

## Answer guidelines to QE 2005 Paper C

Note: The answer guidelines contain some points (non-exhaustive) that could be covered in the answer to this Paper.

### **Interpretation**

Wordings that may require interpretation:

1. “Open”
  - “Display volume for storing items of food and/or drink”
  - “Side” – Does it cover upwardly facing side?
  - “Air curtain” – “rapid, laminar flow”
  - “Across”
  - Antecedent issue “said open side”
- 2 “Shelves” – does this mean something projecting from a rear wall, or is it just any generally horizontal surface?
  - “A number” – does this imply plural?
3. “Them”
  - Does “items” require that they are the same items as Claim 1, i.e. food and/or drink items.

### **Infringement**

Claim 1 (yes?)

Claim 2 (yes? – if number implies a plural, so there is no literal infringement, what about Catnic/Improver questions)

Claim 3 (yes? – but only by Frezor’s customers)

### **Validity**

Does what the infringer did prior to the filing date of the patent constitute prior art?

Over GB 1,000,000 (all claims novel, since the air flow cannot be regarded as an air curtain; no hint of air curtain, so inventive)

Over GB 1,500,000 (claim 1 lacks novelty; do other claims lack novelty/inventive step?). Combination with GB1,000,000 unrealistic

WO 04/10000 is prior art only if Singapore national phase is entered, and even then for novelty only. All claims would lack novelty.

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### **Amendment**

To overcome GB 1,500,000

1. In claim 1, limit to “food and/or drink retail outlet refrigerator/freezer cabinet”. Argue that this will be interpreted narrowly as in the *Workmate* case (*Hickman v Andrews and Another* [1983] RPC 147), and several subsequent cases. If it gives novelty to claim 1, does it give inventive step? Does this amendment make all the other claims novel and inventive also?
2. Optionally, as a precaution, in claim 3, limit to displaying “items of food and/or drink”.

(Note that some other amendments are possible, e.g. to sloping shelf, and might be given marks.)

Only need to overcome WO04/1000 if SG national phase entered. However, it might be prudent to add one clearly novel claim now also. This could for example be a dependent claim to a cabinets having “a lamp mounted the cabinet to illuminate the display volume” (see final line of the patent; this is infringed by Frezor (“fluorescent lamp 12”). Note that this claim is also novel and arguably inventive over GB1,500,000

### **Advice to Client**

Promptly apply to amend over GB1,500,000 (see above)

Monitor whether WO 04/10000 enters national phase, and if so promptly amend again to overcome it (or else ensure that amendment made now gives novelty over this document also).

Does Frezor have prior use rights? If so, it may be impossible to proceed against them if they do not change the infringing act (e.g. by modifying their product).

Consider trying to sell the patent to Frezor. Otherwise, is it realistically worth risking litigation with a party which is not a true commercial competitor?