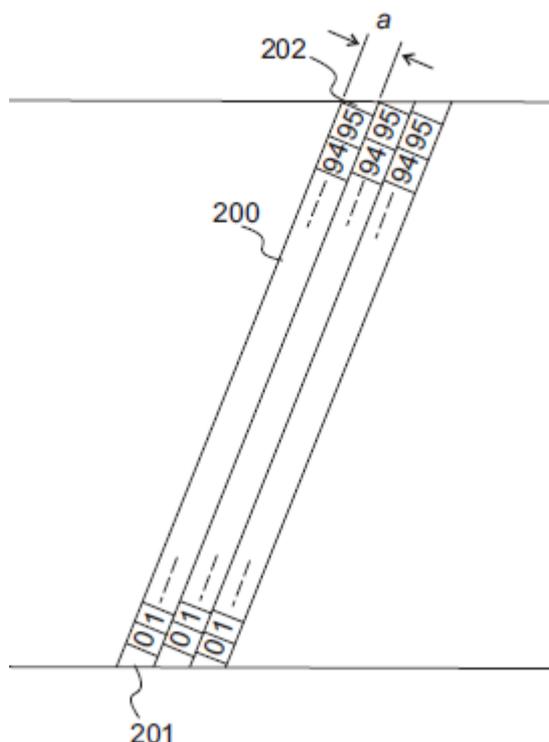


Use of Reference Numerals in Patent Specifications

Patent specifications are documents which disclose inventions to the public by way of some example embodiments, usually including some explanatory drawings. Features of the embodiments referred to in the text are identified by reference numerals. The following is an example of a patent drawing which relates to the layout of individual data fields 202 set out in strips 200 across the width of a magnetic tape 201.



According to the implementing regulations of the European Patent Convention, reference numerals should preferably be included within the claims themselves. However, the reference numerals appearing in the drawings shall not import any limitations on the scope of the claim.

“Rule 43 (7) Where the European patent application contains drawings including reference signs, the technical features specified in the claims shall preferably be followed by such reference signs relating to these features, placed in parentheses, if the intelligibility of the claim can thereby be increased. These reference signs shall not be construed as limiting the claim.”

The majority of UK national patents are now granted via the European patent route as European patents (UK). Under UK practice it is acceptable, but not essential, to include reference numerals in the claim. However the traditional UK drafting practice is not to include reference numerals in the claim.

The issue of the use of reference numerals in construction of a patent claim arose in the UK courts in *Telsonic AG's Patent* [2004] R.P.C. 38 § 26:

"Reference numerals ... are designed to be, and can be, useful tools to elucidate the inventor's intention. As such they may, depending on the circumstances, help to illustrate that the inventor intended a wide or narrow scope for his claim. On the other hand they cannot be used to import into the claim restrictions which are not foreshadowed by the language of the claim itself."

The matter of reference numerals was also later considered in Virgin Atlantic Airways Limited v Premium Aircraft Interiors Group Limited & Premium Aircraft Interiors UK Ltd [2009] EWHC 26 (Pat) Case No HC-07-C1905 at paragraphs 183 – 185; 223; 226 as follows:

"185. Thus the reference signs are an aid to intelligibility of technical features of the claim itself. But the reference numbers alone cannot limit the claim."

In that case, the European patent specification EP 1495908 claimed priority from two earlier UK patent applications GB 0119459.6 and GB 0202389.3 each of which were terminated before grant.

In Virgin Atlantic Airways Ltd v Premium Aircraft Interiors UK Ltd [2009] EWCA Civ 1062, Case No : 3/2009/1389 when considering the use of reference numerals in drawings, Lord Justice Jacob stated:

17.... In particular we do not think that numerals should influence the construction of the claim at all – they do not illustrate whether the inventor intended a wide or narrow meaning. The patentee is told by the rule that if he puts numerals into his claim they will not be used to limit it. If the court subsequently pays attention to the numbers to limit the claim that is simply not fair. And patentees would wisely refrain from inserting numbers in case they were used against them. That is not to say that numbers are pointless. They help a real reader orient himself at the stage when he is trying to get the general notion of what the patent is about. He can see where in the specific embodiment a particular claim element is, but no more. Once one comes to construe the claim, it must be construed as if the numbers were not part of it. To give an analogy, the numbers help you get the map the right way up, they do not help you to read it to find out exactly where you are."

The net result is that in the United Kingdom, reference numerals in a patent specification are not able to influence the construction of the claim at all. They apply no limitations to the scope of the claim.

The point was additionally considered by the UK Intellectual Property Enterprise Court in Curt G. Joa, Inc. v Fameccanica Data SpA [2017] EWHC 1251 (IPEC) Case No IP-2015-000205 which involved revocation proceedings against EP(UK) 1355604 in which the terms "vent sites" and "bond sites" were used interchangeably throughout the specification in relation to nappies or diapers. Both vent sites and bond sites were given the same reference numeral 100.

In that patent the UK court decided that the use of "vent sites" and "bond sites" which were consistently referred to in the patent specification by the same reference numeral clarified the interchangeability of those two features.

Patent drafting points

When drafting patent specifications, it is important to avoid accidentally referencing two different features by the same reference numeral, although in some cases if this does

occur and it is clear from the specification that an incorrect reference numeral is obvious error and that nothing else could have been meant, there may be an opportunity to make a correction of an obvious error during prosecution of the patent application.

How can Franks & Co help?

Franks & Co and its predecessor businesses have been drafting patent specifications for more than 100 years and have obtained granted patents over that period in the UK, US and a large number of other countries of the world. We draft patent specifications suitable for international patent applications, European patent applications, United States, United Kingdom, Chinese and Japanese patent applications and any other country.

Contributors to this article: Robert Franks PhD, Chartered and European Patent & Trade Mark Attorney, working from our Sheffield & Manchester offices.

Source material

1. VIRGIN ATLANTIC AIRWAYS LIMITED and PREMIUM AIRCRAFT INTERIORS GROUP LIMITED and PREMIUM AIRCRAFT INTERIORS UK LIMITED., (2009), Neutral citation number: [2009] EWHC 26 (Pat)
2. Virgin Atlantic Airways Limited and Premium Aircraft Interiors UK Limited., (2009), Neutral citation number: [2009] EWCA Civ 1062
3. CURT G. JOA, INC and FAMECCANICA DATA SpA., (2017), Neutral citation number: [2017] EWHC 1251 (IPEC)
4. European patent number EP1495908, (2011)
5. European patent number EP1355604, (2003)

Full text of the court decisions can be found on the British and Irish Legal Information Institute website: <http://www.bailii.org>

Full text of patents can be found on the European Patent Office website: www.epo.org

Franks & Co

15 Jessops Riverside

Brightside Lane

Sheffield

S9 2RX

T: +44 (0)114 249 9888

F: +44 (0)114 249 9666

E: franksco@franksco.com

Franks & Co (South)

Carlton House

26 Billing Road

Northampton

NN1 5AT

T: +44 (0)1604 632436

F: +44 (0)1604 626128

E: northampton@franksco.com

Franks & Co (Mancunium)

Cheadle Place, Cheadle Point

Stockport Road, Cheadle

Manchester

SK8 2JX

T: +44 (0)161 820 2891

F: +44 (0)114 2499666

E: manchester@franksco.com

www.franksco.com

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