



11 August 2009

PATENTS ACT 1977

BETWEEN

John Terence Crilly

Claimant

and

New Age Radiators Limited and
Ray Fisher Construction Limited

Defendants

PROCEEDINGS

Reference under section 8(1)(a) of the Patents Act 1977 in respect of
patent application numbers GB 0812748.2 and GB 0816067.3

HEARING OFFICER

J Elbro

DECISION

Introduction

- 1 Patent application number GB 0812748.2 was filed on 11 July 2008 by New Age Radiators Limited. Patent application number GB 0816067.3 was filed on 3 September 2008 by Ray Fisher Construction Limited. Neither of these applications has yet been published.

- 2 John Terence Crilly has now filed a reference under section 8(1)(a) of the Patents Act 1977 seeking an order that both UK applications proceed in his name in preference to the current applicants. Alternatively, Mr Crilly requests that the comptroller makes an order as necessary to bring about an equitable resolution to the question of entitlement to the two patent applications.

- 3 A copy of the reference was sent to the patent applicants and those considered likely to have an interest in the case, that is, Ray Paul Fisher, Stephen Graham Fisher and Andrew Paul Crilly. Each was invited to file a counter-statement if they wished to object to the reference. No response has been received. Therefore as required by rule 77(9) of the Patents Rules 2007, I must treat each of them as supporting the claimant's case. Rule 77(9) says:

77(9) Where-

(a) a person was notified under paragraph (1) or (2); and

(b) that person fails to file a counter-statement under paragraph (6) or (8), the comptroller shall treat him as supporting the claimant's case.

- 4 On 3 August 2009, the Office wrote to the patent applicants and those considered to likely to have an interest in the case and advised them that in the absence of a counter-statement these proceedings would be treated as unopposed. Accordingly in the absence of any counter-statements the reference stands as uncontested.

The law

- 5 These proceedings have been brought under section 8 of the Act, the relevant parts of which read:

Section 8

8.(1) At any time before a patent has been granted for an invention (whether or not an application has been made for it) –

(a) any person may refer to the comptroller the question whether he is entitled to be granted (alone or with any other persons) a patent for that invention or has or would have any right in or under any patent so granted or any application for such a patent;

(b) ..

and the comptroller shall determine the question so far as he is able to and may make such order as he thinks fit to give effect to the determination.

(2) ...

6 Also relevant is section 7, which reads:

Section 7

7. (1) *Any person may make an application for a patent either alone or jointly with another.*

(2) *A patent for an invention may be granted –*

(a) *primarily to the inventor or joint inventors;*

(b) *In preference to the foregoing, to any person or persons who, by virtue of any enactment or rule of law, or any foreign law or treaty or international convention, or by virtue of an enforceable term of any agreement entered into with the inventor before the making of the invention, was or were at the time of the making of the invention entitled to the whole of the property in it (other than equitable interests) in the United Kingdom;*

(c)

(3) *In this Act "inventor" in relation to an invention means the actual deviser of the invention and "joint inventor" shall be construed accordingly.*

(4) *Except so far as the contrary is established, a person who makes an application for a patent shall be taken to be the person who is entitled under subsection (2) above to be granted a patent and two or more persons who make such an application jointly shall be taken to be the persons so entitled.*

Claimant's arguments

7 According to the Statement of Grounds filed by the claimant's representative, John Terrence Crilly is an inventor with an interest in improving radiator design. He has filed a number of patent applications and since April 1994 has been endeavouring to improve further the design of radiators. As a result of these endeavours, he devised the subject matter encompassed by UK patent application numbers GB 0812748.2 and GB 0816067.3 around January 2008, prior to the filing dates of the applications.

8 Mr Crilly discussed his inventions with Ray and Steve Fisher under terms of confidentiality. As far as Mr Crilly is aware, Ray Paul Fisher and Stephen Graham Fisher are the controlling minds behind New Age Radiators Limited and Ray Fisher Construction Limited.

9 A loose agreement was entered into whereby Ray and Steve Fisher would provide funding for patent applications resulting from the inventions and Mr Crilly in turn would grant Ray and Steve Fisher a future share in any profits generated as a result of any licensing or sale of any resulting patents. The details of the agreement were to be decided upon at a later date.

- 10 A firm of patent attorneys was instructed by Ray and Steve Fisher to prepare suitable patent applications as a result of the meeting between Mr Crilly and Ray and Steve Fisher. A meeting was held in April 2008 between Mr Crilly, Ray and Steve Fisher and the patent attorney. At this meeting, Mr Crilly disclosed technical details of the invention. On 29 April 2008, he provided the patent attorney with illustrations of the invention prepared by his son, Andrew Paul Crilly. He also provided further subject matter relating to patent application number GB 0816067.3.
- 11 In August 2008, Mr Crilly discovered that New Age Radiators Limited had filed patent application number GB 0812748.2 on 11 July 2008 and that the application encompassed some of the subject matter devised by him and disclosed to Ray and Steve Fisher and the patent attorney.
- 12 In October 2008, Mr Crilly discovered that Ray Fisher Construction Limited had filed patent application number GB 0816067.3 on 3 September 2008 and that the application encompassed the remainder of the subject matter devised by him and disclosed to Ray and Steve Fisher and the patent attorney.
- 13 According to the Statement of Grounds, Mr Crilly had no prior knowledge that the applications would be filed in this way. He was working on the assumption that the applications would be filed in his name as the sole inventor and legally entitled applicant. He was not under an obligation to assign his rights to anyone at the time the inventions were made, nor had he subsequently assigned his rights to the inventions to anyone and had not granted permission to either New Age Radiators Limited or Ray Fisher Construction Limited to file patent applications covering his inventions.
- 14 Since discovering the existence of the patent applications, Mr Crilly has endeavoured to reach a settlement with Ray and Steve Fisher and the associated companies, New Age Radiators Limited and Ray Fisher Construction Limited. An amicable settlement however has not been achieved. Hence Mr Crilly now requests an order from the comptroller that the patent applications proceed in his name or the comptroller makes an order to bring about an equitable resolution of this matter. Mr Crilly also requests an award of costs from New Age Radiators Limited and Ray Fisher Construction Limited.

Findings and Order

- 15 In view of the absence of any counter-statements, I accept the facts of the case as set out in the Statement of Grounds filed by Mr Crilly's representative. I therefore find that Mr Crilly is the deviser of the inventions encompassed by patent application numbers GB 0812748.2 and GB 0816067.3 and as such is entitled to be named as the sole patent applicant in respect of the applications.
- 16 I therefore order that patent application numbers GB 0812748.2 and GB 0816067.3 should proceed in the name of John Terrence Crilly as sole patent applicant.

Costs

- 17 Mr Crilly has requested an award of costs from New Age Radiators Limited and Ray Fisher Construction Limited. In view of the fact that neither has filed a counter-statement, both are taken to support the claimant's case under rule 77(9) and this includes the claimant's request for an award of costs.
- 18 Costs in proceedings before the comptroller are awarded on the basis of a standard published scale. The standard scale for proceedings commenced on or after 3 December 2007 is set out in Tribunal Practice Notice (TPN) 4/2007. The scale does not contemplate situations such as the present one in which no counter-statement has been filed; the first entry on the scale is for the combined actions of preparing a statement and considering that of the other side.
- 19 Although I could in principle award a token costs award below the bottom of the scale, it seems to me that to do so would serve no useful purpose as the costs of collection would likely outweigh the value of the award. I accordingly make no order for costs.

Appeal

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

J Elbro

Divisional Director acting for the Comptroller