

## **PATENTS ACT 1977**

IN THE MATTER OF applications under rules 110(4) and 100(2) of the Patents Rules 1995 and a reference under section 8(1) concerning patent application No GB 9820519.8 in the names of Harry Robinson and Laurence Antony Brooks

### **DECISION**

- 1 This decision concerns a request to extend the period for lodging an appeal against my decision of 14 May 2002. Under paragraph 16.5 of the High Court's Practice Direction 49E, made in respect of part 49 of the Civil Procedure Rules 1998, the comptroller may allow an extension if it is requested before the period expires .
- 2 In my earlier decision I refused under either rule 110(4) or rule 100 of the Patents Rules 1995 to allow the late filing of a request for substantive examination so as to enable terminated application No GB 9820519.8 to proceed. I also made no order on a reference under section 8 of the Act which had been brought with a view to allowing a "replacement" application to be filed.
- 3 On 24 June 2002, one day before the expiry of the period for appeal, the applicants' patent agent Mr M G F Lunt of Harrison Goddard Foote requested an extension of the period to 16 July 2002. This he said was because of the difficulty of communicating to Mr Brooks, who was in South Africa, the advice now received from counsel about the chances of success on appeal, and of getting instructions from Mr Brooks.
- 4 In response to a request from the Patent Office for a fuller explanation, Mr Lunt replied on 26 June 2002. I think it will be helpful to quote the relevant passage of his letter in full :

"A copy of the decision of 14 May 2002 was sent to Counsel (Mark Vanhegan) shortly after the receipt in this office of the Decision. He was asked to give an informal opinion. Shortly after that, a telephone message was received from Mr Vanhegan's chambers explaining that Mr Vanhegan could not comprehend fully all the facts of the case from the decision and he requested further details of the matter. These were sent on 06 June 2002, comprising the statutory declarations of Mr Robinson and Mr Brooks, and the skeleton arguments prepared by the present writer for the hearing.

Due to pressure of work, Mr Vanhegan was not able to consider the papers until Thursday 20 June, when a telephone conference was held with the writer and the informal opinion of counsel was given.

This was reported to Mr Brooks in South Africa on 21 June, and also to Anthony Williams of Uni-Screw Limited in Birmingham. The decision whether to appeal is not in Mr Brooks' hands alone. He is returning to the UK this week so that a meeting can be held to discuss the matter and decide if an appeal should be filed. Mr Brooks is staying with friends in South Africa and communication with him over his mobile telephone is difficult."

- 5 I do not need to go over my earlier decision in any great detail. However, I should explain that although it involved a reference under section 8 filed in the name of Mr Brooks, there was in fact no dispute between Mr Brooks and Mr Robinson as to entitlement to the application. Mr Robinson was content to leave decisions on patents in the hands of Mr Brooks. The matter was therefore effectively *ex parte*. Mr Lunt has confirmed that this is still the case and that he is acting for both Mr Brooks and Mr Robinson.
- 6 Whether the appeal period can be extended therefore comes down to considering whether the reasons given by Mr Lunt are sufficiently strong to outweigh the potential harm to the public that may be caused by further delay. Although the Patent Office's Tribunal Practice Notice TPN 3/2000 "Requests for extensions of time in which to appeal decisions" urges me not to take an over-relaxed attitude merely because the matter is *ex parte*, I consider that Mr Lunt has given sufficient reasons. I accept that the facts of this case are complex and unusual, and (as I explained in my earlier decision) baffling at times as regards Mr Robinson's role in the events which led to the termination of the application. I am satisfied that the particular combination of factors in this case - the difficulty in getting to grips with the facts of the case, the pressure of other work and the unavailability of Mr Brooks for detailed discussion until he returns to the United Kingdom - justify the extension which is sought.
- 7 I therefore extend to 16 July 2002 the period within which an appeal against my decision of 14 May 2002 may be lodged.
- 8 Although it is almost certainly academic, this decision has its own period for appeal, which, since it relates to a procedural matter, is 14 days.

Dated this 28th day of June 2002

**R C KENNEL**  
Deputy Director acting for the Comptroller

**THE PATENT OFFICE**