

PATENTS ACT 1977

IN THE MATTER OF an application by
Contra Vision Limited to amend patent
number GB 2165292C and an opposition
thereto by Clear Focus Imaging Inc

DECISION

1. This decision concerns a request to extend the time allowed for lodging an appeal against a decision of the comptroller.
2. Contra Vision Limited (“Contra Vision”) applied to the comptroller to amend patent number GB 2165292C. The application was opposed by Clear Focus Imaging Inc (“Clear Focus”), and in due course the matter was heard by Mr Dennehey, a Hearing Officer acting for the comptroller. On 3 March 2000 Mr Dennehey issued his decision. He refused the application to amend but allowed the parties two months in which to comment on the notion and content of a possible draft order which would allow Contra Vision an opportunity to submit revised amendments. He adopted this course because the possibility of giving Contra Vision another bite at the cherry, so to speak, had not been canvassed at the hearing.
3. Since Mr Dennehey’s decision was not on a matter of procedure, under paragraph 16.3 of the High Court’s Practice Direction 49E, made in respect of part 49 of the Civil Procedure Rules 1998, any appeal against the decision has to be lodged within six weeks. That period expires tomorrow. A few days ago Contra Vision wrote to the Office arguing that the appeal period should run not from 3 March but from the date on which Mr Dennehey makes his order. That argument was rejected in an Official Letter dated 11 April on the grounds that whilst the decision of 3 March is an interim one, it is still an appealable decision in its own right. It is clearly a decision because it has determined the question of whether the amendments so far proposed by Contra Vision should be allowed.

4. Anticipating that its argument might be rejected, Contra Vision asked in the alternative for the appeal period to be extended until six weeks from the date of the anticipated order. They submit that Contra Vision should know the form of the order before considering the merits of filing an appeal, since otherwise its position will be unfairly prejudiced. Clear Focus have objected to this. They say that these proceedings have been running since 1997 and that the amendments which are the subject of the decision were submitted some time before then. They argue that the sheer volume of the amendments suggests the patentee must have given careful and extensive consideration to the whole matter at that time, and accordingly they should not need any further time in which to decide whether they wish to appeal.

5. The comptroller is given the power to extend the appeal period under paragraph 16.5 of Practice Direction 49E, and the sole issue before me today is whether or not to do so. Both sides have indicated that they are content for me to make the decision on the basis of the written submissions they have made.

6. Clear Focus have a valid point when they say these proceedings have been running quite long enough. However, I also have some sympathy with Contra Vision's position. True, one can argue that in principle the decision of 3 March stands on its own feet, and deciding whether to appeal it should not depend on the order that Mr Dennehey eventually gives. However, looking at it more pragmatically, I can well understand that Contra Vision might be content not to appeal the decision if they are given another chance to amend, but might be much more anxious to appeal if they are not given that chance. If I refuse to extend the appeal period, that may merely trigger an appeal that might not otherwise have been made, and that would be in no one's interest. Conversely, if I do extend the period it seems unlikely that would actually increase the overall time that it will take to bring the whole proceedings to a final conclusion, because the order will itself be a decision subject to a six week appeal period. For this reason, I do not believe extending the appeal period is likely to prejudice Clear Focus in any significant way.

7. I therefore propose to allow an extension. Given the reasons for the extension, I think it would be more sensible to relate the extension to the date on which the further order is made, rather than setting a period running from today which might later turn out to be unduly

short or unduly long, depending on quite when the order is made. The patentee's suggestion that the period for lodging an appeal against the present decision should terminate at the same time as the period for appealing the order seems sensible.

8. Accordingly I extend the period within which an appeal against Mr Dennehey's decision of 3 March 2000 may be lodged to six weeks from the date on which an order as foreshadowed in paragraphs 60 and 61 of that decision is made.

9. The decision of 3 March deferred consideration of the question of costs. Any claim for costs in respect of the particular issue I have had to decide should be dealt with at the same time as the costs in respect of the substantive issues.

10. This decision does relate to a matter of procedure. Any appeal against it must therefore be filed within two weeks.

Dated this 13th day of April 2000

P HAYWARD

Divisional Director, acting for the comptroller

THE PATENT OFFICE