

PATENTS ACT 1977

IN THE MATTER OF

a reference under sections 8, 12 and 13

by IDA Limited, Colin Thomas Metcalfe, David Julian Lax
and Polymer Powder Technology (Licensing) Limited

in respect of UK Patent Application No. 9814507.1,
International Patent Application No. PCT/GB99/02090,
European Patent Application No. 99929525.6

and Australian Patent Application No. 46317/99

in the name of the University of Southampton,

and of patents or applications for a patent deriving or claiming priority therefrom

DECISION ON CONFIDENTIALITY OF THE HEARING TRANSCRIPT

- 1 A reference was filed on 17 September 2001 on behalf of IDA Limited, Colin Thomas Metcalfe, David Julian Lax and Polymer Powder Technology (Licensing) Limited ("the claimants") to determine under sections 8, 12 and 13 of the Patents Act 1977 questions of inventorship and entitlement in respect of certain patent applications and patents. The patent applications specified in the reference were UK Patent Application No. 9814507.1, International Patent Application No. PCT/GB99/02090, European Patent Application No.99929525.6 and Australian Patent Application No. 46317/99. Also included were all patents or applications for a patent deriving or claiming priority from these applications. The defendants were Philip Edwin Howse and Roger Edward Ashby, who were named as inventors in the International patent application, and the University of Southampton, which was named as the applicant.
- 2 The evidence rounds that followed were both protracted and difficult. Indeed, several preliminary decisions were issued to resolve a series of disputes between the parties. One of these disputes concerned requests for confidentiality under rule 94(1) of the Patents Rules 1995. In the fourth preliminary decision, dated 10 December 2002, the hearing officer directed that two witness statements should be treated as withdrawn and not be open to public inspection. The hearing officer also directed that parts of a second witness statement made by Philip Howse and elements of the claimants' evidence in reply should be treated as confidential. He also established a confidentiality club of those who could have access to the confidential documents. Subsequently, on 12 March 2003, a further direction as to confidentiality was made concerning a document provided by the defendants.
- 3 During the course of the main hearing before me over five days from 31 March 2003 to 4 April 2003 and on a further day on 10 April 2003, the proceedings were conducted not in public for short periods in keeping with the directions as to confidentiality in existence at that time. The hearing was also held not in public at other times when I considered there was a risk that evidence given under cross-examination might, if given in public, be prejudicial to commercial interests of the witness. Nevertheless, I made it clear more than once that I would review the transcript of the hearing to confirm which specific disclosures had the necessary quality of confidentiality, with a view to opening up as much of the transcript as possible to public inspection.

4 I duly reviewed the transcript on receipt and the Office wrote to the parties on 27 June 2003 informing them of my preliminary view on this matter. The parties responded by letters, dated 24 July 2003, with their own views on what should and should not remain confidential in the transcript. I considered these views and the Office wrote to the parties again on 29 July 2003 enclosing extracts of the transcript marked to show my proposed redactions. This letter also sought agreement to a proposal that the unredacted transcript should be open to a small confidentiality club, comprising legal advisers and other specified individuals. Raworth Moss & Cook, agents for the claimants, wrote on 30 July 2003 to state that the claimants were content with both of my proposals. Boulton Wade Tennant, agents for the defendants, did likewise in a letter dated 5 August 2003.

Order

5 I therefore order that the full and unredacted transcript should be open to the legal advisers of both parties, Colin Metcalfe, David Lax, Ralph Brown, Philip Howse and Roger Ashby only.

6 I am directing under rule 94(1) that those parts of the transcript identified in the marked-up extracts enclosed with the Office's letter dated 29 July 2003 shall be treated as confidential. A correspondingly redacted version of the transcript will be placed on file open to public inspection.

Appeal

7 Any appeal against this decision shall be filed within 28 days of the date of this decision.

Dated this 29th day of August 2003

S N DENNEHEY

Divisional Director acting for the comptroller

THE PATENT OFFICE