

**PATENTS EXAMINATION BOARD**  
**PRACTICAL LEGAL PROBLEMS**

**Paper 1**

**EXAMINATION : JULY 2016**

**EXAMINERS:** R BAGNALL  
D DOHMEN

**MODERATOR:** C.E. PUCKRIN S.C.

**DURATION:** READING TIME – 60 MIN  
EXAMINATION TIME – 3 HRS  
TOTAL – 4 HRS

**NOTES TO CANDIDATES:**

1. Attached to the paper are copies of the following documents:
  - (i) A copy of the Patents Act No. 57 of 1978;
  - (ii) A copy of the Patent Regulations 1978; and
  - (iii) A copy of the Uniform Rules of the High Court under the Superior Courts Act 10 of 2013 (Rules 6, 14, 17, 18, 19, 21, 22, 23, 24, 25, 30, 35, 36 and 37).
  
2. Each candidate is also allowed access to (1) one dictionary during the exam.
  
3. This paper consists of 23 pages in total and includes the following documents:

- (i) Questions 1 to 3 (100 marks);
  - (ii) Document A: Summons and Particulars of Claim (7 pages);
  - (iii) Document B: South African Patent 2012/1234 (5 pages);
  - (iv) Document C: Clothesdome leaflet (2 pages);
  - (v) Document D: South African Patent 2006/0555 (4 pages); and
  - (vi) Document E: South African Patent 2005/0999 (1 page).
4. Prior to the hand out of the answer papers, candidates will have the opportunity to read the above documents and make notes for 60 minutes.
5. Where appropriate reference should be made to case law.
6. Please note that in the marking of answers:  
30% of the marks will be allocated for advice on legal aspects;  
60% for technical advice; and  
10% for form of the advice.

**QUESTION 1:**

**(35 marks)**

You receive the following letter from your client.

*“Dear Patent Attorney*

*We need your assistance and advice regarding a patent infringement matter relating to one of our leading products. We have been selling our Clothesdome washing line in South Africa for the last 2 years. Initially, we manufactured the Clothesdome here in Milnerton and distributed it through hardware stores in the Western Cape.*

*The Clothesdome is very popular in high rainfall areas. Since we could not keep up with the demand, we made arrangements for an independent Indian washing line manufacturer to manufacture the Clothesdome on our behalf and over the last 6 months we have been importing the Clothesdome from India.*

*Given the fact that we are now able to guarantee a constant supply of the Clothesdome we have started marketing the Clothesdome in high rainfall areas throughout South Africa.*

*To our surprise, a summons for patent infringement [Document A] was delivered to our head office yesterday by the Sheriff of the Court. A copy of the summons is attached.*

*We never knew of Alldry's Patent No. 2012/1234 [Document B] and as far as we know, there is no clothes line similar to our Clothesdome sold in South Africa by Alldry or any other manufacturer or retailer. We did not even receive a letter of demand or any other communication from Alldry! The leaflet of the Clothesdome [Document C] which is attached to the summons is a copy of our leaflet and correctly describes and illustrates the Clothesdome.*

*During our development of the Clothesdome we did come across two old South African patents [Documents D and E] and as far as we are aware, both these patents had lapsed some time ago.*

*The Clothesdome is an essential part of our business and without it our business is sure to fail. We desperately need your advice on the matter and how to react to the summons.*

*Please contact me as soon as possible regarding the matter.*

*Yours faithfully*

*John Allweather  
Managing Director  
Flexi Dome (Pty) Ltd”*

Your searches at the South African Patents Office confirmed that South African Patent No. 2012/1234 is in force and that all formalities have been correctly complied with.

Please provide your client with an opinion as to whether its activities would amount to an infringement of South African Patent No. 2012/1234.

**QUESTION 2:**

**(45 marks)**

Please provide your client with an opinion as to whether or not South African Patent No. 2012/1234 is valid and enforceable in South Africa in light of the prior art [Documents D and E] which your client found and provide your client with strategic advice as to how it should respond to the Summons and conduct the litigation.

**QUESTION 3:**

**(20 marks)**

Please draft a Plea and Counterclaim to the Summons and Particulars of Claim (the header and representative details of the pleading may be omitted).

\*\*\*\*\*

**TOTAL: 100 marks**

IN THE COURT OF THE COMMISSIONER OF PATENTS  
FOR THE REPUBLIC OF SOUTH AFRICA

Patent/Case No. 2012/1234

In the matter between:

ALLDRY (PTY) LTD

Plaintiff

and

FLEXIDOME (PTY) LTD

Defendant

In re: South African Patent No. 2012/1234 and infringement thereof.

---

COMBINED SUMMONS

---

To the Sheriff or his Deputy:

**INFORM**

**Flexidome (Pty) Ltd**, a company duly incorporated in terms of the company laws of the Republic of South Africa with its principal place of business at **100 Atlantis Road, Milnerton, Western Cape, South Africa**, (hereinafter called "the defendant"); and

**THAT**

**Aldry (Pty) Ltd**, a company duly incorporated in terms of the company laws of the Republic of South Africa with its principal place of business at **14 Anderbolt Road, Boksburg, Gauteng, South Africa**, (hereinafter called "the plaintiff");

hereby institute action against the defendant in which action the plaintiff claims the relief on the grounds set out in the particulars of claim attached hereto.

**INFORM** the defendants further that if it disputes the claim and wishes to defend the action it shall:

- (i) within ten (10) days of the service of this summons file with the Registrar of this Court at the Patent Office, Block F – Entfufukweni, 77 Meintjies Street, Sunnyside, Pretoria, notice of its intention to defend and serve a copy thereof on the plaintiff's attorney, which notice shall give an address (not being a post office box or poste restante) referred to in Rule 19(3) for the service on the first and second defendants of all notices and documents in this action,
- (ii) thereafter, and within twenty (20) days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the plaintiff a plea, exception or notice to strike out, with or without a claim in reconvention.

**INFORM** the defendant further, that if it fails to file and serve notice as aforesaid, judgment as claimed may be given against it without further notice to it, or if, having filed and served such notice, it fails to plead, except, make application to strike out or counterclaim, judgment may be given against it.

**AND** immediately thereafter serve on the defendant a copy of this summons and return the same to the registrar with whatsoever you have done thereupon.

SIGNED AT PRETORIA ON THIS THE 23<sup>rd</sup> DAY OF JUNE 2016.

[Signed: DH Dohmen]

---

D. H. Dohmen  
ADAMS & ADAMS  
Plaintiffs' Patent Attorneys  
Adams & Adams Place  
Lynnwood Bridge, 4 Daventry  
Street, Lynnwood Manor,  
0081, Pretoria  
Ref: PM1111ZA00 DHD  
Tel: +27 (0) 12 432 6000  
Fax: +27 (0) 12 432 6599

---

PARTICULARS OF CLAIM

---

1.

The plaintiff is Alldry (Pty) Ltd, a company duly incorporated in terms of the company laws of the Republic of South Africa with its principal place of business at 14 Anderbolt Road, Boksburg, Gauteng, South Africa.

2.

The defendant is Flexidome (Pty) Ltd, a company duly incorporated in terms of the company laws of the Republic of South Africa with its principal place of business at 100 Atlantis Road, Milnerton, Western Cape, South Africa.

3.

A copy of the complete specification of Patent No. 2012/1234 entitled "Cover for a Clothes Dryer" ("the patent in suit") is attached hereto as annexure "POC-1".

4.

The patent in suit is, and has been, at all material times hereto, valid and subsisting.

5.



4.1. From a date unknown to the plaintiff, the defendant has imported and/or exported and/or manufactured and/or used and/or offered to dispose of and/or disposed of and are still importing and/or exporting and/or manufacturing and/or using and/or offering to dispose of a Clothesdome product (hereinafter called the "the defendant's product") into, out of and in South Africa.

4.2. A leaflet of the defendant's product is attached hereto as annexure "POC-2".

6.

The defendant's product falls within the scope of each of claims 1 to 6 of the patent in suit.

7.

In the premises the defendant has infringed, and is still infringing each of claims 1 to 6 of the patent in suit.

8.

The above conduct of the defendant is not authorised by the plaintiff.

9.

The plaintiff apprehends on reasonable grounds that the defendant will persist with the aforesaid infringement of the patent in suit unless the defendant is restrained by a final interdict ordered by this Court.

10.

The conduct of the defendant has caused and is causing the plaintiff damages, which damages the plaintiff is at present unable to quantify.

WHEREFORE the plaintiff claims:

1. An interdict restraining the defendant from infringing each of claims 1 to 6 of SA patent no. 2012/1234 by, importing, exporting, manufacturing, using, disposing of or offering to dispose of the defendant's product or any other product falling within the scope of these claims of the patent in to, out of or in the Republic.
2. An order for the delivery up for destruction of any product in the possession or under the control of the defendant which infringe any of claims 1 to 6 of SA patent no. 2012/1234;
3. An enquiry into damages suffered by the plaintiff as a consequence of the infringement of SA patent no. 2012/1234, and payment of the amount of damages found to have been so suffered; alternatively an enquiry into the extent of the infringement and the amount of a reasonable royalty to be paid in lieu of damages, and payment of the amount of royalties found to be so payable;
4. In the event of the enquiry in terms of prayer 3 above being ordered, and the parties being unable to reach agreement as to the future pleadings to be filed,

discovery, inspection or other matters of procedure relating to the enquiry, an order authorising any of the parties to make application to the above Honourable Court for directions in regard thereto; and

5. An order directing that the defendant pays the plaintiff's costs including the costs of counsel and the qualifying fees of the plaintiff's expert witness(es).

**SIGNED AT PRETORIA ON THIS THE 23<sup>rd</sup> DAY OF JUNE 2016.**

[Signed: DH Dohmen]

---

D. H. Dohmen  
ADAMS & ADAMS  
Plaintiffs' Patent Attorneys  
Adams & Adams Place  
Lynnwood Bridge, 4 Daventry  
Street, Lynnwood Manor,  
0081, Pretoria  
Ref: PM1111ZA00 DHD  
Tel: +27 (0) 12 432 6000  
Fax: +27 (0) 12 432 6599

### Cover for a Clothes Dryer

This invention relates to a cover for a clothes dryer, referred to hereinafter as a clothes dryer of the type specified, comprising an upright central support, support arms radiating outwardly from the central support and lengths of clothes line extending between the arms. Such clothes  
5 dryers are generally used outdoors where laundry hung out to dry can become wet by rain. It is known to provide clothes dryers of the type specified with a waterproof cover formed of flexible plastics sheeting draped across the top of the arms and clothes line lengths, so as to prevent such wetting. However these covers can sag between the clothes line lengths and at least the  
10 outer ends of the arms usually slope upwardly so that ponding of rainwater occurs. This can overload the dryer and may wet the user and the laundry as it is being taken in.

According to the invention there is provided a cover for a clothes dryer as set forth in claim 1. Some preferred features of the invention are set forth in the dependent claims.

Embodiments of a cover according to the invention for a clothes dryer of the type specified will now be described in detail, by way of example only, with reference to the accompanying  
15 drawing, in which:

Figure 1 is a schematic perspective view of a three armed clothes dryer of the type specified, without a cover fitted;

Figure 2 is a schematic side illustration of the cover mounted in position on the clothes dryer, the rearwardly extending arm and corresponding components of the cover support frame being  
20 obscured;

Figure 3 is an enlarged perspective view of a hub component of the cover, and Figure 4 is a schematic plan view of the cover and the clothes dryer, with some parts shown broken away to reveal underlying structure.

Referring now to the drawings, there is shown a clothes dryer 10 of the type specified, which  
25 comprises an upright central support 11, from which three support arms 12 radiate outwardly. Lengths of clothes line 13 are strung between the arms 12 to enable clothes to be hung out to dry. For simplicity, only the outer lengths of the line 13 are shown, and then only in Figure 1, though in practice further lengths of the line will be provided which extend around and inwardly towards the central support 11.

A cover 14 for the clothes dryer 10 is adapted to be mounted removably on at least the radiating  
30 support arms 12 of the dryer 10. The cover 14 comprises a support frame 15 which is detachably mounted on the support arms 12 and the central support 11, and a top cover 16 which is arranged to be supported by the support frame 15. Together the support frame 15 and top cover 16 form the cover 14 for the dryer 10 which extends over the radiating support arms  
35 12 of the dryer 10. The top cover 16 is provided with means for attaching the cover 14 to the

**Document B – ZA 2012/1234 filed 1st October 2012, without priority claim  
Granted 1st February 2013**

radially outer ends of the support arms 12, such means comprising reinforced apertures 16a formed at the required positions in the outer periphery of the top cover 16, through which the radially outer ends of the arms 12 can be taken. The attachment can be completed by provision of tape ties or the like.

5 The support frame 15 comprises a central hub 17 (see Fig. 3 for detail) comprising a short support strut 17a which is mounted in/on the usual aperture in/on the upper end 11a of the central support 11, and resiliently deformable support elements 19 which extend radially outwardly of the hub 17 so as to overlie the support arms 12 of the dryer 10. The support elements 19 may comprise pliable plastics tubes connected by the hub to make a three legged  
10 assembly, bent to curvature. The support elements 19 may be supplied to size, or may be cut down to size by the installer/user, when necessary. The dotted lines in Figure 2 show the tube assembly and skirt as they would be when fitted to a shorter armed dryer. Figures 1, 2 and 4 also show the usual shorter radiating support arms 23 of dryer 10, which are pivoted to the arms 12 and lock the arms 12 in the required V-shape.

15 The support elements 19 can be deformed so as to adopt an arch shape when their radially outer ends 20 are attached to suitable mounting positions 21 along the lengths of the arms 12 and the support strut 17a is braced against the dryer central support 11. The attachment of the outer ends 20 of the elements 19 to the arms 12 may take any convenient form, preferably by providing tape ties (not shown). The arched shape provided by the support elements 19  
20 imparts a generally dome shape to the top cover 16, which thereby forms a protective weather cover for clothes which are suspended from the lines of the dryer 10. The arched top and sloping sides of the cover 14 provides good rainwater runoff which avoids ponding. To that end the top cover 16 is preferably made of a resiliently stretchable material and the reinforced apertures 16a are positioned such that the top cover 16 is stretched out wrinkle-free. For  
25 example, top cover 16 may have a downwardly extending flange portion 24, above which are provided three reinforced holes of about half-inch diameter, into an appropriate one of which the outer ends of the arms 12 are entered, depending upon the size of the dryer. Even where the top cover 16 is relatively inelastic (e.g. when formed from lightweight plastics sheet) the resiliency of the support elements 19 can provide the necessary tensioning.

30 In order to provide further weather protection for the suspended clothes, the cover 14 also includes a skirt 22 which extends in use downwardly from the radially outer end of the support arms 12 far enough to protect the clothes from windborne rain. The skirt may be hung in the manner of a curtain from the outermost lengths of line 13 extending between the arms 12. For improved access to the clothes hanging space, the skirt 22 may be divided at the corners into  
35 separate portions, so that each skirt portion may be drawn open or closed. Detachable fasteners may be provided for attaching the adjacent vertical edges of the closed skirt portions to each other.

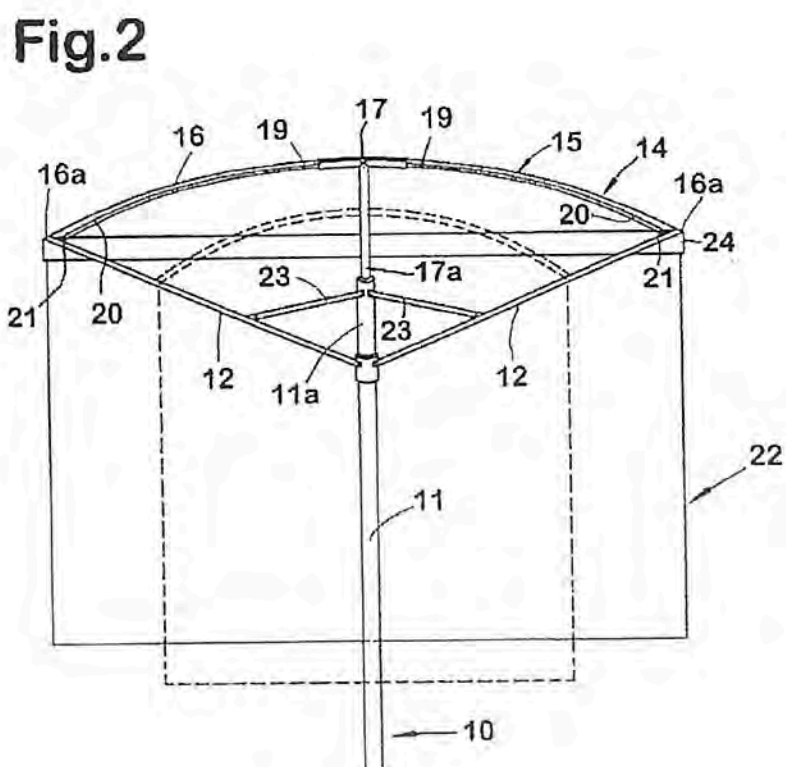
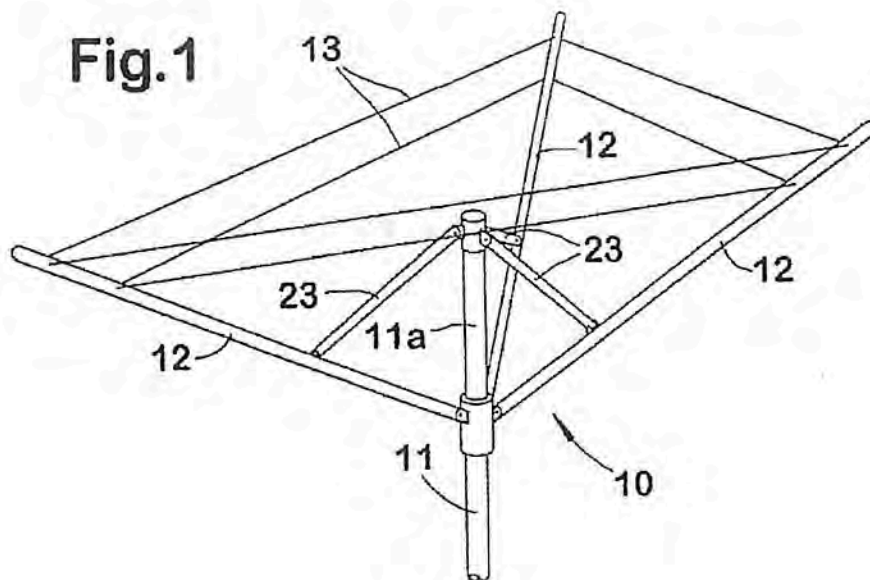
Document B – ZA 2012/1234 filed 1st October 2012, without priority claim  
Granted 1st February 2013

The support frame 15 may also be constructed, if desired, without provision of any central support strut 17a. It is possible to construct the support frame 15 sufficiently sturdily, that it can provide the necessary support for the cover 16 solely via the attachment of the resiliently deformable support elements 19 to the outer ends of the support arms 12 of the dryer 10.

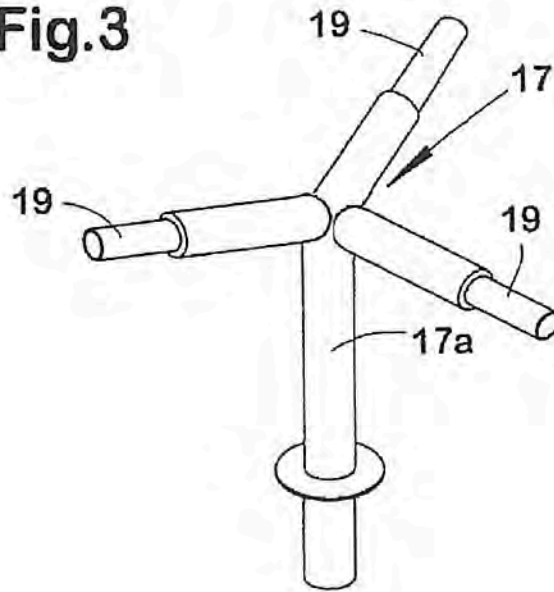
5

CLAIMS

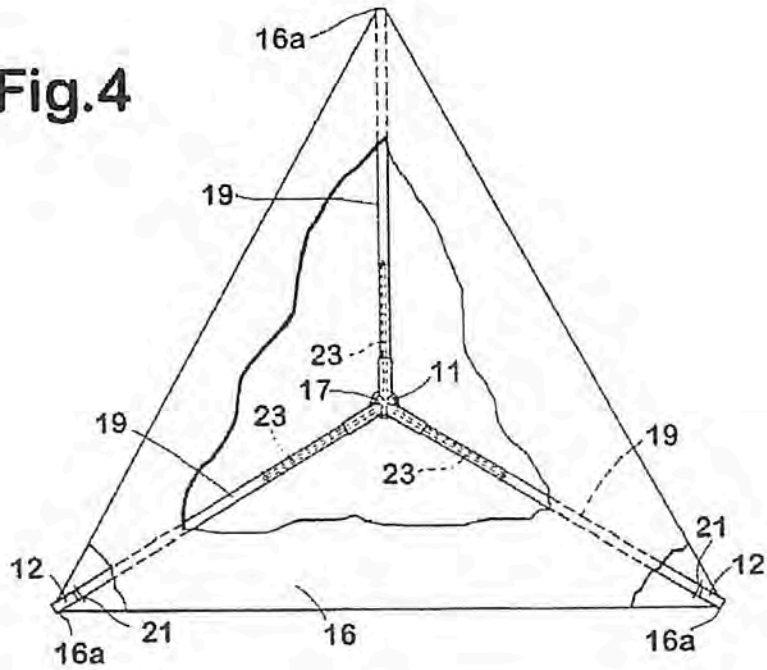
1. A cover for a clothes dryer of the type specified, the cover being adapted to be mounted removably on the dryer; in which the cover comprises a support frame which is detachably mountable on said support arms, and a top cover which is arranged to be supported in use by the support frame so as to form a cover for the dryer which extends over the radiating support arms of the dryer, the top cover being provided with means for attaching the cover to the radially outer ends of the support arms.  
10
2. A cover according to claim 1 in which the support frame comprises a central support hub, and resiliently deformable support elements extending radially outwardly of the support hub so as to overlie the support arms of the dryer.  
15
3. A cover according to claim 1 or 2 in which the support elements have releasable fastenings, at their radially outer ends, for fastening them to the support arms, the elements being deformable into an arched shape when they are attached to the support arms so as to impart a generally dome shape to the top cover.
- 20 4. A cover according to any preceding claim and further comprising a skirt which extends in use downwardly from the radially outer ends of the support arms throughout a length sufficient to protect the clothes from wind-borne rain.
5. A cover according to claim 4 in which the skirt is arranged to be drawn open or closed in the manner of a curtain.
- 25 6. A cover according to any preceding claim in which reinforced holes are formed at the required positions in the top cover and skirt (where present), for engagement by the outer ends of the support arms.



**Fig.3**



**Fig.4**



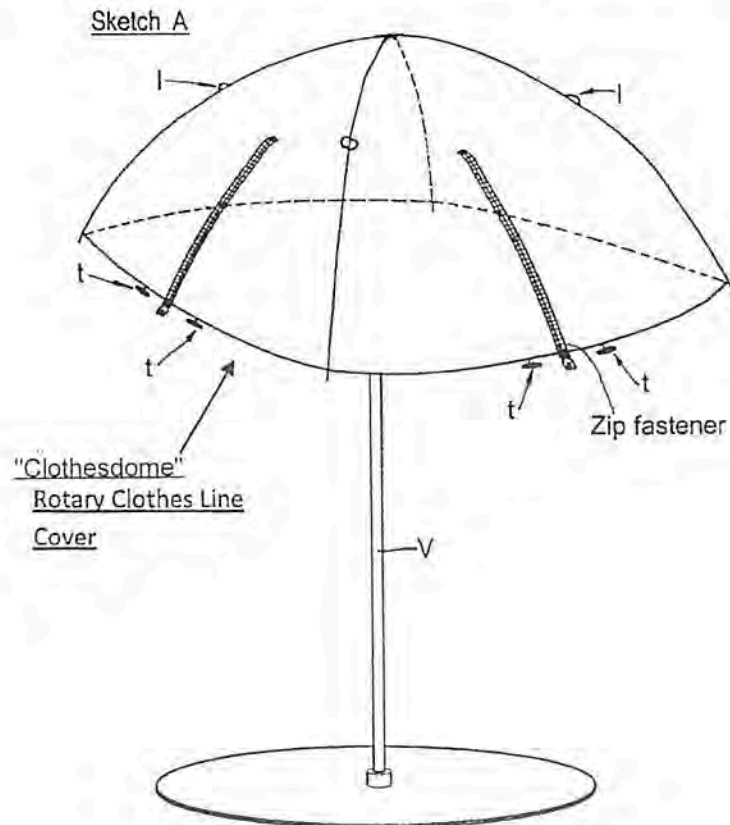


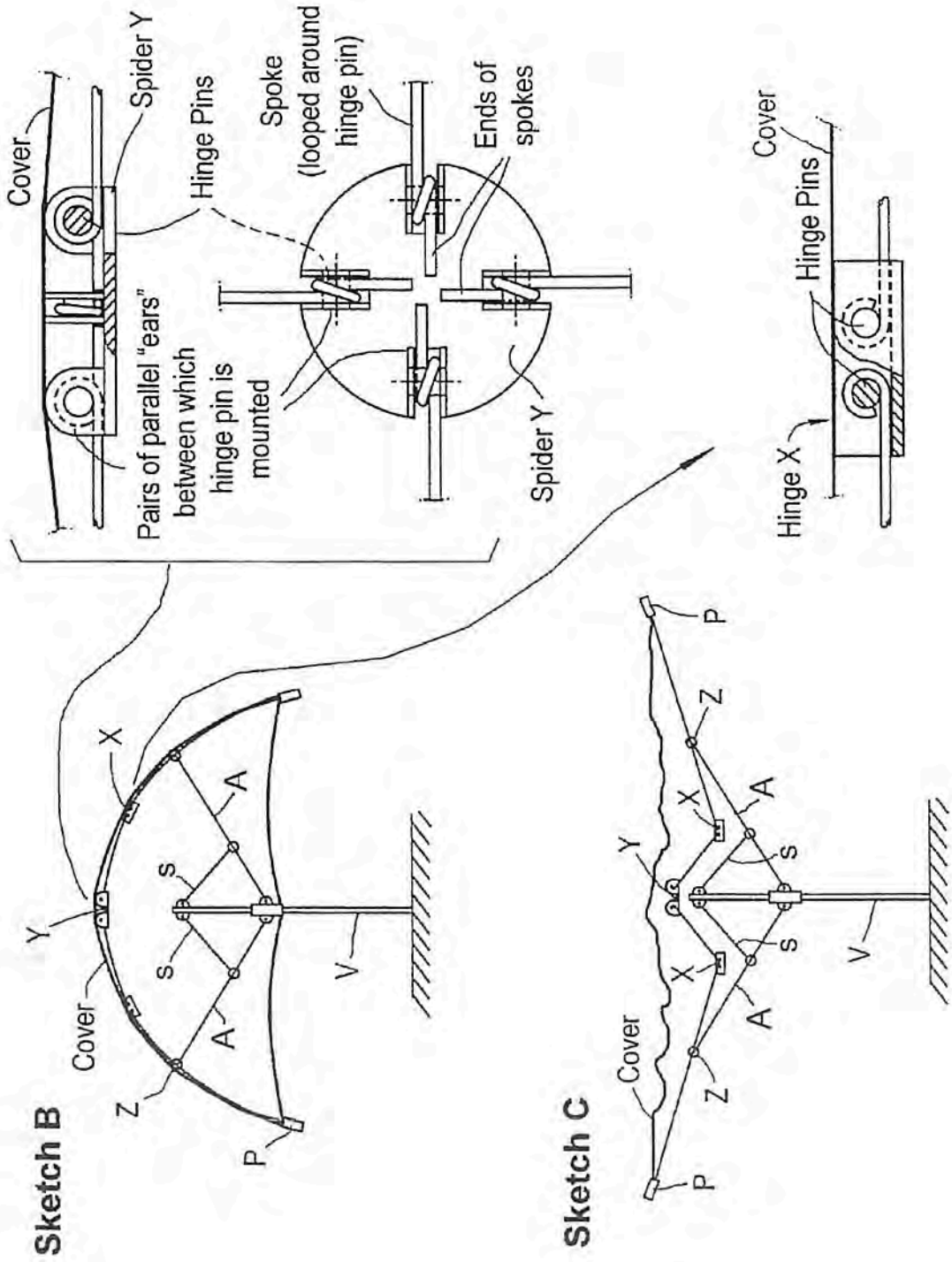
The clothesdome cover is made from panels of waterproof textile material which are sewn together and stretchable over a number of stiff wire spokes to form a dome shape. See sketch A, showing the cover fully unfolded and fitted to a clothes line. The clothes line has a vertical centre pole *V* and a number of support arms *A* (not visible in sketch A) between which a washing line is strung in a spiral pattern. We make 3, 4 and 6 spoke covers to fit clothes lines with 3, 4 or 6 arms. Each panel has a zip fastener extending from its outer edge, part-way up the centre line. Individual zip fasteners can be undone and the resulting flaps tied back using toggles *t* and loops *l* to access the line within the cover, for hanging out or taking in the washing.

The inner ends of the spokes are hinged to a "spider" *y*, so that they are all connected together at the top of the dome. The spokes each have a hinge *x* part-way along their length and a pivoting clamp *z* outward of the hinge *x* for securing the spoke to a corresponding arm *A* of the clothes line (see sketch B). The outer end of each spoke is received in a pocket *p*, sewn into the bottom end of each seam between the textile panels.

The cover can be conveniently folded away while still fitted to the clothes line, as shown in sketch C. To do this, undo all of the zip fasteners at once, and pull the hinges downwardly, so as to collapse the central part of the dome. The spokes will collapse about the hinges *x*, so that the textile covering is no longer under tension. The individual sections of the spokes relax into their unstressed, straight shape. You can then fold the rotary clothes line up in the usual way. As the line supporting arms *A* move towards the vertical position, the majority of the cover is folded up in between these arms and the stays *s* by which the arms are connected to the vertical support pole *v* of the rotary line. Only the tips of the spokes beyond the clamps *z* and the corresponding skirt portion of the cover fabric will stick up beyond the tops of the arms. The folded clothes line and cover can be covered by an extra-long sock-type outer cover (sold separately) to keep them clean and dry and prevent the line from tangling when not in use.

25





### Improvements relating to clothes dryers

This invention relates to covers for clothes dryers of the type having at least three arms extending radially from a central post to support clothes lines; the arms of such dryers  
5 are generally rotatably mounted and foldable so that they take up little room when the dryer is not in use.

While such dryers represent an advance over conventional single clothes lines, particularly for use in confined areas, they still suffer from the disadvantage of allowing washing hung thereon to become wet if it rains. It is an object of the invention to  
10 provide a cover for a clothes dryer to protect washing from rain.

In its simplest form a cover according to the invention takes the form of a polygonal sheet of flexible, waterproof material, having as many sides as the dryer has arms, a pocket being provided at each corner for receiving the end of an arm so that the cover is held in place.

15 In a more sophisticated form the cover additionally comprises a supporting framework which is securable to the arms. The cover then has an umbrella-like appearance with the sheet sloping downwards from the centre.

Although the invention may be carried out in many different ways, some embodiments thereof will now be described, by way of example, with reference to the accompanying  
20 diagrammatic drawings in which:

Figure 1 is a vertical section through a cover according to a first embodiment fitted on a dryer;

Figure 2 is a plan of a cover according to a second embodiment fitted on a dryer;

Figure 3 is a part-sectional side elevation of the cover of Fig. 2, and

25 Figure 4 is a detail section along the line IV-IV of Fig. 2.

Fig. 1 shows the top portion of a dryer post 10 surrounded by a slidable collar 12 from which extend three arms 14, two of which are shown, each arm 14 being supported by a strut 16 hinged thereto at one end and at the other to a fixed ring 18. Between neighbouring pairs of arms extend parallel lengths of clothes line (not shown).

A triangular cover 20 formed of heavy gauge polyethylene is fitted with a pocket 22 at each corner for reception of the outer end of an arm 14.

To fit the cover 20 the collar 12 is slid up the pole until the arms 14 are fully extended. Each pocket 22 is then fitted over the end of a corresponding arm 14.

- 5 As the cover 20 is of a size that it has to be stretched slightly to fit it, it is under slight tension when fitted and is thus held firmly in place, the centre of the cover 20 being supported by the top of the pole 10. When not in use the cover 20 is readily foldable to facilitate storage.

- 10 As shown in Figs. 2 and 3 the cover 24 comprises three panels 26. Each panel 26 is disposed between two spines 34 and is held in position by virtue of the fact that, as shown in Fig. 4, a thickened region or bead 36 formed at the edge of each panel border is captively received in a channel 38 formed in the side of each spine 34. The spines are springy and flexible so that the cover can absorb/resist gusts of wind.

- 15 A series of four struts 40, 42, 44 and 46 extends below each spine 34 for supporting it above the clothes dryer. A clip 48 is provided at the junction of struts 40 and 42 for clipping to the dryer strut 16 and a clip 50 is provided at the junction of struts 44 and 48 for clipping to both the end of the dryer strut 16 and the arm 14. Any other suitable securing means such as clamps or releasable securing straps can be used in place of the clips. To provide extra protection against driving rain the spines 34 may extend  
20 beyond and downwardly of the ends of the arms 14.

It will be noted that the inner vertex of each panel 26 is cut away so that the panels together define a central air circulation vent 52. It will be appreciated that the term "sheet" as used herein includes a sheet made up of a number of panels joined together.

A rectangular cover to fit a four-armed dryer is similarly constructed.

- 25 [Claims omitted.]

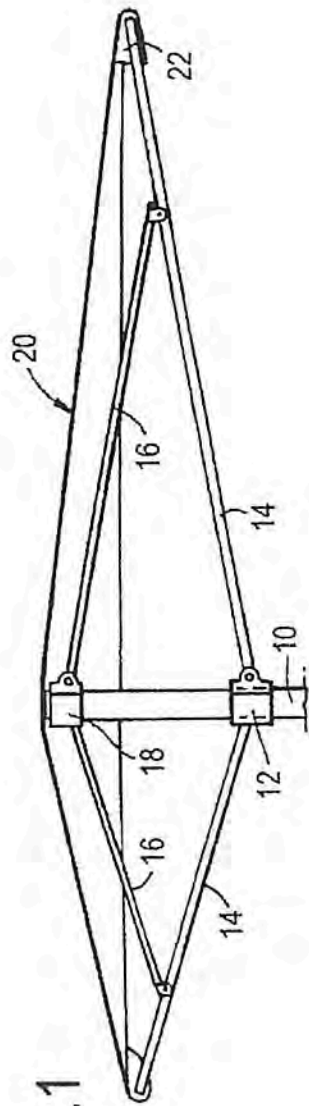


Fig.1

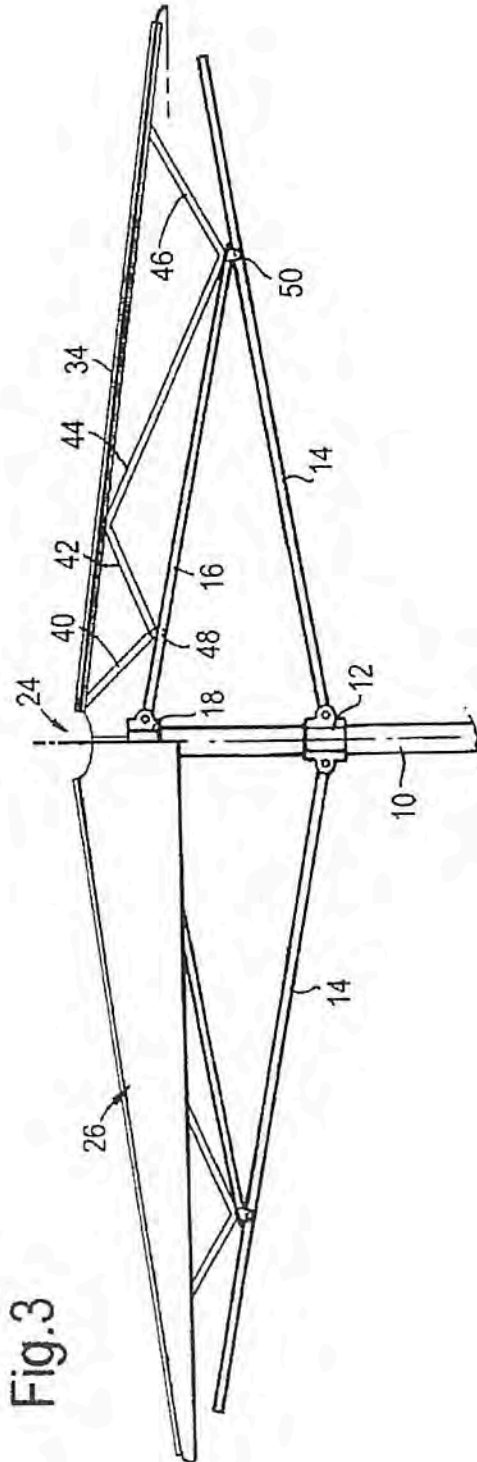


Fig.3

Fig.2

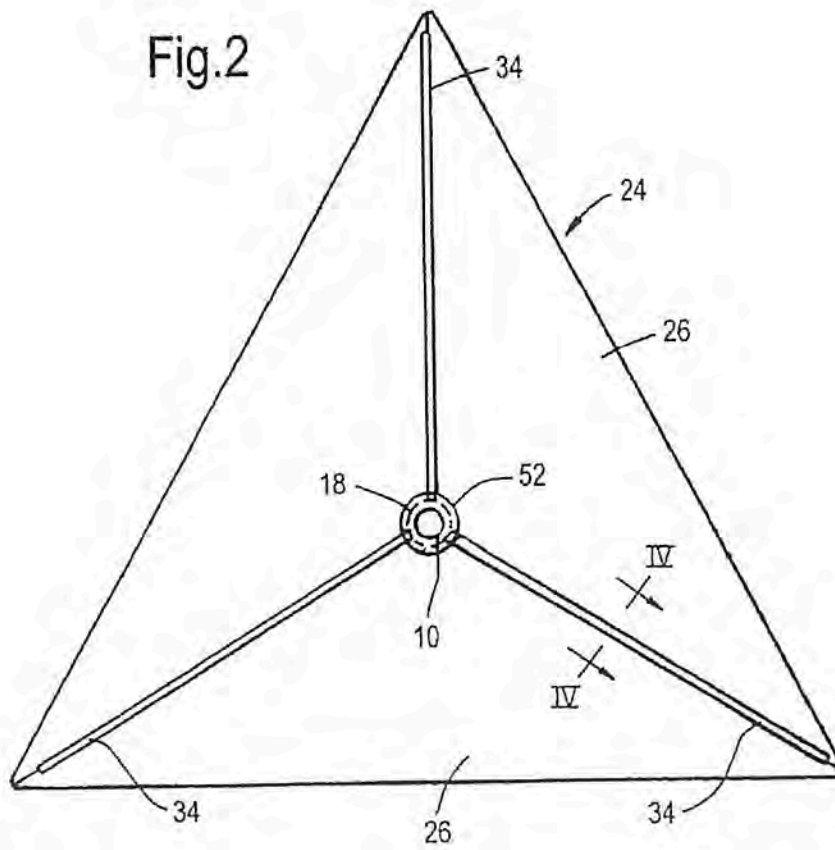


Fig.4

