



PATENTS ACT 1977

BETWEEN

Anthony Richard Timson and Cellxion
Limited

Claimant

and

M.M.I Research Limited

Defendant

PROCEEDINGS

Reference under sections 12 and 37 of the Patents Act 1977 in
respect of patent number EP1908319

HEARING OFFICER

P R Slater

PRELIMINARY DECISION

- 1 In these proceedings, the defendants had until the 28 June 2011 to file their counter-statement. However, on the 22 June 2011, they requested that this deadline be extended by two months to 31 August 2011. The reasons given were that they required additional time to locate relevant documents dating back some 5 to 7 years, and that some of the people which they wished to interview were no longer employed by M.M.I Research Limited and would be difficult to locate particularly during the summer holiday period.
- 2 On 23 June 2011, I indicated to both parties that I was minded to grant the defendants an extension of one month in which to file their counter-statement, and gave both parties an opportunity to submit comments on the issue. In a subsequent letter dated 28 June 2011, the defendants reiterated their request for a two month extension.
- 3 The claimants, in their response dated 27 June 2011, raised no objection to the proposed extension of one month. However, they questioned whether this should be further extended to two months on the grounds that the defendants had already had longer than is normally allowed to file their counter-statement.

4 Given that the defendants have repeated their request for an extension of two months and in the absence of any agreement between the parties as to whether such an extension should be allowed, I have to decide this as a preliminary matter. The parties have agreed that this can be done on the basis of the papers on file.

5 These proceedings are being conducted under Part 7 of the Patent Rules 2007, and in accordance with Rule 81 of the said Rules I have the power to change any period of time which has been specified under that Part. In doing so I am bound by Rule 74 which I shall quote in full:

Overriding objective

74.— (1) The rules in this Part set out a procedural code with the overriding objective of enabling the comptroller to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable—

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate—

(i) to the amount of money involved,

(ii) to the importance of the case,

(iii) to the complexity of the issues, and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the resources available to the comptroller, while taking into account the need to allot resources to other cases.

(3) The comptroller shall seek to give effect to the overriding objective when he—

(a) exercises any power given to him by this Part; or

(b) interprets any rule in this Part.

(4) The parties are required to help the comptroller to further the overriding objective.

6 As I understand it, the claimants' only argument against granting the extension seems to be based on the premise that the defendants have already had longer than is normally allowed to file their counter-statement, and so should not be given any additional time. Whilst this strictly speaking may be true, this was due in part, to a delay in the process following a request by this Office for the claimants to furnish additional copies of certain documents referred to in their original statement of grounds. Although it could be argued that the defendants would have had easy access to these documents, it is not readily apparent to me that the inventors themselves would have been able to locate copies, and hence I do not think it would have been reasonable at that time to expect them to submit

their counterstatement. However, I do not think this has any real bearing on my decision, what matters is how best to proceed to ensure that the case is dealt with proportionately and fairly.

- 7 Having considered the papers before me, I would have to say, I have some sympathy with the defendants' argument that it could be difficult and more time consuming than usual to locate documents, some of which may be up to 7 years old. Furthermore, I appreciate that locating employees who no longer have ties with the company may also take longer than expected, and that this may be further exacerbated by the time of year. What matters, I think, is that the defendants have adequate time to prepare their counter-statement and to set out their arguments as completely as possible. I think it would therefore be somewhat harsh to dismiss the defendants request for an extension of two months on that basis. Furthermore, I do not think the claimants will be disadvantaged in anyway should I grant the extension.
- 8 On balance therefore, I believe it would be appropriate in this case to grant the extension. I therefore allow the defendants until 31 August 2011 to file their counter-statement.

Costs

- 9 The question of costs has not been raised in this context.

Appeal

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

P R SLATER

Deputy Director acting for the Comptroller