



4 September 2009

**PATENTS ACT 1977**

BETWEEN

Dr Steven Sevak Singh

Requestor

and

Timeguard Ltd

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Observer

PROCEEDINGS

Request under section 74B of the Patents Act 1977 for Review of  
Opinion 09/08 on patent number GB2385449

HEARING OFFICER

Peter Back

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1 This is a review of Opinion 09/08 in respect of patent number GB2385449 (“the patent”). The patent was granted to the sole inventor Dr. Steven Sevak Singh on 2 June 2004 with an earliest date of 13 February 2002, the filing date.

2 Dr. Singh filed a request on 29 February 2008 seeking an opinion as to whether the patent had been infringed by a remote control dimmer lamp holder supplied by Timeguard Ltd. to Homebase Ltd. for sale, based on a copy of the installation and operating instructions for the lamp holder. Observations were made on behalf of Timeguard by Graham Coles & Co. and observations in reply by Dr. Singh. An opinion was duly issued on 20 May 2008 concluding that the Timeguard remote control dimmer lamp holder did not infringe any claim of the patent.

3 Dr. Singh filed a request for a review of Opinion 09/08 on 18 August 2008, asking that the opinion be set aside. The request was opposed by Timeguard and the matter came before me at a hearing on 22 July 2009. Dr Singh was represented by Ms Andrea Hughes of Frank B Dehn & Co. and Timeguard Ltd was represented by Mr Graham Coles of Graham Coles and Co.

## The law

4 The relevant rules from the Patents Rules 2007 covering reviews of opinions are:

### *Rule 98 - Review of opinion*

*(1) The patent holder may, before the end of the period of three months beginning with the date on which the opinion is issued, apply to the comptroller for a review of the opinion.*

....

*(5) The application may be made on the following grounds only—*

*(a) that the opinion wrongly concluded that the patent was invalid, or was invalid to a limited extent; or*

*(b) that, by reason of its interpretation of the specification of the patent, the opinion wrongly concluded that a particular act did not or would not constitute an infringement of the patent.*

### *Rule 100 Outcome of review*

*(1) Upon the completion of the proceedings under rule 99 the comptroller shall either—*

*(a) set aside the opinion in whole or in part; or*

*(b) decide that no reason has been shown for the opinion to be set aside.*

*(2) A decision under paragraph (1)(a) or (b) shall not estop any party to proceedings from raising any issue regarding the validity or the infringement of the patent.*

*(3) No appeal under section 97 shall lie from a decision to set aside the opinion under paragraph (1)(a), except where the appeal relates to a part of the opinion that is not set aside.*

5 In *DLP Limited* [2007] EWHC 2669 dealing with an appeal from a review of an opinion Kitchen J. stated at paragraph 22 of the judgment (NB rule 77K is now part of rule 100):

*“In the case of an appeal under rule 77K, the decision the subject of the appeal is itself a review of the opinion of the examiner. More specifically, it is a decision by the Hearing Officer as to whether or not the opinion of the examiner was wrong. I believe that a Hearing Officer, on review, and this court, on appeal, should be sensitive to the nature of this starting point. It was only an expression of an opinion, and one almost certainly reached on*

*incomplete information. Upon considering any particular request, two different examiners may quite reasonably have different opinions. So also, there well may be opinions with which a Hearing Officer or a court would not agree but which cannot be characterized as wrong. Such opinions merely represent different views within a range within which reasonable people can differ. For these reasons I believe a Hearing Officer should only decide an opinion was wrong if the examiner has made an error of principle or reached a conclusion that is clearly wrong. Likewise, on appeal, this court should only reverse a decision of a Hearing Officer if he failed to recognize such an error or wrong conclusion in the opinion and so declined to set it aside. Of course this court must give a reasoned decision in relation to the grounds of appeal but I think it is undesirable to go further. It is not the function of this court (nor is it that of the Hearing Officer) to express an opinion on the question the subject of the original request.”*

6 Hence following DLP it is clear that this review should not provide a second opinion, but review whether the opinion was wrong because the examiner has made an error of principle or reached a conclusion that is clearly wrong.

### **The patent**

7 The patent relates to a remote control power switch and claim 1 at the time the opinion was issued was as follows (minor amendments under Section 27 were subsequently allowed):

*“A device for controlling a function of an electrical device using a conventional remote control comprising, said device being susceptible to be switchable between a learning mode and a normal mode of operation; the device comprising*

*a. Means for controlling said function of said electrical device;*

*b. Means for receiving a signal from said conventional remote control;*

*c. Means for learning an operating key from said conventional remote control, said controlling means responsive to reception by said receiving means of a signal corresponding to said learned operating key;*

*d. Means of switching the device between its learning mode (for learning the operating key) and its normal mode, implemented, through means for receiving a signal from said conventional remote control.”*

### **The Timeguard device**

8 The Timeguard device is a remote control dimmer lamp holder that fits to a conventional lamp holder and into which a bulb is fitted. The instructions describe normal operation of the Timeguard device in which the bulb is switched on and off by successive brief presses of any button on a conventional infra red remote control and the brightness of the bulb is dimmed by longer presses of any

button on a conventional infra red remote control. The instructions also describe what is termed specific button operation of the Timeguard device in which it learns to respond to a specific button on a conventional infra red remote control. In order to achieve this, the following steps are described:

- a. *Ensure that either the lamp plug is out of the socket or that the consumer unit switch is turned off. Fit a 40W filament bulb to the bulb holder to minimize IR interference.*
- b. *Plug in or turn on the supply and turn the light switch on for longer than 2 seconds (there is no maximum limit ...).*
- c. *Turn the light switch off and then back on again twice within 2 seconds (quickly).*
- d. *The light will start from off and increase steadily to half brightness letting you know that the operation in (c) was successful.*
- e. *Press the selected remote control button twice within 30 seconds keeping the remote control pointing directly towards the lamp holder and keeping them as close together as possible.*
- f. *The light will flash once and then go to full brightness to indicate that the remote control code has been stored correctly.*
- g. *The unit will now only respond to the selected button on the selected remote control but apart from this it will operate as in normal operation. It will remain in specific button operation when the light switch is off ready for further operation in this mode when the light switch is turned on again.*

9 In forming his opinion the examiner only had the installation and operating instructions for the allegedly infringing device. At the hearing I had the benefit of a demonstration by Dr. Singh of an example of the Timeguard device provided by Timeguard. In the event this demonstration exemplified the instructions above which were provided for the original opinion and I do not believe that the demonstration has made a difference to my understanding of the instructions or of the way the Timeguard device operates.

## **Submissions**

10 It is common ground between the parties that the Timeguard device shows all the features of the patent apart from paragraph d of claim 1.

11 As I have said Dr. Singh and his representative were of the view that the examiner did not construe claim 1 correctly and that therefore his opinion should be set aside. More specifically the suggestion was that the examiner has incorrectly construed the terms “between” and “normal mode” at paragraph d in claim 1. Even accepting the examiner’s construction of the claim Dr. Singh still believes that the conclusion was wrong.

12 Although it is mentioned only in claim 1 of the patent, in his opinion the examiner came to the view that normal mode is when the device is controlling a function of an electrical device. For Dr. Singh normal mode covers all the various operating modes of the device and learning mode is a special case of normal mode in which the device is learning the particular button to which it will subsequently respond and that the Timeguard device enters and leaves its learning mode when the selected remote control button is pressed twice within 30 seconds at step 4e in the instructions. Mr. Coles by contrast, and much like the examiner, points to step 4c of the instructions as being the point at which the device transitions between normal and learning modes when the light switch is turned off and then back on again twice within 2 seconds, a condition which Dr. Singh believes to be a waiting state which is also a normal mode, as are any locking and unlocking modes. Dr. Singh refers me to passages reproduced from several text books to underline his construction of normal mode. These texts seem to establish that terms such as “normal operating mode”, “special operating mode”, “emulation mode”, “supervisor mode” are known in the fields of microcontrollers and microcomputers. However, none of the passages define the meaning of these terms and I have therefore not been able to draw any assistance in assessing the various constructions of the term normal mode.

13 The examiner was of the view that “between” should be construed to mean switching from normal mode to learning mode and back again. By contrast Dr. Singh believes that “between” should be construed more widely to mean switching either from normal mode to learning mode or vice versa or both ways.

14 In construing “normal mode” and “between” and his final conclusion Mr. Coles can see nothing unreasonable and no error of principle in the examiner’s opinion. Dr. Singh on the other hand finds the differences between his interpretation and the examiner’s opinion do not fall within Kitchen J.’s “range within which reasonable people can differ” from DLP Limited.

15 Even accepting that the examiner was right that “between” means switching both ways between normal and learning modes, then Dr. Singh maintains that the Timeguard device still falls within claim 1 since it enters the learning mode at the first press of the selected remote control button at step 4e in the instructions and leaves it again at the second press.

16 I have already reproduced part of the judgment of Kitchen J. in DLP Limited and to my mind in this case my task is simply to decide did the examiner make an error of principle or reach a conclusion that is clearly wrong?

17 It is clear that the examiner and Dr. Singh construe “between” and “normal mode” differently. In light of Kitchen J. in DLP Limited I have deliberately not come to a decision as to what is the proper construction of these two terms, since I do not see that as the task of this review. I can see nothing to suggest that the examiner’s construction was clearly wrong, nor that he erred in principle. He construed the claim purposively and expressed his opinion as to what the skilled man would have understood the patentee to have used the language of the claim to mean. That Dr. Singh and the examiner come to different opinions on the

point does not mean the opinion is clearly wrong.

18 Dr. Singh suggests that, even accepting what he calls the examiner's narrow construction of the claim, the conclusion of the opinion was clearly wrong in that the Timeguard device switches both into and out of its learning mode in response to a specific button on a remote control. I think that in fact this is the same point as the construction of the terms "learning mode" and "between". If I accept that the examiner's view on the point at which the Timeguard enters its learning mode was reasonable, i.e. in response to the rapid on and off switching of the light switch, then it must follow that the Timeguard device cannot transition both ways between normal and learning modes in response to the remote control, irrespective of how it leaves the learning mode to return to its normal mode.

19. In summary, as I understand things, the examiner in the opinion and Mr Coles in his submissions took the view that the Timeguard device enters its learning mode, that is the condition in which it can be programmed to respond to a single selected key on the remote control, when the light is switched off and then back on again twice within 2 seconds, according to step 4c of the instructions and that this does not infringe paragraph d of claim 1 which requires the switching of the device between its learning mode and normal mode by a signal from the remote control. This seems to me to be an entirely reasonable conclusion based on the material available to the examiner when he issued his opinion and, whilst Dr Singh may disagree with this conclusion, I do not accept that it can be characterised as wrong.

### **Conclusion**

20 I have found no error of principle in the examiner's opinion, nor a conclusion that was clearly wrong. Therefore under rule 100, I decide that no reason has been shown to set the opinion aside.

### **Costs**

21 Both sides have requested their costs. Since I have decided that the opinion should not be set aside, I order Dr Singh to pay Timeguard Limited £1100 as a contribution towards their costs.

### **Appeal**

22 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

Peter Back  
Divisional Director acting for the Comptroller