

## 2012 PAPER P6

### SAMPLE SCRIPT A

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#### **PAPER: P6**

#### Construction

#### Claim 1

- 1.1 - "A cover ... type specified"  
- for = suitable for (not limited to)  
- 'cover' – generally capable of being placed over, normal meaning, to cover over  
- 'of the type specified' – (this has no antecedent basis – lacks clarity?) p.3 lines 1-2 → no particular impact on scope  
- probably cover can be umbrella covering, if suitable for purpose questionable whether whole umbrella suitable – yes if big enough (not usually)  
- type specified appears described p.3 para. 1: upright central support, support arms radiating and lengths of clothes line between arms.
- 1.3 - "the cover being adapted ... on the dryer"  
- the dryer = refers to the clothes dryer to give meaning  
- removably → covers when cover is in place and not in use  
- mounted on the dryer – means it has to be in contact with dryer or can be some other means? – probably the former – p.3, 1.13 – mounted at least the arms of the dryer  
- removably = regularly removable? – no reason to limit this way  
∴ construed simply: capable of being removed
- 1.5 - "in which the cover comprises"  
  
-comprises – includes at least the following features possibly other features
- 1.7 - "a support frame ... support arms"  
  
- support frame – supports the top cover (see later) – p.3 lines 32-33  
  
- with top cover = cover p.3 1.33-34 – does it need to be able to extend over whole dryer? Possibly, to achieve purpose of covering clothes of whole of dryer – check with client (not construed so narrowly here)

- further limitation necessary e.g. central hub and support strut? P.4 lines 5-6? – no p.5 para. 1 says no strut needed; claim 2 has hub, suggests not needed in claim 1.

- detachably mountable – equivalent to ‘mounted removably of cover’? (1.3)

- on said support arms – said – no antecedent basis from rest of description, construe to mean support arms belonging to dryer rather than to cover of claims – not clear

- on – limited to only on support arms? Probably not, but must be connected at least to support arms, no clear reason for limitation.

- Conclusion – support frame: purposive construction: anything capable of supporting top cover

- “frame” – broadly construed, not limited to ‘surround’ (as in picture frame) – inconsistent with embodiments.

1.9 “and ... cover for the dryer”

- and = must have both support frame (1.7) and top cover

- top cover vs cover – not ideal to use same word – construed that ‘top cover’ has purpose of ‘cover’ (see 1.1) i.e. to protect from rainfall, ‘cover’ also having support frame (see 1.7) to allow ‘top cover’ to work

- so top cover = portion of material extendable over dryer → ‘so as to form a cover for the dryer’ (purpose)

- arranged to be supported = broad, any arrangement (see also 1.7)

- in use → support by support frame not necessary when product not in use

- which is – refers to top cover being supported

1.11 “which extends ... of the dryer”

- ‘which’ – construed to refer to the cover not support cover – p. 3 l. 34-35

- “in use” clause

- the re radiating support arms has no antecedent basis – not completely clear – construe to refer to support arms discussed at 1.7

- effect of ‘radiating’ on support arms previously? Probably not important but may limit sorts of cover

1.13 “the top cover ... of the support arms”

- provided with, means for = broad construction for = suitable for (see 1.1)
- attaching the cover – attachment of top cover or whole cover? Construe as attachment of whole cover (e.g. could be through the support frame)
- the radially outer ends – no antecedent basis – construe as support arm ends farthest from middle (gives claim meaning)
- attachment = direct connection to? Or can there be more elements in between arms and cover? – construe either direct or broader connection

## Claim 2

2.2 “A cover according to claim 1”

- means must have all features of claim 1

2.4 “in which the support frame comprises”

- comprises = includes at least the following features, possibly having other features as well
- refers to features of support frame of cover of claim

2.6 “a central support hub”

- central = in the middle (approximately – unlikely that if purpose of support is provided that small variations in centrality will be outside scope of claim – Catric)
- alternative meaning = key? Unlikely construction in my view

## Hub

- hub needs support strut? (Fig. 3) p.5 para. 1 says not need support strut but doesn't refer to hub
- what is the hub? Whole of Fig. 3, probably

- Hub = support strut and radially extending support elements? (p.4, para. 2) – nothing else is described (although this is embodiment) – unnecessarily narrow? Nothing in dependent claims about strut but elements not part of hub because they're later in claim

→ hub = member i.e. broad construction – support hub, function of support of top cover – purposive construction?

- same as frame – probably meant different (intention of drafter)? Central location makes it different

→ Hub = member capable of providing support to top cover →

→ central support hub

- part that is capable of supporting a top cover having a location that is in the central region of the top cover in use
- extends centrally? Probably not so limited hub  $\neq$  elements as separate parts of claim so intention of drafter probably that the hub is the point in the middle where elements meet

### Conclusion

- central support hub – part of support frame where support elements meet, located roughly in the middle of the top cover in use.

#### 2.8 “and resiliently deformable ... of the support hub”

- and → frame includes hub (see 2.6) as well as support elements
- support elements – broad term – anything capable of supporting top cover
- resiliently deformable – capable of changing shape against force (not limited to pliable plastic of embodiment – other possibilities envisaged by drafter else he’d’ve limited to this).
- deformable – covers product not in use
  - implies bent out of shape – covers situation with hinges so shape changeable? Is this ‘deformation’? Embodiment has pliable plastics – p.4, 1.9 – too limiting?
    - p.4 1.15-21 describes purpose of deformation is to achieve dome shape  $\therefore$  construe purposively so that any means provided for changing the shape of the top cover to achieve a dome/arch shape? – claim 3 suggests not limited to this shape in claim 2
      - in view of purpose construe deformable = to achieve shape change (broader than dome in view of claim 3)
  - extending radially outwardly of support hub
    - always the case i.e. in use and not in use?
  - radially → suggests elements (more than one) do not extend in same direction (see also 2.10)
  - must be circular? (radial) – or result of dryer? Construe term to have normal meaning → circle
  - all support elements individually extend radially or can be jointed pieces extending overall radially? Continue the latter (broadly construe)

#### 2.10 “so as to overlie ... of the dryer”

- the dryer part of the claim? Clearly not intended (claim 1 – 1.1 (‘for’)) – always says in description that the invention is the cover

→ construe to be an “in use” clause i.e. ‘so that in use the support elements overlie dryer support arms’

- overlie – immediately adjacent? Probably not correct to limit ∴ not in my construction
  - directly overlie at all points? Probably - normal meaning, and in line with Figs. 3+4
  - one support element per arm? Implied by embodiments but may not be necessary ∴ not construed as such

### Claim 3

3.1 “A cover according to claim 1 or 2”

- cover has all features of either claim 1 or claim 2 (which has features of claim 1 in too)
- note 3.3 – actually construed as meaning claim 3 dependent only on claim 2 and not claim 1

3.3 “in which the ... releasable fastenings”

- releasable fastenings limited to support elements
- impact on claim 1 (no support elements)?
- or limited to dependent on claim 2?
- in view of 3.9 (refers to elements) – construe impact on 3.1 not claim 1
- releasable – covers product not in use
- is this the same as removably and detachably of claim 1? Construe yes – this is the part allowing attachment because otherwise many parts not connected
- makes sense to not limit to having many releasable/detachable/ removable parts.
- fastenings – broad, not limited to specific means of connecting – see p. 4 l. 17-19
- ‘fastening’ include clamp? Yes – clamp can be released by unscrewing – check with client – and fastens two things together

3.5 “at their radially outer ends”

- refers to radial support elements of claim 2 → likely correct choice at 3.3 for claim dependency (the ‘radial’ part of claim 1 refers to the dryer)
- their – no proper antecedent basis, little impact on claim (skilled person likely to understand ‘end’)
- radially outer end – construe to mean the ends of the support elements farthest from the support hub (see also claim 2 construction)

- 3.7 “for fastening ... arms”
- similar to 2.10 referring to dryer
  - for a suitable for – in line with 7.3
- 3.9 “the elements being deformable ... support arms”
- deformable – see 2.8
    - in this case, limited to achieving arched shape – purposive construction discussed at 2.8 adopted here
  - arched shape - dome (p.4 l.20) achieved – see 3.11
    - probably understood by skilled person – includes umbrella type shapes
      - [achieves purpose of allowing rainwater to roll off top cover]
  - when attached to arms → “in use” clause so not so limited when not in use – consistent with deformable
- 3.11 “so as to ... top cover”
- refers to dome shape being achieved by top cover not necessarily whole cover
  - dome different from arch? Not in cross sectional shape

#### Claim 4

- 4.2 “A cover ... claim”
- has all features of any of claims 1 to 3 noting that claims 2 and 3 refer eventually to claim 1
  - see 4.8 for dependency impact – actually construed to be dependent on claims 2 or 3
- 4.4 “and further comprising”
- also must have the following features but may have more than just these features
- 4.6 “a skirt”
- skirt – normal meaning is surround of something
  - so construe to mean material going round edge of top cover – doesn’t actually say so in claim?
  - but allegedly only other essential feature of cover is frame, alternatively have skirt around whole of cover?
  - in line with the embodiment and purpose (see 4.8), construe to mean something that goes round the edge of the top cover
  - does skirt go all way round? Yes – normal meaning of term

- note support arm limitation of 4.8, so skirt extends from them
- skirt part of top cover? Can be same material?

Intention of drafter is that they're separate? Probably the latter – p.4 l. 30-31 – cover includes a skirt not 'top cover includes a skirt' ∴ construe skirt ≠ part of top cover

4.8 “which extends ... wind-borne rain”

- extends in use – not necessarily when not in use, functional limitation
- from support arms – not in claim 1
  - impact on claim 1 or dependency?
  - dependency (see below)

- only from support arms? Or whole of cover as well? Not limited to just support arms, can be either

Impact on dependency – the radially outer ends properly only has antecedent basis in claim 3 but reference to radial extension in claim 2 ∴ construe broadly, dependent on claims 2 or 3

- length sufficient – purpose is 'to protect clothes from rain' – clothes? Short clothes, all clothes? Not clear term, construe to be apparently capable of doing so from length (may depend on alleged infringement) – i.e. cannot be very short

- wind-borne rain i.e. rain that comes at a dryer from the side

Downwardly – directly downwardly? – normal meaning seen from embodiments that intent is to have top cover over the top, this part ending at support arms, with vertically extending skirt

- no clear reason to limit ∴ construe broadly
- note court may construe narrower so non-vertical extension excluded

∴ downward includes non-vertical downward extension.

### Claim 5

5.1 “A cover ...4”

- has all features of claim 4

5.3 “in which the skirt ... curtain”

- open or closed – implies some exposure of inside (clothes on dryer or dryer itself)

- refers to skirt not top cover – skirt construed to be a separate portion (but not necessarily different component)

- drawn open or closed ... in the manner of a curtain
- does this imply sliding?
- probably not since refers to their attachment to ends of support elements – not clear what would be sliding where
- construed to imply that the skirt is separable
- not limited to panels (no panels in claims)

## Claim 6

### 6.2 “A cover ... claim”

- all features of any one of claims 1 to 5
- note 6.4 – impact on dependency?
- skirt only mentioned in claims 4 and 5
- therefore construed has to have all features of either claim 4 or claim 5?
- no – says (where present) construed in respect of skirt ∴ no issue of dependency

### 6.4 “in which reinforced ... (where present)”

- reinforced → some level of support to take shape so preventing further tear (not limited further)
- holes – more than one hole – hole = gap in material
- are formed – manufacture limitation? Probably not, construed to mean are present
- the required positions – no antecedent basis
- where are required positions? – see 6.6; corresponding to place where desired to put support arms through
- top cover and skirt – positions in both top cover and skirt not just one or the other
- but
- (where present) – refer to top cover, skirt, or both? – construed just to skirt because claim 1 (and also other claims) have top cover 10 always present, while skirt only in claims 4 and 5 (see discussions at 6.2) so not always present
- top cover and skirt – reaffirms separate parts (not clear from figures)

### 6.6 “for engagement ... support arms”

- the outer ends – construed to mean the radially outer ends (see 3.5) so claim has meaning
- engagement – holes and support arms engage → support arms pass through holes



- for = suitable for

## Infringement

- note: actions infringe, not products

Several potential infringers: Rotabrolly  
Retailers  
Mega Mart  
Customers of Retailers

- Mega Mart did not accept Rotabrolly's offer ∴ appear to have carried out no infringing activities (check) and so no infringement – did they 'keep'?
- Unlikely to pursue as client's own customer and since they alerted client to Rotabrolly

## Rotabrolly product

### Claim 1

1.1 - described as cover (p.8 1.1)  
- for clothes dryer? – appears so – clothes line, waterproof material → likely suitable for  
- of type described: V = central support  
A = support arms  
Washing line  
∴ appears to be clothes dryer of type described  
  
∴ feature present

1.3 mounted removably?  
→ feature present, sketch A shows cover mounted on dryer

Removably – presumably so because they appear to be selling just the cover so if it fits on presumably it comes off again – check with client  
Rotabrolly not clearly designed to be regularly removed (stays on line when not in use) but claim not so limited

On balance, I conclude feature present

1.7 - stiff wire spokes act as support frame within purposive construction (depends on presence of top cover see below)  
- detachably mountable – capable of detachment – see 1.3 ∴ on balance feature probably present  
- sketch C shows apparent connection between frame (spokes) and support arms A  
  
∴ feature present

1.9 - top cover present (waterproof textile material)  
- in use clause present – spokes extend to cause cover to spread over dryer

∴ feature present

1.11 - top cover appears to extend over support arms, shown in sketch C

∴ feature present

1.13 - means of attachment of top cover to support arms – via clamp Z (para. 2, p.8) – direct connection

∴ feature present

### Conclusion

All features of claim 1 present

∴ Rotabrolly product inside scope of claim 1 as construed

### Claim 2

2.2 - in view of conclusion to claim 1, feature present

2.6 - is Y a hub?

- part of support frame where support elements (spokes) meet, central location appears from Sketch B

∴ inside scope as construed

∴ feature present

2.8 - spokes = support elements as construed, extend radially as construed  
- resiliently deformable – have to apply force to change shape ∴ inside scope as construed

[- note if court construed ‘deformable’ differently, conclusion might be different (i.e. if pliable, then spokes may not be inside scope of claim 2)]

∴ feature present

2.10 - not clear from figures whether overlies as construed

- consider it likely in view of p.8, lines 5-6 (correspondence of spoke number with number of arms)

- also, spokes hinged at arms

- Spokes appear to lie over (though not immediately next to) the arms of the dryer

∴ inside construction

∴ feature present

### Conclusion

All features of claim 2 present in Rotabrolly ∴ inside scope of claim 2

### Claim 3

- 3.1 - in view of previous assessments, feature present
- 3.3 - releasable fastenings – are clamps Z releasable? 3.5 (they're present at radially outer edge)  
- in line with construction, construed probably are – this is how cover attached in first place (broad construction)

But are they 'fastenings' within construction?

Yes – for security spoke to arm p.8 l.11 (3.7)

- 3.9 - spokes appear to have arch shape – sketch B – in use
- 3.11 - generally dome shaped cover in use – sketches A and B confirm

### Conclusion

All features appear to be present  
∴ Rotabrolly inside scope of claim 3

### Claim 4

- 4.2 - feature present (previous analyses)
- 4.6 - skirt around top cover? As construed, skirt cannot be part of top cover ∴ outside scope
- 4.8 - is length sufficient? Not clear that it is  
- need to ask client

### Conclusion

Claim 4 not infringed

### Claim 5

- 5.1 - feature not present (previous analysis)
- 5.3 - feature present  
- tippers allow opening & closing of cap cover para. 1 p.8

### Conclusion

Claim 5 not infringed

### Claim 6

- 6.2 - Yes as dependent on claims 1-3

- 6.4 - none described – check with client
- 6.6 - not present – spoke ends go into pocket p not holes

### Conclusion

Claim 6 not infringed

### Activities

#### Rotabrolly

Rotabrolly appear to be making, disposing, offering for disposal, and keeping in the UK – proof of offering and sales – check others (are they making?)

Client patent in force

∴ Appear to infringe claims 1 to 3 of patent  
Do not appear to infringe claims 4 to 6

#### Retailers

- disposal and keeping and offering for disposal
- appear to infringe claims 1 to 3

#### Customers of Retailers

- end users: private, non-commercial use allowed ∴ unlikely to be successful in infringement action despite probably infringing use, unless commercial use

### Validity

#### Novelty

Consider following prior art:

Prior art discussed in patent

Doc C

Doc D

Umbrellas – briefly consider (examiner's comment)

- not Rotabrolly patent, not prior art (filed later)

Doc C, Doc D earlier published than client patent so available for assessing novelty and inventive step

#### Umbrellas

Cover – yes

- Claim 1
- 1.1 suitable for a clothes dryer? Unlikely size?
  - 1.13 whole umbrellas have no means for attaching to a dryer

1.3 – not present, no obvious mounting means

1.7 – feature present

1.9 – feature present (top cover supported by frame in use) – cover for dryer?

### 1.11 – size of umbrella vs dryer

- In view of lack of attachment means claim 1 novel over umbrella → dependent claims also novel

### Prior art in Patents

- 1.1 - yes, waterproof cover p.3 l.6
- 1.3 - probably – not clear
- 1.7 - no support frame described p.3 para. 1
- 1.9 - yes – top cover, no arrangement for support
- 1.11 - yes – cover extends over dryer
- 1.13 - no, no means of attachment

Conclusion: Claim 1 novel over prior art in patents – consequently, all other dependent claims novel

### Doc C

- 1.1 - cover present (para. 1 p.10)  
Clothes dryers as described (para. 1 p.10)  
  
∴ feature present
- 1.3 - pocket = mounting means  
Probably removable  
  
∴ feature present
- 1.7 support frame – p.10 lines 15-17  
Describes framework securable to arms  
  
∴ feature present
- 1.9 - polygonal sheet of material = top cover p.10 l.16 – as a result of framework cover extends over dryer, see also fig. 3  
  
∴ feature present
- 1.11 - fig. 3 shows cover extending over dryer arms  
  
∴ feature present

- 1.13 cover has attachments means  
- pocket 22 for receiving outer end of arm 14 p.11 para. 1  
  
∴ feature present

### Conclusion

Claim 1 appears to lack novelty over Doc C.

### Claim 2

- 2.2 - feature present (see above)
- 2.4, 2.6 - no clear hub on support frame 42, 40 etc – fixed ring part of dryer not cover (p.10, final para.)  
  
∴ feature not present
- 2.8 struts hinged – change shape under force? Only when cover unhooked at one end so is removal of force? Arguable, on balance feature present  
Support elements? – yes, spikes and/or spokes – broad construction etc  
Radial extension? The support elements themselves as a whole extend radially  
  
Resiliently deformable support elements = spokes under spires – spires not deformable  
  
Extend radially outward  
  
∴ feature present
- 2.10 - overlies in line with construction  
  
∴ feature present

### Conclusion

Claim 2 novel over Doc C.

### Claim 4

- 3.1 - no (depends on claim 2 only, see above)
- 3.3 } - no – releasability provided by pockets on the top cover not the support  
3.7 } elements  
- but yes – clip 50 clips support elements 44, 48 to arm 14 (para. 5 p.11)  
- also describes releasable receiving straps  
  
∴ feature present
- 3.5 - not at radial outer ends of arms – not in description, not shown in fig. 3

∴ feature present

- 3.9 - no – no arching of support elements that have fastenings  
- spines may arch? Check with client  
- but these do not have fastenings as discussed at 3.3, 3.7

∴ feature not present

- 3.11 - feature present – umbrella shape described

### Conclusion

Claim 3 novel over Doc C.

### Claim 4

- 4.2 - no, see above

- 4.6 - no, as construed skirt not same as top cover ∴ description of extension ≠ skirt

- 4.8 - p.11, lines 19-20 description of spine extension → implies cover extension

∴ on balance feature present

### Conclusion

Claim 4 novel over Doc C

### Claim 5

- 5.1 - no, see claim 4

- 5.3 - no description of this, no features to suggest presence

### Conclusion

Claim 5 novel over Doc C.

### Claim 6

- 6.2 - yes as depends on claim 1  
- no as dependent on claims 2-5

- 6.4 - hole described in top cover – 52  
(air circulation vent)  
- reinforced? Not described, check with client  
- required positions – no (6.6)

- 6.6 - hole not for engagement with outer ends of support arms

## Conclusion

Claim 6 novel over Doc C.

## Doc D

### Claim 1

- 1.1 - questionable : not a cover for a clothes dryer of the type described (see also 'umbrella') – is an umbrella – question if suitable for purpose – size?
- 1.3 - no feature described for attachment to a dryer
- 1.7 - no : support frame present  
Not removable – welded to top cover
- 1.9 - no : top cover 15  
: supported by frame in use  
: not so as to form cover for dryer
- 1.11 - ? : no indication of cover over dryer arms size?
- 1.13 - no – no feature describing attachment

Conclusion : claim 1 novel over Doc D  
(therefore all other claims also novel)

### Claim 2

- 2.2 - no, see above
- 2.6 - yes – 4 or 5 both qualify, central, spokes join there
- 2.8 - yes – fig. 1 shows shape change compared to fig. 2 in use  
- support elements @ 'springy' steel spokes also likely considered  
Indication of deformable
- 2.10 - no, no individual of overlying

## Conclusion

Claim 2 novel over Doc D.

### Claim 3

- 3.1 - no, see above
- 3.3 - no part suitable for fastening to support arms



3.5, 3.7 - no releasable fastening evident at outer edge of spokes

3.9 - yes – deformation into arch shape clear from fig. 2

3.11 - yes – dome shape, fig. 2 shows

#### Conclusion

Claim 3 novel over Doc D.

#### Claim 4

4.2 - no, see above

4.6 - no indication of a skirt portion

4.8 - or length sufficient? Possibly user's clothes

#### Conclusion

Claim 4 novel over Doc D

#### Claim 5

5.1 - no, see above

5.3 - no indication of such feature, no separation of start as construed

#### Conclusion

Claim 5 novel over Doc D

#### Claim 6

6.2 - no, see above

6.4 - hole in cover 15 but only one – no, feature not present

6.6 - no indication suitable for support arms to pass through

#### Conclusion

Claim 6 novel over Doc D.

#### Inventive Step

UK courts use windsurfing IPO 37 UK approach.

The person skilled in the art is likely to be in the field of weatherproof devices for clothes dryers – probably manufacturers, but probably not supermarket chain employees. Their common general knowledge will include devices of the kind described in the background

sections of client patent and Doc C. They will also be aware of umbrellas and common mechanisms of action such as described in Doc D and in examiner's comment of Rotabrolly's application (may not actually be aware of Doc D, as part of common general knowledge, but able to find it).

Claim 1 is directed to covers for clothes dryers, the covers having a support frame and a top cover that can extend over the whole of the dryer. The top cover is attachable to the support arms of a dryer. The cover is removable.

Although not novel over Doc C under my construction I think claim 1 would be obvious over Doc C and Doc D if found novel. Doc C describes a cover which is removably mountable in a dryer. The support frame of an umbrella could be adapted to be used with the general concept of Doc C.

Claim 2 specifies a central support hub and resiliently deformable support elements. These features appear to be described in Doc D as part of the umbrella support frame. While it might be obvious to combine Doc C and Doc D in this way, I am not sure that the location of the support elements over the support arms is obvious. Can we discuss this point? (Client is the skilled person) – is there any special reason for it? Otherwise no reason and probably obvious. I am not certain that it would be obvious to choose this position to the skilled person. It could be argued that the choice is part of his routine experimentation but if have to combine Doc C and Doc D first then the argument is difficult. I think claim 2 might be inventive. Claim 3 relates to releasable fastenings at ends of elements, deformable into arch shape to give dome shape. In view of Doc C and Doc D I think there are no inventive features. Releasable fastenings at the end of support elements obvious point of connection to dryer, dome shape natural choice over flat for reasons outlined in client patent (pending).

Claim 4 is directed to a skirt capable of protecting clothes from the side. Doc D has a deep dome shape which achieves a similar effect. I also think that the problem might be an obvious one, the features of the solution being broadly claimed and therefore obvious over Doc C itself, in view of common general knowledge of skilled person, or Doc C and Doc D together.

Claim 5 is directed to a skirt that can be opened or closed like a curtain. There is no pointer to this feature in any of the prior art. There is no mention of the problem it solves. I think it would be difficult to argue that claim 5 is obvious in view of the prior art we have.

Claim 6 refers to reinforced holes in the top cover and skirt to engage support arms. I do not think this feature can be derived from the Doc C or Doc D alone or in combination and so I think it is inventive.

### Sufficiency

The patent does not have many broad disclosures. The embodiments appear to show sufficiency across scope of claim. I cannot see issues. I note that some of the claims are not clear (I have noted this during construction). Please note that lack of clarity is not a ground on which a patent claim may be attacked, unless it relates to amendment (sufficiency attacks often try to disguise attack of lack of sufficiency).

### Amendment

Before taking action (see 'Advice') you may wish to amend the claims. Note that claims cannot be broadened after grant and may not add matter to the application as filed. They are at the Comptroller's discretion and may be opposed.

### Possible amendment

- Reinforced apertures = means of attaching arms to cover (p.4, first paragraph)
- Short support strut part of hub (para. 2 p.4) – might clarify 'hub', see 2.6 – probably not helpful in view of Rotabrolly product
- Support elements = pliable plastic tubes (p.4 1.9) – probably not helpful in view of Rotabrolly product
- 
- Form of top cover (p.4, 1.23)
- Division of skirt at corners?

### Advice

In my construction, claims 2 to 6 are novel, with claims 2, 5 and 6 providing features that would contribute to arguments about inventive step. (Ask client to examine my comments about claim 2, and can discuss with client.)

I think that Rotabrolly product falls inside scope of claims 1 to 3.

Please note that this means that since the validity of claims 2 and 3 may hinge on the skilled person's view and technical advantage, client's opinion important as position may not be very strong.

### Threats

I do not recommend that client writes threatening letters to Rotabrolly or to their retailers or customers. It is better to draw their attention to the patent (non-threatening).

Retailers and customers of Rotabrolly and retailers – ultimately client wants these people to buy their product so better not to cause angst anyway.

If threaten with selling – a potentially actionable threat. Not actionable if threaten with manufacturing or import (product claims). If you tell them about the patent, and they do not stop, then take action (does give them time to do their own validity assessment – it is common for counter actions of invalidity to be raised in infringement actions).

Rotabrolly are small company and may be interested in a licence deal rather than court action – I recommend approaching them first with licence offer.

If client does want to commence infringement proceedings I recommend applying to amend first to put claims in better order. At present I cannot see any straightforward amendment that improves the strength of your patent and covers Rotabrolly's product, however, so if client disagrees with assessment of validity of claim 2 may be difficult. (Remedies available at court – as described by solicitor.)

Freedom to operate : in view of termination of Doc C before grant, no valid, in force patent  
→ you do not infringe Doc C.

If I am to act as your PF51 referee

## 2012 PAPER P6

### SAMPLE SCRIPT B

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#### **PAPER: P6**

#### Construction

#### Claim 1

- 1.1 - A cover for a clothes dryer of the type specified  
- sets the field  
- “for” – suitable for use with, even if suitable for use with or intended for other purposes  
- “cover” – clear. Means a shield  
- “clothes dryer of the type specified” – clothes dryer of the type described in the specifications = a clothes dryer comprising an upright central support, support arms radiating (or extending) outwardly from the central support and lengths of clothes line extending between the arms (p.32 1.34)
- 1.2 The cover being adapted to be mounted removably on the dryer  
“adapted” – configured  
“mounted removably on the dryer” – the cover can be mounted on the dryer and can be removed from the dryer. The cover need not be removed from the dryer in use. 1.2 is satisfied as long as the cover can be removed because the word “removably” is used here.  
  
- “dryer” is not part of claimed subject matter
- 1.3 in which the cover comprises a support frame which is detachably mounted on said support arms  
“comprises” – includes but not limited to the following features  
“support frame” – a frame for supporting something (in this case, a top cover (see 1.4))  
“detachably mounted” – the support frame is mounted and can be detached or removed from “said support arms”  
“said support arms” – no antecedent basis (except that they are part of the clothes dryer in 1.1). probably means the support arms of the clothes dryer in 1.1 (e.g. support arms 12 in the embodiment)
- 1.4 and a top cover ... support frame

“top cover” – this “top cover” here is part of the cover recited in 1.1 and includes only the shield at the “top” of the cover recited in 1.1 when in use. E.g. the top cover 16 of the cover 14 in the embodiment.

“arranged to be supported in use by the support frame” – the top cover is configured to be propped up in use by the support frame. The function of this is recited later in the claim in 1.5.

“a top cover” – “a” means one but can the top cover be made of separate parts? Probably, based on a functional construction, separate parts combined together serve the same function.

1.5 so as to form ... dryer

“So as to” – function of 1.4 is as follows

“form a cover for the dryer” – “cover” here refers to the cover in 1.1 because on p.3 l.34, the exact same language is used and “the cover” is stated as “the cover 14” in the embodiment ∴ this should be “from the cover for the dryer”

“which extends over the radiating support arms of the dryer” – the cover (not the dryer) extends (i.e. stretches) over the radiating support arms of the dryer. No antecedent basis for “radiating support arms” except that they are part of the dryer in 1.1, “radiating” means extending outwardly. In this case, the arms extend outwardly from the central support of the dryer (see 1.1)

- In the embodiment, part of the arms 12 are actually over the cover 16 because the arms 12 enter the holes 16a and extend over flange positions 24 ∴ “extends over” probably covers “the cover extends partially over the arms”. But “partially” is not explicitly claimed ∴ This probably covers the case whereby the cover extends fully over the arms i.e. the entire cover is over the arms.

1.6 the top cover ... support arms

“being provided with means” – the top cover is given the following means. The means need not be part of the top cover. If the patentee intended this, the patentee is likely to have used words like “comprises” as used in other parts of claim 1 and other claims.

“means for attaching the cover to the radially outer ends of the support arms” – anything suitable for coupling the cover to the radially outer ends of the support arms. “radially outer ends” mean the end of the arms which are extending out. “inner ends” are the ends coupled to the central support of the dryer. In the embodiment, reinforced apertures 16a are formed and the radially outer ends of the arms 12 are taken through them. The means here are not limited to these apertures (because this is not explicitly claimed) but the cover must have something to couple itself to the ends of the arms. As claimed, the coupling also need not be direct (even though, this is the case in the embodiment).

Claim 2 – Depend on claim 1 (1 + 2)

2.1 in which ... hub

“comprises” – same as that in 1.3

“central support hub” – a member for supporting the cover. The word “central” suggests that the hub should be roughly in the centre of the frame. But this need not be exactly in the centre as that would be too narrow an interpretation. Rather, using a functional construction, the support hub may be considered “central” as long as it allows elements extending from it to achieve the function as stated in 2.2.

- But do the elements have to slope downwardly? P.3 1.9 says a disadvantage of the arms sloping upwardly. But it seems to be a stretch on the claim language to construe “radially” as downwardly so I would still construe “extending radially outwardly” as just extending outwardly.

2.2 and resiliently ... dryer

“resiliently deformable support elements” – elements that can support the top cover in 1.4 and that are both resilient (i.e. resistant to deformation / does not deform easily) against the top cover and that can be deformed when required. For example, support elements 19 in the embodiment (but as claimed, not limited to those).

“extending radially outwardly of the support hub” –

“radially” suggests that the support elements need to form radii of a circle. But this conflicts with the embodiment in which the support elements are not horizontal even when not in use (∴ do not exactly form radii) ∴ this probably just means extending outwardly.

“so as to overlie the support arms of the dryer”

“so as to” – the elements extend radially outwardly to achieve the following

“overlie the support arms of the dryer” – the elements lie above the support arms of the dryer. As claimed, the elements need not be directly above the support arms. As long as they are generally above the support arms so that the cover can be supported above the support arms, 2.2 probably satisfied (functional construction).

Claim 3 – Dependent on claim 1 or 2 (1 + 3, 1 + 2 + 3)

3.1 in which ... support arms

“have” – include but not limited to the following

“releasable fastenings” – elements for securing or fastening. According to the description, the attachment of the outer ends 20 to the arms 12 may take any convenient form ∴ I construe “releasable fastenings” here as any element for

securing the support elements' ends to the support arms and that can be released to free up the support elements' ends to the support arms.

“radially outer ends” – same words used in 1.6. I construe them in the same way i.e. these are the ends extending out from the central support hub (“inner” ends are those coupled to the central support hub). Since the word “ends” are used here, I construe this to mean the extremity or at least near the extremity of the support elements.

### 3.2 the elements ... top cover

“deformable into an arched shape when they are attached to the support arms” – the elements can be deformed into an arched shape when attached to the support arms. What is “arched shape”? Using a functional construction, I would construe this to mean “bent” so as to impart a generally dome shape to the top cover (see further explanation for “generally dome shape” below).

“so as to impart a generally dome shape to the top cover” – “generally” suggests that a functional construction should be used to construe “dome shape”. On p.4 l.21-22, it is stated that the arched top and sloping sides of the cover 14 provides good rainwater runoff which avoids ponding ∴ I construe “dome-shaped” to mean any shape that can achieve this function.

### Claim 4 – Dependent on any one of claims 1, 2, 3 (1 + 4, 1 + 2 + 4, 1 + 3 + 4, 1 + 2 + 3 + 4)

#### 4.1 and further comprising ... rain

“a skirt” – part of the cover that is not stretched out

“extends in use downwardly from the radially outer ends of the support arms” – the skirt extends towards the ground from the ends of the arms.

- can “skirt” be a part of the cover that is stretched out but extends towards the ground from the ends of the arms? Using a functional construction, this is possible. But the patentee intentionally uses the word “skirt” instead of broader terms e.g. second covering means etc. Therefore, a skilled person is likely to understand the patentee to intend the narrower interpretation of a part of the cover not stretched out. ∴ I shall adopt this narrower interpretation here.

“throughout a length sufficient to protect the clothes from wind-borne rain” – the skirt extends throughout a length long enough to protect the clothes from wind-borne rain.

### Claim 5 – Dependent on claim 4

#### 5.1 in which the skirt ... curtain

- In the embodiment, the skirt 22 may be divided at the corners into separate positions so that each skirt portion may be drawn open or closed in the manner of



a curtain. But this is not explicitly claimed. The function of this is to improve access to the clothes hanging space. ∴ using a functional construction, I construe 5.1 to mean that the skirt is hung in a manner to allow access to the clothes hanging space (so it must have some sort of opening for this). “in the manner of a curtain” does not add much limitation because there are all sorts of curtains which can be drawn in different ways.

Claim 6 – Dependent on claim 1, 2, 3, 4, or 5

6.1 in which reinforced holes ... support arms

“reinforced holes” – the holes are strengthened against tearing

“are formed at the required positions in the top cover and skirt (where present)” – 6.1 can be satisfied even if a skirt is absent. The holes are provided at the positions that can achieve the function stated later in the claim.

“for engagement by the outer ends of the support arms” – the holes are suitable to be engaged by the outer ends (this refers to “radially outer ends” in 1.6) of the support arms.

Infringement

Potential Infringer	Potential Infringing Act
Rotabrolly Sell product in B	
Independent retailers	Sell product in B
Users	Use product in B
	(But may have private, non-commercial use defence)

Does product in B infringe? ✓ = present, X = absent

Claim 1

- 1.1 ✓ P.81.3-4 “clothes line has pole V, support arms A between which a washing line is strung” + “cover ... fitted to clothes line”.
- 1.2 ✓ The cover can be folded away while still fitted to the clothes line but the cover can still be removed from the clothes line if desired.
- 1.3 ✓ Support frame (spider y and spokes) support top cover (“cover” in sketch B) can be mounted and detached from arms A using pivoting clamps 7.
- 1.4 ✓ “cover” in sketch B supported by spider y and spokes

- 1.5 ✓ The “cover” in sketch B stretches over the outwardly extending arms A. Entire “cover” is over the arms A but this is still within my construction.
- 1.6 ✓ “Cover” is given the spokes with the pivoting clamps Z for securing each spoke to a corresponding arm A (p.8 l.11-12) which indirectly attach the cover to the ends of the support arms (sketch B).

∴ claim 1 is infringed.

#### Claim 2

- 2.1 ✓ “spider” y allows spokes to extend from it (+ see 2.2 below)
- 2.2 ✓ Spokes extend outwardly from “spider” y to lie above arms A (sketch B) so that the “cover” can be supported. The spokes are resistant to deformation and can be deformed using hinges X if desired.

∴ claim 2 infringed.

#### Claim 3

- 3.1 X Spokes are not fastened to arms A at their ends.
- 3.2 ✓ The spokes can be bent to impart a dome shape to the “cover” (p.8 l.2). The text in B states that the spokes are ... but they can be bent using hinges X.

∴ claim 3 not infringed.

#### Claim 4

- 4.1 X No skirt. There is a portion overhanging arms A which appears long enough to protect the clothes but this portion appears stretched out ∴ not a “skirt” by my construction.

∴ claim 4 not infringed.

#### Claim 5

- 5.1 X No skirt. But if portion overhanging arms A can be considered a “skirt”, then zip fastener t and loops l allow access to the clothes hanging space and 5.1 would be present → But this is not how I construe “skirt”.

∴ claim 5 not infringed.

#### Claim 6

6.1 X No reinforced holes.

∴ claim 6 not infringed.

### Novelty

#### Prior art

p.3 l.4-10 of Doc A – not sufficiently enabling

Doc C – published on 8 June 1999 before 1 Oct 05 ∴ full prior art.

Doc D – published on 1 Oct 1988 ∴ full prior art.

Novelty over C – Embodiment 1 (Contd)

1.1 ✓ p.10 l.3-4 “three arms, central post, clothes lines)

1.2 ✓ cover has pockets 22 and can be removed

1.3 X no support frame to support cover 20

1.4 X no support frame

1.5 ✓ cover extends over arms 14

1.6 ✓ pockets 22 attach cover to ends of arms.

∴ claim 1 novel over C emb 1 ∴ claims 2-6 novel.

### Claim 2

2.1 X no support frame

2.2 X no support frame / hub

∴ claim 2 adds novel features over C emb 1.

### Claim 3

3.1 X } no support elements

3.2 X }

∴ claim 3 adds novel features over C emb 1.

### Claim 4

4.1 X No skirt. No part of cover 20 overhangs arms 14.

∴ claim 4 adds novel features over C emb 1.

#### Claim 5

5.1 X No skirt

∴ claim 5 adds novel features over C emb 1.

#### Claim 6

6.1 X pockets 22 are outside of cover 20 and not holes formed in cover 20

∴ claim 6 adds novel features.

Novelty over C – Embodiment 2 (C emb 2)

1.1 ✓ p.10 1.2-3 (same as emb 1)

1.2 ✓ clips 48 provided for clipping → can be removed

1.3 ✓ support frame 34, 40, 42, 44, 46

1.4 ✓ cover 24 supported by 34, 40-46 cover 24 has 3 separate panels but still within construction

1.5 ✓ cover 24 extends over arms 14 (Fig. 3)

1.6 X cover 24 not coupled to ends of arms 14 (Fig. 3) – ends of arms 14 not abutting cover 24

∴ claim 1 novel over C emb 2 ∴ claims 2-6 novel by dependency

#### Claim 2

2.1 X no central support hub ∴ spokes 34 do not extend from a central member

2.2 X p.11 1.13-14 spikes 34 are springy and flexible and are above arms 14 but there's no central hub

∴ claim 2 adds novel features over C emb 2.

#### Claim 3

3.1 X clips are not at the ends of the spikes 34.

3.2 ✓ spikes 34 are deformable / bent so as to impart a shape that allows runoff of rain

∴ claim 3 adds novel features over C emb 2.

#### Claim 4

4.1 X no skirt ∴ → no part of cover overhangs arms 14 and is not stretched out

∴ claim 4 adds novel features over C emb 2.

#### Claim 5

5.1 X no skirt

∴ claim 5 adds novel features over C emb 2.

#### Claim 6

6.1 X 10 holes in cover. Vent 52 is not suitable for engagement with outer ends of support arms.

Novelty over D

1.1 ✓ is suitable for (though may not be convenient) use with a clothes dryer

1.2 X no adaptation of cover. Can at best be placed over dryer but doubtful that it can be mounted.

1.3 X has support frame 17, 18, 12 but not detachably mountable on arms of dryer

1.4 ✓ top cover 15 supported by stays 12 and 17, 18

1.5 X does not extend over radiating support arms of dryer

1.6 X no means to attach cover to ends of arms

∴ claim 1 novel over D ∴ claims 2-6 novel over D by dependency

#### Claim 2

2.1 ✓ central hub 4 from which stays 12 extend

2.2 X do not overlie support arms of dryer

∴ claim 2 adds novel features over D

#### Claim 3

3.1 X stays 12 not fastenable to arms of dryer

3.2 X not attached to arms of dryer but if so, probably can be bent to impart the dome-shaped

∴ claim 3 adds novel features over D

#### Claim 4

4.1 X no skirt

∴ claim 4 adds novel features over D

#### Claim 5

5.1 X no skirt

∴ claim 5 adds novel features over D

#### Claim 6

6.1 X no holes in cover for engagement with arms of dryer

∴ claim 6 adds novel features over D

### Inventive Step

#### Claim 1

The person skilled in the art (PSA) is one familiar with covers (e.g. maker or user of covers). He/she has the general knowledge of the waterproof cover formed of flexible plastic sheeting as described in p.3 1.5-10.

The inventive concept of claim 1 is that a support frame is provided so that the cover does not sag and cause ponding of rainwater. Further support is achieved by attaching the cover to the ends of the arms of the dryer. Claim 1 differs from C emb 1 in that there is no support frame in C emb 1. In C emb 2, the cover is not coupled to the ends of the support arms. In D, there is no teaching of adapting the cover to be mounted on a dryer.

Is it obvious to combine c emb 1 and 2 to arrive at the invention? There is the argument that it is a mere workshop variant to have pockets 22 added to the cover 24. However, there is no teaching in C about the advantage this modification will give. There is certainly no teaching in D about how to mount the cover to the dryer. Further, C teaches two embodiments – alternatives for supporting the cover. A PSA will see from C that each embodiment works well and ∴ there is no motivation to combine them. ∴ on balance, I think it is more likely that the PSA is taught away from the invention, seeing that the two embodiments in C are alternatives that each works well ∴ I find claim 1 inventive ∴ claims 2-6 are inventive as well.

### Inventive Step

## Claim 2

Claim 2 adds feature of central support hub and elements extending from hub. No central hub in C emb 2 but this is taught in D. D relates to an umbrella to shelter from rain. A PSA would refer to it but C emb 2 has spines 34 which are well supported already ∴ why would a PSA be motivated to add a central hub? + Adding this hub closes vent 54 ∴ A PSA would not be motivated to add it ∴ claim 2 adds an inventive feature.

## Claim 3

- Adds feature of releasable fastenings at ends of support elements. Clips in C emb 2 support the spines 34 well (even better than if the clips are provided at the end?). D does not teach any way of attaching the cover to a dryer. ∴ a PSA would not be motivated to add clips at the end of the spines 34 in C emb 2 ∴ claim 3 adds inventive feature.

## Claim 4

- Adds feature of skirt. I construe “skirt” to mean one that allows access to clothes in dryer. The cover in D does extend downwardly but there is no opening for the access. The cover in C emb 2 does not really extend downwardly ∴ claim 4 adds inventive features.

## Claim 5

- Same argument as claim 4 ∴ claim 5 adds inventive features.

## Sufficiency

No issues

Amendment – see below

Advice to client :

- Expert evidence would be used in courts. But in my view, claim 1 appears infringed and valid. It would be good to check with PSA on my analysis.

- Rotabrolly and their retailers are liable for infringement as they are selling the product in B.

- Has Rotabrolly been selling for only 2 years? Check! Because if they started selling before the priority date of your patent, then they may have prior use defence.

- Even though your patent appears valid and infringed, avoid threatening Rotabrolly and retailers because if I am wrong, they may take action against you on grounds of groundless threats – they have to prove that they are threatened and aggrieved by the threats. Groundless threats action can be taken ∴ they are selling not making / importing.

- Better to negotiate with them. You appear to have a strong case because your patent is valid and infringed (in my view). Perhaps, consider granting a licence to them?

- Otherwise, can take legal action against them. You may seek an interim injunction. Balance of convenience appears to favour you because your patent looks valid and infringed, and your business is seriously impacted (this is your most profitable product). But you need to give cross-undertaking in damages which may be substantial.

- At full trial, you may get damages on account of profits.



## 2012 PAPER P6

### SAMPLE SCRIPT C

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#### **PAPER: P6**

#### CONSTRUCTION

Kirin – Amgen : What would the skilled person have understood the patentee to have intended to claim from the language of the claims (as interpreted by the description and drawings).

The skilled person is a designer of clothes dryers and covers for clothes dryers because the title and technical field (page 3, lines 2-4) relate to clothes dryers and covers.

#### Claim 1

1.1 a cover for a clothes dryer  
means  
an element which is suitable for putting over a clothes dryer to prevent wetting from rain fall  
because  
what does the cover cover? Covers are described in page 3, lines 5-8 (p.3, ll.5-8) as being draped on top of the clothes dryer to prevent wetting from rain fall. Therefore it must be placed over the clothes dryer.  
for means suitable for (i.e. can be used for this purpose without modification)  
because the skilled person is aware of drafting conventions.

Clothes dryer specified in 1.2.

1.2 ‘of the type specified’  
means  
the clothes dryer comprises an upright central support, supporting arms radiating outwardly from the central support and lengths of clothes line extending between the arms.  
because  
the dryer is defined as such in p.3, ll.2-4.

Radially means extending away from a central axis because this is shown in figure 4 where the arms extend away from the axis which passes through the hub and along the central support 11 (in fig. 2)

1.3 ‘the cover being adapted to be mounted removably on the dryer’  
means  
the cover is configured to rest on or be connected to the top of the dryer such that it can be separated,  
because  
Mounted on means connected to the top of because the patentee draws a distinction between mounted in and mounted on when discussing slats in p.4 ll.5-7. On means on top of because this is consistent with the fraction of the cover described in p.3, l.6-7.

I have construed ‘mounted removably’ to encompass resting as to draw a distinction between this term and ‘detachably mountable’ – the patentee would have used this same term if they meant the same – see below.

1.4 ‘in which the cover confirms a support frame’  
means  
wherein the cover has at least members which give shape to the cover  
because  
p.4 l.15 describes how the support elements give shape to the cover. Clearly the members can be rigid (as by analogy the support arms of the dryer are rigid) or elastically deformable (as in the example of the support elements of p.4 l.15).  
In this case the support frame supports the flexible components of the cover to give them shape (see below for discussion of support cover).

Confirming means having at least the following elements but maybe more because of the repercussive effect of dependent claims which list additional components (e.g. skirt in claim 4).

1.5 ‘which is detachably mountable on said support arms’  
means  
The frame is releasably connected to the support arms of the clothes dryer.  
because  
‘detachably mounted’ is a different term from ‘mounted removably’ but it appears to be related to the same feature – how the cover is connected to the dryer. This clause appears to be further defining how the connection is performed.

Attachments are discussed as relating to a positive connection in p.4, l.2-3 e.g. by the provision of tape ties. Therefore detachably mounted must mean there must be a positive connection which can be released.

1.6 ‘a top cover’  
means  
a sheet of material which can be placed over the support arms.  
because  
The cover of the prior art is described as a sheeting (p.3, l.7). This appears to perform an analogous function to the top cover of p.4, l.19-28. The cover may be made of a sentiently stretchable material (p.4, l.24) or a lightweight plastic sheet (p.4, l.28).

over because it is on ‘top’ in use which suggests it must be uppermost.

1.7 'so as to form a cover for the dryer' which extends over the radiating support arms of the dryer.

means

in such a way as to prevent rain wetting the dryer support arms (or a portion thereof).

Because

- This team mirrors the language of the first portion of the claim. It is not clear whether it is the top cover or the top cover and the support arms which provides this function. It doesn't matter which is intended as in either case the sheet portion must be placed over the dryer.

The purpose of the cover is to prevent wetting from rainfall (p.3, l.5).

It is not clear whether the claim is limited to covering the full extent of the support arms – all of the embodiments appear to cover all of the areas (e.g. fig. 2, fig. 4). However the language of the claim does not explicitly state this. In any case nothing in the infringement or prior art appears to turn on this point.

1.8 The top cover being provided with means for attaching the cover to the radially outer ends of the support arms.

means

the top cover has elements suitable for connecting the cover to the radially outer ends of the support arms so they are in contact

because

The 'cover', in this case, is the whole structure not just the top cover although in any case it is by the 'top cover' that the 'cover' is connectable to the support arms.

Suitable for because skilled person aware of drafting conventions.

Means is inherently unclear. Implies patentee wished to cover all elements which provides the stated function. In this case the means could be part of the top cover (e.g. reinforced apertures (p.4, l.1) or separate elements such as tape ties (p.4, l.3).

The stated function implies a positive connection and contact between cover and ends of arms because arm ends are specified in claim.

2.1 A cover according to claim 1

means

a cover having all of the elements of claim 1

because

a skilled person is aware of drafting conventions.

2.2 in which the support frame comprises a central support hub

means

wherein the support frame has at least a connector situated in the middle of the frame, when looking down, to allow connection of a plurality of elements.

because

the hub is described in p.4, l.9-10 as allowing connection of a plurality plastics tubes (in this case 3) to make a multi legged assembly.

Central means middle when looking down because this is depicted in figure 4 (item 17 is hub).

2.3 resiliently, deformable support elements extending radially outwardly of the support hub so as to overlie the support arms of the dryer.

means

elastically bendable elongate members which project away from a central upward axis passing through the support hub, the members being arranged about the axis in the same way as the areas of the dryer.

because

elastically bendable because the resiliently deformable support elements are bent to curvature (p.4, lines 5-10). The support elements must be elastic as the resiliency can provide the necessary tensioning (p.4, lines 28-29).

The dryer is not claimed so from a product it is difficult to know whether it would infringe the overlying feature.

As shown in figure 1 the support arms of the dryer extend radially away from the central axis equidistantly. This is mirrored by the arrangement of the elements of figure 3. As the angle between the central axis and the arms/elements are different it must be the arrangement of the arms/ elements about the axis that is intended. → overlying is not restricted to being in contact with.

3.1 A cover according to claim 1 or 2

means

a cover having all of the features of claim 1 or claim 2

because

a skilled person aware of drafting conventions.

3.2 'in ... support elements have releasable fastenings' at their radially outer ends for fastening them to the support arms.

means

wherein the support elements can be connected by connectors to the support arms, the connection being at the end of the support elements furthest away from central axis which allow separation

because

'them' and 'their' relate to the support elements because they are plural. Can't be support arms because this term comes after 'them' and 'their'.

Radially means extending away from an axis so the outer ends must be the ends furthest away from that axis.

Fastenings could be tape ties (p.4, l.19). Tape ties are also used for attacking (or connecting) the cover to the arms (p.4, ll.1-4). Therefore fastenings are attachments or connectors.

3.3 the elements being deformable into an arched shape ... impart a generally dome shape to the top cover

means

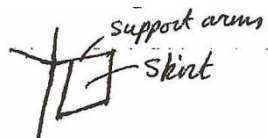
the support elements are bendable into a curvature to provide sloping sides which increase in gradient towards the outer edge.

because

the support elements can be bent to curvature (p.4, 1.10) and these support elements impart the arched/dome shape (p.4, 11.19-20). The dome shape is depicted in figure 2 where the gradient increases towards the edges. This gradient change provides the benefit of preventing ponding (p.4, 1.19-20) which usually occurs at the outer edges (p.3, 1.8-9).

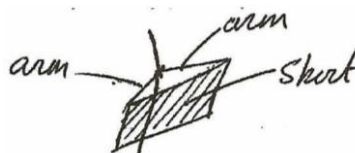
Note – No elements in claim 1. Claim 1 only dependent on claim 2.

- 4.1 A cover ... any preceding claim ... further confusing  
means  
a cover of any of claims 1, 2 or 3 having at least the following  
because  
dependencies } would be known to skilled person because  
and comparing } of drafting conventions  
Although further used doesn't mean that listed features are replicate → further defining claimed features.
- 4.2 A skirt which extends in use downwardly from the radially outer ends of the support arms  
means  
a skirt element which projects (in use) from the outer ends of the support arms  
because  
'hung' because p.4, lines 32-33 suggests it can be hung like a curtain. However hung not in claim so must be broader – projects  
Skirt has corners and can be attached at edges so must be a sheet (p.4, 1.34-35; Figure 2).
- 4.3 throughout a length sufficient to protect the clothes from wind borne rain  
means  
extending laterally away from the ends of the support arms to enclose the sides of the dryer (or a position thereof) and project down a length commensurate with hanging clothes.  
because  
length could refer to a length of the support arms:



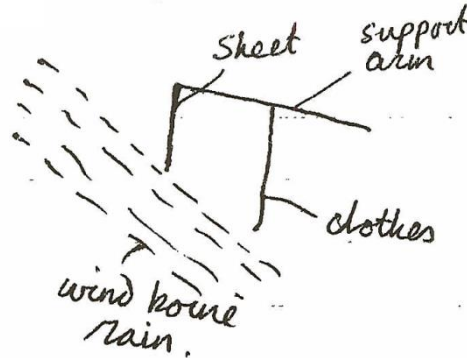
but this would not appear to protect the clothes hanging between the arms from wind-borne rain. This is also inconsistent with the embodiment of figure 2.

Therefore the skirt must be hung between the arm ends as described in page 4, lines 32-33. This means that the skirt extends laterally away from the ends of the support to enclose the sides of the dryer as shown in fig. 2.



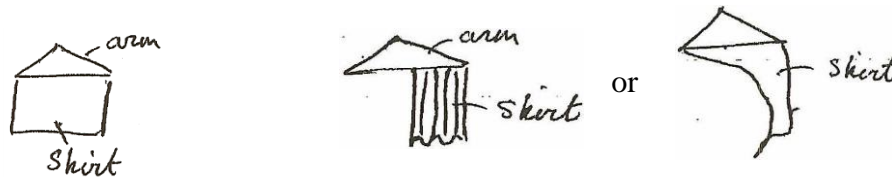
A length sufficient is inherently unclear. It appears to mean that it has to be a length of the same order as the length of the hanging clothes.

This will of course be dependent on the angle of the rain.



5.1 A cover according to claim 4  
means  
a cover having all the features of claim 4  
because  
skilled person aware of drafting conventions

5.2 in ... skirt arranged to be ... in manner of a curtain  
means  
one portion of the skirt can be moved laterally away from an adjacent position.



because  
although curtains can be opened in a variety of ways the spec discusses separating portions of the skirt to allow each skirt portion to be moved away from an adjacent position (p.4, ll.33-35).

Claim not limited to separation being at support arm ends (p.4, l.33-35) so separation could be anywhere.

6.1 A cover according to any preceding claim  
means  
a cover having all the features of claim 1, 2, 3, 4 or 5  
because  
a skilled person aware of drafting conventions

6.2 in which reinforced holes ...top cover and skirt (where present) for engagement by the outer ends of the support arms.  
means  
the connection between the arms and the top cover and skirt are provided by reinforced holes.

because

The reinforced holes are described as forming the attachment between the top cover and support arms (p.3, l.35 – p.4, l.4).

## INFRINGEMENT

Rotabrolly is offering to supply a document according to B also sales to independent retailers. Independent retailers will possibly be infringing by keeping and selling on the product. End users may infringe through use but will be exempt if it is for private and non commercial use.

Feature	Present (✓) or not (X)	Reasoning
1.1	✓	It is over the dryer because it obscures the top of the dryer (figure A). It will prevent wetting from rainfall because it is made of waterproof material (p.8, l.1) → has all features of my construction
1.2	✓	Dryer has an upright central support on Hole V (figure A; p.4, l.4) has a number of support arms A which extend away from central support (fig. C, p.4, l.4). has clothes lines extending between arms because the washing line forms a spiral pattern (p.4, l.5)
1.3	✓ (check)	Rotabrolly is connected by a pivoting clamp (p.8, l.11). This suggests releasable attachment (but not described as releasable so check)
1.4	✓	The Rotabrolly has a number of stiff wire spokes which give the cover a dome shape (p.4, l.1-2) There are members which give shape to the cover.
1.5	✓	As described in 1.3 the spokes (forming the frame) is connected to the arm of the clothes line (fig. C; p.8, ll.10-11).
1.5	✓	The waterproof textile material described in p.8, l.1-3 is a sheet of material placed over the support arms according to my construction (see figure B).
1.7	✓	The waterproof textile material is held over the dryer as shown in figure B. This will prevent rain water from falling on the dryer support arms below.
Feature	Present (✓) or not (X)	Reasoning
1.8	✓	The spokes are attached to the cover by pockets (p.8,

1.13-14)

However, the spokes are not the support arms according to my construction. Nevertheless the spokes are attached to the arms via the clamps (p.8, 1.11-12).

Furthermore the cover connects with the ends of the support arms A as shown in figure B.

Therefore the spokes and clamps are elements for connecting the cover to the radially outer ends of the support arms according to my construction.

Overall	✓	Infringed.
2.1	✓	All features of claim 1
2.2	✓	Spider Y as shown in Figure/Sketch B is a connector in the middle of the frame to allow connection of a plurality of elements because the spoke elements are connected together at the top of the dome by the spider (p.8, 1.9-10). Sketch B is looking down.
2.3	✓	<p>Spokes are stiff wires (p.8, 1.1-2) which can be bent to form a dome (p.8, 1.1-2) and can relax from the bent shape to an unstressed, straight shape (p.8, 1.17-18). Therefore must be <u>elastically bendable</u>.</p> <p>They extend away from central upward axis as shown in fig. B.</p> <p>Seem to overlie dryer arms as they are connected to same central axis and to the ends of the support arms → must overlie (fig. C)</p> <p>Also, each Rotabrolly has same number of arms as the dryer (p.8, 11.5-6)</p>
3.1	✓	<p>All features of claim 2.</p> <p>Not really dependent on claim 1 see note in construction.</p>
3.2	X	The connectors are at the ends of the support arms (Sketch B) not the ends of the support element spokes which are even further out (Sketch B).
Feature	Present (✓) or not (X)	Reasoning
3.3	✓	Stiff wire spokes forms a dome shape (p.8, 1.2-3) which, as shown in figure B increases in gradient towards the outer



edges to form curved sloping sides, according to my construction.

As the spokes are straight when released (p.8, l.18) they are bent into a curve when in use as shown in figure B.

- |     |                  |                                                                                                                                                                                                                                                                                                                             |
|-----|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1 | ✓<br>✓<br>X      | Claim 1 all features ✓<br>Claim 2 all features ✓<br>Claim 3 not attached in same place                                                                                                                                                                                                                                      |
| 4.2 | ✓                | The portion of the top cover which is below the end of A as shown in figure B is a short element which projects in use from the outer ends of the support arms downwards according to my construction.                                                                                                                      |
| 4.3 | ✓                | The portions of the top are below the ends of support arms A extend laterally away from A and enclose the sides of the dryer (see sketch B). They appear to project down a length which is commensurate with the length of the support arms so it would appear that they are of a length commensurate with hanging clothes. |
| 5.1 | ✓<br>✓<br>X<br>✓ | Claim 1<br>Claim 2<br>Claim 3<br>Claim 4                                                                                                                                                                                                                                                                                    |
| 5.2 | ✓                | Zip fastener shown in A would allow one portion of skirt to be moved away from an adjacent portion.                                                                                                                                                                                                                         |
| 6.1 | ✓                |                                                                                                                                                                                                                                                                                                                             |
| 6.2 | X                | Not at end of support <u>arms</u>                                                                                                                                                                                                                                                                                           |

NOVELTY: C

Feature	Embodiment		Reasoning
	1	2 – with frame	
	Present (✓)	or not (X)	
1.1	✓	✓	Cover for clothes dryer discussed in p.10, l.2-3 configured to prevent clothes getting wet in rain (p.10, l.9-10)
1.2	✓	✓	3 arms extending radially (p.10, lines 3-4) Central post (p.10, l.4) supporting clothes lines (p.10, l.4) between arms (p.10, l.28-29)
1.3	✓		attached by pockets on sheet (p.10, l.11-12) which can be

		fitted over corresponding arm (p.10, lines 3-4) → separable connection
	✓	attached by clips (p.11, l.15), clamps or releasable securing Straps (p.11, lines 17-19)
1.4	X	just a waterproof sheet. Shape given by support arms.
	✓	spines support the cover above dryer giving shape to the Cover (p.11, l.14-15)
1.5	X	no frame
	✓	can be connected by clips and struts (p.11, l.14-15) Clips could be replaced by releasable securing straps (p.11, l.18)
1.6	✓ ✓	both have polygonal sheet of flexible material (p.10, lines 11-12)
1.7	✓ ✓	both cover the underlying support arms (figure 1, figure 3)
1.8	✓	pockets secure arm to thereby connect cover to outside of arm (p.10, l.15-17)
	X	The ends of the arm are connected to the top cover as shown in figure 3 but they are not in contact.
Overall	X	no frame – key element won't continue with first embodiment
	X	no connection.
2.1	X	
2.2	X	no central hub as central portion of each panel cut away (p.11, lines 21-22)
2.3	✓	spines are springy & flexible (p.11, lines 12-13)
3.1	X	not all of claim 1
3.2	X	not on outer edges of support elements as shown in figure 3.
3.3	X	not curved to form an increasing gradient as shown in figure 3.
4.1	X	not claim 1 or 3

4.2	✓	spines may extend (project) beyond and downwardly of the ends of the arms (p.11, lines 19-20) to protect against driving rain
4.3	✓	same stated function as 4.3 so seems to have same design constraints.
5.1	✓	not claim 1 or 3
5.2	X	no separation between adjacent portions fig. 3.
6.1	✓	not claim 1 or 3
6.2	X	not connected to support arms outer edge

#### NOVELTY D

Feature	Present	Reason
1.1	X	not for clothes drier
1.2	X	not separate element from cover no lines for clothes
1.3	X	not for dryer
1.4	✓	springy steel spokes 13 (fig. 2) give shape to umbrella
1.5	X	no support areas
1.6	✓	PVC cover is waterproof and gives shelter from rain (figure 2) and is placed over support elements (fig. 2)
1.7	X	not used for dryer
1.8	X	no support arms. There is a handle for holding but this would not connect the cover to the contact the support arms
2.1	X	
2.2	✓	The spokes are hinged to a collar 6 fixed to bottom end of The umbrella tip (fig. 2). This collar connects the spokes and is in the middle of the frame
Feature	Present	Reason
2.3	✓	spokes are springy → elastically bendable extend away from central axis as shown in figure 3.
3.1	X	claim 1 features not present

3.2	X	no connectors at end which allow separation because tip Protectors are welded to ends of spokes (figure 2).
3.3	✓	covers as shown in fig. 2 – shape increases in gradient away from centre
4.1	X	not claim 1
4.2	X	no support arms
4.3	X	not clothes dryer
5.1	X	not all features of claim 4
5.2	X	no adjacent portions can be moved away from another portion
6.1	X	not claim 1
6.2	X	uses tip protectors rather than reinforced holes (figure 2).

### INVENTIVE STEP

A skilled person is a designer of clothes dryers and covers (see construction sheet).

Common general knowledge includes umbrellas including D because such umbrellas are known to nearly everyone (p.2, lines 31-34) and C talks about umbrellas (p.10, lines 16-17).

The claims have been construed as above.

#### Claim 1

The inventive concept of the record frame embodiment of C is that the ends are connected to the top cover such that they are in contact.

A skilled person would be led from the first embodiment of C to connect the cover to be in contact to hold the cover more firmly in place. Therefore claim 1 is novel but not inventive.

#### Claim 2

The inventive concept of claim 2 is having a central hub.

The central hub in the umbrella is a collar provided around the tip. Replacing the collar and tip arrangement of the umbrella with the hold of D would lead to the hole of D being occluded.

This would remove the advantage of the hole which is to provide an air circulation vent (p.11, lines 21-22).

Therefore a skilled person would be led away from combining the teaching of D which does not require ventilation and C which does.

→ Claim 2 inventive.

### Claim 3

Inventive concept is forming domed shape because it prevents ponding of water (p.3, 1.8-9). C states that frame work gives umbrella like appearance (p.10, lines 16-17). A skilled person may consider using the shape of a different umbrella as that of D.

However the shape of the umbrella does not appear to be considered by C → the straight sides perform the function adequately. No motivation to change shape. Ponding will be prevented in C by using taut cover (p.11, lines 5-6).

Ponding not a problem for umbrella as user can move umbrella.

→ Not obvious to change shape of cover.

### Claim 4

C already has all additional features of claim 4.

### Claim 5

Inventive concept : separation

Not disclosed in either D or C

Inventive ✓

### Claim 6

Inventive concept : reinforced holes

Not disclosed in D or C

Inventive

SUFFICIENCY

Claims appear to be sufficiently disclosed to allow a working embodiment to be made.

AMENDMENT

Amend to claims 2 or 5 which are novel and inventive and infringed.

Claim 2 covers both embodiments which you were selling (relates to central hub)

Claim 5 relates to skirt which may be unduly limiting

Claim 4 may be useful if could amend to just the domed concept without limitation to position of connector as the domed concept is inventive.

Dear Kent,

Summary

Claim 1 is novel but not inventive  
Claim 2 is novel and inventive  
Claim 3 is novel and inventive  
Claim 4 is not novel  
Claim 5 is novel and inventive  
Claim 6 is novel and inventive

Claim 1 is infringed  
Claim 2 is infringed  
Claim 3 is not infringed  
Claim 4 is infringed  
Claim 5 is infringed  
Claim 6 is not infringed

Can amend claims to limit scope and still cover infringement. Best done before starting proceedings to show good faith (s.37).

Could get a validity opinion from UK IPO and infringement opinion.

Is Rotabrolly also manufacturing or importing the product? If so we can be more forceful in our letters as they could not pursue a groundless threats action. If they are not we should be careful and also find out who is importing/manufacturing – we can always just notify them of the patent. The retailers are also infringing by selling.

An interim injunction seems not to be possible as Rotabrolly have been selling for some years so the balance of convenience lies with them.

Have they got any rights?

We could negotiate with them – e.g. offer a licence.

Infringement action could get damages, or amount of products, injunction, delivery up and declaration of infringement. This is an expensive action.

Yours

P. Attorney