

30<sup>th</sup> December 2009

**PATENTS ACT 1977**

BETWEEN

Leonard S Stockley

Applicant for  
Revocation

and

Husqvarna UK Ltd

Patentee

PROCEEDINGS

Application under section 72 of the Patents Act 1977  
for revocation of patent number EP 1367016 B1

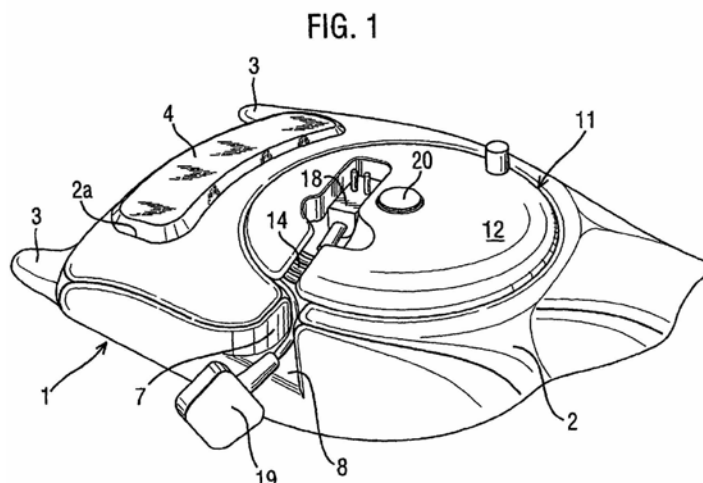
HEARING OFFICER

Stephen Probert

**DECISION**

- 1 In these proceedings, Mr Leonard S Stockley seeks revocation of patent EP 1367016 B1 (“the patent”). The patent proprietor, Husqvarna UK Ltd, (“Husqvarna”) maintains that the patent is valid and should not be revoked.
- 2 The patent concerns an electric lawnmower, with a spool holder for storing the electric cable integrally formed on an outside surface of the grass-box. The patent has a priority date of 21<sup>st</sup> May 2002; figure 1 from the patent is reproduced below (right).

- 3 Mr Stockley says that he invented a lawnmower with a spool holder integral with the grass-box, and showed it in public from November 2001. Accordingly, he says that claims 1, 3 and 20 of the patent lack either novelty or an inventive step, and that the patent should be revoked under section 72(1)(a).



- 4 Both sides filed evidence, following which the matter came before me at a hearing on 15<sup>th</sup> December 2009. At the hearing, Mr Stockley was assisted by Dr Peter Cox and Husqvarna was represented by Mr Ian Wood of Mayer Brown International LLP.
- 5 I issued a preliminary evaluation a couple of weeks before the hearing, in which I stated what I considered to be the important issues to be decided, and also indicated my provisional view.

### **The Claims**

- 6 The claims under attack read as follows:

1. A lawnmower comprising a grass-box, a main body structure housing an electric motor and a cutting chamber, and a cable storage device comprising a spool (11) for storing an electric cable (14) in a wound-on configuration, the spool being rotatably mounted in a spool holder (2), **characterised in that** the spool holder is integrally formed with the grass-box of the lawnmower on an outside surface thereof.

3. A lawnmower as claimed in claim 1 or claim 2, wherein the grass-box is provided with a lid (1), and the spool holder (2) forms part of the lid.

20. A lawnmower as claimed in claim 19, wherein the spring (41) is a clock spring, one end of which is fixed to the spool (11), the other end being fixed to the spool holder (2).

- 7 In order to appreciate the scope of claim 20, it is necessary to read claim 19, upon which it is dependant:

19. A lawnmower as claimed in any one of claims 1 to 18, further comprising a spring (41) for storing energy produced as the cable (14) is unwound, the release of said energy being usable to rewind the cable.

- 8 Mr Wood submitted that as Mr Stockley had not suggested that claim 19 was invalid, then it followed that the attack against claim 20 must fail because claim 20 is dependant on claim 19. I can certainly see the logic of this argument, as I accepted at the hearing, and Mr Stockley did not challenge Mr Wood on this point. However, on reflection, I'm not sure that an applicant for revocation can be prevented from attacking a dependant claim simply because he has not also attacked the claim(s) upon which it depends. If the dependant claim is shown to lack novelty or inventive step, then it follows that the claim(s) upon which it depends will also lack novelty or inventive step. In the event, nothing in this decision relies on the novelty/obviousness (or otherwise) of claim 20, and I did not hear reasoned arguments on the point so I prefer to leave it open.

### **The Law**

- 9 The Comptroller's powers to revoke a patent on the application of another person are set out in section 72(1). With respect to the validity of the claims, the relevant parts read as follows:

### **Power to revoke patents on application**

72.-(1) Subject to the following provisions of this Act, the court or the comptroller may by order revoke a patent for an invention on the application of any person (including the proprietor of the patent) on (but only on) any of the following grounds, that is to say:

- (a) the invention is not a patentable invention;
- (b) ...

- 10 In relation to section 72(a) above, section 1(1), section 2(1) and section 3 define the appropriate requirements for a patentable invention:

### **Patentable Inventions**

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;
- (c) ....

and references in this Act to a patentable invention shall be construed accordingly.

### **Novelty**

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

### **Inventive Step**

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).

- 11 In this case, the definition of “state of the art” found in section 2(2) is particularly relevant:

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.

- 12 It was established in advance of the hearing that the correct test for inventive step is the structured approach found in *Windsurfing*<sup>1</sup> as reformulated by the Court of Appeal in *Pozzoli*<sup>2</sup>:

- 1(a) Identify the notional “person skilled in the art”
- 1(b) Identify the relevant common general knowledge of that person;
- 2 Identify the inventive concept of the claim in question or if that cannot readily be 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 which would have been obvious to the person skilled in the art or do they require any degree of invention?

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<sup>1</sup> *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59

<sup>2</sup> *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

## **The Evidence**

- 13 Both sides filed evidence. Mr Stockley supplied a witness statement describing how he set out to invent a spool holder for an electric lawnmower. He also lists various people with whom he discussed his invention. I shall say more about these individuals, what information they were given and what they were allowed to do with it, later in this decision.
- 14 Mr Stockley also refers to his own patent application — GB0127664.1 filed on 19<sup>th</sup> November 2001 — which he says described a lawnmower with a spool holder “integral with and on” the grass-box. But this application was terminated in June 2003 and was never published. It cannot therefore form part of the state of the art. Mr Stockley refers in detail to correspondence between himself and his patent attorney during the drafting of his patent application, but again, none of this correspondence was in the public domain and Mr Stockley’s patent attorney was bound by a duty of confidentiality.
- 15 Husqvarna filed evidence in the form of a witness statement from Mr Michael Bowden. Mr Bowden has worked for Husqvarna since 1985 and is currently employed as Research and Development Director. He has a background as a mechanical and production engineer, and has been involved in new product development for many years, as a design engineer, manager and departmental head. Mr Bowden was involved with the team in the making of the invention described in the patent and is one of the named inventors.
- 16 Mr Bowden was cross-examined at the hearing in relation to his role in the team that invented Husqvarna’s lawnmower. He also confirmed what he had said in his witness statement — ie. that Husqvarna had been tackling a different problem to that addressed by Mr Stockley with his invention. More specifically, Husqvarna was interested in a cable storage solution, as distinct from cable management. Mr Bowden says that a known competitor machine had previously relied on quite complex and expensive solutions that maintained a constant tension on the cable to provide cable management. Husqvarna was looking for something simpler and less expensive. He adds that Husqvarna was also looking for a solution that would be suitable where weight is a critical consideration, as it is with hover mowers. In this respect, he says that it was advantageous to have a simple cable storage solution rather than one that involves keeping heavy cable on the product during use.

## **The State of the Art**

- 17 In the majority of applications for revocation of a patent, the claimant relies on documents, often other patent applications, that were published before the priority date of the patent under attack in order to demonstrate that the invention already formed part of the state of the art. But in this case Mr Stockley relies on a prototype model of a [modified] lawnmower that he claims he showed in public from November 2001 — around six months before the priority date of Husqvarna’s patent. He says that his modified lawnmower had a spool holder incorporated into the lid of the grass-box, and he supplied several photographs of his prototype model, a selection of which I have reproduced later in this decision.

18 This raises two questions that I need to determine before I can go on to consider the issues of novelty and inventive step. Firstly, was Mr Stockley’s modified lawnmower “made available to the public” as defined by section 2(2) of the Patents Act? If I find that it was, I then need to determine, on the basis of the facts in the case, *what* the public could have learned from the disclosure.

**Made available to the public**

19 In his statement of case, and also in his evidence, Mr Stockley says that his invention was kept in the garage attached to his home, but he provides the names of several individuals who saw his invention in his garage:

Mr Everard & Dr Cox —	Neighbours of Mr Stockley
Mr Trehern & Mr Patel —	Employees of Magiglo, a company who helped Mr Stockley with the development of his invention.

20 Mr Stockley also says that his invention was seen by members of his family and friends, as well as the manager and workmen on the building site where he had just moved into a new home.

21 Husqvarna’s counterstatement denies that Mr Stockley’s invention was made available to the public, but it does not deny that the various people mentioned in Mr Stockley’s statement saw the invention in Mr Stockley’s garage between November 2001 and 21<sup>st</sup> May 2002. As I indicated in my Preliminary Evaluation, I therefore find that Husqvarna accepts that these people saw Mr Stockley’s invention (his lawnmower with a spool holder) in his garage, before the priority date of the patent. But does this mean that Mr Stockley’s invention was “made available to the public”?

22 In my Preliminary Evaluation I drew the parties’ attention to *Folding Attic Stairs Ltd v The Loft Stairs Company Ltd & Michael Heraghty*<sup>3</sup> and also to paragraphs 7-12 to 7-16 of “Terrell on the Law of Patents” (sixteenth edition). Mr Wood, in his skeleton, referred to one of the cases mentioned in Terrell, *PLG Research Ltd v Ardon International Ltd*<sup>4</sup>, in which Aldous J says:

“Thus to form part of the state of the art, the information given by the use must have been made available to at least one member of the public who was free in law equity to use it.”

23 Considering in turn, the specific individuals and categories of people who saw Mr Stockley’s modified lawnmower, I need to decide whether at least one of them was a “member of the public who was free in law and equity” to use the information they gained in Mr Stockley’s garage?

24 Mr Patel and Mr Trehern worked in the Research and Development department of a company called Magiglo. According to Mr Stockley’s statement, Mr Patel and Mr Trehern both attempted to assemble a fully working model of Mr Stockley’s

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<sup>3</sup> [2009] EWHC 1221 (Pat) — See <http://www.bailii.org/ew/cases/EWHC/Patents/2009/1221.html>

<sup>4</sup> [1993] FSR 197 at page 226.

invention, but were unable to do so. In the case of Mr Trehern, we know that he was required to sign a non-disclosure agreement before being shown the prototype of the invention because he says so in a statement of truth written by him and supplied by Mr Stockley as an attachment to his statement (LS15). Mr Trehern was therefore under an express legal obligation to keep the information confidential, and was certainly not “free in equity and law to use it”.

25 I think that on the balance of probabilities Mr Trehern’s colleague at Magiglo, Mr Patel - the R&D Manager, was also under an obligation to keep Mr Stockley’s invention confidential. I think this would have been implied by the circumstances in which he (Mr Patel) received the information; that is, if he did not also sign a non-disclosure agreement. So Mr Patel was also not “free in equity and law” to use the information he was given in relation to Mr Stockley’s invention.

26 Mr Everard is a carpenter who lived immediately next door to Mr Stockley. He visited Mr Stockley’s home from time to time, as neighbours often do, and Mr Stockley showed him his invention. At the time, Mr Stockley was having problems fabricating a holder for a spool of cable, and Mr Everard was able to make one out of wood for him. There is no specific evidence that Mr Everard signed a non-disclosure agreement before being shown the prototype. However, it is clear that Mr Stockley was aware of the requirement to keep inventions confidential. He says in his witness statement that he had kept his invention a secret for over two years, and that anyone to whom he disclosed the invention was required to sign a non-disclosure agreement that he downloaded from the internet. It was only after his first patent application was filed that his patent attorney wrote to him (on 22<sup>nd</sup> November 2001) telling him:

“... you are free to disclose the invention to others without risking loss of any patent rights we may eventually obtain for you.”

27 Mr Wood argued very persuasively that the circumstances in which Mr Everard was shown the invention and subsequently became involved in the fabrication of a part for the prototype imported an obligation of confidentiality. He relied upon the judgment of Megarry J in *Coco v Clark*<sup>5</sup> in which he said:

“It seems to me that if the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised that upon reasonable grounds the information was being given to him in confidence, then this should suffice to impose upon him the equitable obligation of confidence. In particular, where information of commercial or industrial value is given on a business-like basis and with some avowed common object in mind, such as a joint venture or the manufacture of articles by one party for the other, I would regard the recipient as carrying a heavy burden if he seeks to repel a contention that he was bound by an obligation of confidence”

28 Against this, Mr Stockley put up a spirited defence, suggesting that most people unfamiliar with the law would not consider themselves bound to maintain the confidentiality of something that they had seen in another person’s home. Clearly, much depends on the circumstances in which the information is imparted. In this case, noting particularly Megarry J’s example of the manufacture of articles by one party for the other (eg. such as the wooden spool holder that Mr Everard

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<sup>5</sup> *Coco v Clark* [1969] RPC 41 at 47.

made for Mr Stockley's prototype), I find that Mr Everard probably was bound by an implied obligation of confidentiality; ie. he was not free in equity and law to use the information he received in relation to Mr Stockley's invention.

29 That leaves Dr Cox, another of Mr Stockley's neighbours. Dr Cox often visited Mr Stockley's garage, after work and on weekends, to play pool on a table set up in Mr Stockley's garage. Mr Stockley showed his invention to Dr Cox for the first time in March 2002, roughly two months before the priority date of Husqvarna's patent. Prima facie I think that Dr Cox would also be considered to be under an implied obligation of confidentiality because of the circumstances in which he saw the prototype — ie. in a neighbour's private garage. But Dr Cox probably knows more about patents than the typical man in the street, and he asked Mr Stockley a very pertinent question. The following paragraph is found in Dr Cox's statement of truth (attachment LS12 to Mr Stockley's statement)

“At that time I had some responsibility for freedom to operate assessments within my work area at a major pharmaceutical company which prompted me to ask Mr Stockley if he should be showing me this invention as it could be considered prior art if the patent had not been filed. He informed me that the patent had recently been filed and therefore there was nothing to worry about.”

30 The patent mentioned here by Dr Cox is Mr Stockley's earlier patent application; it was withdrawn prior to publication. Nevertheless, Dr Cox's statement clearly suggests that the invention was disclosed to him in circumstances where confidentiality was not an issue. Having been told that a patent application had recently been filed, and that there was “nothing to worry about”, I consider that Dr Cox was free in equity and law to make use of the information disclosed to him in relation to Mr Stockley's prototype lawnmower.

31 Mr Wood submitted that I should give reduced weight to Dr Cox's statement of truth because it has not been formally submitted as evidence in these proceedings (in the form of a witness statement or statutory declaration etc.). Weight might be a relevant factor if there was any evidence to suggest that Dr Cox was not free in equity and law etc.. But with nothing on the other side of the balances, I would have to completely disregard Dr Cox's statement of truth in order to reach any other conclusion in relation to Dr Cox. I don't think the 'weight' attributed to evidence is really an issue when it is the only evidence available.

32 That is enough for me to conclude that Mr Stockley's modified lawnmower was “made available to the public”. Mr Wood argued that there was nothing to suggest that Dr Cox actually used the information that he gained in Mr Stockley's garage. He is quite right; there isn't. But as paragraph 7-12 of Terrell puts it:

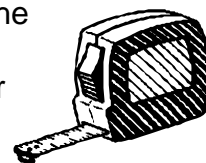
“The words “made available to the public” also impose no requirement that any person should actually have received the information. It is sufficient if it is available to be received, as, for example, being placed on the shelves of a library open to the public, no matter how obscure or remote the library is. Equally, it makes no difference, if the material is in fact available, whether the skilled person would have had a reason to look for it. In *Lux Traffic Controls Ltd v Pike Signals*, Aldous J said:

“... Further it is settled law that there is no need to prove that anybody actually saw the disclosure provided the relevant disclosure was in public.” ”

- 33 If I understood him correctly, Mr Stockley further submitted that the letter from his patent attorney telling him that he was free to disclose his invention to others, meant that the invention was in fact available to the public from the date of that letter (ie. 22<sup>nd</sup> November 2001). I think Mr Stockley was attracted to this argument because if it had succeeded then he would not need to establish whether any [other] person actually received the information from him — ie. it was “made available to the public” because from 22<sup>nd</sup> November 2001 there was nothing to prevent Mr Stockley telling anyone about it. But for this submission to succeed, Mr Stockley himself would have to be regarded as the member of the public becoming free to use the information, and I do not think that was ever intended by Parliament or the Courts. Mr Stockley was, by definition, the originator of the information; he cannot also be the “member of the public” to whom the information is made available.
- 34 Mr Stockley also claimed that his invention was seen by members of his family and friends, as well as the manager and workmen on the building site where he had just moved into a new home. I don’t think Mr Stockley’s family qualify as “members of the public” for the purposes of this statutory test. Moreover, given that the modified lawnmower was kept in the garage attached to Mr Stockley’s home, I consider that anyone else who saw it would have been under an implied obligation of confidentiality — unless, as in the case of Dr Cox, there is reason to believe that such an obligation had been expressly lifted. Moreover, it is far from clear what information a casual observer would have gleaned from the modified lawnmower. Unless the lid of the grass-box was already open with the spool holder (and possibly a spool of cable) exposed inside, one would need to open the lid of the grass-box in order to gain any appreciation of Mr Stockley’s invention.
- 35 In his submissions at the hearing, Mr Stockley said that his invention was also made available to the public on at least one occasion when it was wheeled across a car park from his car to the premises of Magiglo. But there is no evidence in the proceedings to support this, so I have ignored it while making my decision. I also note in passing that even if the evidence had supported Mr Stockley’s statement, it is not clear how much of his invention a member of the public would have been able to see, given that the essential elements of Mr Stockley’s invention would presumably have been concealed inside the grass-box.

### **What exactly was made available to the public?**

- 36 Mr Stockley’s invention addressed a different problem to that described in Husqvarna’s patent. He set out to find a way of preventing the blades of a electric lawnmower from cutting or damaging the trailing power lead. His idea was to mount a spool holder somewhere on the lawnmower, that would hold the excess cable when the lawnmower is in use. The spool holder is under spring tension so that as the lawnmower moves closer to the power point, the spool holder automatically takes up the surplus cable. When the lawnmower is not being used, the spring attached to the spool holder fully winds in, and stores, the cable rather like a tape measure.



- 37 In Mr Stockley’s prototype, the spool holder was bolted to the underneath of the lid of the grass-box. It was not a working prototype, and Mr Stockley continued developing his prototype well after the priority date of Husqvarna’s patent. The



following photographs, attached to Mr Stockley's statement, give a good impression of what Dr Cox would have seen.



### Novelty

- 38 Mr Stockley's invention (as described and illustrated in his statement, and later in his evidence) clearly shows the spool holder located on the inside of the lid of the grass-box. The claims of Husqvarna's patent are limited to lawnmowers with a spool holder on an outside surface of the grass-box. As I indicated in my Preliminary Evaluation, it seems to me that Mr Stockley's prototype lawnmower does not fall within the scope of the claims of the patent, and therefore it was going to be extremely difficult (to say the least) for Mr Stockley to prove that the invention claimed in the patent lacked novelty. Nothing that was said at the hearing has persuaded me that my Preliminary Evaluation was incorrect.
- 39 Mr Stockley did suggest to me that when Dr Cox told others about what he had seen, he would have described it as "a spool holder integrated into the lid of a grass-box" and that anyone hearing this description would visualise an arrangement that would fall within the scope of claim 1 — eg. something similar to that shown in figure 1 of Husqvarna's patent (see paragraph 3 above). I suppose it was worth a try, but I cannot in all seriousness contemplate what Dr Cox **might** have said to someone else, and/or what that person **might** have understood him to mean. I must go with the evidence of what was made available to Dr Cox, and not what he may have made available to someone else.
- 40 Therefore the attack against claim 1 based on novelty fails. It follows that the attack against the novelty of claims 3 and 20 must also fail since they are dependant on claim 1.

### Inventive Step

- 41 As indicated above, and as discussed at the hearing, the correct test for inventive step is the structured approach found in *Windsurfing* as reformulated by the Court of Appeal in *Pozzoli*.

Step 1(a) — Person skilled in the art

- 42 Mr Bowden's evidence suggests that the patent in suit is addressed to a person who is involved in developing gardening equipment (including electric lawnmowers) suitable for domestic outdoor use. He says that those involved in developing such gardening equipment typically have degrees or equivalent qualifications in relevant scientific subjects, eg. engineering, materials science

and physics. Mr Stockley did not challenge this evidence. I am content to adopt this as the description of the person skilled in the art.

#### Step 1(b) — Common general knowledge

43 Neither side offered anything specific in this regard. I think the common general knowledge would include a working knowledge of the operation of most domestic gardening equipment, as well as basic principles of engineering — electrical and mechanical.

#### Step 2 — The Inventive concept

44 Again, neither side offered anything particularly helpful on this. I deduce from the patent specification that the inventive concept in claim 1 is a cable storage device for an electric lawnmower, comprising a spool holder integrally formed on an outside surface of a grass-box.

45 The inventive concept of claim 3 is the narrower one of integrally forming the spool holder on a lid of the grass-box, while in claim 20 it is the use of a clock spring to store energy as the cable is unwound, and which subsequently provides energy to rewind the cable.

#### Step 3 — The difference from the prior art

46 The most significant difference between the inventive concept in claims 1 & 3 and Mr Stockley's prototype (the prior art) is that Mr Stockley's spool holder is a separate component mounted on the inside surface of the grass-box.

47 Mr Wood submitted that there were in fact three distinct differences:

i) The purpose of Mr Stockley's invention was to hold the cable on the spool while the lawnmower is in use, rather than to store it only when the lawnmower is not in use.

ii) The spool holder in Mr Stockley's prototype was on the inside of the lid of the grass-box.

iii) The spool holder in Mr Stockley's prototype was not integrally formed with the grass-box, but was a separate component.

48 I don't accept Mr Wood's first difference. The claims of the patent in suit are not limited to storing the cable only when the lawnmower is not in use. Earlier in the hearing I had asked Mr Wood whether in his opinion the claims of Husqvarna's patent would be infringed by a hypothetical variation of Mr Stockley's prototype in which the spool holder is moulded into the lid of the grass-box instead of being bolted to the underneath of the lid. (In this hypothetical variation, the spool holder would store surplus cable while the lawnmower is in use and maintain the cable under tension). He maintained, correctly in my view, that such an arrangement would infringe claim 1. Therefore I conclude that the purpose of the spool holder (ie. whether it is for 'managing' the cable in use as well as, or instead of, 'storing' it when not in use) is not a relevant difference.

49 Mr Wood's second and third differences are well founded, although I am not persuaded that it is necessary to regard them as two separate differences. I can see why Mr Wood chose to describe the difference in this way. He was trying to increase the gap that Mr Stockley has to bridge in order to show that both

differences constitute steps that would have been obvious to the person skilled in the art. But when one appreciates that the third and fourth steps of the *Windsurfing* test both refer to differences (plural), it should be irrelevant whether the difference(s) are represented in one sentence or in two.

#### Step 4 — Is it inventive?

- 50 Mr Bowden in his evidence says that the skilled person would not consider moving the spool holder from the inside to the outside of the grass-box lid. He makes a number of good points. If the skilled person is only interested in a retractable lawnmower lead that feeds and retreats to keep the cable off the ground when in use (to reduce the possibility of cutting through the cable), then moving the spool holder to an outside surface could increase the risk of it being damaged or fouled by grass cuttings, or other contaminants — both when in use and when being stored, for example, in a shed. He also points out that moving the spool holder from its location within the grass-box could lead to increased strain on the spool holder (and the electrical connections at the end of the cable). This is because the sides of the aperture in the grass-box (through which the cable passes) would absorb much of the impact of the inevitable sharp tugs on the cable.
- 51 Mr Bowden also says that incorporating the spool holder in a complementary recess in the lid of the grass-box would require some degree of invention. Mr Stockley dismissed this as a minor constructional change.
- 52 Having heard all the arguments on both sides, I consider that these differences are steps that would have been obvious to the skilled person. I agree with Mr Stockley that the ‘step’ of incorporating the spool holder in a complementary recess in the lid of the grass-box would not require any degree of invention. I think it is something that the skilled person would instinctively consider when taking a crude prototype (which is all that Mr Stockley’s modified lawnmower was meant to be), forward into a polished and cost-effective production design suitable for a consumer market. From my own experience of developing prototypes (albeit in the field of automotive electronics) I know that early prototypes, or “proof-of-concept”’s as we used to call them, often look very primitive by comparison with the final products that come off the production line.
- 53 Although I appreciated the force of Mr Bowden’s evidence on the point, I consider that the disadvantages of moving the spool holder to an outside surface of the lid of the grass-box are not so significant that they would prevent the skilled person from thinking about it as a real possibility. I think that is all that is required for a finding of lack of inventive step. There would be potential disadvantages to overcome, but I think they are relatively minor once one has appreciated the possibility of locating the spool holder on an outside surface. For example, incorporating the spool holder in a complementary recess (which I have already found to be matter of routine design rather than invention) overcomes most if not all of the disadvantages that Mr Bowden highlights.
- 54 I also note that Dr Cox, and/or any other member of the public who saw Mr Stockley’s modified lawnmower before the priority date of the patent in suit, did not see a working prototype. The evidence is clear that, even with the assistance of Messrs Trehern and Patel from Magiglo, Mr Stockley did not manage to

assemble a working prototype before the relevant date. Therefore, Mr Bowden's point in relation to the skilled person being interested in a retractable lawnmower cable (ie. that feeds and retreats to keep the cable off the ground when in use), carries less weight; because all that Dr Cox saw was a spool holder for holding a lawnmower cable, mounted on the inside lid of the grass-box. I have no doubt that Mr Stockley explained what his intentions were in relation to his invention, but that does not reduce the force of what Dr Cox actually saw, and what he was at liberty to pass on to others — ie. a spool of cable attached to the inside lid of a lawnmower grass-box.

- 55 Accordingly I find that claims 1 and 3 lack an inventive step, and therefore the patent, in its current form, is invalid. In the circumstances I see no need to reach a decision in relation to claim 20, and I prefer not to do so for the reasons given in paragraph 8 above.

### **Next steps**

- 56 Although Mr Wood did not explicitly request an opportunity to amend the patent should my decision go against him, I think he was implicitly requesting this when he said at the outset of the hearing that only claim 1 and claim 3 (when dependant on claim 1) were being attacked. Accordingly, I am going to allow the patentee six weeks in which to file amendments under section 75 of the Act should they so wish. If amendments are filed, they will need to be advertised and if necessary, I will give directions for the subsequent procedure. If no amendments have been filed within two months, I shall revoke the patent.

### **Costs**

- 57 Mr Stockley and Mr Wood both preferred me to defer the issue of costs until after I had made my decision, and so I agreed that I would invite them to provide written submissions after my decision has issued. In the circumstances it seems reasonable to allow a period of 28 days from the end of the appeal period, for both Mr Stockley and Mr Wood (on behalf of the patentee) to file any written submissions on costs, with (if necessary) a further 14 days for submissions in reply. I would propose to suspend any decision regarding costs in the event of an appeal. If I do not receive any written submissions on costs, the default position is that I will order costs in line with the published scale.

### **Appeal**

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

**S PROBERT**

Deputy Director acting for the Comptroller