

Examiner's
use only

Glossary

- ▽ = because
- ∴ = therefore
- CGK = common general knowledge
- PSA = person skilled in the art
- ⇒ = means
- IC = inventive concept
- GG = Gutter Gate
- DG = Drain Gate

Construction

Numbered claims at end

1.1. ⇒ Sets the scene as items of outerwear. Independent product claim. It includes outerwear that is weatherproof, but isn't limited to this ▽ this is "most outerwear" p6l12-13. ∴ just clothing that can be worn outside.

✓

1.2. ⇒ the outerwear of 1.1

having ⇒ comprising ⇒ including the following features but not limited to just these

body portiontorso ⇒ the item of outerwear has a portion which protects the user's body (i.e. not including the user's arms, legs and head).

Major portion ⇒ more than 50% as this is the normal meaning of the term "major". The PSA would understand that the patentee meant that the entire torso did not need to be covered. However, the outerwear must cover enough that it is still effective even when it is not closed (p6l22-23).

✓

✓

The portion covered must be sufficient to protect the back and most of the chest from the rain falling in all directions, as this is the function of the outerwear as clearly describes in p6l23-25.

✓

1.3. ⇒ the item must have some form of fixture which can be done up and undone in such a way to secure the item to the user's torso

This includes a zip (p7l10) but doesn't have to be as alternative means are clearly envisaged (e.g "otherwise closed" p6l22.

✓

1.4. ⇒ the item of 1.1.

lowermost edge ⇒ the edge of the garment closest to the ground when in use.

configured to terminate over the user's legs ⇒ that, when in use on an adult (p6l6), the lowermost edge terminates in a position which would result in the water draining off the item and onto the user's legs or trousers if it weren't for the features of 1.5 + 1.6. ∇ the function of this invention is to mitigate this problem p6l18. This is not limited to specific parts of the legs and items which terminate anywhere which would result in the water running onto a portion of the legs would be encompassed by this term ∇ the benefits of the invention (features 1.5 and 1.6) would still be seen.

✓

✓

1.5. secured to ⇒ can be secured to ∇ claim 4 clearly demonstrates that embodiments where the upturned portion can be removed are encompassed by claim 1. ∴ 1.5 includes both reversibly and irreversibly secured p7l40 supports this interpretation.

✓

the lowermost edge of 1.4.

is an upturned portion ⇒

an ⇒ one or more as item is "having" in 1.2 i.e not limited to only one.

upturned portionbody portion ⇒ the item has a portion which is angled such that a fluid (doesn't have to be water) run downs the body portion it is captured by the upturned portion and prevented from flowing onto the user's legs as this is its function p7l21-23. The upturned portion includes, but isn't limited to a gutter. p7l13, p6l27. The upturned portion can be provided as a continuous loop or as a length with two ends (one or more length, see "an" construction above) p7l50.

✓

✓

for ⇒ suitable for.

✓

upturned portion does not need to be a distinct component from the material of the body, it can be formed from it ∇ the upturned portion does not always need to be removable p7132-33.

✓

1.6. the upturned of 1.5.

having ⇒ see having in 1.2.

one or more ⇒ greater than or equal to one.

drain aperture ⇒ a hole in which the fluid captured by the upturned portion can be expelled through via gravity. towards the floor p7124–28. The “aperture” is construed as a “hole” as this is the normal meaning of the word.

✓

Aperture ⇒ a drainage port providing a spigot p7117.

“located at portion” - the aperture or apertures are located at a position at the rear of the outerwear such that the drainage of fluid does not interfere with the working practices of the user p6128-29 p7126-28.

✓

✓

As the patentee included “or towards” the PSA would understand that the aperture does not have to be at the very back (i.e central to the rear), and would include the rear half of the item, when in use.

2.1. Item of outerwear with all the features of claim 1 and the following

2.2. “drain conduitaperture” ⇒ a component, such as a hose (p7123-24) or a down pipe (p7117 - 18) is secured to the aperture of 1.6 to further direct captured water/fluid away from the wearer (p6131-32). The drain conduit can be either permanently or reversibly secure. p7133-35.

✓

✓

✓

3.1. An item of outerwear with all the features of claim 1 and optionally claim 2.

3.2. ⇒ upturned portion of 1.5 can be fixed in a position where it is not able to capture fluid running down the body portion. This can be wither because it is folded inside the item, as described in p7132-134 and shown in Figure 2B., or ∇ the upturned portion is removable and is stored away, as outlined in claim 4 and p7140-46.

✓

✓

deployable ⇒ not claimed in this specific condition, just that the item can be in such a condition and subsequently converted to the second condition when required e.g when the weather becomes wet p6l34-37.

✓

3.3 ⇒ the configuration (condition) wherein the upturned is in use and positioned to capture the fluid running down the body portion.

✓

4.1. ⇒ An item with all the features of claim 1 and claim 3 and optionally claim 2.

4.2 ⇒ Describes the first condition in 3.2 and limits to the specific embodiment wherein the upturned portion is removed from the item and therefore not secured to the lowermost edge of the item,* p7l40–45; p6l35–37. and is stored e.g in the pocket of the item p7l44-45. When dependent on claim 2, this can involve (but doesn't have to) separation of the drain conduit p7l47-48.

✓

* i.e it can be stored ready to be deployed when needed p6l35-37.

5.1. An item with all the features of claims 1, 3, 4 and optionally claim 2.

5.2. ⇒ the upturned portion of 1.5 is secured to the lowermost edge (as in 1.5) in the condition when in use (condition of 3.3) by a discontinuous fixing device ⇒ a device that has several distinct fixing point, such as the buttons described in p6l41–43. and p7l40-42. Not limited to a specific number of fixing devices but does not include continuous fixing devices, such as zippers.

✓

6.1. An item with all the features of

- claim 1,
- claim 1 + 2
- claim 1 + 2 + 3
- " 1 - 4
- " 1 - 5
- " 1, +3
- " 1, +3, +4 or
- " 1, +3, +4, +5

6.2. The item is a jacket or a coat, as in p6l45-46. A coat can have the features as described in p7l7-10.

✓

DCP

2

14.5

MARKS AWARDED 14.5

Infringement

2 embodiments GG + DG. Considered separately.

DG

- 1.1. ✓ Overcoat = outwear p3l5.
- 1.2. ✓ See Fig1 – covers major portion of upper torso p3l10
- 1.3. ✓ Buttons, toggles or a zipper all mean to releasably secure p3l10-12
- 1.4. ✓ Without means of 1.6, the rain would soak the users legs p3l7-8/(See Fig 1), so according to my construction, feature present.
- 1.5 ✓ Gutter formed (G in Figure) at lowermost edge of body portion p3l18-19. Integral gutters fall within scope of 1.5 (see construction).
- 1.6. ✓ p3l25-26; clearly present: Away from the front implies “towards the rear”, as shown in “D” in Fig 1.

All the features of claim 1 present in DG.

- 2.1. ✓ see above
- 2.2. ✓ “d”, drain p3l25,-26. presumably involves an aperture - check this with client though.

Balance of probabilities, all features of claim 2 appear to be present in DG.

- 3.1. ✓ See above (both dependent on C1 + C1 and C2).
- 3.2. x Gutter is integral p3l18, and welded onto BP so can't be removed or folded away = no first condition
- 3.3. ✓ There is a second condition where it is able to capture fluids (its only position), but not deployable from first condition.

DG does not have all features of C3.

4.1. x for all dependencies as no 3.2.

4.2. x No first condition, where gutter not secured as G welded to BP p3118-19.

DG does not have all features of C4.

5.1. x for all dependencies as no 3.2 or 4.2

5.2. x G is welded to BP p3118-19 = no discontinuous fixing device.

DG does not have all features of C5.

6.1. Dependent and C1	✓		
C1+2	✓	* no 32.	
C1+2+3	x *	0 no 4.2	
C1-4	x *0	+ no 5.2.	
C1-5	x *0+		
C1+3	x *		
C1+3+4	x *0		
C1+3+4+5	x *0+		

6.2. ✓ Overcoat = coat p315.

DG contains all features of claim 6 when dependent on claim 1, or claim 1+2 (not other dependencies)

GG

Client does not provide GG when fixed to an item of outerwear, and therefore GG does not make, use, dispose of, offer to dispose of, import or keep the products of C1-C6. Therefore no direct infringement by activities relating to GG. The below infringement analysis is in relation to indirect infringement - i.e once the GG has been retrofitted to the coat (p2 6th para) by the user.

1.1. ✓ p413 - to be attached to outerwear.

1.2. ✓ Implicit in coat or outerwear p4123.

1.3. ✓ Some of the coats / outerwear will have buttons or zip to secure garment to torso.

1.4. ✓ At least some of the coats will terminate such that the water would run off and onto the legs. as the function of GG is to prevent this

✓

✓

✓

1.5. ✓ GG is secured to the inner surface of the lowermost edge of the clothing p4I5-6 + p4I23-25.

The G is the upturned portion for capturing fluids

✓

1.6. ✓ p4I18-21. The gutter has drainpipe (aperture implicit) and is installed at the rear of the coat.

When GG installed, all features of C1 present.

✓

2.1. ✓ See above.

2.2. ✓ Drain pipe (Fig 2.2+2.3) is a drain conduit

When GG installed all features of C2 present.

✓

3.1. ✓ For both dependencies.

3.2. ✓ The attachment of GG to the coat appears to be reversible, so it can be removed when not in use (as it uses Velcro or poppers etc p4I10-12) and packages small p4I30-31 so can be deployed (attached) when needed (check with client though).

✓

3.3. ✓ Yes - when attached to the coat

When GG is installed, all features of C3 present.

✓

4.1. ✓ For all dependencies

4.2. ✓ When not in use it is not secured to lowermost edge (see 3.2).

When GG is installed, all features of C4 present

✓

5.1. ✓ For all dependencies.

5.2. ✓ Hook and eye type fasteners + popper half are discontinuous fixing devices p4I10-12.

When GG installed, all features of C5 present.

✓

6.1. ✓ For all dependencies

6.2. ✓ Can be fixed to coats p4I5-6.

When GG installed, all features of C6 present.

✓

Conclusion

DG infringes C1, 2+6.

GG (when installed) infringes C1-6.

pg 44 TG 1
OO(2) 2
FEP 0.5
CON 2

11.5

MARKS AWARDED 11.5

Novelty

Both Doc C + Doc D were published before Doc B filing date so are s2(2) prior art.

✓✓

Doc C.

1.1. ✓ The invention relates to wear for both indoor + outdoor use, p12|20. + p14|18.

✓

1.2. x only a negligible portion of the user's rear is covered p13|10–11 so not "major portion".

✓

1.3. ✓ The tie strings releasably secure the item p13|7-8.

✓

1.4. ✓ In absence of gutter portion water drips over legs + feet p12|17–18.

✓

1.5. ✓ The gutters + reservoirs p12|20-22. prevent water from dropping over floor (p12|18-19) and dripping on legs p12|17-18. and therefore capture the fluid.

✓

1.6. x As gutters, there are no apertures. There are "spout forming portions which are of a hemispherical shape (p13|13-14), but these are not "apertures" (i.e holes) within my construction. Furthermore, the spouts result in drainage to the side of the wearer (not at or towards the rear).

✓

As reservoirs, there are no drain apertures or spouts, and water cannot drain from the gutters p14. 18-10.

Claim 1 is novel over Doc C.

2.1. x see above.

2.2. x No aperture and no drain conduit,. The extensions in p14|23-24 do not constitute a drain conduit as are not secured to the aperture.

Claim 2 novel over C.

3.1. x see above.

3.2. ✓ When the fasteners are not in place, the upturned portion will not be able to capture water as it will not provide a gutter.

3.3 ✓ Condition when in sue p13|2-5.

Claim 3 is novel over C in view of dependency.

4.1. x see above

4.2 x the upturned portion is formed from the apron and is therefore not removable from lowermost edge.

Claim 4 is novel over C.

5.1. x see above

5.2 ✓ The fastening means (15+16 on Fig3) comprise buttons + buttonholes and other fastening elements which are discontinuous p13|22–25. p14|14–17

Claim 5 is novel over C in view of dependency

6.1. x see above.

6.2. x relates to an apron.

Claim 6 is novel over C.

The above analysis applies to both gutter + reservoir embodiments of Doc C. The key point where the analysis differs is for features 1.6 and 2.2 as outlined. The analysis of the remaining features applies to both.

Novelty Doc D.

1.1. ✓ Cycling wear = outerwear p17|3–5, p17,|13–15.

1.2. ✓ See figure 1 –completely covers torso.

✓

✓

✓

✓

✓

✓

- 1.3. x Pulled over head so no means to releasably secure garment to the torso p17, l6-7. ✓
- 1.4. ✓ Runaway is at the botton edge of the coat which, if it wasn't present would result in water running onto legs = terminates over the users legs p17l16-18. ✓
- 1.5. ✓ Runaway is an upturned portion p17l16 secured to the bottom edge (lowermost edge) of the coat. and capture the raindrops sliding down the coat p17l28-30. ✓
- 1.6. ✓ Drain apertures = p17l30-31, which is located at the rear of the coat, where water drains from p18l37-38. - in line with shoulder blades = at rear. ✓
✓

Claim 1 is novel over D.

- 2.1. x see above.
- 2.2. x no evidence of drain conduit. ✓

Claim 2 is novel over D.

- 3.1. x see above.
- 3.2. ✓ the runaway appears to be separable from the coat, which would, when separated constitute the first condition p18l30. ✓
✓
- 3.3. ✓ When in use (i.e attached to coat Claim 3 is novel over D in view of dependency

4. 1 -x see above

- 4.2 ✓ Runway can be a separate item p18l30. ✓

Claim 4 is used novel via dependency.

- 5.1. x see above.
- 5.2. x no discussion of a discontinuous fixingdevice
Continuous discussed in p18l26-29. ✓

Claim 5 is novel over D.

6.1 x

6.2 ✓ Cycling coat = coat p1713-5.

Claim 6 novel in view of dependency.

DEP 1
CON 2

15.5

MARKS AWARDED 15.5

Inventive step

Relevant test is Pozzoli

Prior art is Doc C and Doc D – both published before filing date of Doc B so available for attacking inventive step.

The PSA is a designer or manufacturer of outerwear, specifically interested in addressing the issues associated with water run off and mitigating the effects of such run off. The CGK of the PSA includes the general use of outerwear p6l8-10 and the associated issues with some weatherproof clothing p6l12-16. The CGK also includes the general construction of garments e.g as described in p7l7-10. Of course, the above should be confirmed with an expert in the field to establish what was indeed CGK at the filing date of Doc B.

The IC of claim 1 is an item of outerwear which mitigates the issues described in p6l14-16 by use of an upturned portion and a drain aperture. The starting point is taken a Doc D as this is more definitively related to “outerwear” and the problems associated with rain run off. The difference between claim 1 and doc D is -that the coat of doc D does not have a means to releasably secure the outerwear to the torso. e.g a zip. The user of zips or other fastening means to secure the item to the torso are considered CGK as are the benefits of such means i.e that the item can be removed without having to pull the garment over the user’s head. The addition of a zip to the coat of D would therefore be well within the PSA’s capability and there is no reason as to why the PSA would not make this routine modification.

C1 is therefore considered obvious in view of Doc D + CGK.

Claim 2

The CGK + PSA + starting point are the same as for claim 1. The IC is an item of outerwear which includes a drain conduit which further directs the captured

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✓

water away from the wearer p6l31-32. This feature is not disclosed in Doc D and is therefore a further difference. The benefits of the conduit are clear from Doc B and there is nothing in Doc D to hint than a conduit may provide such benefits. Furthermore, the aperture of Doc D (Fig 3, (210')) appears relatively basic and would have to be modified to allow a conduit to be secured to it. Without motivation to modify the coat of Doc D in such a way, there is no reason why the PSA, who has no inventive capacity, would do this. Therefore claim 2 is considered inventive (as well as all claims dependent on it).

Claim 3

PSA, CGK and starting point are the same. The IC is an item of outwear that has 2 conditions which can either capture or not capture fluids. As outlined for novelty, Doc D indicates that the runway can be made as a separate item and attached to a cycling coat p18l30. It is arguable that this does not mean that it is reversibly attachable but, in the case it is not, it certainly provides the motivation to the PSA to modify the coat in such a way. When reversibly attachable, there are 2 conditions as outlined in claim 3 and these features ∴ do not add to the inventiveness.

C3 dependent on C1 = obvious

C3 dependent of C2+C1 = inventive in view of C2.

Claim 4

CGK + PSA + starting point is the same. IC is an item with a reversibly attachable upturned portion. The analysis for claim 3 applies equally to claim 4. Doc D at least teaches towards a reversibly attached upturned portion. ∴ features of C4 do not contribute to inventiveness.

Therefore C4 only inventive when dependent on at least C2.

Claim 5

PSA + CGK + starting point are the same as claim 1. The IC is an item of outwear with an upturned portion which is reversibly attached to the item via a discontinuous fixing device. As outlined for claims 3+4, Doc D arguably taught the features of claim 3+4. The use of a discontinuous fixing device would not be considered inventive as such devices e.g buttons + buttonholes are well know, Claim 5 does not contribute to inventiveness

Claim 5 inventive only when dependent on at least C2.

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Claim 6

CGK + PSA + starting point are the same as claim 1. The IC is the same as C1 except for that the item is a coat or a jacket. Doc D clearly describes a coat so this additional feature does not add to inventiveness.

✓
✓

C6 is inventive only when dependent on at least C2.

13.5

MARKS AWARDED 13.5

Sufficiency

There do not appear to be any issues.

✓

0.5

MARKS AWARDED 0.5

Amendment

Client is not (yet) proprietor so has no right to amend application, or patent once granted. However warn proprietor could improve validity case by:

- (i) inserting features of C2 into C1, which according to my analysis would make C1 novel + inventive

✓✓

This would be allowed post-grant as it is a narrowing amendment. (can't broaden post grant.

✓

1.5

MARKS AWARDED 1.5

Advice.

Doc B is not yet granted, so cannot yet be enforced. First renewal for GB not due until 31st July 2020.

Under my analysis:

GG directly infringes claims 1, 2 and 6.

DG, when installed infringes all claims.

All claims are novel over Doc C + Doc D but only claims limited to include feature of claim 2 would be inventive. A court, however, may find differently, particularly on inventive step. Advise consulting expert in the field and discussing the above analysis.

As no longer doing any activities in relation to DG, and it appears that activities were stopped before Doc B published (check this) client is not liable for infringement in relation to DG.



The GG also does not directly infringe Doc B but it is a means relating to an essential element of the invention (as it embodies the inventive concept of the invention) and the client knows that it is suitable for and intended for putting the invention into effect in the UK as it is "a kit which can be retrofitted to any coat". Therefore, supplying or offering to supply GG in the UK without the consent of TVBS while/when Doc B is in force would be an infringement of Doc B GB.



Entitlement

As client appears to have devised the invention of claim 1 (the DG) it appears that he is the first owner, provided no agreement to the contrary is in place (check) as he approached TVBS before filing of Doc B. Get more detail on this an if client is entitled, initiate s12 entitlement proceedings before Doc B grants (EP prosecution will be halted), or if that can't be done in time use. s37 proceedings for GB designation.



If not entitled, advise filing an opposition against Doc B by 1st Sep 2020 citing Doc D as rendering at least claim 1 obvious. Perform further prior art search.



Advise client that he appears to have prior user rights in relation to DG as activities in relation to this started before Doc B filing date. This would not extend to activities to GG, as not started until after Doc B filing (check this).



Threat is actionable as patent application exists and clear TVBS intend to bring proceedings.*

Advise not to start selling (and stop offering) GG until issues resolved to minimise potential liability.

* not primary infringer.

GG Customers probably not direct infringers as exempt via private + non commercial use.



4

MARKS AWARDED 4

Spare set of claims

Claims

- 1.1. 1.2
1. An item of outerwear, the item of outerwear having a body portion for covering at least a major portion of a user's upper torso and means to releasably secure the item of outerwear to the users torso, the item of outerwear having a lowermost edge which is configured to terminate over the user's legs, secured to the lowermost edge is an upturned portion for capturing fluids running down the body portion, the upturned portion having one or more drain apertures located at or towards the rear of the body portion to allow captured fluids to be expelled from the upturned portion. | 1.3 1.4 1.5 1.6
- 10
- 2.1. 2.2.
2. An item of outwear according to Claim 1, wherein a drain conduit is secured to the drain aperture. |
- 3.1 3.2
3. An item of outerwear according to Claim 1 or 2, wherein the upturned portion is deployable from a first condition in which the upturned portion is not able to capture fluids to a second condition where it is able to capture fluids running down the body portion. | 3.3
- 4.1 4.2
4. An item of outerwear according to Claim 3, wherein in the first condition the upturned portion is not secured to the lowermost edge.
- 20
- 5.1 5.2
5. An item of outerwear according to Claim 4, wherein the upturned portion, in the second condition is secured to the lowermost edge by a discontinuous fixing device.
- 6.1 6.2
- 25 6. An item of outerwear according to any preceding Claim, wherein the item

of outerwear is a jacket or coat.