



BL O/205/06

21 July 2006

PATENTS ACT 1977

BETWEEN

Gerkos Boilers (Tipperary) Limited

Claimant

and

Alley Enterprises Ltd

Defendant

PROCEEDINGS

Application under Section 72 for revocation of
patent number EP0616676

HEARING OFFICER

Phil Thorpe

PRELIMINARY DECISION

Background

- 1 An application for revocation of European Patent No. EP 0616676 in the name of Alley Enterprises Ltd ("the Defendant") was filed on 12 May 2005 by Gerkos Boilers (Tipperary) Limited ("the Claimant").
- 2 The patent relates to boilers and the application for revocation is made on the grounds that boilers manufactured and sold by the Claimant and used by the public before the priority date of the patent, include features which fall within the scope of the patent.
- 3 In a preliminary decision dated 23 March 2006, the Hearing Officer, Peter Back, refused a request from the claimant that the comptroller should decline to deal with the application under section 72(7)(b) of the Patents Act 1977. In that decision the hearing officer also decided to defer consideration of costs until after the substantive hearing has taken place.
- 4 The claimant in a letter dated 21 July 2006 submits that there has been a material change in the circumstances relating to the issue of the comptroller declining to deal in that the request is now clearly supported by the defendant. This has been confirmed in a letter of the same date from the defendant.
- 5 Where a request is supported by both parties, the comptroller will normally

decline to deal. I can find nothing in this reference that would cause me to conclude, given the views of both parties, that it would not be more properly determined by the court. I therefore decline to deal with the reference

Costs

- 6 Both parties have indicated that the outstanding issue of costs before the comptroller be reserved until the court proceedings are resolved. I therefore make no order for costs at this time.

Appeal

- 7 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

P Thorpe

Deputy Director acting for the Comptroller