



4 October 2011

**PATENTS ACT 1977**

BETWEEN

Lowe Engineering (Midland) Limited

Claimant

and

Ambar Kelly Limited

Defendant

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PROCEEDINGS

Application under section 72 of the Patents Act 1977 in  
respect of patent number GB 2429021

HEARING OFFICER

A C Howard

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**DECISION**

- 1 Proceedings for revocation under Section 72 of the Patents Act 1977 were commenced on 20 December 2010 but have so far not advanced to the counter statement stage.
- 2 The office was notified on 17 March 2011 of the existence of infringement proceedings in the Patents County Court in which, inter alia, the validity of the patent was being challenged under section 72 and an order for revocation had been applied for as part of the counterclaim. An official letter dated 11 April 2011 invited submissions on how the present proceedings before the comptroller should be handled in view of this development. The defendant (Ambar Kelly) stated, through a letter from their representatives (HLBBshaw) dated 27 April 2011, their view that the issue of validity should more properly be determined by the court and that the comptroller should accordingly decline to deal with the question.
- 3 A letter dated 16 May 2011 from ip21 Limited, who had been acting for the claimant (Lowe), stated that they were no longer doing so and that Lowe were now acting for themselves. Subsequently, a letter dated 1 June 2011 from Virtuoso Legal stated that they have been instructed to act for Lowe.

- 4 The Office was then notified in a letter dated 8 June 2011 from Virtuoso Legal, apparently acting not on behalf of Lowe but rather on behalf of two individuals (Janet Lowe and Nigel Lowe) and another company (Lowe Riser Pod Limited), stating that Lowe had gone into liquidation in April 2011. The letter further requested a stay in proceedings pending the outcome of the action in the Patents County Court.
- 5 Ambar Kelly's representatives, in a letter dated 19 August 2011, repeated the request that the comptroller decline to deal with the matter in view of the corresponding proceedings in the Patents County Court, and they stated that their client reserved the "right to request a hearing" should the Hearing Officer be minded to decide otherwise.
- 6 A Case Management Conference was convened by telephone on 19 September 2011 to discuss how the matter should proceed. At that conference Elizabeth Ward of Virtuoso Legal participated, but stated that she had no instructions from Lowe. Dr Chris Moore of HLBBshaw reiterated his view on behalf of Ambar Kelly that no useful purpose could be served by continuing the present proceedings.
- 7 Although Lowe have requested that I stay the proceedings, they have advanced no argument as to what that would achieve, despite having had ample opportunity to make substantive submissions, most recently at the Case Management Conference itself.
- 8 Having considered all the information available to me from the file, I can see no possible benefit in allowing these proceedings to continue before the comptroller. Given that the claim for revocation is already before the court, I do not think that it is strictly necessary for me to do anything more than terminate the present proceedings, but for the avoidance of any doubt, using the language of section 72(7)(b) of the Patents Act 1977, I certify that the question whether the patent should be revoked is one which would more properly be determined by the court.

### **Costs**

- 9 Dr Moore stated that he would not be requesting costs, and I therefore make no order in this regard.

### **Appeal**

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

**A C HOWARD**

Deputy Director acting for the Comptroller