

Examiner's
use only**A copy of the claims****CLAIMS**

1. A bird feeder comprising: a food holder, for containing bird food, having a sidewall including apertures for permitting birds access to the food; [A] the sidewall being formed of a mesh of metal wire; attachment means for allowing the bird feeder to be suspended from a fixing point; a shroud movably mounted with respect to the food holder ✓✓ between an open position, in which the apertures are accessible to birds, and a closed position in which the shroud surrounds the sidewall so as to prevent access to the food; [B] the shroud being without apertures and bias means for maintaining the shroud in the open position except when an animal having a weight exceeding a predetermined value attempts to gain access to the food by standing on the shroud, whereupon the shroud descends to the closed position under the weight of the animal against the action of the bias means.
2. A bird feeder according to claim 1, comprising a support for supporting the food holder at one end thereof, the attachment means being supported at the other end of the support for allowing the bird feeder to be suspended from the fixing point.
3. A bird feeder according to claim 2, wherein the support includes a rod on which the shroud is slidably mounted.
4. A bird feeder according to claim 3, wherein the bias means is in the form of a helical spring positioned on the rod and is disposed between the shroud and the food holder.
5. A bird feeder according to any preceding claim, wherein the shroud is formed of metal, such as copper, steel or aluminium.
6. A bird feeder according to any preceding claim, wherein the shroud has a minimum length of about 250 mm. ✓✓
8. A bird feeder according to any preceding claim, wherein the inner surface of the shroud has substantially the same shape as the outer surface of the sidewall.
9. A bird feeder according to any preceding claim, wherein the shroud and the food holder are both cylindrical.

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Dependent claims

New claim 7: A bird feeder according to any preceding claim, wherein the metal wire is galvanised wire or stainless steel.

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10. A bird feeder according to claim 8 or claim 9, wherein the shroud is spaced from ✓ the food holder by no more than 1 to 1.5 mm.
11. A bird feeder according to any preceding claim, wherein the metal wire has a diameter of ✓ about 2mm.
12. A bird feeder according to any preceding claim, wherein the mesh size is 5-8 mm. ✓
13. A bird feeder according to any preceding claim, wherein the shroud has a pitched roof portion. ✓
14. A bird feeder according to any preceding claim, wherein an open end of the shroud is ✓ flared.

Divisional claim (Proposed)

A bird feeder comprising: a food holder, for containing bird food, having a sidewall including apertures for permitting birds access to the food; attachment means for allowing the bird feeder to be suspended from a fixing point; a shroud moveably mounted with respect to the food holder between an open position, in which the apertures are accessible to birds, and a closed position in which the shroud surrounds the sidewall so as to prevent access to the food; the shroud having ✓ a pitched roof portion, and bias means for maintaining... (remaining wording of claim 1)

Basis: - pg. 7, lines 4 – 5.

MARKS AWARDED 20/34

Response

(23)

Dear Sirs

In response to the recent examination report, please find enclosed amended claims for consideration. I also enclose Form 51 for a change in ✓ representation, and request a 2 month as of right retrospective ✓ extension under S117B to bring the new deadline to 18 Nov 2017.

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Amendments

Claim 1 has been amended to incorporate [A]. Support for this is based on former claim 7, directed to “metal mesh”, former claim 8, directed to particular wires, and page 5, line 14 – 15, which states that the mesh may be formed of

wire. It is appreciated that although the above noted references refer specifically to galvanised wire, it is clear from the previous dependence of claim 8 upon claim 7, and the note on page 5 that the mesh is "ideally" formed of galvanised wire, that galvanised wire is an optional feature and that the PSA (skilled person) would directly and unambiguously derive "metal wire" from the application as filed. See also pg 5, line 31, which refers to wire mesh. ✓

Claim 1 has further been amended to specify that the shroud is moveably mounted "with respect to ✓ the food holder." This replaces the wording "on the bird feeder". Basis is found on page 4 line 27.

Feature [B] has also been incorporated into claim 1. Support is found on pg. 9, line 3, and figures 1 and 2. It is appreciated that although pg. 9, line 3 (and the surrounding sentences) state that the shroud is without apertures at least in the portion of the shroud lying adjacent to the sidewall, by "at least" it is envisaged that the shroud could optionally be without any apertures, as indeed is shown in Figures 1 and 2.

Basis for the dependent claims is as follows: ✓

<u>Dependent claim</u>	<u>Basis</u>
2	original claim 2
3	original claim 3
4	original claim 4
5	original claim 5 ✓
6	pg. 8 line 25
7	former claim 8
8	original claim 9
9	original claim 10
claim 11	pg. 6 lines 21-22
claim 12	pg. 6 line 22
claim 13	pg. 7 lines 3-5
claim 14	pg. 9 line 8

No matter has ∴ (therefore) been added. The Applicant reserves the right to re-introduce any deleted subject matter in this, or any future divisional applications during prosecution.

Clarity

Since claim 1 has been amended that the shroud is moveably mounted on the food holder, which is a component of the bird feeder, it is now clear that the shroud forms part of the claimed ✓ bird feeder.

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The figure in claim 6 was indeed an error. The claim has been corrected accordingly. Since the correction has basis in the application as the only figure for this length, it is clearly and unambiguously evident that

- a) the original number in the claim was a mistake✓; and
- b) that nothing else could have been intended than the value of 250 mm✓.

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∴ these, objections are overcome.

Unity

All of the present claims relate to the same special technical features and are ∴ unified.

Novelty

Claim 1, and all dependent claims thereon, are novel over D1, since claim 1 requires the sidewall being formed of a mesh of metal wire, and that the shroud is without apertures✓; neither of which are disclosed by D1✓. Instead, D1 discloses a container (i.e. the sidewall of the food holder) 12, being formed of transparent✓ plastic (see pg. 14, line 20-21), which is clearly not a mesh). Although the container 12 of D1 has access openings; these are few in number and are not the plurality✓ of openings formed from a mesh (see pg. 15, para 3). The shroud of D1 (14) is not without apertures, as openings✓ (44, 50) are provided in the shroud to cooperate with the opening in the shroud to control access through the shroud to the feed (see pg. 15, lines 12-14).

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Claim 1 requires a moveably mounted shroud which can move between an open position, in which the apertures of the food holder being accessible to birds, and a closed position in which the shroud surrounds the sidewall so as to prevent access to the food. Claim 1 also requires✓ a mesh of metal wire to form the sidewall. Neither of these features are disclosed by D2.

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Although D2 discloses a tube of mesh, there is no disclosure of this being metal. In addition, although D2 discloses “shields” to prevent the loss of food, there is no disclosure of these being moveable between an open and a closed position. Although not immediately clear from the image, the shield also appears to contain an aperture, in direct contrast to the shroud of claim 1 which does not have any apertures. Claim 1, and all dependent claims thereon, are ∴ novel over D2

Inventive step

The PSA is a bird feeder manufacturer.✓

The common general knowledge (cgk) comprises bird feeders comprising a container made from a wire mesh (see pg. 4✓, lines 5-6).

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The inventive concept of the present application is the provision of a bird feeder comprising a food holder having a sidewall, the sidewall being formed of a mesh of metal wire, and a shroud moveably mounted with respect to the food holder between an open position, in which the apertures are accessible to birds, and a closed position, in which the shroud surrounds the sidewall, the shroud being w/o apertures so that when closed there is no access to the food; the shroud being maintained in an open position by a bias means except when an animal having a weight exceeding a predetermined value attempts to gain access to the food. As noted on pg. 4, line 18-21, this provides the advantage of a bird feeder which offers much greater resistance to squirrels on the one hand, whilst not restricting access to birds on the other. In addition, since the sidewall is made of mesh, perches are not required for the birds to access the food in the food holder.

As noted above, the difference between the inventive concept and D1 is that D1 doesn't disclose the sidewall to be formed of a mesh of metal ✓ wire, and that the shroud is w/o apertures. These differences would not be obvious to the PSA, because D1 is also concerned with the issue of excluding larger animals while allowing smaller birds to feed, which it believes is resolved by providing a shroud having an opening alignable with an opening of the food holder. There would ∴ be no motivation for the skilled person to consider altering this design, as the PSA would believe that such a feeder was already suitable.

Nor would modifying D1 even help the PSA to arrive at the present invention; even if a wire mesh was used, the shroud only has a few holes and so would still only be accessible to one or 2 birds at a time. It would also be impractical to align the holes with the wire mesh. Since an object of D1 is also to observe the feed level, (see pg 14 line 21-22) in any event D1 teaches away from a wire mesh ✓. And if the skilled person considered using the shroud of the present invention in D1, since there are no apertures, birds would not be able to access the food. ∴ all claims are inventive over D1.

The difference between D2 and the present invention is that the shield of D2 is not moveable. It merely serves to prevent loss of food, not to give access to the birds, ∴ the PSA would not be motivated to modify D2. In addition, D2 claims to already be squirrel resistant, ∴ the skilled person would believe, from this ✓, that no further improvements are required.

The PSA would not be motivated to combine D1 and D2, since they are not cgk, but even if they did, this would not make the present invention obvious, since too many structural modifications would be required. ✓

If the shield of D2 replaced the shield of D1, there would then be no way of the birds accessing the food.

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If the wire mesh of D2 replaced the transparent plastic of D1, the same issues as above would occur. ∴ present invention is inventive over combination.

Other

Fav. re-exam is requested.

MARKS AWARDED 23/31

Memo

Misc

- Yes – can deal with this matter – can file a form 51✓ to change representation – as proposed in attached draft response (which I would be grateful if you could review)
- Initial deadline of 18 Sept has passed, but as patent office indicated, can request a 2 month✓ as-of-right extension, – bringing new deadline to 18 Nov. ✓
- Please ∴ provide me with your final instructions in good time before this date.

Objections

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- Think the Examiner was correct about D1✓ removing the novelty of claim 1; the 2nd paragraph of page 14 discloses all features✓.
- Even though the feeder of D1 is intended for keeping out small birds, because the structural features are the same✓, novelty is still lost (and in any event, D1 mentions on pg. 13 lines 7 -8 that squirrels can also be excluded✓)
- Was ∴ required to amend the claims✓ to distinguish the present invention over D1.
- Regarding the Examiners objection against claims 2 + 3, in relation to the upper tube, I disagree, since the upper tube 28 of D1 is arguably simpler a smaller section✓ of the food holder, and not a separate support. In any event, we are only required to show novelty for claim 1, and since I have amended claim 1 (as see below), I have not responded to this in the response. I disagreed with the Examiner regarding D2 and how this made the wire mesh obvious, as I feel the Examiner has failed to appreciate the combination✓ of the wire mesh and the shroud, which I believe is inventive. I have ∴ tried to clarify this combination to improve inventiveness in claim 1.
- I agreed with both of the clarity objections, which I have addressed.

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Amendments

- Understand your key invention to be the combination of the shroud and the wire mesh✓, since it conveniently enables the exclusion of squirrels which enabling ease of access to birds. I have ∴ amended claim 1 to cover this, since I understand it covers your current commercial✓ designs, and is both novel and inventive. Also note that while mesh wall alone isn't inventive, as you say, there is nothing to teach of the combination in D1 + D2
- I looked throughout the specification for basis for covering any mesh, or metal or plastic meshes, since I understand that you wish to move to manufacturing plastic mesh. Unfortunately, I was unable to find clear basis for any✓✓ type of mesh (or plastic), and so at the moment claim 1 is limited to metal mesh, which would not cover plastic.

∴, to also cover any type of mesh, I propose filing a divisional claim directed to an additional feature of the shroud – the pitched roof, as I believe this is inventive, ✓ but does not limit to a particular type of mesh. Divisional applications do incur substantial costs, and may take a while to grant, but since your sales are increasing I thought you may be willing to pay this. In addition, I understand that you haven't yet started manufacturing the plastic mesh feeder, so I thought it more important to cover the metal mesh now, with the intention of getting the divisional granted in future.

Please let me know if you would like to file a divisional, and, if so, whether you would like to proceed with the proposed divisional claim, or alternatively, my current proposed claim 1. Divisionals can only be filed up to 3 months before the compliance deadline, and prior to grant of the parent, but we will get warning of the imminent grant of the parent 1st.

Dependent claims

Have added a number of dependent claims which are arg. inventive.

- dimensions of metal wire

MARKS AWARDED 14/35

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