



6 May 2009

**PATENTS ACT 1977**

BETWEEN

Portasilo Limited

Claimant

and

Manchester Cabins Limited

Defendant

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PROCEEDINGS

Reference under section 71 of the Patents Act 1977 in  
respect of patent application number GB 2426767

HEARING OFFICER

P M Marchant

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**PRELIMINARY DECISION**

- 1 Portasilo Limited have brought an action under section 71 for a declaration of non-infringement in relation to Manchester Cabins Limited's patent GB2426767.
- 2 Section 71 requires the applicant to approach the patentee with full particulars of the potentially infringing act. The patentee has an opportunity to provide the applicant with its own declaration of non-infringement. If that is not forthcoming, s71 permits them to bring an action for a declaration of non-infringement in the court or before the comptroller.
- 3 Portasilo launched such an action, but has hit problems because Manchester Cabins say that Portasilo did not provide them with full particulars of the potentially infringing act, but only a sketchy indication of it. That being the case, they say that Portasilo have not complied with section 71.
- 4 Manchester Cabins say there is a further problem in that Portasilo, as part of their application, allege that the patent is invalid. It is common ground that they are at liberty to do so because section 74 of the Act allows validity to be put in issue in an action under section 71. However Manchester Cabins assert that the validity attack combined with the lack of full particulars is not permissible. They say that amounts to a general attack on validity which is prohibited by section 74(2). Their view is that if Portasilo wish to make a general attack on validity they must bring a

revocation action under section 72, but if they wish to assert invalidity under section 71 they can do so only in relation to a specific potentially infringing act, and for that (and other) reasons it is necessary for them to provide full particulars of the act.

- 5 Manchester Cabins have as a result said that the action should be struck out. A preliminary hearing was arranged to decide the matter on 6 March 2009. At the hearing Mr Graham Moore appeared for Manchester Cabins assisted by Mr Nigel Hackney. Mr Tim Ashton appeared for Portasilo assisted by Mr Alex Lockey.

***Is it permissible to address only validity and avoid providing “full particulars”?***

- 6 The claimant’s approach to the case seems to have been to assert the invalidity of all the claims, to go on and reason that since in their view the claims are invalid, it is not possible for them to be infringed; to draw the conclusion that there is little point in going into great detail about the construction of their product, since whatever that construction is, it will not be found to infringe an invalid claim, and following on from that to launch the present action largely in terms of an attack on validity and only secondarily in terms of the non-infringement question.
- 7 This approach had led to the difference of view on the validity issue that I have just discussed. The basic question is whether it is permissible in an action under section 71 for the comptroller to consider the validity of a claim without also having a full description of the potentially infringing product before him so that he can consider whether it falls within the scope of the claim. If that is permissible, it could potentially lead to a finding that a claim was invalid and that it was therefore incapable of being infringed by the product whatever it’s description. It would follow that a declaration of non-infringement could be issued irrespective of the description of the product.
- 8 In my view this is not permissible for four reasons. Firstly, section 74(1)(c) says that validity may be put in issue in proceedings under section 71 but, as Manchester Cabins have pointed out, section 74(2) goes on to prohibit the institution of proceedings seeking only a declaration as to the validity or invalidity of a patent. The assessment of claims under section 71 in relation to validity without also a substantive assessment of the relationship between the potentially infringing product and the claim, or at least the possibility of such an assessment, would appear to me to be contrary to this provision.
- 9 Secondly, the approach adopted by the claimant is based on the assumption that the claims will indeed be found to be invalid. If such a procedure were allowed, but it turned out in the event that some or all of the claims were in fact valid, the process would immediately be rendered ineffective: the comptroller would have found the claims valid but would not be in a position to make any assessment as to the relationship between the potentially infringing product and the claims. He would consequently not be able to assess the product in relation to non-infringement or to issue any declaration.
- 10 Thirdly, it is a requirement of section 71 that the claimant provide “full particulars”. It is not open to him to elect to run a declaration of non-infringement action in

some other way, and to choose as part of that process not to provide full particulars.

- 11 Fourthly it is necessary for the potentially infringing act to be specified so that it is apparent in respect of which particular act or acts any declaration of non-infringement is granted.
- 12 I should say that I do not think it is necessary for the comptroller actually to make an assessment of the relationship between the potentially infringing product and the claim in every case; I agree with the point made by Mr Ashton in section iv) of his skeleton where he wrote: "if the hearing officer decides to consider validity first, and comes to the conclusion that the patent is invalid in its entirety, then he is able to grant the declaration sought by the claimant for their specific act(s)". He referred me to *Cunningham Covers Limited v Airmat Safety Products Limited* O/302/04 in which the hearing officer had taken that approach, although in that case the claims were found to be valid. The point that the declaration is for specific acts is critical; whatever the outcome on validity, the full particulars of the act must be furnished by the claimant for the reasons given above.

### ***Full particulars***

- 13 Section 71 requires: "that the person has applied in writing to the proprietor for a written acknowledgement to the effect of the declaration ... claimed and has furnished him with full particulars in writing of the act in question."
- 14 Thus it is a requirement before an action under section 71 can get off the ground that the applicant must furnish the proprietor with "full particulars". What does "full particulars" mean? I don't think this is a difficult question; it seems plain on the wording of the Act that the applicant has to provide the proprietor with a complete description of what it is they are intending to do which might potentially infringe the patent. The particulars must be sufficient for the proprietor, and subsequently the court or the comptroller, to establish whether the proposed act does or does not infringe the claims.
- 15 *Mallory Metallurgical Products Limited v Black Sivalls and Bryson Incorporated* [1977] RPC 321 was decided under the 1949 Patents Act, but the provisions in relation to the requirement for full particulars in section 66 of that Act were effectively the same as they are under section 71 of the 1977 Act. This case still appears to be the leading authority on the subject. Scarman LJ in the Court of Appeal said at page 345 that "the description must be sufficiently clear and precise to enable the court to declare that an article corresponding with the description would not constitute an infringement" and that "if there be lack of clarity or precision, the court is not in a position to grant the declaration sought."
- 16 It seems that the level of detail required is not an absolute one but relates to what is necessary to determine whether the potentially infringing act falls within the claims. In *Minnesota Mining & Manufacturing Co's Patent* [1999] RPC 135, Pumfrey J referring to an objection that the particulars were not adequate said at page 153: "Here I believe the true objection, [is] that the particulars are on the face of them, inadequate because they do not describe the drug. That would be true if the claim were construed as the patentees say it should be construed. As I

have construed the claim, the particulars are not inadequate.” He goes on to say that “there is always a risk that the adequacy of a description will be affected by the construction which is placed upon the claim and it is always preferable, in any case of an application for declaration of non-infringement, to aid the description furnished to the patentee by a sample of the alleged infringement or by drawings, or whatever.” It is clear that Pumfrey J’s view is that the applicant should err on the side of providing more rather than less information.

- 17 Where there is no attack on validity, it is only necessary to consider infringement of the independent claims since if an independent claim is infringed, no declaration will be made but if no independent claim is infringed, there is no need to go on and consider any of the dependent claims, since being of narrower scope they could not be infringed either. However where, as in this case, the applicant alleges that the claims are invalid, if the case proceeds to an investigation as to validity and finds that some of the claims are invalid but some are not, it seems by a logical extension to Pumfrey J’s comments, that it is necessary for the applicant to provide sufficient detail of its potentially infringing activity for the proprietor to assess whether any of the valid claims are or are not infringed. Since the applicant does not know in advance which claims may be found valid, it is necessary for it to produce information in sufficient detail to make an assessment of infringement in relation to any of the claims which, in the light of its assertions as to validity, might be found to be valid.
- 18 Following this argument, in the present case, since the applicant says that all the claims are invalid, it would need to provide sufficient detail for the assessment to be made whether any of the claims are or are not infringed by the potentially infringing product.
- 19 A further point is that the onus is on the applicant to make a full disclosure. Also in the *Mallory* case, Scarman LJ said at page 345 “the burden of proving the absence of infringement rests, in my judgment, upon the plaintiff”.
- 20 Mr Moore made the point that it is necessary for the particulars to be sufficiently detailed such that in the event a declaration of non-infringement is granted, it is clear precisely what act the claimant is entitled to perform within its terms. I agree. Mr Moore referred me in his letter of 26 January 2009 to Section 15-13 of Terrell on the law of Patents which quotes Pumfrey J in *Niche Generics v Lundbeck A/S* [2004] FSR 20: “The declaration merely tells the defendant that if the claimants can demonstrate that the manufacture is according to the process description which forms the subject matter of the declaration, then there is no infringement of the patent”. Pumfrey J’s observation supports Mr Moore’s view.
- 21 In the present case, the claimant’s attorneys wrote to the patentee’s attorneys on 12 May 2008 with the following description of their product: “A semi-permanent /temporary car park of the kind shown in the attached drawings. The car park consists of a plurality of rectangular deck components which are supported by a number of peripheral and intermediate columns. Each deck component is roughly 15.6m long and 2.5m wide.” That is the full extent of the explanation. The attached drawing shows a framework of upright columns on ground plates supporting an elevated framework of horizontal beams. There are triangulating supports attached to some of the columns and an array of what I take to be the

deck components forming a platform supported on the framework. The columns and beams appear to be “I” section components. The drawing shows a deck component or components removed revealing the beams and columns below. The drawing is small scale so that little further detail is apparent, and it is not possible to make out what any further detail relates to. There is no indication of the means of attachment of the components to one another. There are no explanatory notes of any sort on the drawing.

22 It is very clear to me these are not “full particulars” as required by the Act. They are rather the minimum information that could be provided to show that the claimant has a product which occupies the same general area of technology as the patent. The prima facie expectation of the requirement to supply full particulars would in my view involve at least an explanation of each component of the structure, the way the components are arranged together to form the whole construction, the means by which each component is attached to each other component and, since the structure is a temporary and apparently modular one, details either of one or more specific configurations or of how the different components can be put together to form different modular configurations. Also, to the extent necessary to explain how the structure works, the materials and dimensions of the components.

23 Since, as is clear from Pumfrey J’s comments mentioned above, it must be possible to assess the nature of the potentially infringing product in relation to each of the claims, it is also necessary for the particulars to indicate whether all the various features of the claims are or are not to be found in the product.

Claim 1 reads:

“A modular platform suitable for supporting vehicles or portable buildings or the like, the platform having:  
a plurality of deck modules, each deck module being a prefabricated unit for forming a part of the deck of the modular platform, each deck module being attached to at least one other deck module and including a deck surface suitable for vehicle parking on; and  
support means attached to the platform for supporting it above an area;  
wherein the deck surface of each deck module is substantially rectangular, the deck surface having a support space located at each of the longitudinally opposite ends, and an aisle space between the support spaces suitable for allowing passage of traffic and the width of the deck surface of each deck module is between 2m and 3m and the length of the surface of each deck module is between 15m and 16m.”

24 It is consequently necessary in relation to claim 1 for the particulars to specify whether “each deck module is attached to at least one other deck module” and whether the “support means is attached to the platform” for example. Similarly in relation to claim 4, whether “each leg is attachable to a deck module at or near the module’s corners”. Further details can be identified in relation to the specific features of the remaining claims which the full particulars must include.

- 25 The claimant says in its letter of 8 January 2009 that they have stated that their product falls within the scope of claims 1 and 27 (and a number of the dependent claims) and that their product can therefore be taken to include all the features of those claims. Also that the person skilled in the art would realise that the support means must be attached to the platform to prevent the deck modules moving relative to one another during use. That does not meet the requirement for the claimant to provide full particulars of its product. Merely stating that the product falls within the terms of the claims identifies that it is one of a general class of objects but does not identify any particular features of the specific product, still less its full particulars. It does not fulfill the requirement for particulars of the “specific act” which Mr Ashton himself acknowledged. As Mr Moore pointed out, following this approach would result in the futile situation that a declaration of non-infringement would be sought for “anything that doesn’t fall within the claim”.
- 26 At the heart of this is the fact that it is not for the claimant to determine whether its product does or does not fall within the terms of the claim. The whole point of the provision in section 71 is that it is for the proprietor, or the court or the comptroller, to make the determination. Consequently a mere statement that the claimant’s product does or does not fall within any of the claims can provide no contribution to the full particulars.
- 27 Mr Ashton made something of the fact that the claimant had provided a drawing. He said that since Pumfrey J had indicated in the *Minnesota* case that a drawing was a beneficial optional extra, the fact that the claimant had provided one demonstrated that they had given more information than was actually required. The obvious flaw in that argument is that a deficiency in the basic information will not necessarily be remedied by the further information in a drawing. In this case it is not.
- 28 The claimants also argue that they provided the information that they thought to be sufficient and that the proprietor should have asked if they needed more. As I have said, I think the information they provided was a bare minimum and that the onus is on them, the claimants, to provide full particulars. They would have a point if they had provided a full explanation but had overlooked some particular feature. It would then be reasonable to expect the proprietor to point that out and to ask for clarification. That is not the case here. The particulars provided fall well short of what is required, and it is not reasonable in those circumstances to expect the proprietor to ask for more. That would lead to the ridiculous situation that claimants would provide information in dribs and drabs depending on what questions the proprietor thought to ask.
- 29 Further to that, it is clear from the exchange of correspondence following the claimant’s letter of 12 May 2008 that the proprietor did in fact ask for more information. The proprietor wrote to the claimant on 23 May 2008. The letter was marked “Without prejudice save as to costs” but Mr Moore waived privilege in the letter at the hearing. The letter said: “at present, I have only a basic figure (attached) of your intended product ... it is difficult to make out the fundamental features of your product from the figure. So I wonder whether you could supply further details about the product; in particular, further details about the individual modular platforms of the product?”

- 30 I conclude that Portasilo have not provided “full particulars” as required by section 71. As a result, the proprietor has not so far been in a position to provide its own declaration of non-infringement. Nor has the comptroller been provided with sufficient information for him to provide a declaration.
- 31 One further relevant point is that the proprietor complained that Portasilo should not be allowed to describe their product as a kit of parts that could be assembled in a number of different ways to form car parks having different configurations. According to Mr Moore, they must plump for a specific configuration and allow the proprietor or the comptroller to make their determination on the specific article. Mr Moore has a point but I don’t think it can be the whole story. It is a matter of fact that the character of the present car park constructions is that they are modular and can be assembled in different ways. I think Portasilo are at liberty to ask for a declaration of non-infringement in respect either of a particular configuration or of the generality of components. In the latter case it would be necessary for them to describe fully and clearly how the different components can be assembled in different configurations. It is for Manchester Cabins or for the hearing officer as the case may be to decide in respect of any variability, whether some or all configurations fall within the claims. In the *Mallory* case Goff LJ said on page 339: “I will assume without deciding that the description required by the section may describe more than one article; but it is abundantly clear that if there is before the court no actual article, and if the description is capable of referring to more than one article, the description must be completely precise and such as will enable the court to say no article corresponding to that description could infringe the patent.” It therefore seems that any variability in configuration must be described precisely and that if any of the variations would involve an infringement, it is not possible to give a declaration of non-infringement.

### ***Supplementing the particulars during the proceedings***

- 32 I have found that Portasilo did not, at the outset, provide full particulars of the potentially infringing act to the proprietor contrary to the requirement of section 71, and it follows that the section 71 action has not been properly launched. The question arises whether a claimant in this position can supplement the original particulars with further information during the proceedings in order to remedy the deficiency and thereby continue the action, or whether as requested by Manchester Cabins, the action should be struck out.
- 33 Historically, the courts and the comptroller have taken a practical view and allowed further particulars to be filed in such cases, even late on in the proceedings, on the argument that if the case is struck out the claimant can simply launch another action based on the new material so that the outcome is the same as if it had been admitted except that all the parties suffer added delay and expense.
- 34 For example, in the *Mallory* case referred to above at first instance the applicant was ordered to produce further particulars. (See line 10 on page 339). The claimant also referred me to the cases of *Crocodile Packaging Ltd v Clip-Lok Industries Ltd* O/145/95 and *The Helping Hand Company (Ledbury) Limited v Impro Limited* O/181/96 in which the claimant had been allowed to submit further particulars during the proceedings. Similarly the hearing officer in *MMD Design*

*and Consultancy Limited's Patent* [1989] RPC 131 accepted that drawings necessary to particularise the product could be filed later in the proceedings.

- 35 That has not invariably been the case however; in *South African Inventions Development Corporation v British Railways Board* O/41/85 at page 5 the hearing officer found that it would be “grossly unfair on the patentees to allow the applicants to amend their statement to give further particulars of the proposed act three years after they filed the application...” and he disallowed amendment of the particulars.
- 36 The point was considered specifically in *Melkris Limited v Philip Denman* O/369/01. The hearing officer accepted that subsequent amendments to provide fuller particulars had generally been allowed in the past but noted that since those decisions, the civil justice reforms initiated by the 1996 Woolf report had resulted in adoption of an overriding objective to deal with cases expeditiously<sup>1</sup>. Balancing the argument in the prior cases that a claimant prevented from filing further particulars could simply launch a new action, against the proposition that the reform objectives would suggest a case that had not been prosecuted in accordance with the provisions of the Act should be struck out, he said that as a general principle, the reform objectives should take priority. However he decided for reasons particular to the circumstances not to follow the principle on that occasion and allowed the action to proceed even though it hadn't been launched strictly in accordance with the provisions of the Act.
- 37 The claimants accept this point but say that the overriding objective should be considered in relation to all the circumstances including its effect on both parties. They say it would not be consistent with the overriding objective for the action to be struck out only to be restarted, and that there is no prejudice to the proprietor in allowing further particulars to be submitted during the proceedings. I can see the force in this argument. I agree that there will not necessarily be a conflict between the overriding objective and allowing amendments during proceedings. I asked Mr Moore to what extent the proprietor was disadvantaged by the claimant's failure to provide full particulars at the outset and he explained that the proprietor had lost the opportunity to negotiate terms with the claimant. Although Mr Moore didn't mention it, it seems me that the proprietor had also been put to the trouble of pursuing the issues at the present hearing as a result of the claimant's actions. These are disadvantages that have put the proprietor to further work but do not seem to me to prejudice the just resolution of the substantive issues in the case. They may therefore be remedied in costs.
- 38 Taking all this together, I consider that it would be in accord with the overriding objective to allow the claimant to supplement its original particulars with full particulars in the present case.
- 39 I note at this point that in the run-up to the present hearing, the claimant took it upon itself to file further particulars about its product in its letter of 8 January 2009. These particulars consist of a number of drawings; drawing 1 showing the lower end of a support column and its ground plate, drawing 2 showing a ramp

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<sup>1</sup> An overriding objective corresponding to that in the Civil Procedure Rules has now been incorporated into the Patents Rules - see rule 74 of The Patents Rules 2007.



attached to provide access to the platform, and drawings 3 and 4 showing exploded and assembled views of a deck module. The body of the letter also contains discussion of the product in relation to the claims, on pages 4 to 6.

***Are the further particulars sufficient?***

- 40 Are the particulars that have now been provided by the claimant sufficient to allow a determination to be made as to the question of infringement in relation to any of the claims that might be found valid? I find that they are not entirely satisfactory; but that they do not fall very far short. The new drawings and explanation provide helpful extra information in relation to most of the features relevant to the claims, but they are still incomplete in some respects.
- 41 I must say that the explanations provided in the letter of 8 January are unhelpful in that they tend to argue that it is obvious that the drawings should be interpreted as exhibiting certain features, rather than simply disclose the detail of the product in straightforward terms. As a result the explanation is heavy on argument and light on disclosure. However, I am prepared to interpret assertions of the form: "it would be obvious to the skilled person that ..." to mean that the product includes the feature specified. Looking at the explanation on page 4 of the 8 January letter, I take the discussion under "Feature a)" to say that the deck components are prefabricated. The claimant quite reasonably relates the construction of its deck modules to the definition of "prefabricated" in the patent. I similarly take the discussion under "Feature b)" to say that each deck component is attached to at least one other deck component by means of fasteners passed through apertures in the modules.
- 42 However, under "Feature c)", while it states that the support means is attached to the platform, it does not say how. The claimant has effectively said that its product falls within this aspect of claim 1 rather than explaining how the support means is attached to the platform. This explanation suffers from the deficiency discussed in paragraph 25 above. Similarly in relation to claim 5, the claimant's letter asserts that their product has features which bring it within claim 5, but does not describe how the support columns are: "attachable to two deck modules". The same applies to the "support means" feature of claim 6. Simply saying that each support column "has a support surface which engages its respective deck module" does not provide sufficient disclosure as to how the components are configured. Evidently what is needed is a straightforward explanation as to how the claimant's support columns are attached to the deck modules.
- 43 I find that the disclosure is adequate in relation to the features of the remainder of the claims however. On one particular point, the proprietor, in its letter of 26 January 2009 (section 5) and also at the hearing, indicated that despite the claimant's assertions, in the 8 January letter and again at the hearing, that their construction did not include a bowed beam as required by claim 24, the proprietor was not certain that that was indeed the case. In my view, it is adequate for the claimant to explain that its construction does not involve bowed beams. The effect of this is that in the event a declaration of non-infringement is granted, such a declaration would operate in respect of constructions that did not involve bowed beams but not in respect of constructions that did.

44 So, Portasilo need to provide more information in relation to the feature of claim 1 that the support means is attached to the platform and to the features of claims 5 and 6. In addition as discussed in paragraph 31 above it remains necessary for Portasilo to set out either one or more specific configurations of the modular car park in respect of which they seek declarations, or to provide a clear statement of the different ways in which the modular construction can be assembled so as to define the different configurations in respect of which they seek a declaration.

### ***Conclusion and next steps***

45 I have found that where validity is put in issue in section 71 proceedings, the claimant must nevertheless provide full particulars of the potentially infringing act pertinent to all claims which might be found valid. I have also found, following the authorities, that “full particulars” means a full description of the potentially infringing act sufficient for the proprietor, or the court or the comptroller as the case may be, to determine whether the act does or does not fall within the terms of those claims.

46 The claimant did not provide full particulars at the outset and so did not properly launch the section 71 action. However, I have decided that they should be allowed to supplement them by filing further particulars during the proceedings. They have already done so in their letter of 8 January 2009 but that still leaves some detail of the construction undisclosed, and they need to specify what particular constructions and/ or variations of the modular system they are interested in, as I have identified above.

47 I recognise it is possible that in the light of this decision, or indeed in the light of the Opinion that Portasilo have obtained from the Office under section 74A, in relation to the validity of the Manchester Cabins patent (Opinion 17/08), or if the parties so decide as a result of any mediation exercise that they may undertake, that the present action may be resolved or withdrawn. However I need to make an order to give effect to this decision in the event that the action continues.

48 I consequently order that within the 28 day period for appeal of this decision Portasilo file the supplementary particulars that I have identified above, namely details of construction relevant to the feature of claim 1 that the support means is attached to the platform and to the features of claims 5 and 6, and a specification of the particular constructions and/ or variations of the modular system in respect of which they want a declaration. Portasilo should copy those particulars to Manchester Cabins. When they have been filed, I will consider whether they now constitute full particulars, and will arrange for the action to revert to normal processing or will issue a further order depending on that consideration.

49 However, if this decision is appealed, this order is suspended pending the outcome of the appeal.

### ***Costs***

50 Portasilo have succeeded in this preliminary action since I have decided not to strike out the action and I have allowed Portasilo to file further particulars.

- 51 However I have found that the action was not properly launched, as a result of Portasilo's failure to file full particulars contrary to the requirement of section 71. It appears that this failure arose from their expectation that it would be acceptable to address validity primarily and to circumvent the requirement to file full particulars of the potentially infringing act. It has turned out that this expectation was misplaced. The action has consequently become derailed, resulting in the unnecessary delay and expense of the present hearing.
- 52 I consider that this would warrant a fairly heavy costs penalty against Portasilo. However in mitigation I consider that the treatment of validity in declaration of non-infringement actions is not clear cut, there being little in the way of guidance in the authorities. Consequently, I do not consider it was unreasonable of Portasilo to venture the approach to validity that they did. Further, that Portasilo have obtained an Opinion from the Office under section 74A which suggests that Portasilo may have a point in their representations on the validity of the patent, that there is consequently room for accommodation by the patentee and that it would therefore not be just to apply too heavy a penalty against Portasilo. Thirdly, that Portasilo have belatedly but on their own initiative filed further particulars which although suffering from the defects I have identified in paragraphs 41 and 42 above, do largely meet the "full particulars" requirement.
- 53 I will consequently award costs which take into account that Portasilo have won, that nevertheless penalise them for causing the unnecessary delay and cost of this hearing but which take into account the mitigating features I mention above so that the penalty is significantly less than it would have been if those factors had not applied.
- 54 I consequently order that Portasilo pay Manchester Cabins the sum of £2500 within 7 days of the expiry of the 28 day period for appeal in this case, but that if this decision is appealed, this order is suspended pending the appeal.

### **Appeal**

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

**P M MARCHANT**

Deputy Director acting for the Comptroller