

QUESTION PAPER REFERENCE: FD4

Construction

CONSTRUCTION

1a “A lightweight envelope”

“envelope” means a containment wallet for documents because documents are transmitted in an envelope p3 l 5-6

“lightweight” could mean that set out at p3 l 15-16, but clear from p4 l 6-7 that weight of materials outside range at p3 l 15-16 is contemplated.

Claim 6 states envelope formed of paper/paperboard/cardboard ∴ C1 must encompass this as C6 is dependent on C1. “Lightweight” ∴ means a low density material, but not limited to a specific weight.

1b “comprising a pouch portion for storing documents”

“comprising” means including but not limited to the following features

“pouch portion” means a region of the envelope configured to receive and retain documents because pouch is for holding documents to be transmitted p3 l 5-6

↳ “pouch portion” configured to store documents within itself (i.e. surrounds the stored document)
p3 l 6 “to secure documents within the pouch”

1c “and a flap portion joined to the pouch portion at a fold line and for sealing the pouch portion”

“flap portion” means a leaf or flange structure p4 l 28-30 – clear to skilled person

“joined to the pouch portion” means the flap portion is connected to the pouch portion – see Fig 1 flap 3 connected to pouch 2 p4 l 12-13

“fold line” means a crease between flap portion and pouch portion about which the flap portion is rotatable – p4 l 13-14

“for sealing the pouch portion” means that when rotated, the flap portion closes on open side of the pouch portion to form an envelope (p4 l 29-30) which is then prevented from being re-opened by some means (ie. adhesive) p5 l 1-3

1d “One of the flap portion and the pouch portion bearing adhesive” means that at least either the flap portion or the pouch portion have an adhesive applied thereon, because adhesive may be applied to both flap and pouch (P3 l 29)

“adhesive” means a chemical security means (ie. not a mechanical fastener) which does not go tacky when in the presence of steam because this is “essential” at p5 l 19-21

- 1e “such that when the flap portion is folded about the fold line to be brought into abutment with the pouch portion the portions are secured together”
“into abutment” means putting the flap portion and pouch portion in direct physical contact p5 l 1-2

“the portions” means the flap portion and the pouch portion – antecedent basis lacking, but definition inherent from wording of C1 – AMEND – SUFFICIENCY.

“secured together” means non-releasable contact p5 l 2-3

- 1f “the flap further comprising tamper-evident means arranged to irreversibly indicate opening of, or an attempt to open, the envelope”

“further comprising” means including but not limited to the following
↳ “further” means separate to the previous features as clear that the adhesives 2a/3a are separate to slits 5a/5b and perforated line 6 – see Fig 1

“tamper-evident means” means any feature configured to respond to an attempt – Needs to be separate to work – see p5 l 10-12 – successful or otherwise to open the envelope by leaving some visual indication of such an event because the slits 5a/5b will tear (visual) and the perforations 6 will separate – p5 l 10-12

- 1g “and at least located at or towards either side of the flap portion” means the tamper-evident means are present in an end region of the flap portion positioned near the transverse edges of at least one of the sides of the flap portion because C4 requires “across major portion” ∴ implies presence at two sides not required in C1 and “alternative” is standard meaning of “either”
↳ NB – Embodiment has tamper-evident means at both sides, but not presented as essential as user would only pull from one side – see p5 l 15-18.

- 2a “An envelope according to claim 1” means an envelope having all of the features of claim 1 and the following features

- 2b “wherein said tamper-evident means comprises a pair of elongate continuous slits”

“comprises” has same meaning as on ft 1b

“elongate” means that the slit is long in relation to its width

“continuous” means that the slit is unbroken

“pair” means that two slits are present

“slit” means a cut portion of the envelope because normal meaning of slit and clear at p3 l 20 they are in the flap (ie. cut into)

3a “An envelope according to claim 1 or 2” means an envelope having all of the features of C1 or C1+C2 and the following features

3b “Wherein the tamper-evident means comprises a perforated line”

“perforated line” means a series of cut-outs along an elongate axis, because clear from Fig 1 perforated line 6 is elongate and a through-hole/cut out is standard meaning of perforation

↳perforation configured to create weak points to frangibly separate either side of perforated line p5 l 12-14

4a “An envelope according to C3” means an envelope having all of the features of

C1 + C3 or
C1 + C2 + C3

and the following features

but as C4 requires slits which are only present in C2 ∴ lack of antecedence when read as C1 + C3. As such, skilled person would ignore dependence on C3 when dependent on C1 ∴ read as C1 + C2 + C3

↳Amend

4b “Wherein the continuous slits and the perforated line together form a continuous line of weakness across at least a major portion of the pouch portion”

“continuous line of weakness” means an axis of the envelope which is configured to frangibly separate in response to a tampering force – p5 l 10-14, of which both slits and perforated line are constituent parts.

“across at least a major portion” means extending substantially along the majority of the width of the flap portion of the envelope – Fig 1

width = normal to direction of insertion of document

5a “An envelope according to C1” means an envelope having all of the features of C1, and the following features

5b “wherein the adhesive is a continuous strip of adhesive” means that the adhesive is an unbroken line when it is applied to either the flap or the pouch – p4 l 24, l 32-33

↳Adhesive could be in two separate parts (see Fig 1) so each part must be unbroken if it is applied to both flap and pouch

5c “which extends across a major portion of the said one of the flap portion and pouch portion” means the adhesive is arranged along substantially the majority of the width of the envelope

(width = normal to direction of insertion of document)

- 6a “An envelope according to C1” means an envelope having all of the features of C1 and the following features
- 6b “formed from paper, paperboard or cardboard” means the envelope comprises (formed not limiting to entire envelope – p3 l 2-4) these materials, which would be well understood in the art – see p3 l 15-19, p4 l 6-7.

MARKS AWARDED 14

Infringement

INFRINGEMENT – Doc B Is ft present? Y/N

- 1a Y – p8 l 3, p9 l 15 all usual materials ∴ low density material.
- 1b Y – body p8 l 12 + Fig
- 1c Y – flap p8 l 12
– fold line – see Fig.
– sealing – p8 l 16-19
- 1d N – Adhesive strips – see Fig p8 l 16
NB not 1st/2nd blobs as my constr. requires separate to the tamper evident means
→ No info on whether tacky in presence of steam ∴ N.
- 1e Y – p8 l 16-19
- 1f Y - 1st/2nd blobs p8 l 20-23 + p9 l 5-7 and slits p8 l 13
- 1g Y - 1st/2nd blobs and slits near the sides of the flap/envelope – see Figure + p9 l 1-3

Not all fts of C1 present ∴ Not infringed

↳ Turns on tacky/steam adhesive. Buy envelope and test as may infringe (need more information)

- 2a - N as not all fts of C1 present
- 2b - Y – slits – see Figure + p8 l 13

Not all fts of C1 present ∴ not infringed (again, turns on tacky/steam on C1)

- 3a - N as not all fts of C1 or C2 present
- 3b - N. Slits not perforated line as not in series along axis.

Not all fts of C3 present ∴ not infringed

4a - N as not all fts of C1 or C2 or C3 present

4b - N as no perforrated line

↳ NB slits go over half way across flap in direction parallel to entry of document but not across width as per my construction. + not in series so not perforated.

Not all features of C4 present ∴ not infringed.

5a - N as not all features of C1 present

5b - Y – both strips of adhesive are continuous (one on flap one on pouch)

5c - Y – see Figure

Not all features of C5 present ∴ not infringed

6a N as not all features of C1 present

6b Y see p9 | 16

Not all fts of C6 present ∴ not infringed.

MARKS AWARDED 11

Novelty

NOVELTY – Doc C

1a Y – p11 | 1, | 5, p12 | 9

1b Y between rear panel 12 and front panel 11 Fig 1+2

1c Y flap portion = closure flap 18 } p12 | 2-3
fold line = score line 19 }
for sealing p12 | 8, p12 | 11-13

1d N – adhesive strip 22 is on rear panel 12 ∴ present p12 | 9-13
– but, no info on whether adhesive is of the type specified – non-tacky re:
steam

1e Y – see Fig 4 + p12 | 9-13

1f Y – P12 | 29-30 + | 33-38 + slit 30 p12 | 31-32

1g Y – slit 30 is at edge of flap – Fig 4.
slits 23 also in end region

Not all fts of C1 present ∴ novel

(turns on presence of tacky re: steam)

2a N as not all fts of C1 present

2b Y – slits 23 + 25 are par
↳ each slit is continuous in own right

↳ NB – together, a line of slits forms perforation but each slit falls within my construction

Not all fts of C2 present ∴ Novel.

3a N as not all fts of C1 + C2 present.

3b Y as slits 23 are in line – forms perforation.

Not all fts of C3 present ∴ novel.

4a N – Not all fts of C3 present

4b N – potentially the slit 30 and adjacent slits (not numbered) in Fig 4 could be this -
but not accross major portion – i.e. the width of envelope.

Not all fts of C4 present ∴ novel.

5a N as not all fts of C1 present

5b Y – see Fig 2

5c Y – see Fig 2

Not all fts of C5 present ∴ novel.

6a N as not all fts of C1 present

Y – for paperboard + cardboard. (p11 | 33)

N – for paper

NOVELTY – Doc D

1a - Y p15 | 1

1b - Y pouch 2 Fig 2. p17 | 11

1c - Y flap 4. p17 | 12

1d - N no info on type of adhesive re:- tacky with steam

But – see bonding zone 6 p17 l 16.

1e - Y p16 l 15-17. p15 l 6-8.

1f - Y means are notch 9 (or slit see p17 l 33) and pre-dotted cut 8

1g - Y see Fig 1 – notch at side of flap

Not all fts of C1 present ∴ novel

2a N as not all fts of C1 present

2b Y as weakening line 8 is a cut line and from Fig 1/2 can see it has discrete slits.

Not all fts of C2 present ∴ Novel

3a N as not all fts of C1 or C2 present

3b Y – weakening line 8.

Not all fts of C3 present ∴ novel.

4a N as not all fts of C1 + C2 + C3 present

Not all fts of C4 present ∴ Novel

5a N as not all fts of C1 present

5b Y – see bonding zone 6 p17 l 16-17

5c - Y see Fig 2

Not all fts of C5 present ∴ novel

6a N as not all fts of C1 present

6b N – no info on materials

Not all fts of C6 present ∴ novel.

MARKS AWARDED 13

Inventive Step

INVENTIVE STEP

1a The skilled person (SP) is a maker/designer of envelopes + specifically tamper-evident envelopes, as this is the field of the invention (p3 l 1)

1b The CGK of the SP includes p3 l 2-10 and p4 l 28-30, as these are referred to in the patent. Specific embodiments of Doc C/Doc D not CGK.

2 Claims are construed according to my construction section

Claim 1

3 C1 is distinguished over the Prior Art in that it requires an adhesive which is non-tacky in the presence of steam.

4 It would be obvious to provide such an adhesive because the SP knows that it is not impossible to peel the flap away p3 l 8, and therefore would actively want to prevent a tamper event simply steaming the flap open. Purpose of tamper-evident means is that envelope can't be opened without leaving a visual indication. Therefore is it routine to simply provide a stronger/non-tacky adhesive, so as to avoid such a possibility.

→ C1 is not inventive.

C2 – Not inventive if C1 not inventive as further features of C2 are present in Doc C/Doc D.

Doc C discloses slits on series

Doc D discloses notch 9 which can become slit.

Inventiveness dependent on adhesive of C1 ∴ not inventive

C3

Perforated line is present in both C and D

Purpose of perforation is to leave visual indication due to frangibility

↳ In Doc C this is same purpose as diamond shapes get left behind

↳ In Doc D perforation has essentially identical functionality to the patent, except Doc D discusses this in terms of allowing easy opening. This potentially teaches away from tamper-evident characteristic, but effect is still that it is easy to see when the envelope has been opened ∴ SP. would be motivated to include weakening line 8

Inventiveness ∴ dependent on adhesive of C1

∴ Not inventive

C4

Feature is present in Doc D.

↳ Notch 9 (when it is a slit) and line of weakness

8 [unclear] continuous line of weakness

∴ Inventiveness dependent on adhesive of C1 ∴ not inventive

→ If slit 9 and end of line of weakness 8 not considered to form a pair of slits, then would be routine modification to include second slit, as SP would realise that envelope could be opened from other end of envelope

∴ not inventive.

C5

Feature present in Doc C/D.

Not inventive to simply apply adhesive along most/all of the flap portion. Routine modification by SP.

C6

Materials known to SP in CGK ∴ routine modification – Not inventive.

MARKS AWARDED 6

Sufficiency & Amendment

SUFFICIENCY

- Amend patent p5 l 9 – transverse edge 3e

**SUFFICIENCY- MARKS AWARDED 0
AMENDMENT - MARKS AWARDED 1**

Advice

ADVICE

- Finding of non-infringement of C1 based on lack of information regarding essential feature of tacky-resistant adhesive.
 - ↳ Likely that this would be present in a tamper-evident envelope otherwise easy to overcome the flaps so a bit useless
 - ↳ 1st/2nd blobs of Doc B are stronger than adhesive strip but aren't equivalent to the adhesive in the claim according to my construction.
- Recommend we buy an envelope from ex-employee to test adhesive, and if it matches type required we have evidence of an infringing product and an infringing act (sale)
 - ↳ E4U infringe already by disposing of envelopes in UK – presumably also making

None of the claims are valid due to inventive step.

↳ Court could take different view, in particular if one of the slits of C4 and the perforated line are required to be separate integers (i.e. such that one of the slits can't form part of the perforated line), C4 may be inventive as neither Doc C or Doc D disclose slits at both ends of the flap – technical effect is to detect tampering regardless of which end is used by the tamperer.

- Amend patent to require that grasping either of the transverse edges will cause a

tear (i.e. slit at both ends)

↳ Basis p5 l 11-12 and from having slits near each transverse edge – Fig 1/2 (potential added matter based on p4 l 19-20)

↳ Infringement would read onto this p9 l 5-7 and not present in C/D as slits not at both ends of envelopes.

- You developed the envelope jointly with ex-employee
 - ↳ ∴ you are at least jointly entitled to patent
 - ↳ Exemployees duties were sales ∴ invention not made during normal duties
 - ↳ Did you specifically assign the duty to invent to her? (Seems unlikely as you seemed reluctant to want to do so)
 - ↳ Due to her position as top salesperson, does she have special obligation to company?
 - if answer to both of these is no, then she is entitled to joint ownership of the invention with you.
 - ↳ As such, she can freely work the invention and you cannot sue her
 - But first she must become a co-proprietor
 - ↳ Patent only just granted – she has 2 years from grant date (i.e. by Sept 2018) bring entitlement proceedings against you
 - ↳ When granted, you did not seem to be aware that you might not be solely entitled to patent
- Evidence of sales can be used as evidence of inventive step – long felt want
- If you do own patent solely and we amend it as above so that it is valid + infringed you can enforce your patent against Envelopes 4 U (renewal fee not due until Jan 17)
- Remedies include injunction, Damages (for lost sales) or account of profits, order for delivery up/destruction of envelopes, declaration of infringement (+ validity if questioned) and costs
- Recommend you amend patent asap and before starting any infringement action against E4U.
 - ↳ Damages will be reduced if forced to amend during proceedings (and I think patent invalid)
- As E4U have only just entered market could apply for interim injunction as balance of convenience is with you
 - ↳ Not likely to get one granted as claims invalid so no reasonable case to be tried
 - ↳ By time you have amended patent (which will be published and can be opposed) it will probably be too late to get interim injunction as you must move quickly to get granted one.
- We should do a search to find E4U's patent
 - ↳ There is nothing in Doc C or D about adhesive which changes colour ∴ this is likely patentable
 - ↳ But, overall construction of E4U's envelope would still fall within scope of your

claims (once amended) and would need your license to continue

↳ Could approach them for cross license

→ Amend patent, then apply to UKIPO for opinion on infringement + validity in light of E4U's envelope and the cited prior art

↳ Use to twist arm of E4U into stopping infringement without going to court.

→ If adhesive used by E4U isn't non-tacky then this could be contributory infringement as only thing missing is that type of adhesive

↳ the rest of the E4U product is means relating to essential element of invention, and is not a staple commercial product as it has tamper-evident means

↳ As such, recommend are by product from E4U to prove supply + receipt in the UK

MARKS AWARDED 5