

PATENTS ACT 1977

IN THE MATTER OF
an application under Section 72
by Dynamic Products Limited
for revocation of Patent No GB 2333698
in the name of Clares Merchandise
Handling Equipment Limited

and

IN THE MATTER OF an offer under
section 29 by Clares Merchandise
Handling Equipment Limited to surrender
Patent No. GB 2333698

DECISION

Background

- 1 Patent No GB 2333698, entitled “Steerable mobile load carrier and castor assembly therefor” was filed on 29 January 1998 in the name of Clares Merchandise Handling Equipment Limited (the Proprietor) as application number GB9801939.1 and was granted on 3 October 2001.
- 2 On 26 September 2002 Dynamic Products Limited (the Claimant) applied for revocation of the patent under Section 72(1)(a) on the grounds that the invention is not patentable for lack of novelty and/or inventive step. On 28 January 2003, before completion of the usual evidence rounds, the Proprietor submitted an offer to surrender the patent under Section 29(1).

The Comptroller’s Approach

- 3 Since revocation applies retrospectively, whilst surrender only has effect from the date when notice of its acceptance is published in the *Patents and Designs Journal*, it follows that an offer to surrender does not automatically terminate revocation proceedings. In circumstances such as these it is the Comptroller’s practice to decide whether the patent should be revoked before dealing with the offer to surrender.
- 4 Paragraphs 72.09 and 72.38 of the *Manual of Patent Practice* set out the approach the Patent Office normally takes where no counter-statement is filed and an offer to surrender is made in the course of revocation proceedings. In essence, this is that the matter should be considered as if each specific fact set out in the statement has been conceded except insofar as it is contradicted by other documents before the Office. If on this basis it is determined that at least one ground for revocation has been made out, the parties are informed that it is proposed to issue a formal decision revoking the patent, and consequently not to accept the offer to surrender, unless either party

opposes this course of action. This was the position taken in an official letter of 21 May 2003.

- 5 In a letter dated 23 May 2003 the Proprietor informed the Office that they do not oppose the issue of a formal decision revoking the patent and no reply was received from the Claimant. I have therefore considered very carefully all the papers on file in coming to the present decision.

The Patent

- 6 The patent relates to steerable mobile load carriers. Claim 1 reads as follows:

“A steerable mobile load carrier including a base chassis provided with a set of ground-contacting wheel elements, said set including a pair of swivel castors to allow steering of the carrier, the swivel castors of said pair being spaced apart in a direction transverse to the longitudinal axis of the carrier and disposed at the same longitudinal position and being resiliently mounted to the chassis so that as the downward force applied at the castor mounting by the carrier weight increases, so the swivel axis of the castor tends to tilt, the inclination of said swivel axis to the vertical varying according to variation in the magnitude of said downward force, wherein there is further provided a transverse connecting member rigidly interconnecting the castors of said pair so as substantially to equalise the inclinations of the respective castor swivel axes.”

- 7 Claims 2 to 14 are also directed to a steerable mobile load carrier and are dependent on claim 1. Claim 17 relates to a castor assembly for a steerable mobile load carrier according to claim 1. Claims 15, 16 and 18 are of the omnibus form and are directed to a steerable mobile load carrier (claims 15 and 16) and to a castor assembly (claim 18).

- 8 The steerable mobile load carriers are of the supermarket trolley type and of the kind used for luggage at airports. The present invention apparently aims to strike a balance between steerability and a tracking effect which biases the trolley towards travelling in a straight line. The trolley uses what are basically conventional castor-type wheels which are able to pivot about a vertical axis so as to facilitate turning of the trolley.

- 9 The patentees have discovered that if the pivot axis is tilted away from the vertical, this imparts a restoring moment which tends to return the wheel to its straight ahead position. This ensures that the trolley has a built in tendency to travel in a straight line. It is necessary to balance this tendency against the ease with which the trolley can be steered by a user. It is stated that the restoring moment is dependent on the size of the angle through which the pivot axis is tilted away from the vertical; the larger the angle, the greater the restoring moment. Thus this angle needs to be chosen as a compromise between steerability and the tendency to travel in a straight line. The optimum angle depends on the weight of the trolley; small when the trolley is empty, larger when it is loaded. The patentees have addressed this with an arrangement where the angle is responsive to the weight of the trolley such that it increases with the loading of the trolley. Figure 5 of the patent shows this being achieved through the use of a flexible mounting between the castor and the trolley using a bush of resilient material.

The case for revocation

- 10 The Claimant is seeking revocation on the grounds that the invention is not patentable for lack of novelty and/or inventive step. They cite prior use and a number of patent documents. The main thrust of their argument appears to relate to the prior use of the passenger baggage trolley mark 6a manufactured by Clares Merchandise Handling Equipment Ltd (the Clares Trolley). This trolley is described and illustrated in some detail in their Statement of 18 September 2002.
- 11 They itemise what they consider (correctly in my view) to be the essential features of the invention as claimed in claim 1 of the patent and compare these with the features of their trolley. They are able to demonstrate that each of these features is present in their trolley. In particular they identify in the Clares Trolley a base chassis that includes a depending rigid U-shaped plate structure having front and rear walls that are inclined to the vertical and a horizontal wall. The castors are connected to the depending part of the chassis by a mounting assembly comprising a rigid, transverse mounting member that is disposed immediately below the horizontal wall and a resilient connection. The mounting member supports a swivel castor at each end. The castors are spaced apart in a direction transverse to the usual direction of movement of the carrier and are located at the same longitudinal position. The transverse mounting member is connected to the rigid depending structure by a bolt that extends in a vertical direction through an aperture in the horizontal wall. The aperture is larger than the bolt shank so as to provide a clearance. Immediately above the horizontal wall and mounting member there is a rubber bush that is disposed around a shank of the bolt and is retained between the transverse member and a nut. The bush has an internal bore that is frustoconical in shape with the diameter increasing in the vertical direction. The clearance between the bolt and the edge of the aperture together with the resilient nature of the bush provides a flexible, resilient connection between the mounting member (and castors) and the depending structure that forms part of the trolley chassis. The resilience of the bush and its frustoconical bore allows the mounting member to tilt relative to the chassis when the trolley is loaded. Loading of the trolley applies a downward force at the castor mounting and the resulting tilt action serves to incline the swivel axes of the castors such that the degree of inclination varies according to the magnitude of the load in the trolley. The transverse mounting member ensures that the inclination of each of the swivel axes is equal. Of particular note are Figs 4 and 5 in Appendix 1 to their statement. These show photographs of a wheel of their trolley in an unladen and laden condition. It is clear that in the laden state the angle between the pivot axis and the vertical is greater than in the unladen condition. It seems clear that this variation in the pivot angle with loading of their trolley is inherent in the design of the wheel mounting and is not a mere accident. This is illustrated in Figs 7 and 8 of Appendix 1.
- 12 The Claimant goes on to argue that all other claims of the patent also lack novelty based on the prior use outlined above and the other cited documents, presumably in anticipation of any offer to amend the claims had the matter gone to a revocation hearing. However, for the present purpose it is only necessary to decide whether at least one ground for revocation has been made out. Having considered the Claimant's statement I am satisfied that the invention claimed in at least claim 1 of the patent is not novel in the light of the prior use referred to in that statement. It should be noted that no evidence of the date of this prior use has been submitted. However the Claimant

states that evidence will be submitted to show that the Passenger Baggage Trolley manufactured by Clares Merchandise Handling Equipment Limited was sold to the British Airports Authority and has been used since 1994 at various airports in the United Kingdom including Heathrow and Gatwick at least. They go on to say that such trolleys can be inspected at the aforesaid airports and that their use has continued from 1994 through to the present day; 1998 being well before the priority date of the patent. In accordance with Manual of Patent Practice, paragraph 72.38 it is assumed that this statement is conceded. I therefore conclude that at least one ground for revocation has been made out, which in the absence of any defence from the Proprietor is sufficient for revocation to proceed.

13 I therefore order revocation of the patent and decline the offer to surrender.

Costs

14 In their application for revocation the Claimant asks for an award of costs in its favour. However, since the matter has been decided on the papers without a hearing, the parties were asked in an official letter to indicate their position on the question of costs. The Proprietor did not respond and the Claimant indicated that they do not wish to pursue costs. Accordingly I make no order for costs in this case.

15 Any appeal against this decision must be filed within 28 days of the date of this decision.

Dated this 7th day of August 2003

Peter Back
Deputy Director, acting for the comptroller