

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

B E T W E E N:

HESCO BASTION LIMITED

Claimant

-and-

(1) DIRICKX SYSTEMS LIMITED

(2) KEVIN LYONS

(3) MICHAEL PICKUP

(4) SHAUN ELLIS

(5) BENJAMIN JENKINS

Defendants

GROUND OF INVALIDITY

The following are the Grounds of Invalidity of UK Patent GB 2608722B (“the Patent”) referred to in the Defence and Counterclaim served herewith and upon which the First Defendant relies.

1. None of the claims of the Patent is in respect of a patentable invention, in that the subject matter thereof was not new as of the priority date of the Patent. The alleged invention the subject of the Patent formed part of the state of the art in that it had been made available to the public by the following matters:

PARTICULARS

- (1) The use by the Claimant of a gabion barrier assembly line according to at least claim 1 of the Patent between at least 2004 and a date in or around 2021 at its manufacturing facility in Leeds, UK. Said gabion barrier assembly line was in fact observed by a large number of third party visitors to said manufacturing facility who were not subject to any obligation of confidence, and who were therefore free in law and equity to make use of anything that they observed during their visit.
- (2) The use by Hesco Bastion (USA) Inc. (or another company in the same corporate group as the Claimant) of a gabion barrier assembly line according to at least claim 1 of the Patent since at least 2012 at its manufacturing facilities in Charleston, South Carolina, USA. Said gabion barrier assembly line was in fact observed by a large number of third party visitors to said manufacturing facility who were not subject to any obligation of confidence, and who were therefore free in law and equity to make use of anything that they observed during their visit.
- (3) In support of the First Defendant's case that the Claimant and its affiliate(s) were using a gabion assembly line according to at least claim 1 of the Patent for many years before the priority date, the First Defendant relies on the fact that the only named inventor of the Patent, James Heselden, died in September 2010, some 13 years before the priority date.
- (4) The broadcast of a report on ITV's Calendar News programme on or around 6 November 2014 on the Claimant's manufacture of gabion baskets and the uses to which they can be put. A copy of the video of the broadcast is at Annex 1. At Annex 2 is a screenshot of the page on the ITV news website from which the copy was taken. To the best of the First Defendant's knowledge, the video was also available to view on that page of the website from 4 November 2014, which is the date displayed on the web page. At around 1:53, the video shows

the gabion barrier assembly line at the Claimant's manufacturing facility in Leeds, UK, described in sub-paragraph (1) above, which has all the features of at least claim 1 of the Patent.

- (5) The video entitled 'How Hesco roam worry-free' first published on YouTube on 6 October 2017. Said video is available to be viewed at <https://www.youtube.com/watch?v=9GZ-BSDYw60> and a copy of said video is at Annex 3 hereto. The footage at 0:17 shows the gabion barrier assembly line at the Claimant's manufacturing facility in Leeds, UK, described in sub-paragraph (1) above, which has all the features of at least claim 1 of the Patent.
- (6) The use by the First Defendant of a gabion barrier assembly line according to at least claim 1 of the Patent since at least 29 July 2022 at its manufacturing facility in Leeds, UK. Said gabion barrier assembly line was, before the priority date of the Patent, in fact observed by third party visitors to said manufacturing facility who were not subject to any obligation of confidence, and who were therefore free in law and equity to make use of anything that they observed during their visit. In support of the above prior use, the First Defendant relies on the documents at Annex 4.

2. Further, or in the alternative, none of the claims of the Patent is in respect of a patentable invention in that the subject matter thereof did not involve an inventive step at the priority date of the Patent, in that the same was obvious to a person skilled in the art having regard to the state of the art. Hereunder, the First Defendant relies on common general knowledge alone, which comprised the following in particular at the priority date:

PARTICULARS

- (1) Gabion barriers are regularly manufactured on an assembly line.

- (2) The assembly of gabion barriers on an assembly line is made significantly easier by the ability to drag the gabion barrier along the factory floor. In particular, this aids the assembly, movement and folding of the gabion barrier.
- (3) It is therefore beneficial for at least part of the floor of a gabion barrier assembly line to be covered by a material with a low coefficient of friction.
- (4) A smooth metal is a material with a low coefficient of friction.
- (5) Therefore, covering at least part of the floor of a gabion barrier assembly line with a smooth metal would allow the gabion barrier to be dragged along the factory floor.
- (6) A smooth metal is further a suitable material to cover at least part of the factory floor of a gabion barrier assembly line because:
 - (a) it is more durable than other known flooring materials; and
 - (b) it has the function of protecting the factory floor from damage.

CHRIS AIKENS

STATEMENT OF TRUTH

The First Defendant believes that the facts stated in these Grounds of Invalidity are true. The First Defendant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by statement of truth without an honest belief in its truth.

I am duly authorised to sign this statement of truth on behalf of the First Defendant.

Full name: KEVIN LYONS

Position: CHIEF EXECUTIVE OFFICER

Signed:

A handwritten signature in black ink, appearing to read 'Kevin Lyons', with a horizontal line extending to the right.

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Dated: 20 May 2024

Served this 24 day of May 2024 by Squire Patton Boggs (UK) LLP, 60 London Wall, London, EC2M 5TQ, solicitors for the First Defendant.

(Ref: CD1/DIR.075-0001)

Claim No.: HP-2024- 000006

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Defendants

GROUND S OF INVALIDITY

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Solicitors for the First Defendant