

COPYRIGHT DESIGNS AND PATENTS ACT 1988

IN THE MATTER OF an application by
Stafford Engineering Services Limited under
section 247 of the Act for the settlement of a
Licence of Right available under paragraph
19(2) of Schedule 1 to the Act in respect of
copyrights owned by Michael Wood

PROCEDURAL DECISION

Background

1. This decision concerns an application under section 247 of the Copyright Designs and Patents Act 1988 by Stafford Engineering Services Limited ("Stafford") for a licence of right under paragraph 19(2) of Schedule 1 to the Act, in respect of copyrights owned by Mr Michael Wood. They relate to trussed beam and tower systems manufactured by Slick Systems Limited and Slick Systems International Limited ("Slick") of which Mr Wood is a director. Although the copyrights are said to be owned by Mr Wood personally, Slick have largely been acting on his behalf in these proceedings.
2. Stafford filed its application, together with a draft licence, on 16 October 1996. Proceedings went far from smoothly, and it took two years for the case to get to the substantive hearing. This took place on 2 October 1998, and whilst all the main issues were heard, one important problem emerged which has prevented me issuing my decision following that hearing. This problem concerns the precise identity of the drawings which are to be the subject of the licence.
3. To deal with this problem, immediately after the hearing, and with the agreement of the parties, I issued an Order in the following terms:

(A) Mr Wood must draw up a schedule of all drawings in his custody, possession or control which relate to the Slick Systems products that have been identified in this application for a Licence of Right and which were made before 1 August 1989. The schedule must indicate to which Slick Systems product each drawing relates unless this is clearly apparent from the drawing itself.

(B) Further, within one month of the date of the hearing (ie by 2 November) Mr Wood must serve a copy of the schedule, together with a copy of each drawing mentioned in the schedule, on the applicant. He must also supply a copy of the schedule to the Patent Office within the same period.

[Paragraphs (C) and (D) specified the subsequent procedure to be followed by the parties after the drawings had been produced by Mr Wood, and paragraph (E) stated what Mr Wood should do if he had difficulty with the order.]

(F) If, having seen the schedule and drawings, the applicant considers they highlight further problems which need to be resolved before I can settle the licence, they are at liberty to apply to me for further directions.

4. The drawings were duly supplied within the month allowed under subparagraph (B) of the Order, but the applicant was not happy with them. In a letter dated 6 November, it said it had grave doubts whether the drawings supplied were made before 1 August 1989, because they appear to have been produced on a CAD system and the applicant believes Mr Wood did not have access to a CAD system until a later date. It asked Mr Wood to supply the original drawings.

5. There the matter stuck. This may in part have been due to the fact that Mr Wood was in Brazil where his wife had been seriously ill, and indeed, sadly then died. The applicant was told by Slick that he should be back in the UK at the end of the first week of January, but still nothing was forthcoming from Mr Wood. Eventually, in its letter of 15 February 1999, the applicant requested me to issue an Order requiring Mr Wood to supply a sworn explanation of how the drawings were produced and to allow it to inspect the originals. The requested order

also provided for two alternatives in case Mr Wood wished to assert either that there are no drawings prior to 1 August 1989 or that there are yet further drawings.

6. At this stage I asked one of the Patent Office officials to tell Mr Wood that I was appalled by the fact that 4½ months after the hearing this issue had still not been resolved and that I would not tolerate further procrastination. I recognise Mr Wood has had personal problems with his wife's illness and death and I sympathise with him. At the same time, Stafford have a right to a licence, and the more this drags on the greater the potential jeopardy to their legitimate business interests. Notwithstanding Mr Wood's problems, I find it difficult to believe, as it has tried to imply, that Slick has been unable to contact him. Indeed, Mr Wood's personal involvement in Slick's affairs was manifest from the evidence before me at the substantive hearing, and it is simply not credible that there has been next to no contact between him and those running the business for him here in the UK. Further, it would appear that Slick has been actively pursuing legal action in Germany in connection with these systems. The company have claimed that the conduct of this action is purely a matter for the company as Mr Wood personally is not a party, but this strikes me as disingenuous: because of Mr Wood's central role in Slick, I have difficulty believing Mr Wood has not been actively involved in the German litigation. I may be wrong, because I do not have any sworn evidence as to exactly what has been going on, but *prima facie*, on the information currently available to me, I am far from satisfied that Mr Wood has been pursuing this matter as assiduously as he should.

7. The Patent Office's intervention produced (a few days after the deadline that had been set) a response from Slick. They reported that Mr Wood had instructed it to explain that the drawings supplied had indeed been produced before 1 August 1989 and that he did have access to computer facilities by that date. The applicant replied by asserting that it had information to the contrary and that it was prepared to file an Affidavit to that effect. Slick responded by repeating its instructions but further stating that Mr Wood would not oppose an Order in the terms sought.

8. At the moment I have no sworn evidence from either side from which I could form a view as to whether Stafford has good *prima facie* grounds for challenging the drawings. However,

I certainly consider, given the history of this case, that they ought at least to be allowed to inspect the originals. I have concluded, in all the circumstances, that I will make an order more or less as sought by Stafford, including the alternative options.

9. It is essential for the eventual settlement of the licence that the relevant drawings be identified, and Stafford has a right to expect this to be done as rapidly as possible, given the already very long delay since the hearing. Accordingly I am giving Mr Wood just 14 days to comply. If Mr Wood wishes to extend this deadline he will need to provide, before the deadline expires, very convincing, sworn evidence as to why he cannot meet it.

Order

10. I therefore order that:

either

the Respondent shall within 14 days file an Affidavit or Statutory Declaration to the effect that there are no drawings in the custody, possession or control of the Respondent which relate to the Slick Systems products that have been identified in the application filed by Stafford Engineering Limited for a licence of right and which were made before 1 August 1989;

or

if the Respondent continues to assert that the drawings enclosed with the Respondent's letter dated 30 October 1998 were made before 1 August 1989, the Respondent shall within 14 days file an Affidavit or Statutory Declaration explaining how they were produced and where the originals may be inspected, and shall permit such inspection at any reasonable time thereafter;

or

if the Respondent asserts that there are other drawings in the Respondent's custody, possession or control which relate to the said products and which were made before 1 August 1989, the Respondent shall within 14 days provide a schedule of them and indicate where the originals may be inspected, and shall permit such inspection at any reasonable time thereafter.

The 14 day period shall be 14 days from the date of this decision.

11. The Respondent shall copy any documents filed under this Order to the applicant.

Subsequent procedure

12. Until Mr Wood has responded to this Order, it is difficult to lay down what ought to happen next. Accordingly I can only say that either side is at liberty to come back to me for further directions. However, I hope they will be able to take the matter forward between them without having to ask me to intervene at every step. The objective must be to get, as quickly as possible, to the position where the drawings which are to be the subject of the licence (assuming such drawings actually exist) are satisfactorily identified, so that I can issue my decision on the substantive issues.

13. As this decision relates to a matter of procedure, under the Rules of the Supreme Court any appeal must be lodged within 14 days.

Dated this 8th day of March 1999

P HAYWARD

Divisional Director, acting for the Comptroller

THE PATENT OFFICE