

Unearthing the Russian Mole

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Introduction

Patent information work is sometimes more colourful than one would expect. At Victor Green & Company we've been asked to carry out searches that need a lot of lateral thinking.

In a memorable enquiry about a Russian device called the "Magic Mole", a great deal of detective work was required to find the answer. The Magic Mole was the subject of a US patent and our client needed to prove they were not infringing the patent claims by the sale of a similar product. We were able to identify an expert witness and the case was settled.

Should you wish to requisition a search from us, colourful or otherwise, rest assured that the relationship between you and Victor Green & Company, and any information you provide, will be kept strictly confidential. We took care to obtain permission from the instructing attorney for us to publish an account of this interesting case.

The Search

In 1989 there was a search enquiry about a Russian Magic Mole. The Magic Mole was a machine that allowed pipes to be laid underground without the need to dig trenches or tunnels (see figure). It looked like a torpedo and could bore horizontal channels for pipes and cables under canals, roads and railways using a pneumatic hammer action. The Russian inventors had obtained a US patent¹ covering the device and our client was being sued by them in the United States.

The machine had been imported into the United Kingdom in 1969, before the US priority date, knowledge of which would indicate that the patent was invalid. Although the US company knew of prior use of the device and verbal evidence would have been sufficient if the disclosure had occurred in the United States, they needed documentary evidence for a US court if the information had arisen in other territories.

It was known that George Cohen Machinery Ltd had imported the tunnelling device into the UK by 1974². Patent analysts at Victor Green & Company started by telephoning the company and learned that the first batch of machines had been imported by some other company. By a series of contacts, we found a company in Ireland that had bought one of the machines in April 1970 and still had the manual. Their engineer was good enough to send the whole document, which by extraordinary luck still had attached the compliment slip from the importer, Wogau Brameast Trading Ltd³, signed E.W. Webb.

The Importer

With that information in our hands we went hunting for Mr E.W. Webb. Telephone directories of the regions of the UK, working outwards from London, were examined for every occurrence of the name E.W. Webb and these were followed up by phone until we discovered the person we wanted, retired but alive and reasonably well in Milton Keynes. He had worked for the Guinness Mahon merchant bank which owned Wogau Brameast, and was responsible for the original importation of the first 40 Magic Moles.

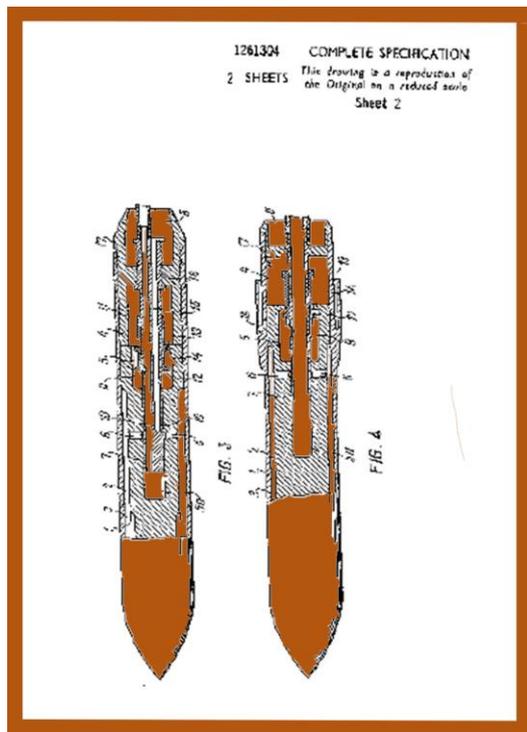


Figure Magic Mole from Institut Gornoga dela Sibirskogo Otdelenia US3616865

Demonstrations

A meeting with Mr Webb was very fruitful. The 40 machines were sold, but the product had been dropped by the bank and the spares sold off. Mr Webb had set up and attended demonstrations of the Magic Mole and was able to give us the name of the engineer, Albert, who had carried out the demonstrations. The demonstrations included one in the grounds of the US ambassador's residence in London, Winfield House, with the aim of laying cable without disturbing the rose beds. We realised that the demonstration had therefore taken place on US soil, and wondered if eyewitness evidence would be sufficient if the date could be established as early enough. This was verified by the American Bar Association, but unfortunately the embassy staff had no particular interest in helping us with our enquiries, believing that the records would be difficult to access if they even still existed.

By another series of contacts, an engineer in Hull remembered that he used to obtain spares from "a plumber in Norwich". We searched the Yellow Pages for Norwich (for younger readers these were telephone directories classified by trades and occupations), and by phoning everyone in the list of plumbers identified a Mr Reg Whiting as the owner of the Magic Mole spares. He too was tremendously helpful.

He faxed us a list of the forty owners of Magic Moles, and as we started contacting them names, we found an engineer at the South West Electricity Board in Taunton, Somerset who remembered a demonstration of the Magic Mole and who had diaries dated well before the priority date. At a visit to Taunton he was able to show us an entry for January 1969 indicating his attendance and proving that the machine had public disclosure even before the Russian priority date of 26 February 1969.

Conclusion

Albert and the man who had first identified the Magic Mole in Russia as a machine worth importing were also interviewed, and a meeting was arranged at a London patent attorney's office at which all the interviewees were brought together after some 18-20 years for a discussion with our client's US attorney in a strange kind of reunion.

Subsequently it was learned that the plaintiff's attorneys fought back with some vigour, firstly by trying to invalidate the witnesses' evidence on the basis that small sums were paid by our company for their time and trouble in taking part in the interviews, and secondly by suggesting that they had been led by our interviewer to the evidence they had given by unfair means. None of this was effective.

Apart from the paper evidence, it was the presence of Albert, who gave the first demonstrations in the UK of the Magic Mole, that was wanted at the trial in the US. Having identified this expert witness, the case was settled.

References

1 Pneumatic percussion device for making holes in the ground by packing the latter, US3616865, Institut Gornoga dela Sibirskogo Otdelenia, Priority date 26 February 1969

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2 Pneumatic Tunneller, New plant, equipment and materials, The Highway Engineer, Journal of the Institute of Highway Engineers, Vol.21, No.1, p.10, January 1974, Chartered Institution of Highways & Transportation (CIHT)

3 Magic Mole, From Russia comes an ingenious aid for laying small diameter pipelines quickly, easily and, so it is claimed, at an economic price. Gas World - Gas Transmission, 14-16, 29 November 1969

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