contends that as the platform is structurally separate from the outer shell and that as separate mounting means are provided for the platform and the enclosure to allow them to move independently of one another, the implication is that the platform is not bounded by the side walls. I am not persuaded that the term “*bounded*” goes that far. In my opinion one part can bound another even if those two parts are able to move relative to one another. As discussed above, the Patent clearly envisages two possible scenarios one of which being that the enclosure is retro fitted to the platform. I therefore agree with the Requester that a platform bounded by side walls is disclosed by Exhibit 2a.
55. The Observer has put forward no arguments to explain why they do not consider the outer shell to be collapsible. As stated, it is clear from the description that the outer shell is indeed collapsible.
56. Consequently Exhibit 2a is considered to disclose all the features of granted claim 1 and thus anticipates this claim.

57. The requirements of claims 5 and 7 (a seal for sealing the enclosure to the blade), 9 (suspension means), 13 (equivalent to claim 1) and 16 (equivalent to claim 5) are also considered to be fulfilled by this document.

### Novelty: Exhibit 3

58. Exhibit 3 which was published as EP 2957538 A1 on 23 December 2015 falls within the S2(3) field of the Patent. I will therefore only assess the relevance of this document to the novelty of claim 1 and its dependant claims.

59. Exhibit 3 discloses a device for protecting lifting platforms for maintaining wind generators. Figures 1 and 2 are reproduced below for reference.



60. The protecting device is constructed from a frame 1 which is provided with a number of side laminar elements in the form of walls 2 which function to enclose the periphery of the frame. Upper laminar elements 3 are also provided which cover the upper area of the frame, in the form of a roof. An opening 6 is provided in the roof through which the turbine blade can pass. The walls and roof are constructed from canvas so are considered to be collapsible.

61. The Requester and Observer disagree with respect to whether this document discloses a platform which is bounded by the side walls of the enclosure. It is stated at paragraph [0021] that the protecting device is installed on a lifting platform and that the vertical posts of the frame (not labelled) are attached to each of the four corners of the platform. It is therefore clear in my mind that a platform of some sort is within the scope of defined invention. However, what is not clear is the construction of said platform and consequently the position of said platform with respect to the protecting device. It is feasible that the platform as a whole could be situated inside

the walls of the protecting device but it is equally possible that it is situated partially within or entirely below the protection device. With the absence of any further evidence I therefore conclude that the requirement for the platform to be bounded by the side walls of the enclosure is not fulfilled by this document.

62. I am therefore of the opinion that Exhibit 3 does not disclose a platform bounded by the side walls of the enclosure and hence does not anticipate granted claim 1.

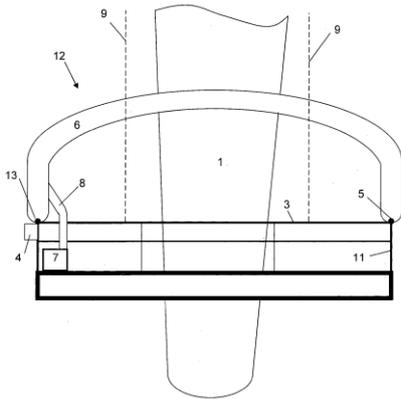
### **Inventive step**

63. The Requester has put forward a number of arguments addressing the inventiveness of the granted claims. In each case the man skilled in the art and his common general knowledge are considered to be the same. As the man skilled in the art was defined as part of my discussion of claim construction I see no need to repeat that definition here.
64. The common general knowledge of said skilled person would include how temporary maintenance structures are constructed and erected, what construction materials are used and the ways in which the structural integrity of such enclosures can be maintained in use. Due to similarities in the way such enclosure are constructed I feel that they would also be aware of maintenance structures designed to be used at ground level such as those used to surround building scaffolding and the like. The Requester in their initial submissions would appear to agree with this assessment. Exhibits 5-10 each disclose the use of tarpaulins and the like as part of temporary maintenance structures such as building scaffolding and it would therefore appear that the disclosures of said exhibits fall within the bounds of the common general knowledge of the skilled man.
65. Consequently, for the reasons I have already given I will not assess the obviousness of the claim set with respect to Exhibit 1a in combination with any of Exhibits 5-10.

### **Inventive step: Exhibit 2a in combination with Exhibit 1a**

66. As I have already assessed that claims 1, 5, 7, 9, 13 and 16 are not new with respect to Exhibit 2a I need only consider the inventiveness of the remaining dependant claims.
67. The majority of the remaining dependant claims refer to the inflatable nature of the enclosure and it is this that I consider to be the inventive concept of these claims.
68. Exhibit 2a does not disclose the use of an inflatable enclosure. The Requester contends that the concept of using inflatable elements in weather protection devices for wind turbine rotor blade maintenance platforms is known from Exhibit 1a and that their use in the enclosure of Exhibit 2a would be obvious to the skilled person.
69. Exhibit 1a discloses a weather protection device for the maintenance of wind turbine blades. Figure 1 is reproduced below for reference. The weather protection device 12 comprises an enclosure having a barrel shaped roof with vertical side parts which surround at least part of the blade 1. The roof has an aperture through which the blade can be received. The barrel shaped roof is made up from a number of inflatable elements 6 and is consequently collapsible.

Fig. 1:



70. Similarly to the use of inflatable elements in the Patent, the use of inflatable elements within Exhibit 1a imparts structural integrity to the enclosure minimising the need to utilise further constructional elements which would add to the overall weight of the enclosure and be detrimental to its ease of use.
71. The construction of the enclosure of Exhibit 2a is such that skeleton frame provides structural integrity and stability to the outer shell. The concentric ring or helical nature of the skeleton frame allows the enclosure to be easily deployed in order to shroud the platform. I can see no motivation as to why the man skilled in the art would consider making parts of the enclosure inflatable as it would be detrimental to the ease of use of the structure. I therefore consider the invention as defined in claims 2-4, 6, 8, 10, 11, 14, 15 and 17 to be inventive over the combined disclosures of Exhibits 2a and 1a.

### **Inventive step: Exhibit 2a in combination with CGK**

72. As previously discussed, Exhibits 5-10 each disclose the use of tarpaulins and the like as part of temporary maintenance structures such as building scaffolding. None of these documents disclose the use of inflatable structures and therefore in combination with Exhibit 2a cannot be considered to dispute the inventiveness of claims 2-4, 6, 8, 10, 11, 14, 15 and 17.
73. Claim 12 which refers to the use of platform which incorporates a barrier to protect operators from falling through an aperture in the platform would be considered a routine adaptation of the platform disclosed in Exhibit 2a which would require no degree of invention.
74. I am therefore of the opinion that the invention as defined by granted claims 2-4, 6, 8, 10, 11, 14, 15 and 17 is inventive in the light of the prior art.
75. I am also of the opinion that the invention as defined by granted claim 12 is not inventive in the light of Exhibit 2a in combination with common general knowledge.

## **Sufficiency of disclosure.**

76. The Requester contends that as the only disclosure of collapsible walls within the Patent is those of an inflatable nature then the Patent fails to disclose enough information to enable the skilled person to perform the invention across the full scope of the claims. The Observer contends that the Patent describes a preferred embodiment wherein the side wall are inflatable and therefore collapsible through deflation. They are of the opinion that it would be clear to the person skilled in the art that other materials and configurations are possible to provide side walls that are collapsible.
77. In the absence of any further arguments I am minded to agree with the Observer that the invention described is merely a preferred embodiment. As indicated by the Observer and as held by *Lord Hoffmann in Kirin-Amgen Inc v Hoechst Marion Roussel [2005] RPC 9*, it should always be remembered that the skilled person is also taken to be trying to make the invention work. I am therefore of the opinion that the invention is sufficiently disclosed.

## **Conclusion**

78. I am therefore of the opinion that granted claims 1, 5, 7, 9, 13 and 16 of the Patent are not novel in light of Exhibit 2a. I am also of the opinion that claim 12 does not involve an inventive step in the light of Exhibit 2a. Furthermore I am of the opinion that claims 1, 5, 6, 13 and 16 include subject matter which extends beyond what was disclosed in the application as filed.

## **Application for review**

79. 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.

Nicola Payne  
Examiner

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## **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.*

