

MOWING DOWN DISCLOSURE ARGUMENTS IN PATENT CASE

- ▶ New entrant to robotic lawn mower market seeks revocation of patent and declaration of non-infringement of competing product.
- ▶ Court considers the level of disclosure required of patentee.
- ▶ How useful is evidence showing the steps that the inventor himself took when considering the issue of obviousness?

What's it about?

For a patent to be valid, it must involve an inventive step, meaning that it must not be obvious to a notional expert skilled in the relevant technology, known as the "art". Patents for things which could have been discovered by such a notional person are regarded as obvious and are susceptible to attack for non-validity.

Husqvarna owns a patent for robotic lawn mowers. Positec also manufactures robotic lawn mowers and wishes to compete with Husqvarna. In this case, Positec sought revocation of Husqvarna's patent on the basis that it was obvious or lacked novelty.

The question for the court concerned the extent to which Husqvarna must disclose material relating to the "obviousness" of its patent. This could include, for example, documents showing the processes that the inventor followed when making the invention, with the aim of showing that he or she went above and beyond what could be considered standard for the industry.

Why does it matter?

In this case, the court agreed with Husqvarna and determined that – at the current stage in the case – material relating to obviousness was not required to be disclosed. As with all such cases, the court was required to balance the value of such material as evidence against the costs of producing it. In particular, on the question of obviousness, evidence relating to the process followed by the inventor when developing the technology behind the patent will only be of limited use in deciding what a notional skilled person would consider to be obvious. Usually, evidence from an independent expert witness will be of more value.

Now what?

Given that validity cases turn very much on their facts, arguments relating to the scope of disclosure will undoubtedly continue to feature in patent proceedings.

[*Positec Power Tools \(Europe\) Ltd and others v Husqvarna AB \[2016\] EWHC 1061 \(Pat\)*](#)

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