

has been no objection since (see letters from the defendants and the claimants' patent attorneys on 19 and 30 March 2007 respectively) to my deciding the matter on the papers and this is what I will now do.

Arguments and analysis

- 4 The dispute would appear to have originated from the defendants' e-mail to the claimants on 7 March. In this the defendants stated that they had put in hand the payment of the balance they believed still to be due as a result of paragraph 44 of my order, and asked whether there were any further renewal fees up to the date of my decision beyond the sum of £2445.99 that they had already paid. In relation to paragraph 45 they believed that they had performed all the acts necessary to comply with my earlier order regarding transfer of the applications in suit, but asked whether any other steps were required.
- 5 This has culminated in a complaint from the claimants that the defendants have failed to say how they would meet maintenance costs still owing and future vesting costs, apparently believing these to be part of the renewal costs referred to in my order. The claimants now seek an order from the comptroller that the defendants should pay outstanding maintenance costs, the costs of £23300 which I awarded in my previous decision, and further sums by way of interest or penalty and patent attorneys' fees as a result of failure to comply with my order. They also seek an order that the defendants should "continue to compute (complete?) the rectification of the foreign registers of the property listed on Order O/320/06 as soon as reasonably practical" and "agree to pay the future vesting costs" of this rectification.
- 6 The claimants' case appears to me to be based on a misunderstanding of my order. Whilst I regret any such misunderstanding, I think it is quite clear from paragraphs 40 and 42 of my previous decision that the costs of £23300 exclusive of renewal fees are made up of £8800 for the substantive hearing, £500 for the preliminary hearings and £14000 in respect of maintenance costs (since I did not consider that the claimants had established a case for anything more than the defendants were prepared to pay). In respect of renewal fees I have considered the notes of costs prepared by the parties before my previous decision. However I see no reason why the claimants should have assumed that this term was to be understood in anything other than its normal sense (as the defendants put it) of the costs required to renew a patent, usually paid annually.
- 7 It does not seem to be in dispute that the defendants have already paid the claimants a sum of £25,745.99, which equates to the costs of £23,300 plus renewal fees of £2445.99 (including VAT). In response to the defendants' questions as to whether there were outstanding any further renewal fees and further acts necessary to complete transfer, the defendants have provided no indication of anything specific and so I will assume that there is nothing outstanding.
- 8 It therefore seems to me that the terms of my order have been met. Even if I am wrong on that, it is not for the comptroller to enforce the payment of costs in proceedings before him. That is a matter for the courts in accordance with

section 107(2) of the Act.

- 9 The claimants' submission, by seeking to muddy the distinction between renewal fees and other maintenance and vesting costs rather than answer the defendants' specific (and to my mind quite reasonable) questions, appears to me to be attempting to re-litigate matters of costs which were settled in my previous decision. I see no justification for re-opening the matter in this way.

Conclusion

- 10 I do not therefore propose to make any further order, and indeed I think the time has come to bring down the curtain on these proceedings. There have been nine decisions from the Office since the proceedings were launched over five years ago, and this will be the fourth decision to issue since the matter was remitted to the Office by the Court of Appeal for final determination. At some stage there must be finality in litigation and I think it would be wholly disproportionate to prolong the matter still further save for the most compelling of reasons. I trust that the parties will bear this in mind - and the power of the comptroller to award compensatory costs for unreasonable behaviour if the matter is unnecessarily dragged out - before making any further submissions.

Further costs

- 11 My previous decision covered the costs of the proceedings to that point and I do not think that any further award of costs is justified in relation to exchange of correspondence since then.

Appeal

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

R C KENNEL

Deputy Director acting for the Comptroller

ANNEX TO DECISION O/114/07

Paragraphs 44 - 45 of O/046/07

44 I therefore order the defendants to pay the claimants the sum of £23300 plus the cost of any renewal fees up to the date of this decision since the decision of the Court of Appeal (less any sum that they have already paid to the claimants), within 7 days of the expiry of the appeal period below. Payment will be suspended in the event of an appeal.

45 I also order the defendants, if they have not already done so, to complete any acts necessary to comply with paragraph 1 of my order in O/320/06 within 28 days of the date of this decision.

Paragraphs 1 - 2 of the order of 9 November 2006 annexed to O/320/06

1 Subject to paragraph 2 below, the Defendants shall by 4pm on 23rd November 2006 correct the inventorship of and assign to the First Claimant free of any licence, mortgage or any other encumbrance UK application No. GB 9814507.1, International Patent Application No. PCT/GB99/02090, Australian Patent Application Nos. 748355, 2006202675 and 2006300936 (by the form of assignment for Application No. 2006202675 attached at Schedule A and a similar form assignment for Application No.s 748355 and 2006300936), US Patent Application No. 09/736023 (by the form of petition and assignment attached at Schedule B), Brazilian Patent Application No. PI 9911813-0 (by the form of affidavit and assignment attached at Schedule C), Japanese Patent Application No. 557692/2000, South African Patent No. 2000/7781 and any patent petty patent design patent or similar form of protection (or application therefor) claiming priority from any of the aforesaid or any priority document in respect of any of them.

2 In respect of the above the Defendants shall cooperate with the claimants by taking all reasonable steps as lie within the Defendants' power and the Claimants may request to ensure that the corrections and assignments are completed without having to seek extensions of time or further extensions of time from the relevant intellectual property Offices.

R C KENNEL

27 April 2007