O-154-08

TRADE MARKS ACT 1994

IN THE MATTER OF

APPPLICATION NO. 2226666 TO REGISTER
IN THE NAME OF OMEGA ENGINEERING INC.
THE TRADE MARK :

OMEGA.CO.UK

AND OPPOSITION THERETO
UNDER No. 93220

BY

OMEGA SA (OMEGA AG) (OMEGA LTD)

Trade Marks Act 1994

IN THE MATTER OF Application no. 2226666
To register the Trade Mark
OMEGA.CO.UK
in the name of OMEGA ENGINEERING Inc.,
and Opposition thereto under
no 93220
by OMEGA SA (OMEGA AG) (OMEGA LTD)

THE BACKGROUND

1. On 20 March 2000, Omega Engineering Inc of One Omega Drive, Stanford, Connecticut, USA, hereafter referred to as Engineering, applied to register the trade mark OMEGA.CO.UK for the following classes of goods and services:

Class 9	Testing and laboratory equipment; vibration control and motion control products and systems; instruments for measurement and control of variable physical and electrical parameters; regulation and control instruments for motion and vibration and for angular, linear and circular displacement and travel; industrial and scientific equipment for measuring, controlling and/or regulating temperature, humidity, pressure, motion, travel, strain, angular, linear and circular displacement, force, flow, viscosity, level pH, load, vibration, electrical resistance, air velocity, amperage, motion, movement, volume, frequency, voltage, ion concentration and conductivity; acquisition, display and retrieval of data for all of the above; transducers; conditioners; monitors; meters; amplifiers, power supplies; transformers; recorders; computer controlled measuring, timing and display apparatus; clocking devices; apparatus for checking and measuring distance; apparatus for acquiring, transmitting, managing and distributing information and data; apparatus for measuring, calculating, processing, pointing, memorising, displaying, transmitting and recording data relating to physical and electrical parameters; equipment for signalling and displaying data for use in the laboratory or in industrial plant or for scientific or industrial purposes; computer controlled apparatus for checking and controlling the measurement of distance; electronic information and Page 2 data display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes; measuring, timing and display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes; measuring and control apparatus for physical and electrical parameters including: circular, linear and angular displacement, circular, linear and angular travel, circular, linear and angular motion, circular, linear and angular movement, volumetric displacement, liquid level, flow, vibration and motion control; computer controlled apparatus for all of the above; fiber optics, temperature control and measurement goods; optics, namely lenses and diffractive optics for laser beams; radiometers, laser diode devices and systems; light emitting diode illuminating systems; computer software for measurement of variable physical and electrical parameters; temperature reference sources; thermocouples; thermistors; computer software for testing the performance, accuracy and calibration of instruments; magnetic data carriers, optoelectronic components; fiber optic components; optical hardware; optics; vibration control products; motion control products and systems; metrology systems; test systems and instruments; lens mounts; laser diodes, beamsplitters, motion controllers; laser beam expanders; fiber optic infrared couplers; infrared sensors; laser diode temperature detectors; energy detectors; optical detectors, infrared detectors; hand held infrared detectors; power meters; laser light sources;

	temperature controllers; analysers, viscosity and flow testers; rotameters; flow meters; all for science and/or industry.
Class 14	Chronometric and horological products for science and industry; industrial and scientific timers; period timers; timers used in industrial and/or scientific apparatus to measure and/or control other variable parameters; all the afore going being for science and/or industry.
Class 16	Printed matter; stationery; instructional and teaching material; catalogues, technical and scientific handbooks, textbooks and technical reference books about measurement, control and regulation of variable parameters in scientific, laboratory and industrial operations and research; all the afore going goods being for science and/or industry; but not including printed publicity material for use by retail outlets.
Class 35	The bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a scientific and industrial goods catalogue by mail order or by telecommunications or from an Internet web site specialising in the marketing of electronic and photonic goods for industrial use.
Class 37	Repairs, installation service, and technical consultation and assistance in the fields of measuring, controlling and/or regulating industrial and laboratory variable parameters; technical consultation and assistance in industrial and laboratory process measurement and control data acquisition, display and retrieval; technical consultation services; instrument testing and technical support services, namely troubleshooting of instrument problems in person and via fax, computer and telephone; instrument calibration, field services, maintenance contracts, equipment installation and testing; on customer training; system upgrades; telephone and on technical support and assistance; instrument maintenance; all being for science and/or industry.
Class 40	Creation of designs and models for science and industry; engineering design services for others in the field of measurement and control; custom manufacturing of instruments for measurement and control of variable physical and electrical parameters to the order and specification of others; all the afore going services for science and/or industry.
Class 41	Education; providing of training, namely teaching and training in the use and operation of instruments and systems; training provided by telephone and on-site, all relating to measurement and control; all the afore going services being for science and/or industry.

The application was published for opposition purposes on 26 November 2004.

2. On 22 February 2005, Omega SA of Jakob-Stampfli-Strasse 96, Bien, Switzerland, hereafter referred to as Swiss, filed notice of opposition and a statement of grounds opposing the registration under sections 5(1), 5(2)(a), 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994, hereafter the Act. The opposition was directed against some of the goods specified in classes 9, 14, 37 and 40 of the registration. These are:

(a) in Class 9:
clocking devices; apparatus for checking and measuring distance; apparatus for acquiring, transmitting, managing and distributing information and data; equipment for signalling and displaying data for use in the laboratory or in industrial plant or for scientific or industrial purposes **to the extent that this data is time of day, or any other data relating to time***;*
computer controlled apparatus for checking and controlling the measurement of distance; electronic information and Page 2 data display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes; measuring, timing and display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes;

(b) in Class 14:
Chronometric and horological products for science and industry; industrial and scientific

timers; period timers; timers used in industrial and/or scientific apparatus to measure and/or control other variable parameters; all the afore going being for science and/or industry.
(c) in Class 37:
Technical consultation services; instrument testing and technical support services, namely troubleshooting of instrument problems in person and via fax, computer and telephone; instrument calibration, field services, maintenance contracts, equipment installation and testing; customer training; system upgrades; telephone and on technical support and assistance; instrument maintenance.

and (d) in Class 40
engineering design services for others in the field of measurement and control;

3. Swiss is proprietor of a number of trade marks comprising the work OMEGA as indicated below:

Mark	Number	Effective Date	Class	Specification
Ω OMEGA	UK 2052200	15 January 1996	9	Electrical and electronic apparatus and instruments for collecting, processing, assessing and transmitting time-related data; public information display systems; computers and computer software for use in connection with time measuring and recording and with public display systems; parts and fittings for the aforesaid goods; but not including any such goods intended for scientific, educational or industrial applications and not including any such goods for photographic lighting purposes or telephone apparatus and not including computer programs for monitoring and managing computer systems performance and utilisation and not including computer programs for optimising mathematical expressions, for predictive or descriptive modelling; and not including computer software for processing seismic data and related instruction manuals, for use in services to the oil and gas industries relating to exploration, evaluation and monitoring of oil and gas formations and seismic data processing services.
Ω OMEGA SCANⁱOⁱVISION	UK 1477193	18 September 1991	9	Sports timing equipment; all included in Class 9; but not including calculating machines or instruments and apparatus, all for measuring, signalling and checking (supervision) of heat and temperature for scientific or industrial use.

	UK 699057	15 June 1951	9	Measuring and signalling apparatus and instruments, all for use in sport; but not including calculating machines nor instruments and apparatus for measuring, signalling and checking (supervision) of heat and temperature for scientific and industrial use.
OMEGA CONSTELLATION	UK 723200	28 October 1953	14	horological instruments; parts and fittings therefor.
	UK 699058	15 June 1951	14	Jewellery watches and pins; horological and chronometric instruments; parts and fittings therefor.
OMEGA.	UK 474165	23 October 1926	14	Watches and jewel-watches and parts and fittings therefor; all being made of precious metals or imitations of precious metals.
	UK 283842	16 June 1906	14	Watches and parts of watches, but not including watch cases sold separately.
OMEGA	UK 283841	16 June 1906	14	Watches and parts of watches, but not including watch cases sold separately.
	UK 1456848	27 February 1991	37	Maintenance and repair of measuring, checking, optical and signalling apparatus and instruments, all the goods being maintained and repaired being for use in sport; maintenance and repair of horological and chronometric instruments and of public information display apparatus and instruments; information services relating to all the aforesaid; all included in Class 37; but not including maintenance and repair of heat and temperature measuring, checking and signalling apparatus and instruments, all for scientific and industrial use
OMEGA ELECTRONICS	CTM 225565	15 April 1996	14	Precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones, horological instruments, among other, watches, parts of watches, watch movements; chronometric instruments, cases for watches [presentation].

OMEGA **(currently the subject of an opposition in relation to the goods in class 9)**	CTM 226027	15 April 1996	3	Perfumery, cosmetics, essential oils.
			9	Clocking device installations, installations for checking, measuring time and distance, used for sporting activities ; installations for acquisition, transmission, management and dissemination of information, used in particular for transport, advertising and banking services; data acquisition peripheral devices, data transmission equipment, equipment for signalling and displaying data, in particular for sporting activities and transport, advertising and banking services ; but none of the aforesaid goods being for apparatus used in industry and/or science for measuring and controlling variable parameters such as temperature, pressure, force, load, vibrations, electrical conductivity, liquid levels, acidity, humidity, deformation and flow.
			14	Precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones, horological instruments, among other watches, parts of watches, watch movements; chronometric instruments, cases for watches (presentation).
			16	Pencils, nibs, pencil lead holders, ball-point pens, felt-tip pens.
			25	Clothing, including scarves, neckties, shirts; footwear; headgear.
			28	Toys, games and playthings; sporting articles.
			37	Clock and watch repairs.
			38	Telecommunications..
			41	Sporting and cultural activities, entertainment.
			42	Creation of designs and models ; research and development in the field of measuring and checking time and distance, management and dissemination of information, in particular for use in transport, advertising, banking and sport ; computer programming used in clocking device installations, installations for checking, measuring time and distance and in installations for acquisition, transmission, management and dissemination of information ; all the aforesaid services relating in particular to transport, advertising and banking and sporting activities ; but none of the aforesaid goods being applied to science and industry and relating to measuring and controlling variable parameters such as temperature,

				pressure, force, load, vibrations, electrical conductivity, liquid levels, acidity, humidity, deformation and flow.
 **(currently the subject of an opposition in relation to the goods in class 9 and the services in class 42)**	CTM 225771	15 April 1996	3	Perfumery, cosmetics, essential oils.
			9	Spectacles, spectacle frames; clocking device installation, installation for checking, measuring time and distance, mainly for use in sporting, scientific and industrial fields; installation for retrieving, transmitting, managing and distributing information, mainly for use in services such as transport, advertising, banking; apparatus making up such installations, namely peripheral devices for data acquisition; data transmission equipment; apparatus for measuring, calculating, processing, printing and memorising data; equipment for signalling and displaying data of every kind.
			14	Precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones, horological instruments, among other, watches, parts of watches, watch movements; chronometric instruments, cases for watches [presentation].
			16	Pencils, nibs, pencil lead holders, ball-point pens, felt-tip pens.
			25	Clothing, including scarves, neckties, shirts; footwear; headgear.
			28	Games and playthings; sporting articles.
			35	Advertising.
			37	Clock and watch repairs.
			38	Telecommunications..
			41	Sporting and cultural activities, entertainment.
			42	Creation of designs and models; scientific and industrial research; computer programming.

4. In their statement of grounds, Swiss claims

   (a) that OMEGA and OMEGA.CO.UK are identical marks because the "non-distinctive domain name elements .CO.UK add nothing in trade mark terms to the applicants mark". Hence their objection to registration of the mark on Section 5(1) and 5(2)(a) grounds.

   (b) that the applicant's mark OMEGA.CO.UK covers identical or highly similar goods to those covered by the opponent's registered marks listed above in classes 9, 14, 37 and 40. Thus there is a likelihood of confusion on the part of the public between the products and services of the applied for registration and those provided by the opponent under its various OMEGA marks.

(c) that they have used their various trade marks containing OMEGA and Ω OMEGA since 1906 in relation to watches and since 1948 in relation to time-keeping and measuring apparatus. These include the trade marks OMEGA CONSTELLATION (on watches since 1953) and OMEGA Ω SCAN 'O' VISION (on timing equipment since 1991). Timing and display equipment bearing the OMEGA marks has been used for "more than twenty Olympic Games" including the 1948 Games in London. Swiss claim that products bearing "trade marks containing or consisting of OMEGA are particularly known in the sporting field and for public display information systems and for watches and other horological and chronometric instruments and related maintenance, repair, design, information and technical services". Thus the OMEGA marks have built up "considerable goodwill" and Swiss claims that they have "passing off rights in their OMEGA trade marks in relation to "timing and measuring apparatus and instruments; information processing, handling and display apparatus and instruments; chronometric and horological apparatus and instruments, jewellery, consultation, repair and maintenance services, design, development and information services" and that use of the trade mark as applied for in relation to any of these would amount to passing off. This is the basis of their objection on the Section 5(4)(a) grounds.

(d) that as a result of the use made of the OMEGA trade marks referred to in (b) above, they have "built up a reputation in those marks" and that use of the mark "OMEGA.CO.UK" without due cause would take unfair advantage and/or be detrimental to the distinctive character and repute of Swiss's earlier marks. The unfair advantage would arise because it would be trading on the "goodwill and kudos created through the opponents [i.e., Swiss's] efforts over many decades in a wide range of technical and precision products and services". The detriment would arise by dilution, tarnishment and association between the earlier marks and the applied for mark. This is the basis of the objection under the Section 5(3) ground.

5. On 9 June 2005, Engineering filed a counterstatement and notice of defence denying all grounds for opposition in which they:

(a) accept that Swiss have shown genuine use of their trade marks in relation to "watches and jewel watches, all being made of precious metals or imitations of precious metals; watches and jewel-watches; parts and fittings for all the aforesaid goods", and "sports timing equipment".

(b) request that Swiss provide proof of use for all other goods and services referred to in their statement of grounds other than these accepted goods and services.

(c) argue that Swiss are estopped from objecting to the registration of goods and services covered by the applied for registration which fall within the scope of paragraph 4c of the agreement signed by Swiss and Engineering on 2 August 1994. This agreement was confirmed as valid by the decision of (the late) Pumfrey J (as he then was) in *Omega SA v Omega Engineering Limited* [2002] EWHC 2620 (Ch). Swiss agreed not to object to any trade mark consisting of or containing the word OMEGA or the Greek letter Ω in relation to "Apparatus industrially and/or scientifically employed for measuring or controlling

variable parameters such as temperature, pressure, force, load, vibration, electrical conductivity, liquid level, acidity, humidity, strain and flow".

(d) deny that there is any basis for objection under the law of passing off. They claim that they have made use of the marks OMEGA and OMEGA.CO.UK in relation to goods set out in the applied for registration for a number of years prior to the application date without any confusion or deception occurring and with Swiss's consent.

6. As part of their counterstatement, Engineering suggested amendments to the specification of goods in classes 9 and 14 and to the services in class 40 that, in their view, took account of the objection from Swiss while also including those goods and services that Swiss agreed it would not object to under the above mentioned delimitation agreement. This involved excluding references to timing from class 9, excluding references to horological apparatus and timers from class 14 and qualifying the reference to engineering design services in class 40 to refer to the type of apparatus agreed as acceptable and using the form of words agreed by Swiss and Engineering in the above mentioned agreement, specifically, '*timing apparatus or period timing apparatus. industrially and/or scientifically employed for measuring or controlling variable parameters such as temperature, pressure, force, load, vibration, electrical conductivity, liquid level, acidity, humidity, strain and flow*'.

7. In a letter dated 24 April 2006, Engineering amended the specification of goods and services applied for in the current registration. It deleted the goods applied for in class 14 and amended the goods applied for in class 9 to remove references to timing in the following manner:

Class 9 Testing and laboratory equipment; vibration control and motion control products and systems; instruments for measurement and control of variable physical and electrical parameters; regulation and control instruments for motion and vibration and for angular, linear and circular displacement and travel; industrial and scientific equipment for measuring, controlling and/or regulating temperature, humidity, pressure, motion, travel, strain, angular, linear and circular displacement, force, flow, viscosity, level pH, load, vibration, electrical resistance, air velocity, amperage, motion, movement, volume, frequency, voltage, ion concentration and conductivity; acquisition, display and retrieval of data for all of the above; transducers; conditioners; monitors; meters; amplifiers, power supplies; transformers; recorders; computer controlled measuring, ~~timing~~ and display apparatus; ~~clocking devices~~; apparatus for checking and measuring distance; apparatus for acquiring, transmitting, managing and distributing information and data; apparatus for measuring, calculating, processing, pointing, memorising, displaying, transmitting and recording data relating to physical and electrical parameters; equipment for signalling and displaying data for use in the laboratory or in industrial plant or for scientific or industrial purposes, **none relating to time**; computer controlled apparatus for checking and controlling the measurement of distance; electronic information and ~~Page 2~~ data display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes; measuring, ~~timing~~ and display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes; measuring and control apparatus for physical and electrical parameters including: circular, linear and angular displacement, circular, linear and angular travel, circular, linear and angular motion, circular, linear and angular movement, volumetric displacement, liquid level, flow, vibration and motion control; computer controlled apparatus for all of the above; fiber optics, temperature control and measurement goods; optics, namely lenses and diffractive optics for laser beams; radiometers, laser diode devices and systems; light emitting diode illuminating systems; computer software for measurement of variable physical and electrical parameters; temperature reference sources; thermocouples; thermistors; computer software for testing the performance, accuracy and calibration of

	instruments; magnetic data carriers, optoelectronic components; fiber optic components; optical hardware; optics; vibration control products; motion control products and systems; metrology systems; test systems and instruments; lens mounts; laser diodes, beamsplitters, motion controllers; laser beam expanders; fiber optic infrared couplers; infrared sensors; laser diode temperature detectors; energy detectors; optical detectors, infrared detectors; hand held infrared detectors; power meters; laser light sources; temperature controllers; analysers, viscosity and flow testers; rotameters; flow meters; all for science and/or industry.
~~Class 14~~	~~Chronometric and horological products for science and industry; industrial and scientific timers; period timers; timers used in industrial and/or scientific apparatus to measure and/or control other variable parameters; all the afore going being for science and/or industry.~~

However, no change was made to the registration applied for in class 40.

8. Swiss maintained their opposition to the amended specification in a letter to the Trade Marks Registry dated 26 May 2006 as the amendments did not address all of the opposed goods in class 9 or the opposed services in class 37 and 40.

9. Both sides filed evidence. Following completion of the evidence rounds, a hearing was scheduled before me on 26 April 2007 to deal with all the outstanding issues.

10. On 18 April 2007, I wrote to both parties, seeking clarification on three points and given the short time period before the date of the hearing, I asked both parties to address these points in their written and/or oral submissions:

(a) Would the grounds under Section 5(1) and 5(2)(a) in relation to identical marks be pursued?

(b) Is the use of trade marks 699058 and 723200 as decided by Professor Annand following appeal of the relevant revocation actions accepted?

(c) The letter from Mewburn Ellis LLP dated 26 May 2006, on behalf of the opponent Omega SA, is not clear regarding the effects of the amendment to the specification in class 9. Is the objection being maintained in relation to the following changes?

(i) The term “measuring, timing and display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes” has been amended by deleting the reference to timing to “measuring and display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes”;

(ii) The term “equipment for signalling and displaying data for use in the laboratory or in industrial plant or for scientific or industrial purposes” has been amended to exclude a reference to time, i.e., “equipment for signalling and displaying data for use in the laboratory or in industrial plant or for scientific or industrial purposes, none relating to time”. Opposition to these goods was related to the extent that ‘this data is the time of day, or any other data relating to time’.

.

11. Both sides filed evidence. The opponent, Swiss, was represented by Sofia Arenal of Mewburn Ellis LLP. The applicant, Engineering, was represented by David J Crouch of Bromhead Johnson Trade Mark Attorneys.

12. Given the evidence filed, in particular that filed by the opponent, included reference to and extracts from many previous legal proceedings between these parties, it has been necessary for me to devote a large amount of time to considering if, how and to what extent these relate to the case in hand.

THE EVIDENCE

13. Before my summary of the evidence of relevance to this case, I make the following general observations:

(a) A large amount of the evidence filed by both parties comprises the texts of decisions from the long running litigation history between them which has included various actions for revocation, invalidation and opposition, and a number of related appeals. Actions have occurred in the UK registry and at OHIM and a list of these actions and appeals (that I am aware of) are appended to this decision. I propose to take note of the decisions referred to in the evidence in so far as I find them relevant to confirm the actual use that has been proven for the various trade marks consisting of or containing the marks OMEGA and Ω OMEGA.

(b) Much of the evidence filed by both parties also includes large extracts reproduced from various witness statements filed as evidence in the numerous actions between these parties and referred to above. I take note of this evidence only in so far as it provides information that is useful for deciding the issues raised in these proceedings.

14. As a consequence, I do not propose to provide a detailed analysis of the evidence filed by both sides in this case. I refer only to those parts of it which I found relevant to deciding the issues raised at the hearing and which I have referred to below in my summary of the pleadings and the outstanding issues to be decided.

EVIDENCE IN CHIEF - OPPONENT

Witness Statement of Sofia Arenal

15. Ms Arenal is a partner at Mewburn Ellis LLP where she has worked in the trade marks department since 1996. She is responsible for all work concerning Swiss, i.e. OMEGA SA.

16. Much of the material attached as exhibits to Ms Arenal statement are copies of various decisions and exhibits for earlier litigation between Swiss and Engineering. These have been provided so that the proven use and scope of the registrations concerned can be noted. Ms Arenal confirms that the opposition in respect of class 14 based on Swiss registration 699058 and

registration 723200 is based on the use proven and scope of the registration still to be confirmed following appeal to the appointed person, Prof Ruth Annand. As noted below, both parties have accepted these decisions.

17. I note that Ms Arenal provides a number of items from the OMEGAMETER opposition which was decided before the UK registry (Decision BL O/013/02, Mr Michael Reynolds) including a copy of the decision (see Exhibit SA3), a copy of the witness statement of Mr Peter Stierli (see Exhibit SA1) submitted as part of those earlier proceedings and 11 associated exhibits. I take note of the summary of evidence and the conclusion reached by my hearing officer colleague. I note that this summary of evidence refers to use of various OMEGA and Ω OMEGA marks and that it covers the use of these marks up to 1999 which is the year prior to the filing date of the application in suit including. In particular, I note what it has to say in relation to trade mark registrations UK 699057 and UK 1456848.

18. Ms Arenal acknowledges the existence of the agreement between Swiss and Engineering referred to by Engineering in their counterstatement (see paragraph 2 of the counter-statement from Engineering). Attached as Exhibit SA4 is a copy of Patent Court decision by Pumfrey J (as he then was) in *Omega SA v Omega Engineering Ltd*, [2002] EWHC 2620 (Ch) which was an appeal of the above mentioned OMEGAMETER decision in which the nature and coverage of the 1994 agreement between Swiss and Engineering was considered by the judge. Ms Arenal states that "the opponents do not accept that they are estopped from bringing these opposition proceedings nor do they agree with the interpretation of Justice Pumfrey's judgement set out by the applicant in the counterstatement" and that this is an issue to be determined at the present hearing.

First Witness Statement of Stuart Ritchie Nield

19. Mr Nield is a member of the trade marks department at Mewburn Ellis LLP where he has worked since 2003. He is authorised to make his statement on behalf of Swiss based on his own knowledge and from papers supplied by Swiss.

20. The exhibits to this statement include decisions issued by the Registrar regarding UK trade mark registration nos. 474165, 699057, 1456848, 1456850, 1477193 which are all held by Swiss. I note in particular the decisions in relation to UK 699057 (see Exhibit SRN4) and UK 1456848 (see Exhibit SRN3) which are relevant to the current proceedings

Second Witness Statement of Stuart Ritchie Nield

21. The exhibits to this statement include decisions issued by the Appointed Person, Professor Ruth Annand, on UK registrations 723200 and 699058. However, as mentioned below, the opponent does not rely on these trade marks as the basis for the opposition.

Third Witness Statement of Stuart Ritchie Nield

22. In this witness statement, Mr Nield refers to the current specifications for UK registrations 474165, 699057, 1456848 and 1477193 held by Swiss. He states that Swiss enjoys goodwill and

reputation in relation to these goods covered by these registrations. I note, in particular, the current specifications for trade mark registrations UK 699057 and UK 1456848 referred to in paragraph 8 of this witness statement.

23. In paragraph 6 of his third statement, Mr Nield refers to the decision on UK registration 1557184 for the mark OMEGA in the name of Engineering (see decision BL O/211/04, Mr D Landau) which was found to be invalid in relation to "*period timers (all for industrial and/or scientific purposes)"*. The Hearing Officer in that decision held that Swiss enjoyed a goodwill and reputation in relation to timing equipment and watches which was not altered when the decision was appealed to the Appointed Person (see Decision BL O/227/05).

24. Amongst the exhibits included with this witness statement were Exhibit SRN10 which comprises a collection of a large number of advertisements and press clippings referring to the trade marks containing or consisting of OMEGA and/or Ω OMEGA. These cover the period 1976 to 1988 and 1989 to 1994. I note that the latest clippings in this file are 6 years before the application date for the current registration. I do not find these of great assistance other than to confirm that marks OMEGA and Ω OMEGA are well established in relation to measurement and display of time including at sporting events.

EVIDENCE IN CHIEF - APPLICANT

Witness Statement of David J Crouch

25. Mr Crouch is a registered trade mark attorney with Bromhead Johnson who represent the applicant Engineering in these proceedings. Mr Crouch has acted for Engineering since 1993 both in the UK and in Europe.

26. Engineering manufactures and sells a wide range of equipment for use in the industrial and scientific fields throughout the European Union. Much of this can be characterised as equipment for the measurement and control of production and manufacturing processes, for example oil refineries, food processing factories.

27. Mr Crouch attached, as exhibit DJC1, a copy of the agreement entered into by Swiss and Engineering in August 2002. This is a copy of the agreement between applicant and the opponent in these proceedings which Engineering refers to in their counterstatement as the basis for their claim that Swiss are estopped from objecting to the current registration. The text of this agreement is discussed in more detail below in this decision. (While I was able to read this exhibit I have not been able to reproduce a copy of it for inclusion in this decision as the quality of the exhibit is poor).

28. Exhibits DJC2 and DJC3 comprise a number of materials from proceedings that took place in the USA which involved Swiss and Engineering. Exhibit DJC2 comprises a witness statement from Mr Peter W Peterson, a US attorney acting for Engineering in proceedings against Swiss in the US. Mr Peterson conducted a pre-trial discovery deposition in the USA with Ms Christiane Sauser-Rupp an employee of Swiss regarding the types of goods sold by her company as part of

proceedings in the USA and exhibit DJC1 comprises extracts from the transcript of the answers Ms Sauser-Rupp gave to the questions Mr Petersen asked regarding the relationships between the various companies in the Swiss family of companies and also regarding the type of business and products and services provided by those companies and by Engineering. Exhibit DJC3 comprises a further witness statement from Mr Peterson and continues with associated exhibits PWP2-PWP16 which provide additional extracts from the transcript of Ms Sauser-Rupp deposition.

29. This transcript was taken as part of proceedings in another jurisdiction and as such only has limited value in the context of the present proceedings. Having considered this evidence briefly I do not think that my decision will turn on any of the matters contained within it. I am satisfied to take account of it only to confirm matters raised elsewhere. For example, I note that in exhibits PWP5-7, Ms Sauser-Rupp discusses the relationships between the various companies in the Swiss group of companies, the opponent, in the UK, USA and internationally and it also confirms that OMEGA SA is the holder of the various OMEGA and Ω OMEGA trade mark (see PWP10).

30. I note from these 2 exhibits that Ms Sauser-Rupp also:

(a) confirms that Swiss does not sell independent timers but rather devices that include timers for example for use in sporting events or passenger transport terminals (see Exhibits PWP12 & PWP14);
(b) stated that Omega Electronics sells, under license from Omega, products for timing of sports events, passenger time information displays, sports stadium and leisure centre screen displays (see paras 8 and 9 in Exhibit DJC-3 and Exhibits PWP10, PWP12 & PWP14);
(c) confirmed that Swiss has acted as an official timekeeper for some large sporting events, e.g. the Olympics;
(d) confirmed that the timing devices sold by Swiss are not for use in science & industry (see para 9 in Exhibit DJC-3 and associated Exhibit PWP12);
(e) indicated that the various goods such as chocolate and golf equipment sold bearing the OMEGA marks were promotional items in relation to the main OMEGA business selling watches, chronographs and horological instruments (see Exhibit PWP11); and
(f) confirmed that Swiss is prevented from selling computer controlled timing devices because of agreements made between Swiss and Engineering in 1992 and 1994.

THE PLEADINGS

31. In response to my letter of 18 April 2007, at the hearing Ms Arenal confirmed that the opponent was not maintaining the grounds of opposition under 5(1) or 5(2)(a) of the Act in relation to identical trade marks.

32. At the hearing, Ms Arenal accepted that this case is principally concerned with the grounds under 5(2)(b). If she is not successful in relation to these ground she is unlikely to be successful in relation to the grounds under 5(3) and 5(4)(a).

33. Both parties confirmed at the hearing that they accepted the use of trade marks 699058 and 723200 as decided by Professor Annand, sitting as the Appointed Person, following appeal of the relevant revocation actions. However, Ms Arenal no longer considered these two registration to be among the closest relevant marks for opposition purposes (see below).

Opposed Goods and Services

34. In her written submission, Ms Arenal summarised what goods in the specification applied for by Engineering were being opposed by Swiss following the various rounds of correspondence. In relation to this, at the hearing Mr Crouch accepted the offer from Ms Arenal that they would not maintain their opposition to some of the goods listed in class 9 if the specification was amended to exclude use of these goods in relation to time. Both parties agreed that these goods in class 9 should now read:

> "*measuring and display apparatus for use in the laboratory or in industrial plant or for scientific or industrial purposes, none relating to time*" (emphasis provided by me)

35. Following this agreement, the goods being opposed by Swiss in classes 9, 37 and 40 are limited to the following:

(a) in Class 9:
apparatus for checking and measuring distance; apparatus for acquiring, transmitting, managing and distributing information and data; computer controlled apparatus for checking and controlling the measurement of distance;…… all for science and/or industry.

(b) in Class 37:
Technical consultation services; instrument testing and technical support services, namely troubleshooting of instrument problems in person and via fax, computer and telephone; instrument calibration, field services, maintenance contracts, equipment installation and testing; customer training; system upgrades; telephone and on technical support and assistance; instrument maintenance;……all being for science and/or industry.

(c) in Class 40
engineering design services for others in the field of measurement and control;……all the afore going services for science and/or industry

36. At the hearing, Ms Arenal also stated that given that the objection to the registration of the mark for goods in class 14 had been dropped and that to some of the goods in class 9 had also been dropped, she considered that the closest relevant marks to the remaining opposed goods and services were the following four marks held by Swiss (referred to hereafter as the Swiss OMEGA marks) and registered for the goods and services indicated below:

Mark	Registration	Filing Date	Class	Specification
Ω OMEGA	UK 2052200	15 January 1996	9	Electrical and electronic apparatus and instruments for collecting, processing, assessing and transmitting time-related data; public information display systems; computers and computer software for use in connection with time measuring and recording and with public display systems; parts and fittings for the aforesaid goods; but not including any such goods intended for scientific, educational or industrial applications and not including any such goods for photographic lighting purposes or telephone apparatus and not including computer programs for monitoring and managing computer systems performance and utilisation and not including computer programs for optimising mathematical expressions, for predictive or descriptive modelling; and not including computer software for processing seismic data and related instruction manuals, for use in services to the oil and gas industries relating to exploration, evaluation and monitoring of oil and gas formations and seismic data processing services.
	UK 699057	15 June 1951	9	Measuring and signalling apparatus and instruments, all for use in sport; but not including calculating machines nor instruments and apparatus for measuring, signalling and checking (supervision) of heat and temperature for scientific and industrial use.
Ω OMEGA	UK 1456848	27 February 1991	37	Maintenance and repair of measuring, checking, optical and signalling apparatus and instruments, all the goods being maintained and repaired being for use in sport; maintenance and repair of horological and chronometric instruments and of public information display apparatus and instruments; information services relating to all the aforesaid; all included in Class 37; but not including maintenance and repair of heat and temperature measuring, checking and signalling apparatus and instruments, all for scientific and industrial use.
OMEGA	CTM 226027	15 April 1996	9	Clocking device installations, installations for checking, measuring time and distance, used for sporting activities; installations for acquisition, transmission, management and dissemination of information, used in

				particular for transport, advertising and banking services; data acquisition peripheral devices, data transmission equipment, equipment for signalling and displaying data, in particular for sporting activities and transport, advertising and banking services; but none of the aforesaid goods being for apparatus used in industry and/or science for measuring and controlling variable parameters such as temperature, pressure, force, load, vibrations, electrical conductivity, liquid levels, acidity, humidity, deformation and flow.
			37	Clock and watch repairs.
			42	Creation of designs and models ; research and development in the field of measuring and checking time and distance, management and dissemination of information, in particular for use in transport, advertising, banking and sport; computer programming used in clocking device installations, installations for checking, measuring time and distance and in installations for acquisition, transmission, management and dissemination of information; all the aforesaid services relating in particular to transport, advertising and banking and sporting activities ; but none of the aforesaid goods being applied to science and industry and relating to measuring and controlling variable parameters such as temperature, pressure, force, load, vibrations, electrical conductivity, liquid levels, acidity, humidity, deformation and flow.

37. As Ms Arenal indicated at the hearing, and I agree, the most relevant grounds for the opposition are those under section 5(2)(b) of the Act. I do not consider that the grounds under sections 5(3) or 5(4)(a) add anything. Success under either of these latter grounds is unlikely if success can not be achieved under s5(2)(b).

Estoppel

38. There was significant discussion during the evidence rounds and at the hearing in relation to the 1994 agreement between the parties and whether or not the existence of this agreement estopped the opponent from seeking to prevent Engineering from obtaining the applied for trade mark. I propose to consider first the grounds under section 5(2)(b) to determine if the mark in suite is likely to result in confusion. I will then consider the 1994 agreement between the parties to determine if this would result in a different decision.

THE LAW

Section 5(2)(b) of the Act - Likelihood of confusion

39. According to section 5(2)(b) of the Act a trade mark shall not be registered if because:

> "it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

40. Section 6(1)(a) of the Act defines an earlier trade mark as:

> "a registered trade mark, international trade mark (UK), Community trade mark or International trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks"

41. UK registrations 2052200, 699057, 1456848 and CTM 226027 all constitute earlier marks under Section 6(1)(a) for the purposes of Section5(2)(b).

Relevant Authorities

42. In determining the question under section 5(2)(b) of the Act, I take into account the guidance provided by the European Court of Justice (ECJ) in:

(i) *Sabel BV v Puma AG* [1998] RPC 199;

(ii) *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117;

(iii)*Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* [2000] FSR 77;

(iv)*Marca Mode CV v Adidas AG and Adidas Benelux BV* [2000] ETMR 723;

and

(v) *Vedial SA v Office for the Harmonization of the Internal Market (marks, designs and models) (OHIM)* (case C-106/03 P) [2005] ETMR 23.

43. It is not required that actual confusion results between the marks in order for an opposition under Section 5(2)(b) to succeed. The test is the likelihood of confusion. In essence the test under section 5(2)(b) is whether there are similarities in marks and goods which would combine to create a likelihood of confusion in the mind of a consumer. In my consideration of whether there are similarities sufficient to show a likelihood of confusion I am guided by the judgments of

the European Court of Justice mentioned above. The likelihood of confusion must be appreciated globally and I need to address the degree of visual, aural and conceptual similarity between the marks, evaluating the importance to be attached to those different elements taking into account the degree of similarity in the goods, the category of goods in question and how they are marketed. Furthermore, I must compare the applicant's mark and the mark relied upon by the opponent on the basis of their inherent characteristics assuming normal and fair use of the marks on a full range of the goods covered within the respective specifications.

44. The effect of reputation on the global consideration of a likelihood of confusion under Section 5(2)(b) of the Act was considered by David Kitchen Q.C. sitting as the Appointed Person in *Steelco Trade Mark* (BL O/268/04). Mr Kitchen concluded at paragraph 17 of his decision:

> "The global assessment of the likelihood of confusion must therefore be based on all the circumstances. These include an assessment of the distinctive character of the earlier mark. When the mark has been used on a significant scale that distinctiveness will depend upon a combination of its inherent nature and its factual distinctiveness. I do not detect in the principles established by the European Court of Justice any intention to limit the assessment of distinctiveness acquired through use to those marks which have become household names. Accordingly, I believe the observations of Mr. Thorley Q.C. in *DUONEBS* should not be seen as of general application irrespective of the circumstances of the case. The recognition of the earlier trade mark in the market is one of the factors which must be taken into account in making the overall global assessment of the likelihood of confusion. As observed recently by Jacob L.J. in *Reed Executive & Ors v. Reed Business Information Ltd & Ors*, EWCA Civ 159, this may be particularly important in the case of marks which contain an element descriptive of the goods or services for which they have been registered. In the case of marks which are descriptive, the average consumer will expect others to use similar descriptive marks and thus be alert for details which would differentiate one mark from another. Where a mark has become more distinctive through use then this may cease to be such an important consideration. But all must depend upon the circumstances of each individual case."

Thus, I must consider whether the mark that the opponent is relying upon has a particularly distinctive character either arising from the inherent characteristics of the mark or because of the use made of it.

Proof of Use

45. As UK trade mark registrations 699057 and 1456848 have been registered for a period of more than 5 years prior to publication of the applied for mark, it is necessary for the opponent Swiss to prove what use has been made of these marks in relation to the goods for which they were registered. UK 699057 concerns goods in class 9 while UK 1456848 concerns services in class 37.

46. UK trade mark registration 2052200, which was applied for on 15 January 1996, completed its registration procedure on 6 May 2005 following opposition from Engineering. CTM 226027 is the subject of opposition proceedings at OHIM, also by Engineering, in relation to goods in

class 9 which are still on-going. As a consequence, the applicant is not yet required to prove use of these marks in relation to the goods registered.

47. In determining whether the opponent has shown genuine use of these earlier marks, I am guided by the principles laid down in *Ansul* (Case C40/01, *Ansul BV v Ajax Brandbeveiliging BV*, [2003] R.P.C. 40) and *Laboratoire de la Mer* (Case C259/02, *LaMer Technology Inc. v Laboratoires Geomar SA*, [2004] F.S.R. 38).

THE DECISION

48. I would first like to consider the relationship between the measurement of time and that of distance which appears to be central to the issue under dispute between these parties.

49. In everyday life, we use time as a way to decide two things, firstly, when is it the time to do something and secondly, how long has it taken to complete a task. In the first case, it may, for example, be the time to go to school or to work or to take some medicine. In the second case, it may be, for example, to know if we are improving at a particular task, such as how long it is taking us to complete a task such as an exercise routine or a journey. The first case is an example where the accurate measurement of a specific time is important whereas the second case is more one where the measurement of a time period, i.e. the time that has elapsed, is important.

50. The measurement of distance involves measuring what is the separation between two points. These two points represent the staring point and the finishing point and the separation between them may be a straight line, the so-called 'as the crow flies' distance or it may be the distance between two points obtained by following a particular path, for example, a road, a cross-country trail. Various units are available for measuring distance and their choice very much depends on scale, the distance may be a small one measured in inches or centimetres or it may be a long one measured in kilometres or miles. Measuring distance can involve the use of a ruler or a tape measure or a device such as a pedometer which counts the number of steps taken. Increasingly, optical based tools are used based on lasers which measure distance on the basis of the time taken for the light signal to travel and return from an object. Such tools are used, for example, by estate agents when measuring room dimensions.

51. Once, a specific distance has been measured and is known, often what is of interest then is to measure the time taken to complete this distance. This is the basis of most sporting events, the time taken to race 100 metres in a sprint or to run (just over) 26 miles in a marathon. In this situation, measuring the time taken to travel this fixed distance is important. It needs to be done accurately if two or more competitors are close together and a ranking must be produced, for example, as in sports events such as sprinting or swimming. In this situation measuring the distance is only relevant to set things up - when the distance is measured and marked on the first occasion it is done so accurately, but once this has taken place, it does not need to be measured every time someone or something travels this distance, instead what is measured is the time taken to achieve the journey. This is the basis for sporting events and is also the basis of transport timetables. In such timetables, e.g., for buses and trains, the time taken to journey between two places, such as towns or cities, is being measured. In these situations, what one is concerned

with is being able to measure time accurately and consistently because what is important is the time taken to achieve something.

52. Time also provides a means which can be used to compare how one process or event or activity is progressing in relation to those that have taken place before or will take place in the future. If one observes how something is progressing as fixed intervals of time are passing, then this can be used to compare this thing with situations that that have occurred in the past and also provide a means by which the same thing can be compared in the future. If one is trying to find out about how a particular process or material compares to another, one could observe what changes have taken place after a period of time has passed. If some property of this process or material is measured and found to be the same or very similar than one is able to conclude that the process or material is behaving in the same way as before, as is expected. If the result shows a difference between the two, then one has a warning that something different may be taking place and that some form of action may be required.

53. This, in my view, explains the relationship between the different types of activities carried out by Swiss and Engineering. Swiss is concerned with measuring the time taken to do something accurately and the result is always being displayed as a time. For example, the time that a train departs or the times that a series of runners have taken to complete a fixed distance. This has been the origin of their business and the basis on which they have become known, for example, through providing time measuring equipment for sporting events such as the Olympics. On the other hand, the main purpose of the business carried out by Engineering is to be able to measure and compare the properties of different materials, processes etc. so that the person doing the measuring can understand if things are working correctly or not. Determining the precise time is not key in the same way for Engineering as it is for Swiss but it needs to be measured accurately as part of the overall process. The equipment sold by Engineering will have to be able to measure time as part of its functioning even if it does not report or display it.

54. However, it is clear that in a sporting event, in order to measure the time taken to complete the distance, one has to measure the time that everyone started, the time that they finished and deduct one from the other to determine how long this took and achieve a ranking of the participants. This is measurement of a time period. The equipment used to measure such a time period will not differ fundamentally in any way from the equipment that would be used in a control room of an industrial plant to determine the time period between measurements of various process characteristics. Equipment sold for the former purpose could be expected to be used or likely to be used for the latter purpose. I do not consider it likely that one would expect the equipment for measuring and displaying time for activities such as sporting events or for passenger terminal displays to be very different from that used for measuring and displaying time for laboratory, scientific or industrial processes. In the context of scientific and industrial activities carried out by Engineering, it may also be necessary to measure exactly the time when a specific event occurs such as when a process was first observed to change significantly or unexpectedly. Thus in both areas of activity carried out by Engineering and Swiss situations will arise where the measurement of the specific time and the elapsed time period is needed. For this reason, I find that it is hard to distinguish the measurement of time on the basis of the use to which the measurement is being put, for example, in sport or in industry.

Reputation

55. Reputation of a mark is based on its distinctiveness and its use. Turning first to assess the distinctiveness of the earlier marks, all of which comprise the word OMEGA. This word which denotes the last letter in the Greek alphabet has a high degree of inherent distinctiveness as it is not descriptive and it does not relate o a characteristic of the goods for which it is registered in classes 9, 37 or 42. The device element, Ω, used in three of the earlier marks, is the symbol for the greek letter omega, and is also is used to indicate the unit of electrical resistance, the Ohm, and would be familiar in the general scientific and technical field. Thus it bears some relation to the goods for which it is registered in classes 9 and 42 which all involve the use of electricity. However, I consider that these earlier trade marks will be referred to as OMEGA marks and that the word element will be the dominant and distinctive element of the mark.

56. From the evidence filed by Ms Arenal, it is clear that at the date of the application 20 March 2000, that the OMEGA mark had a established a reputation in relation to sophisticated timing devices for sporting events and for watches including ladies and gents watches, diving watches, chronographs. This is the same conclusion reached by the Hearing Officer on the basis of very similar evidence in the OMEGAMETER decision (BL O/013/02, Mr M Reynolds). I find nothing in the additional evidence provided by Ms Arenal in the present proceedings which covers the period between that date of application in that decision (18 October 1998) and this one (20 March 2000) that would bring me to a different conclusion.

57. While it may not be so well established as that in relation to timing devices and watches referred to above, I am also satisfied that Swiss has a reputation in relation to time display apparatus for passenger transport terminals.

Comparison of the Marks

58. The applied for mark is OMEGA.CO.UK. A person seeing this mark will quickly recognise that it comprises the word OMEGA as the first part in addition to the common .CO.UK suffix which is used to indicate an internet address. It is well established that this suffix does not bestow any distinctiveness on a trade mark, it merely indicates use on the internet. Thus the distinctive and dominant element of the applied for mark lies in the word OMEGA.

59. The Swiss OMEGA marks, the four most relevant trade marks identified by the opponent (see above), all comprise the word OMEGA. In addition, the three UK marks also include the device element Ω which is the symbol for the greek letter, OMEGA. Thus from a visual point of view and also from an aural point of view use of this device element or symbol reinforces the distinctive word element in each of the three UK trade marks.

60. The distinctive element of the applied for mark is identical to the Swiss OMEGA marks in terms of how it is spelt, how it is said and how it is understood. Thus there is a very high degree of similarity between OMEGA the distinctive element of the applied for mark, OMEGA.CO.UK, and the four registered OMEGA trade marks held by Swiss.

Comparison of the Goods & Services

61. I will examine the goods and services in each class separately.

Goods applied for in Class 9

62. Engineering is seeking registration for the various goods in class 9 as shown below. For comparison purposes, I have indicated the relevant goods in class 9 and services in classes 37 and 42 from UK registrations 699507, 1456848, and 2052200 and CTM 226027 held by Swiss.

63. In considering these registrations and the applied for mark, I have to consider what is fair and notional use taking account of factors such as the relevant public and how the goods and services are made available.

Registered Marks	**Applied for Mark**
Class 9	
UK 2052200	**UK 2226666**
Electrical and electronic apparatus and instruments for collecting, processing, assessing and transmitting time-related data; public information display systems; computers and computer software for use in connection with time measuring and recording and with public display systems; parts and fittings for the aforesaid goods; but not including any such goods intended for scientific, educational or industrial applications and not including any such goods for photographic lighting purposes or telephone apparatus and not including computer programs for monitoring and managing computer systems performance and utilisation and not including computer programs for optimising mathematical expressions, for predictive or descriptive modelling; and not including computer software for processing seismic data and related instruction manuals, for use in services to the oil and gas industries relating to exploration, evaluation and monitoring of oil and gas formations and seismic data processing services.	*apparatus for checking and measuring distance;* *computer controlled apparatus for checking and controlling the measurement of distance;* *apparatus for acquiring, transmitting, managing and distributing information and data;* *all for science and/or industry.*
CTM 226027	
Clocking device installations, installations for checking, measuring time and distance, used for sporting activities ; installations for acquisition, transmission, management and dissemination of information, used in particular for transport, advertising and banking services ; data acquisition peripheral devices, data transmission equipment, equipment for signalling and displaying data, in particular for sporting activities and transport, advertising and banking services ; but none of the aforesaid goods being for apparatus used in industry and/or science for measuring and controlling variable parameters such as temperature, pressure, force, load, vibrations, electrical conductivity, liquid levels, acidity, humidity, deformation and flow.	
UK 699057	
Measuring and signalling apparatus and instruments, all for	

use in sport; but not including calculating machines nor instruments and apparatus for measuring, signalling and checking (supervision) of heat and temperature for scientific and industrial use.	
Class 42	
CTM 226027	
Creation of designs and models ; research and development in the field of measuring and checking time and distance, management and dissemination of information, in particular for use in transport, advertising, banking and sport ; computer programming used in clocking device installations, installations for checking, measuring time and distance and in installations for acquisition, transmission, management and dissemination of information ; all the aforesaid services relating in particular to transport, advertising and banking and sporting activities ; but none of the aforesaid goods being applied to science and industry and relating to measuring and controlling variable parameters such as temperature, pressure, force, load, vibrations, electrical conductivity, liquid levels, acidity, humidity, deformation and flow	

64. The registration applied for refers to '*apparatus for acquiring, transmitting, managing and distributing information and data*' which is subject to the overall qualification '*all for science and/or industry*'. The term '*information and data'* is not further qualified and I consider that this term would include information and data concerning time as well as any one of a number of other parameters that might be of interest to a user such as temperature, pressure and electrical conductivity.

65. The goods for which UK 2052200 is registered in class 9 include '*electrical and electronic apparatus and installations for measuring time-related data*'. The goods for which CTM 226027 is registered in class 9 include '*installations for acquisition, transmission, management and dissemination of information, used in particular for transport, advertising and banking services'* Clearly both of these are very similar to *apparatus for acquiring, transmitting, managing and distributing information and data* for which Engineering is seeking registration.

66. Engineering argued at the hearing that the qualification placed on its registration '*all for science and/or industry'* is sufficent to distinguish it from the registrations held by Swiss. However, I do not consider that this works in relation to apparatus for acquiring, transmitting, managing and distributing information and data on time. As I discussed above in some detail, I consider that measurement of time is the centre of gravity of Swiss's business and that despite the qualification given in relation to the end use of the goods, this is not sufficient to cause a distinction in the minds of the user and so avoid a likelihood of confusion.

67. I am supported in my view in the conclusion drawn by (the late) Pumfrey J (as he then was) in *Omega SA v Omega Engineering Ltd*, [2002] EWHC 2620 (Ch) (already referred to above), who concluded that "*time measuring apparatus, regardless of its intended application, obviously directly reflects the centre of gravity of SA's business*". I am also supported by the conclusion drawn by the Appointed Person, Prof Ruth Annand, in the appeal, already referred to (see BL

O/227/05), of decision O/211/04 (OMEGA mark, Mr D Landau) where it was found that Engineering's effort to register "*period timers … all for industrial and/or scientific purposes*" would be contrary to section 5(2)(b) in relation to UK registration 699057 (the original registration of which had been partially revoked to the current specification in class 9 listed above).

68. In the course of these proceedings, I note that Engineering chose not to qualify this part of the specification in any way, for example, by excluding use in relation to time. This was an option open to them that was pursued in relation to other parts of the specification (see above).

69. Turning to the other goods in class 9 for which registration is sought, these refer specifically to the measurement and checking of distance in the context of scientific or industrial use. The closest relevant marks are CTM 226027 and UK 699057. CTM 226067 is registered for goods in class 9 for *"installations for checking, measuring time and distance, used for sporting activities"* and is also registered for services in class 42 for *"research and development in the field of measuring and checking time and distance, management and dissemination of information, in particular for use in transport, advertising, banking and sport."* UK 699057 is registered for goods in class 9 for "*measuring and signalling apparatus and instruments, all for use in sport; but not including calculating machines nor instruments and apparatus for measuring, signalling and checking (supervision) of heat and temperature for scientific and industrial use"*

70. I do not consider that the situation in relation to the measurement of distance is so clear-cut as it is in relation to the measurement of time. It is clear from the registrations held by Swiss that they refer to the measurement of distance but that this is qualified. UK 699057 is confined to use in sport and CTM 226027 refers to use in particular for sport, banking, advertising and transport. Engineering has confined their use to scientific or industrial use.

71. I cannot find in the evidence submitted by the opponent anything that shows measurement of distance as an essential part of their business. While I accept that distance is involved in Swiss's activities to the extent that it has to measure the time taken to complete a specific distance, I do not consider that that is the same as having equipment to measure distance. Swiss is well known for providing goods and services for the measurement and display of time and that, in the field of sport, these goods and services can be quite complex involving optical equipment such as cameras to determine who has finished first, signalling equipment to determine when someone has crossed a start or finish line or made a false start, and computer equipment to calculate and display rankings, previous timings, and various other information to do with the event and competitors taking part. However, these are all related to measurement of time. The measurement of distance is not an essential part of this and is not required in all instances. Indeed, in sporting events such as swimming, the distance is already fixed by the physical size and length of the pool and there is no need to make a measurement of the distance when measuring the time taken to complete the event distance. Thus in this context I consider that the measurement of time and that of distance are distinct.

72. While I am satisfied that time is not a variable parameter in the way that pressure, electrical conductivity or the other parameters mentioned by Engineering in the 1994 agreement are (see below), I do not consider that distance can be considered in the same way as time. This is in

effect what Ms Arenal and the opponent are inviting me to do. The late Pumfrey J [as he then was, in *Omega SA v Omega Engineering Ltd*, [2002] EWHC 2620 (Ch), already referred to] characterised the difference between such parameters and time in the following way:

> "….If apparatus of any kind for measurement of time or of elapsed time is to be covered by the prohibition of clause 4(c), it must be as an unidentified variable parameter such as "pressure, force, load, vibration, conductivity, liquid level, acidity, humidity, strain and flow."
>
> What is immediately apparent is that these are all quantities which are measured by transducer. They are quantities which can be measured and controlled in response to their measured value. Time, on the other hand, although a parameter that varies, in the sense that it passes, is not such a quantity. Periods of time can, of course, be pre-set and, to that extent, familiar to anyone with an egg timer, time is a variable parameter. But it is not measured in the sense that the listed quantities are measured."

73. At the hearing Mr Crouch referred to liquid level as an example of a distance and referred to the level of fluid in a tank, and to distance as a height. This is true in so far as it goes, in that, for example, the distance between the top and the bottom of a tank containing liquid can be measured and used to control events. Ms Arenal countered by stating that she considered liquid level to be more like pressure. I do not agree as I consider that liquid level and pressure are different types of variable parameter.

74. I consider that the test to be applied is that referred to above in the *Omega* decision by Pumfrey J. Is distance (or any other parameter being considered) a parameter that is 'measured by transducer'? If it is then it is a different type of parameter to time. Time is not a parameter or 'a quantity', in the judge's words, that can be measured and controlled in response to the value obtained, but I consider that distance is.

75. Mr Crouch referred to distance as an attribute of physical things. I do not see the relevance of this. Physical things can be measured and their dimensions of height, width and depth measured. Physical things have a distance only in relation to how far they have travelled from a starting point which is an attribute of how we measure distance and not of the physical thing itself. One could measure the change in dimensions of a physical entity as a way to measure or control what is happening to the size, say, of some food product.

76. Taking account of the relevant users for the registered and applied for goods and their respective uses, I consider that it is possible to distinguish between those goods and services for measurement of distance in the field of sport and those in the field of science and industry. Also, the measurement of distance is not at the centre of gravity of Swiss's business and the reputation that Swiss has established in relation to the measurement of time does not in my view extend into the area of the measurement of distance.

Services applied for in Class 37

77. The services in class 37 for which Engineering are seeking registration are shown below. The closest relevant registration in class 37 held by Swiss is UK 1456848 which is also shown below

Registered	**Applied for**
UK 1456848	**UK 2226666**
Maintenance and repair of measuring, checking, optical and signalling apparatus and instruments, all the goods being maintained and repaired being for use in sport; maintenance and repair of horological and chronometric instruments and of public information display apparatus and instruments; information services relating to all the aforesaid; all included in Class 37; but not including maintenance and repair of heat and temperature measuring, checking and signalling apparatus and instruments, all for scientific and industrial use	*Technical consultation services; instrument testing and technical support services, namely troubleshooting of instrument problems in person and via fax, computer and telephone; instrument calibration, field services, maintenance contracts, equipment installation and testing; customer training; system upgrades; telephone and on technical support and assistance; instrument maintenance; all being for science and/or industry.*

78. I am satisfied from the evidence filled by Ms Arenal that Swiss has shown use of this mark in relation to the goods registered. Indeed this registration was arrived at following a revocation action by Engineering which considered what use had been made of this mark (see Registry Decision BL O/026/03, Mr D Landau).

79. I consider that the registration sought by Engineering in class 37 is broad enough to include the services in this class covered by UK registration 1456848. The maintenance and repair of measuring, checking, optical and signalling apparatus and instruments that are used in sport or large public information display apparatus and instruments or horological and chronometric instruments has to be considered as a technical service. Such a service may involve calibrating and testing instruments such as those that measure time or those that record photo-finishes or sensors as well as involve consultation, training, testing, providing technical support and problem solving services. Although the term '*information services relating to all the aforesaid*' may not be as precise as one would like, I am satisfied that it relates to information on how to maintain and repair the aforesaid equipment and so would include, for example, the use of a computer or fax or phone to obtain technical support. This was the conclusion reached by the hearing officer in Registry decision BL O/026/03 (referred to above) and I see no reason to come to a different conclusion in this instance.

80. There was some discussion on this point at the hearing with Mr Crouch asserting that the exclusions in the registered mark meant that the specification did not cover any scientific or industrial use. I think that he is reading too much into the exclusion. Taking the words as they are written with their normal meaning and taking account of the relevant users, I am satisfied that UK registration 1456848 does not cover the maintenance and repair of apparatus and instruments that measure, signal or check heat and temperature in scientific and industrial uses. The exclusion covers the parameters of heat and temperature only. Thus I consider that the exclusion

is more limited than that proposed by Mr Crouch. It does not exclude time or distance or other parameters. As a consequence, I consider that the registration sought in class 37 is broad enough to include services in relation to instruments that measure time.

81. I note that the registration sought by Engineering does limit all of the aforementioned services to all being for science and/or industry. As I have mentioned above in relation to class 9 goods, I consider that this exclusion does not work in relation to services for instruments that measure time as this is the centre of Swiss's business. I consider that the relevant public would be likely to conclude that a company offering such technical services in relation to equipment for measuring time would likely be the same company as that with a well known reputation for carrying out time measurement, i.e. Swiss.

82. The option to qualify the applied for specification in class 37 so that it did not refer to time was available to the applicant in the course of these proceedings. I note that Engineering chose to qualify other parts of the specification applied for by excluding use in relation to time (see above), but that they did not do so in relation to the services at issue here.

83. Thus I consider that in relation to the goods applied for in class 37, a consumer presented with these services being sold under the OMEGA.CO.UK mark by Engineering would be likely to be confused into thinking that these services were being provided by Swiss.

Services applied for in Class 42

84. The services in class 40 for which Engineering are seeking registration are shown below. The closest relevant registration held by Swiss is CTM 226027 for services in class 42 which is also shown below.

85. Registration CTM 226027 includes '*creation of designs and models*' and '*research and development in the field of measuring and checking time and distance*' I consider that these types of services would include those carried out for third parties (i.e. others) as well as those carried out by a company itself. This registration would include such services for use in the transport field, for example, the management of trains, lorries, providing timetable information but also the use of time to control signals such as traffic lights and so manage traffic flow. The general field of measurement and control for which registration is sought would include the measurement of time as this is an important parameter to determine when exercising control over a process or over a piece of equipment. Thus the services applied for do not fall within the exclusion referred to in registration CTM 226027 as they would cover more than just variable parameters such as those exemplified.

CTM 226027	**UK 2226666**
Registered in Class 42	**Applied for in Class 40**
Creation of designs and models ; research and development in the field of measuring and checking time and distance, management and dissemination of information, in particular for use in transport, advertising, banking and sport ; computer programming used in clocking device installations, installations for checking, measuring time and distance and in installations for acquisition, transmission, management and dissemination of information ; all the aforesaid services	*engineering design services for others in the field of measurement and control;.* *all the afore going services for science and/or industry*

relating in particular to transport, advertising and banking and sporting activities ; but none of the aforesaid goods being applied to science and industry and relating to measuring and controlling variable parameters such as temperature, pressure, force, load, vibrations, electrical conductivity, liquid levels, acidity, humidity, deformation and flow	

86. It is well established in the case law that in the mind of the consumer, a greater degree of similarity between the marks can 'compensate' for a lesser degree of similarity between the goods and services. In this case, the similarity between the marks is very high and I think that this will be likely to influence a customer aware of the services in class 42 sold under the OMEGA mark to conisder that services in class 40 under the OMEGA.CO.UK mark were likely to be provded by the same company.

87. Again I note that the option to qualify the applied for specification in class 42 so that it did not refer to time was available to the applicant. I note that Engineering chose to qualify other parts of the specification applied for by excluding use in relation to time (see above), but that they did not do so in relation to the services at issue here.

Conclusion

88. Taking account of all the above factors, the need for a global appreciation and bearing in mind the imperfect recollection of the consumer who will rarely if ever see both trade marks side by side, I am satisfied that a consumer, seeing the following goods in class 9:

apparatus for acquiring, transmitting, managing and distributing information and data; all for science and/or industry.

and the following services in class 37:

Technical consultation services; instrument testing and technical support services, namely troubleshooting of instrument problems in person and via fax, computer and telephone; instrument calibration, field services, maintenance contracts, equipment installation and testing; customer training; system upgrades; telephone and on technical support and assistance; instrument maintenance; all being for science and/or industry.

and in class 40**:**

engineering design services for others in the field of measurement and control;. all the afore going services for science and/or industry.

being marketed under the trademark OMEGA.CO.UK would be likely to confuse these with the registered trade mark OMEGA, registered for similar goods and services in classes 9, 37 and 42 under registrations UK 2052200, UK 1456848, UK 699057 and CTM 226057. Thus registration of trade mark application 2226666 in relation to these goods would be contrary to section 5(2)(b) of the Act.

89. However, I am satisfied that a consumer, seeing the following goods in class 9:

apparatus for checking and measuring distance; computer controlled apparatus for checking and controlling the measurement of distance; all for science and/or industry

being marketed under the trademark OMEGA.CO.UK would not be likely to confuse them with the registered trade mark OMEGA registered for goods in class 9 under registrations UK 2052200, UK 1456848, UK 699057 and CTM 226057. The opposition by Swiss in relation to the registration of trade mark application 2226666 in relation to these goods is as a consequence not successful**.**

ESTOPPEL

90. I now turn to consider if Swiss is estopped from objecting to Engineering's application for the trade mark in suit because of the existence of the 1994 agreement between both parties and to determine if this would bring me to a different conclusion to that reached above.

91. Engineering provided a copy of the 1994 agreement as Exhibit DJC1. Much discussion has taken place in the various proceedings between both these parties as to what is allowed and what is not by this 1994 agreement. I am also aware that this is not the only such agreement between the two sides, an earlier agreement in 1992 was referred to in Mr Crouch's witness statement and a number of such agreements were also referred to in the OMEGAMETER decision (UK Trade Mark Registry, BL O/013/02, Mr M Reynolds). Pumfrey J considered the 1994 agreement in some detail in his decision already referred to above and both sides referred to it in their written submissions and during the hearing.

92. David Kitchen QC, sitting as the Appointed Person, stated in decision BL O/236/05, which concerned whether or not revocation proceedings were in breach of a contractual agreement between two parties, that:

> "it is well established that the proper approach to contractual interpretation is to seek to ascertain the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation which they were in at the time of the contract."

Mr Kitchen then went on to review the three leading cases on delimitation agreements, ECJ Case 35/83 *BAT v EC Commission* [1985] ECR 363, and two cases from the UK Court of Appeal, *Apple Corp v Apple Computer* [1991] 3 CLMR and *World Wildlife Fund for Nature v World Wrestling Federation Entertainment* [2002] FSR 33. Taking account of these cases and the discussion by Mr Kitchen in relation to how such agreements should be construed, I am satisfied that the 1994 agreement between Swiss and Engineering was a legitimate settlement agreement entered into by both parties as a means to settle a genuine dispute and possible future disputes across various jurisdictions. In this regard I note in particular what Carnwarth LJ said in *World Wildlife Fund for Nature v World Wrestling Federation Entertainment* [2002] FSR 33 at paragraph 48:

"To summarise, where the claimant has been party to a settlement of a genuine dispute, designed to define the boundaries of his trading rights as against the defendant, he is entitled to expect that to be enforced. It is not for him to prove that it is reasonable. The presumption is that the restraints, having been agreed between the two parties most involved, represent a reasonable division of their interests. It is for the defendant, seeking to avoid the agreement, to show that there is something which justifies such a course because the dispute was "contrived" (as in the BAT case); or because there was no reasonable basis for the rights claimed (as, apparently, in Apple); or because it is otherwise contrary to the public interest, for example, going beyond the legitimate purpose of seeking to "avoid confusion or conflict" between the parties."

From this I conclude that the opponent, in this case, Swiss, has to show why their objection to the registration of the mark is justified, if the applicant Engineering has made an application consistent with the terms in the agreement.

93. Clause 4 of the 1994 agreement, which as Pumfrey J stated, is the crucial clause in relation to future disputes in other jurisdictions, reads as follows:

"Henceforth from the signing of this Agreement and effective in all countries of the World:--

(a) OMEGA ENGINEERING INCORPORATED undertakes not to use, register or apply to register any trade mark consisting of or containing the word OMEGA or the Greek letter Ω or any mark containing elements currently resembling either of those two elements in respect of computer controlled measuring, timing and display apparatus, unless intended for science and industry.

(b) OMEGA SA undertakes not to use, register or apply to register any trade mark consisting of or containing the word OMEGA, or the Greek letter Ω or any element colourably resembling either of those two elements, in respect of, "*Apparatus industrially and/or scientifically employed for measuring or controlling variable parameters such as temperature, pressure, force, load, vibration, electrical conductivity, liquid level, acidity, humidity, strain and flow*".

(c) Omega SA will not object to the use or registration by OMEGA ENGINEERING INCORPORATED of any trademark consisting of or containing the word OMEGA or the Greek letter Omega or any element colourably resembling either of these two elements in respect of apparatus industrially and/or scientifically employed for measuring or controlling variable parameters such as temperature, pressure, force, load, vibration, electrical conductivity, liquid level, acidity, humidity, strain and flow."

94. Mr Crouch in his submissions argued that under clause 4(c), Swiss (referred to as OMEGA SA in the agreement) is prevented from objecting to the application in suit. Engineering argues that distance is a variable parameter. It considers that liquid level is the same as distance. On the other hand, Ms Arenal and Swiss did not agree with this interpretation and considered that distance is not a variable parameter and that they are entitled to object to the specification sought by Engineering as it includes goods or services in relation to measurement and display of time.

95. Pumfrey J concluded in the above decision (emphasis added by me):

"I do not think that time is a variable parameter within the contemplation of clause 4(c). I am reinforced in this view by two considerations. First, clause 4(c) permits SA to oppose any mark applied for by Engineering in respect of apparatus otherwise of the kind specified which is not for use industrially or scientifically. A prohibition in respect of time measuring apparatus, regardless of its intended application, obviously directly reflects the centre of gravity of SA's business. Thus, on the construction which I consider appropriate, the centre of SA's business, which is concerned with time measurement, is surrounded by a penumbra of goods otherwise than for use in the industrial and scientific context. It is convenient at this point to refer to the second substantive argument advanced by the Respondents by way of cross-appeal.

It is said that the Hearing Officer erred in his assessment of similarity and of the likelihood of confusion by failing to take into account the provisions of clause 4(a) of the agreement. This, it is said, shows the parties were agreed as to what is not sufficiently similar to give rise to a likelihood of confusion.

For the reasons I have given, I reject this conclusion. Clause 4(a) gives SA the right to consider applications on a case by case basis. It does not oblige SA not to oppose. But, in any event, it seems to me that although I differ from him on the interpretation of the agreement, I would not have interfered with the Hearing Officer's assessment of the likelihood of confusion in fact. The decision of the Court of Appeal in *South Cone Inc v Jack Bessant*, CA [2002] EWHC 763 (Civ) of 28th May 2002 justifies me in interfering only in the circumstances identified in paragraphs 23 to 30 of the judgment of Lord Justice Robert Walker in that case. I am not satisfied that I should interfere, the more so since I have not been shown the great majority of the material before the Hearing Officer relating to the use of the mark by both parties. It follows that, in my judgment, the Hearing Officer should have required removal of the term "*periodic timers*" in its entirety from the specification of goods, once he had determined that it was objectionable under section 5(2)(b) in the absence of the agreement."

96. Thus, I am satisfied that Swiss is entitled to examine each registration applied for by Engineering and decide whether or not to oppose. They are not prevented from opposing the registration if the specification includes a reference to the measurement and display of time, even if this is qualified for use in science and industry. If Swiss considers that the applied for registration considers goods or services that relate to the measurement of time then I am satisfied that they are entitled to object.

97. However, as also discussed above, I have distinguished between the measurement of time and the measurement of distance in relation to the applied for specification and in regard to the latter, Engineering sought registration for the following goods in class 9:

apparatus for checking and measuring distance; computer controlled apparatus for checking and controlling the measurement of distance; ……. all for science and/or industry

I do not consider that the penumbra referred to by Pumfrey J in the above decision included measurement of distance as being within the central core of Swiss's business.

98. I note that clause 2 of the 1994 agreement stated the following:

> "OMEGA SA shall upon the signing of this agreement amend the specification of goods in its [Hong Kong] application ... to read
>
> "*Computer controlled apparatus for checking and controlling the measurement of time and distances for use in sporting events; electronic information display apparatus for use in sporting events and in public concourses; parts and fittings for the aforesaid goods; all included in Class 9*".

Thus, it appears, that Engineering in this context were prepared to allow Swiss to have a registration that related to measurement of distance as well as to measurement of time but that this related specifically to use in sport.

99. By the same token, liquid level which, as I have discussed above, may be considered to be a distance and can be measured in such units, is referred to in the specification in clause 4(c) that Swiss agreed that they would not object to when limited to use for science or industry. The specification in clause 4(c) is not an exhaustive list, it is a list of examples of such variable parameters. Thus other variable parameters can be covered other than those mentioned specifically. As mentioned above, time is not considered to be such a variable parameter and is excluded. Distance, however, which is not the same type of parameter as time, can be considered to be such variable parameter, in my view.

Conclusion

100. Thus, I am satisfied that the 1994 agreement does not would prevent Swiss from opposing the registration of UK trade mark application number 2226666 in the name of Engineering for those parts of the specification that cover goods and/or services related to the measurement (and display) of time.

101. For the reasons I have given earlier, I do not consider that distance is a parameter in the same way that time is. The restriction to use for science and industry by Engineering is consistent with the 1994 agreement and if used in relation to one of the variable parameters referred to in clause 4(c) of the 1994 agreement would be sufficient to estop Swiss, in my view, from objecting to registration of the specification. In the registration sought by Engineering, they have restricted the measurement of distance to use in relation to science and/or industry. As a consequence, I am satisfied that Swiss were not entitled to object to the application by Engineering to register the above mentioned goods for the measurement of distance in class 9.

COSTS

102. Swiss (Omega SA) while not completely successful in their opposition to the registration of trade mark application number 2226666 by Engineering have succeeded to a significant degree

and as such are entitled to a contribution to their costs. **I order Engineering (Omega Engineering Incorporated) to pay Swiss (Omega SA) the sum of £1100.** I have taken into account that not all the original grounds of opposition under Section 5(1) and 5(2)(a) were pursued at the hearing. I have also taken into account that a significant part of the evidence filed by both sides had been presented into other proceedings and were adopted into this case

103. I have also taken account of the comments by Mr Crouch in correspondence and at the hearing in relation to the class 14 goods excluded by Engineering and those by Ms Arenal at the hearing in relation to the evidence filed by Swiss concerning these class 14 goods. I have reduced the award by £100 to take account of both of these.

104. The above sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 4th day of June 2008

Dr Lawrence Cullen
For the Registrar,
the Comptroller-General

Appendix to Opposition no. 93220, Trade mark application no. 2226666 for OMEGA.CO.UK,

Proceedings involving Swiss and Engineering
(UK Trade Mark Registry, UK Appointed Person, UK Court and OHIM)

1. Patents High Court Decisions

(a) Mr Justice Rimer, *Omega Engineering Inc v Omega SA*, [2005] FSR 12, page 214 et seq.

(b) Mr Justice Pumfrey, *Omega SA v Omega Engineering Ltd*, [2002] EWHC 2620 (Ch).

2. Appointed Person Decisions - Professor Ruth Annand in all cases

BL Number	Action	Mark	Application Number	Decision Date
O/282/05	Revocation	OMEGA CONSTELLATION	723200	17 October 2005
O/281/05	Revocation	OMEGA	699058	17 October 2005
O/227/05	Invalidity	OMEGA	1557184	13 July 2005
O/393/03	Revocation	OMEGA	474165	17 December 2003

3. Trade Mark Registry Decisions

BL Number	Action	Mark	Application Number	Decision Date
O/017/05	Revocation	OMEGA CONSTELLATION	723200	13 January 2005
O/007/05	Revocation	OMEGA	699058	11 January 2005
O/307/04.	Invalidity		IR 771474	7 October 2004
O/306/04	Opposition		IR 771475	7 October 2004
O/305/04	Opposition	OMEGA	IR 765501	7 October 2004
O/211/04	Opposition	OMEGA	1557184	15 July 2004
O/177/04	Revocation	OMEGA	1456849, 1456850, 770899	21 June 2004
O/028/03	Revocation	OMEGA	474165	30 January

					2003
O/027/03	Revocation			699057	30 January 2003
O/026/03	Revocation	OMEGA	1456848		30 January 2003
O/013/02	Opposition	OMEGA METER	2179158		14 January 2002
O/554/01	Opposition	OMEGA	2052200		10 December 2001

4. There are also a number of actions between these parties in relation to Community Trade Marks

OHIM Opposition & Appeal Actions

CTM Application Number	Action	Decision Date
225565	Opposition	10 December 2001
225771	Opposition	
226027	Opposition	

Court of First Instance (CFI)

225771