

Examiner's  
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## CLAIMS

1. A bird feeder comprising; a food holder, for containing bird food having 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 movably mounted ~~on~~ *with respect to the bird feeder 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; 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~~ *an* action of the bias means, *wherein the shroud is at least as long as the food holder in length, wherein in the open position a whole of the sidewall is exposed and in the closed position the shroud entirely covers the food holder.*
2. A bird feeder according to claim 1, comprising a support for supporting the food holder at ~~one~~ *a first* end thereof, the attachment means being supported at ~~the other~~ *a second* 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~~ *a* 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 length of about 250mm. ✓
7. A bird feeder according to any preceding claim, wherein the sidewall is formed from metal mesh or perforated sheet metal.
8. A bird feeder according to claim 7, wherein the mesh is of galvanised wire or stainless steel.

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9. A bird feeder according to any preceding claim, wherein ~~the~~ *an* inner surface of the shroud has substantially the same shape as ~~the~~ *an* outer surface of the sidewall.
10. A bird feeder according to any preceding claim, wherein the shroud and the food holder are both cylindrical.

#### Claims

11. A bird feeder according to any preceding claim, wherein the shroud comprises a roof portion at an upper end of the shroud. ✓
12. A bird feeder according to claim 11, wherein the roof portion is pitched. ✓
13. A bird feeder according to any of claims 11 to 13, wherein the roof portion comprises a downwardly extending portion.
14. A bird feeder according to any preceding claim, wherein the shroud is without apertures. ✓
15. A bird feeder according to any preceding claim, wherein the shroud is flared at an open end of the shroud. ✓

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**MARKS AWARDED 28/34**

#### Letter to UK IPO

Dear Sirs,

Please find attached an amended claim set with our comments.

Note that along with this letter I file PF51, appointing myself as representative of Mr. Graham. ✓

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Note that I also request an as-of-right 2 month extension, taking the deadline to reply to 18 November 2017. ✓

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#### Amendments / Basis

Claim 1 – In response to Item 5 of the examination report, Claim 1 has been amended to state the shroud is “moveably mounted with respect to the food holder”. Basis at p. 4, l.26.27. It is clear that ✓ the shroud is part of the bird feeder, since ✓ *good* it moves relative to the food holder which is part of the feeder.

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Claim 1 – basis for amendment at p. 5, l.31-33: “its whole surface is exposed until the weight of an animal pulls the food holder down”. This corresponds to the open position. ✓ P.7, l.26-27: “the spring compressed and the shroud entirely

covering the feed holder.” This corresponds to the closed position. ✓ P. 8, 1.14:  
“The shroud should be at least as long as the food holder.” ✓

Claim 2 – minor amendments for clarity purposes. “First” and “second” are merely labels and do not add matter.

Claim 6 – In response to Item 6, claim 6 has been amended to state the shroud length is about “250 mm”. Basis at 8.I.25.

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Claims 4 and 9 – antecedent corrections.

Claim 11 – Basis at p. 7, I.2-3.

Claim 12 – Basis at p. 7, I.4.

Claim 13 – Basis at p. 7, I.6.

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Claim 14 – Basis at p. 9, I.3.

Claim 15 – Basis at p. 9, I.8

### Novelty

Claim 1 relates to a novel bird feeder designed to allow access to bird feed to birds whilst preventing access to the feed from squirrels.

D1 discloses a food holder (hopper 12) with apertures (42), a hanger wire (60) and a concentric shroud 14. The shroud can move relative to the hopper “under the bias of a compression spring” (p.13, I.18-19).

D1 does not disclose “wherein in the open position a whole of the sidewall is exposed and in the closed position the shroud entirely covers the food holder.” Instead, in D1, there are two positions. In the first position, only the apertures are exposed, with the shroud surrounding the hopper (see p.13, I. 23-24). In the second position, the shroud blocks the apertures. In D1, movement of the shroud is limited to these two positions (see p.15, 6-8). Therefore the “whole of the sidewall” cannot be exposed under any weight or lack of weight of an animal ✓. The length of the spring simply and the limiting pin do not permit this. Claim is therefore novel over D1.

For completeness, D2 discloses a bird feeder made of mesh or plastic with holes in it. D2 does not disclose “a shroud movably ✓ mounted with respect to the bird feeder”, “a bias means” and “wherein the shroud ... entirely covers the food holder”. D2 is silent on these features.

Claim 1 is therefore novel over D2.

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Inventive Step

D1 is considered to be the closest prior art as it is directed to a similar purpose, i.e. limiting access to bird food, and would require the least amount of structural modifications (D2 does not have several structural features, i.e. shroud, bias means). There is a problem with D1 in that it can only be used by a small number of birds at a time, corresponding to the number of apertures in the hopper, i.e. two birds✓. Furthermore, the two birds can only access the food if the holes in the hopper and shroud are aligned. The holes may become misaligned if the mechanism becomes damaged (e.g. stuck) or if the spring deteriorates.

Claim 1 solves this problem as “the shroud is at least as long ... entirely covers the food holder.” That is, in the open position, access to the food from birds is not restricted because its whole surface is exposed✓. Then when a squirrel attempts to gain access, the weight of the animal pulls the shroud down to completely cover the food holder. As the whole sidewall is exposed, there is no requirement for any holes to be aligned. Therefore more birds✓ can access the food and the feeder is more reliable as there are no holes that can become misaligned, preventing access to the food.

D1 teaches that the hopper (food holder) should be surrounded by the shroud (p. 13, l.23-24). D1 also teaches that movement of the shroud should be limited to a small movement sufficient only to misalign its two holes. This is in contrast to claim 1 which requires a large relative movement to allow complete access to the food when in the (first) open position.

Therefore there is no motivation for the skilled person, who does not recognise the problem with covering the hopper at all times, to modify D1 to arrive at the invention of claim 1. If the skilled person was motivated to solve the problem of D1, he would naturally think to add more apertures (holes) to the hopper and shroud. This would not result in the invention of✓ claim 1.

Whilst there is no motivation to look to the teachings of D2, the combination of D1 and D2 does not together teach all of the elements of claim 1.

Since there is no recognition of D1's problem, and no teaching of the novel features of claim 1, it would not be obvious to arrive at claim 1 starting from D1 or D2. Claim 1 therefore involves an inventive step.

It is submitted that claim 1 is novel, inventive and in condition for grant. The dependent claims✓ are also novel by virtue of being dependent on claim 1.

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**MARKS AWARDED 19/31**

## Memo to Client Notes.

- Filed PF51 to change representative ✓
- Requested 2 month extension because deadline ✓ to reply has passed – new deadline is 18 Nov 17. 2/5
- Need approval to file response before this.
- Agree that D1 is similar to our invention.
- D1 discloses original features of claim 1 because in the “open position”, birds can access food through aligned holes in hopper and shroud and in the closed position, the weight of an animal causes holes to be misaligned. ✓ 3/5
- Amendment therefore is necessary for novelty.
- Several options for amendment, two of which are hinted at in client letter. ✓
- First option, – amend to wire mesh. I didn't choose this option because the Examiner objected to claim 7 being obvious in view of the combination of D1 and D2. It would be difficult to argue against this. I believe an additional amendment would be necessary and therefore unduly limiting. Also, client states that he now uses a plastic mesh. There is no basis in spec to cover a plastic mesh so therefore ✓ only a wire mesh would be protected. This wouldn't be commercially valuable to the client as his competitors could sell an equivalent version using a plastic mesh. 3/5
- Second option – entirety of sidewall accessible in open position. I chose this because it clearly distinguishes over the prior art and has a ✓ strong chance of success. Also covers all embodiments so covers the version that is selling ✓ well already. It would catch any competitors using such a shroud no matter what materials are used or what type of mesh etc. the food holder is made of. ✓ 7/10
- I have added fallback options to the pitched roof and to the shroud being without apertures and flared at the bottom. These clearly distinguish over D1 and provide inventive step arguments in their own ✓ right, e.g squirrels can't grip the roof and the bottom is strengthened to protect from damage. 2/5
- I do not suggest filing a divisional as all embodiments are covered ✓. If this is not the case, need feedback from client before end of compliance period and preferably as soon as possible as it has to be granted before grant of parent. +1
- Brief mention of timescale and costs of filing a divisional (and compliance period).

- Whilst there is no basis for amending to a plastic mesh, this embodiment is arguably covered by claim 1 as filed which states “a sidewall including apertures”. A plastic mesh is a wall including many apertures. ✓good
- Client is of course free to use a plastic mesh, product does not have to be limited ✓ to the specific embodiments.
- Client will ask why I added feature of shroud being at least as long as the food holder. I added this feature as I anticipate an objection of a lack of an essential feature from the examiner if it is not included. I.e. in order to completely cover the food holder the shroud must be at least as long as the food holder.
- As it must be at least as long the feature does not appear to be an unduly limiting feature.
- If client knows of an embodiment where the shroud doesn't have to be as the holder, let me know and I can remove feature and attempt to argue that it is not essential.
- Note that the error in claim 6 has been fixed, i.e. cm to mm. ✓
- In summary, amended claims cover all embodiments and offer broad protection. The amended claims have a strong chance of being granted because the novel features are not taught by the prior art. If however a further office action is received, claim 1 can be limited to one of the fallback options provided in the dependant claims.

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**MARKS AWARDED 21/35**