



**PATENTS ACT 1977**

APPLICANT    Stanley Patrick Doyle

ISSUE    Whether patent number  
GB 2341616 should be restored under  
section 28

HEARING OFFICER                                  Mr. G. J Rose'Meyer

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**DECISION**

**Introduction**

1.                This decision concerns whether the patent in suit should be restored following a failure to pay the renewal fee.
2.                The renewal fee in respect of the eighth year of this patent fell due on 20<sup>th</sup> July 2006. The renewal fee was not paid by that date or during the six month period allowed under section 25(4) upon payment of the prescribed additional fees. The application for restoration was filed on 29<sup>th</sup> January 2008, within the thirteen months prescribed under rule 40(1) of the Patents Rules 2007 for applying for restoration.
3.                After consideration of the evidence filed in support of the application for restoration, the applicant was informed that it was the preliminary view of the Intellectual Property Office (IPO) that the requirements for restoration, as laid down in section 28(3), had not been met. The applicant did not accept this preliminary view and requested that in lieu of a hearing, a decision be taken from the papers filed.
4.                I have therefore made a careful and detailed study of all papers on the official file and give the following decision of the basis of these.

**Background**

5.                In his evidence, the applicant Mr. Stanley Patrick Doyle describes himself as a “time served motor engineer... an experienced businessman...a dedicated political reformer and...one of a great many British risk takers ruined financially as a result of inept fiscal policy in the 80's & 90's”. Mr Doyle is a private applicant (i.e. he is not represented by a patent attorney), but this is not his only patent. He states in his

evidence that this patent is one of four he has relating to a futuristic toilet suite.

6. Mr. Doyle's case in brief is that it was never his intention to allow the patent in suit to lapse irrevocably, however due to financial difficulties and the serious illness of his wife during the relevant period when the renewal fee of could have been paid (20<sup>th</sup> April 2006 – 31<sup>st</sup> January 2007) he missed the deadline for payment.
7. The IPO's view was that the evidence provided by Mr. Doyle showed that the failure to pay the renewal fee on time was not "unintentional" as required by the law.

### **The evidence filed**

8. With his original application for restoration Mr. Doyle filed a Witness Statement dated 26<sup>th</sup> January 2008 and three exhibits attached to this. Below are brief summaries of some of the information contained in these:
  - The Witness Statement – stated that it was never his intention to allow the patent in suit to lapse irrevocably; that he was led to believe by members of IPO staff that the patent could be "reinstated" (sic) [restored] without difficulty if the necessary fees were paid
  - Exhibit SD 1 – a pamphlet entitled "Revolutionary Toilet Suite" describing the subject patent
  - Exhibit SD 2 – describing in brief the principles behind the subject patent, the environmental benefits of the invention and some reference (but no details) to failed attempts at securing funding for development of the patent
  - Exhibit SD 3 – a document laying out some of Mr. Doyle's political thinking on financial and Parliamentary reform, some brief reference to how he fell into financial difficulties in the late 80's and early 90's and some background on how he came to invent and design the patent in suit.
9. Following an official letter requesting further details specifically relating to the circumstances surrounding the failure to pay the renewal fee during the relevant period of 20<sup>th</sup> April 2006 – 31<sup>st</sup> January 2007, Mr. Doyle sent in a letter dated 30<sup>th</sup> May 2008. This contained the following statements - *"The sad fact is that that in recent 'retirement' years, a shortage of funds has been exacerbated by my wife's serious illness. I had hoped to buy time by allowing the Patents to lapse for a while, but I now realise I may have 'shot myself in the foot'...I should state quite simply that fees were not paid on time owing to shortage of money."*
10. Mr. Doyle filed a further letter dated 20<sup>th</sup> December 2008 giving some brief details of his wife's serious illness and stating again some of his political thinking particularly on the necessity for global financial reform. He also restated some of the benefits of his invention.

### **The Law**

11. The relevant provision of the law is section 28(3) of the Patents Act 1977.

This states:

*If the comptroller is satisfied that the failure of the proprietor of the patent –*

*(a) to pay the renewal fee within the prescribed period; or*

*(b) to pay that fee and any prescribed additional fee within the period of six months immediately following the end of that period,*

*was unintentional, the comptroller shall by order restore the patent on payment of any unpaid renewal fee and any prescribed additional fee.*

### **Assessment of the evidence and the Decision**

12. The essential determination I have to make under section 28(3) is to be satisfied that the failure to pay the renewal fee was unintentional. It is important that the meaning of this requirement is read and understood in totality.
13. It is tempting to merely look at the word “unintentional” and decide whether the evidence demonstrates that the circumstances surrounding the facts of the case were unintentional. This is not the test. The determination is not to be reached by examining the unintentional nature of the general surrounding circumstances to a case, but rather what the reasons were in specific relation to the failure to renew the patents on time and then whether *that* failure was unintentional.
14. I should say at the outset that Mr Doyle punctuates his evidence with his views on political and financial reform, together with submissions on why he regards his patent as being important. Interesting though these matters are, I do not intend to comment on them here, as I do not regard them as being strictly relevant to the facts surrounding the failure to pay the renewal fee on time.
15. In Mr. Doyle’s submissions it was his shortage of money throughout the period when the renewal fee could have been paid, exacerbated by the serious illness of his wife, which led to the failure to renew the patent on time. Mr. Doyle clearly did not intend either of these two circumstances. He also states unequivocally that it was not his intention to let the patent lapse irrevocably. So does this make the failure to pay the renewal fee unintentional?
16. In my view these were the circumstances surrounding the failure to pay the fee on time, but were not what led to the failure itself. So what led to the failure itself?
17. The answer lies in Mr. Doyle’s statement made in his letter of 30<sup>th</sup> May 2008 in which he stated “*I had hoped to buy time by allowing the Patents to lapse for a while...*”.
18. My interpretation of this statement is that Mr. Doyle was putting off payment of the renewal fee of the patent for as long as he could because of his shortage of

money and the on-going illness of his wife, presumably until such time as things improved. This is not an unreasonable position to adopt and indeed the law caters for it in section 25(4) by offering a six month “period of grace” in which to pay the renewal fee late, albeit with additional fines the longer one waits. But this period cannot be extended indefinitely. Indeed it cannot be extended at all beyond the six month grace period (Part 1 to Schedule 4 of the Patent Rules 2007 refers).

19. Therefore in fact the only time Mr. Doyle was able to “buy” (in his words) was the six months after the renewal fell due – i.e. up to 31<sup>st</sup> January 2007. This may not have been something Mr Doyle fully realised. His belief was that the patent could be “reinstated” without difficulty if the necessary fees were paid. This was correct in so far as it relates to that six month period of grace, but beyond that the proprietor of a lapsed patent has to rely on the restoration provisions of section 28 the Act. However, clearly those provisions are not a further opportunity to extend the “period of grace” and are not subject merely to the paying of fees and additional fines.

20. As can be seen above from the provisions of section 28 (3), restoration is not an automatic right. For restoration to be allowed Mr. Doyle needs to satisfy the comptroller that his failure to pay the renewal fee on time or within the six month grace period was *unintentional*.

21. In my view Mr. Doyle’s statement reproduced at paragraphs 9 and 17 above clearly shows this was not the case. During the relevant period, albeit due to the fact he knew he was unable to pay, Mr. Doyle took a *conscious decision* not to pay the renewal fee in order to “buy time”. How aware Mr. Doyle was of the final date by which the fee had to be paid is entirely unclear from the evidence, but the fact is he missed that deadline. The conscious decision not to pay the fee on time may it seems have been founded on a misunderstanding of the provisions, but it was clearly a decision Mr. Doyle deliberately made for what he saw as good reasons at the time. The failure to pay the renewal fee on time was therefore clearly not “unintentional”.

### **Conclusion**

22. Whilst I have much personal sympathy with the surrounding circumstances of this case, on the evidence put before me I can find no way to conclude in Mr. Doyle’s favour.

23. It follows that I am not satisfied that the failure to pay the renewal fee of the patent on time or within the period of grace allowed was unintentional. I must therefore refuse the application for restoration.

### **Appeal**

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

**Mr. G.J. Rose Meyer**  
Hearing Officer acting for the Comptroller