EIP

Decision in seed drill patent infringement IPEC hearing

Background

Claydon Yield-O-Meter Limited ('Claydon') and Mzuri Ltd ('Mzuri') both manufacture and sell agricultural equipment, including seed drills. The claim concerns two patents: one UK patent ('the 296 Patent') and one European patent ('the 576 Patent'). Mr Claydon, the inventor of both patents, was a Third Party in the proceedings and also gave witness evidence on behalf of Claydon.

Claydon claimed that Mzuri's "Pro-Til" drills infringed both patents. The 296 Patent was found to be infringed by the Pro-Til drills but was not valid. The 576 Patent was held to be neither valid nor infringed.

296 Patent

The 296 Patent's validity was challenged on two fronts: as obvious over a US Patent referred to as "Handy" and by prior use by Claydon. Claydon succeeded in arguing that the 296 Patent did involve an inventive step over Handy, and was therefore not invalidated by it. The prior use argument was more complicated.

It was common ground, based on Lux Traffic Controls Ltd v Pike Signals Ltd, that the requirement for prior use is that the invention is made available to the public in such a form that a person skilled in the art could observe or infer the invention. It is clear from case law that the access is limited to that permitted by law – a person trespassing into a lab would not cause a disclosure to be made (Folding Attic Stairs Ltd v Loft Stairs Co Ltd). It is also clear that it does not matter whether anybody actually did take advantage of the availability of the invention.

p2

In this case, the prototype seed drill embodying the 296 Patent had been tested in a field skirted by a public footpath. Mr Claydon explained that no member of the public ever witnessed these tests, and at one point suggested that if someone had appeared, those carrying out the testing would have moved away so that person would not have been able to make out any relevant details. In the case of E. Mishan & Sons Inc v Hozelock Ltd, it was held that, in cases where the invention was being controlled, the actions of the controller were they to be observed, and the subsequent ability of the observer to gain information, should be taken into account. Mzuri's expert suggested that, even if Mr Claydon had taken steps to hide the invention upon a member of the public appearing, the combination of observing the prototype in action and the state of the field after it had left would have allowed the skilled person to infer the entirety of the invention. The judge agreed, and the 296 Patent was found to be invalid.

576 Patent

The 576 Patent's validity was also challenged on two fronts: again as obvious over Handy, and as obvious over the PCT application which led to the 296 Patent (the PCT Application). Claydon was again successful in resisting the attack based on Handy.

The 576 Patent states, on its face, that it is an improvement on the PCT Application. The main difference between the two is that the 576 Patent discloses a method by which depth of tilling and the seed depth can be independently altered. In contrast, by virtue of the design of the drill disclosed by the PCT Application (and 296 Patent), adjusting one of these depths would also adjust the other.

Claydon's expert claimed that the skilled person would not see an advantage in the ability to adjust the depths independently, and that the invention "lay solely in appreciating that there was a problem to be solved". Actavis UK Ltd v Novartis AG1 recognised that the identification of a problem can be sufficient for invention. However, the judge commented that this "will seldom be the case".

Mzuri's expert felt differently. He claimed that not only would this problem have been obvious, but there would have been two obvious ways of solving it, one of which is the method from the 576 Patent. The other method, of adding a device to each individual tine allowing each to be adjusted individually, would have been so impractical as to have been immediately discarded. The skilled person contemplating the PCT Application would therefore naturally end up with the method disclosed by the 576 Patent. The judge agreed with this analysis, and declared the 576 Patent invalid for obviousness.

The judgment is available here.