

**PATENTS ACT 1977**

BETWEEN

Loadhog Limited

Claimant

and

Polymer Logistics BV

Defendant

PROCEEDINGS

Application under section 72 of the Patents Act 1977 in  
respect of patent N<sup>o</sup> GB 2,440,699 B

HEARING OFFICER

Stephen Probert

**PRELIMINARY DECISION****Introduction**

- 1 In this revocation action, Loadhog Ltd (“Loadhog”) seeks revocation of patent GB 2440699B in the name of Polymer Logistics BV (“Polymer”). Polymer opposes the application. At this stage in the proceedings, only the two statements of case (statement and counterstatement) have been filed.
- 2 Polymer has requested that part of Loadhog’s statement be struck out because it has no basis in law and is not relevant to any of the statutory grounds for revocation set out in section 72. Both parties have confirmed that they are content for me to decide this issue on the basis of the papers.
- 3 The patent concerns a combination dolly-pallet — a load-bearing deck that may be used as either a dolly or a pallet. For the purposes of this preliminary decision, I do not need to say any more about the invention.

**The matter(s) at issue**

- 4 Loadhog asserts that (at some point between filing of the application that led to the patent, and the grant of that patent), an additional feature was introduced into claim 1. The feature is referred to as “feature (e)”, and is worded as follows in the claim as granted:

“... and wherein: the support skids are formed with openings through which the wheels extend when the device is in the dolly condition.”

- 5 Loadhog asserts that feature (e) was only introduced into the patent application after Polymer became aware of Loadhog’s patent application and corresponding “Pally” product. Similarly, Loadhog asserts that claim 2 was only introduced into the patent by Polymer after becoming aware of Loadhog’s “Pally” product. Claim 2 reads:

“2. A dolly-pallet device according to claim 1, wherein the undersurface portions of the support skids are substantially rectangular in outline, and the openings extend inwardly from a side of the rectangular outline.”

- 6 These assertions are made in the last sentence of paragraph 9.2 and paragraph 9.3 of Loadhog’s statement. They read as follows:

“9.2 .... In no claim in the application as filed, nor in any claim as entered into the UK, was there any indication that the inventor considered the feature (e) of Claim 1 as being inventive, and that feature was introduced only after the Claimant’s Pally patent application was published and the defendant became aware of the claimant’s Pally product.

9.3 The claimant also contends that for the same reason Claim 2 is invalid. The feature of Claim 2 was not considered as inventive by the inventor and was introduced by the defendant only after becoming aware of the claimant’s Pally product.”

- 7 In response, the defendant (Polymer) says in its counterstatement:

“16. The matters pleaded in the last sentence of item 9.2 and in item 9.3 has no basis in law, in that they have no relevance to any of the statutory grounds for revocation set out in Section 72 of the Patents Act 1977, and consequently these matters should be struck out.”

## The Law

- 8 There seems to be no question that I have the power to strike out this part of the statement of case. The relevant statutory provision is found in rule 83 of the Patents Rules 2007:

### **Striking out a statement of case and summary judgment**

**83.**—(1) A party may apply to the comptroller for him to strike out a statement of case or to give summary judgment.

(2) If it appears to the comptroller that—

- (a) the statement of case discloses no reasonable grounds for bringing or defending the claim;
- (b) the statement of case is an abuse of process or is otherwise likely to obstruct the just disposal of the proceedings; or
- (c) there has been a failure to comply with a section, a rule or a previous direction given by the comptroller,

he may strike out the statement of case.

(3) .....

- 9 The term “statement of case” is defined in rule 73(3) as including part of a statement of case.

### **Application of the law to the facts**

- 10 Beyond the passages reproduced above from the statements of case, the parties have not provided me with any submissions as to why I should, or should not, strike out the passage(s) from the claimant’s statement. Although section 72(1)(e) has not been specifically pleaded in this case, I was struck by the similarity between the circumstances of this case, and those in a recent decision of the Comptroller’s Hearing Officer in *Stockley v Husqvarna*<sup>1</sup>; in particular as set out in paragraphs 18 to 20 of that decision:

#### *Section 72(1)(e) as a ground for revocation*

18. Mr Stockley argues in his letter of 31 January that the amendment introduced during the application phase of the patent on 13 June 2007 was improper because it was motivated by receipt of information from him and this fact was not communicated to the EPO. He refers to what was then Rule 27(1)(b) of the EPC Rules, which require the description of a European patent application to “indicate the background art which, as far as known to the applicant, can be regarded as useful for understanding the invention, for drawing up the European search report and for the examination, and, preferably, cite the documents reflecting such art”.

19. Unfortunately for Mr Stockley, he has misunderstood the meaning of s. 72(1)(e). This provision refers to amendment of a granted patent, and specifically to the situation where the scope of protection conferred by the patent has been extended. In the present case we are talking about an amendment which was made before the patent was granted, and moreover an amendment which apparently had the effect of limiting the scope of the claim. There is no question of such an amendment being considered to fall within the ambit of s. 72(1)(e). Whether or not Husqvarna ought to have acknowledged Mr Stockley’s earlier disclosure in their application in accordance with Rule 27(1)(b) EPC is not relevant, because non-compliance with this rule is not a ground for revocation of a patent, once granted.

20. For these reasons it is clear to me that Mr Stockley’s arguments on this point have no legal basis.

- 11 In this case also, the amendments to the claims were made before the patent was granted. Moreover, it also seems likely that the addition of feature (e) to claim 1 would have had the effect of limiting the scope of the claim. So, the claims may have been narrowed in the direction of the claimant’s Pally product, but that in itself does not give rise to any cause for revocation under section 72 — whether it was done intentionally or not. **Accordingly I strike out the last sentence of paragraph 9.2 and the whole of paragraph 9.3 of the claimant’s statement.**

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<sup>1</sup> Leonard Stanley Stockley v Husqvarna UK Limited. BL O/118/09

## **Appeal**

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

**S PROBERT**

Deputy Director acting for the Comptroller