



## PATENTS ACT 1977

APPLICANT Michael Torr Todman

ISSUE Whether the time limit for putting patent application number GB0623079.1 in order for grant can be extended under rule 107 or rule 111.

HEARING OFFICER Mr. S. W. Bender

---

### DECISION

#### Background

- 1 Application number GB0623079.1 was filed on 20 November 2006 in the name of Michael Torr Todman and was published on 21 May 2008 as GB2443886.
- 2 The request for substantive examination was filed on 19 November 2008 and the report under section 18(3) of the Act was issued on 22 November 2010. The covering letter to the report included the following paragraph:

“You should note that, in accordance with rule 30(2)(b), the normal unextended period allowed for complying fully with the requirements of the Act will end on 22 November 2011, that is 12 months after the date of this letter.”
- 3 Mr Todman replied to the examination report on 24 March 2011 with detailed submissions and included a request for a supplementary search under section 17(8). The examiner re-examined the application and on 1 August 2011, issued a further report under Sections 17 and 18(3). The covering letter gave until 3 October 2011 to respond, but did not reiterate the deadline under rule 30(2)(b) given in the official letter of 22 November 2010.
- 4 Mr Todman did not respond to the 1 August 2011 letter from the examiner, therefore an official letter issued on 16 November 2011 saying that “as things stand we will treat your application as refused shortly after 22 November 2011” (i.e. the rule 30(2)(b) compliance date).
- 5 The electronic case dossier shows that the next action was a report of the telephone conversation between the Examiner and Mr Todman held on 6 December 2012 in which the Examiner stated that the application had been terminated and that it was now too late to apply to reinstate the application under Section 20(A). During the conversation Mr Todman informed the Examiner that he had not received the official letters of 1 August 2011 and 16 November 2011.

- 6 On 11 December 2012, Mr Todman wrote to the Examiner explaining that he “can only conclude that some error has occurred at the Patent Office” and he requested reinstatement of the application.
- 7 The Office replied on 28 January 2013 stating the view that with the evidence presented to date, the delay or failure in communication was insufficient grounds to reinstate the application. The letter gave the opportunity to request a hearing to decide the matter.
- 8 On 30 January 2013, Mr Todman responded with some counter arguments and a request to be heard. The hearing took place before me on 17 June 2014. Mr Michael Todman represented himself.

### **The evidence**

- 9 The evidence I have considered comprises of the documents held on the official dossier referred to above at paragraphs 1 to 8 and to a skeleton argument filed by Mr Todman dated 7 June 2014.

### **The hearing**

- 10 Mr Todman used the structure of his skeleton argument at the hearing and supplemented this with further details and arguments. He explained that although he received the official letter of 22 November 2010 and noted the reply by date of 22 March 2011 clearly given in bold in the letter, he did not fully comprehend or note the compliance date of 22 November 2011 given in the body of the letter.
- 11 Mr Todman replied to the official letter of 22 November 2010 via the letter of 24 March 2011. He told me that he was expecting an Official response in a few months and telephoned the Office on 5 July 2011 (as noted in the skeleton arguments). Mr Todman stated that he was told the Office was very busy and could not give a date by which to expect the second report. He then marked his records that ‘it could still take some time’. Mr Todman admitted that perhaps he should have noted the compliance date given in the letter of 22 November 2010 but he did not.
- 12 Mr Todman also addressed me on matters relating to rule 107 and rule 111. To assist understanding I will reproduce those rules here:

### **Rule 107 - Correction of irregularities**

**107.**—(1) Subject to paragraph (3), the comptroller may, if he thinks fit, authorise the rectification of any irregularity of procedure connected with any proceeding or other matter before the comptroller, an examiner or the Patent Office.

(2) Any rectification made under paragraph (1) shall be made—

(a) after giving the parties such notice; and

(b) subject to such conditions,

as the comptroller may direct.

(3) A period of time specified in the Act or listed in Parts 1 to 3 of Schedule 4 (whether it has already expired or not) may be extended under paragraph (1) if, and only if –

(a) the irregularity or prospective irregularity is attributable, wholly or in part, to a default, omission or other error by the comptroller, an examiner or the Patent Office; and

(b) it appears to the comptroller that the irregularity should be rectified.

### **Rule 111 – Delays in a communication service.**

111.—(1) the comptroller shall extend any period of time specified in the Act or these Rules where he is satisfied that the failure to do something under the Act or these Rules was wholly or mainly attributable to a delay in, or failure of, a communication service.

(2) Any extension under paragraph (1) shall be made –

(a) after giving the parties such notice; and

(b) subject to such conditions,

as the comptroller may direct.

(3) In this rule “communication service” means a service by which documents may be sent and delivered and includes post, electronic communications, and courier.

### **Submissions under Rule 107**

- 13 Mr Todman could not point to a specific failure in the Office to issue the letters of 1 August 2011 and 16 November 2011 but again stressed that he did not receive them.

### **Submissions under Rule 111**

- 14 Mr Todman explained that if he had received the official letters, he would have noted down the details, including reply by dates. He further explained that the fact that he has no record of them was why he was sure he never received them.
- 15 At the hearing I asked Mr Todman why there was such a delay from his letter of 24 March 2011 until he telephoned the Examiner in December 2012 (save for his telephone call on 5 July 2011). He explained that he had become very busy with other patent applications and therefore this application was not in the forefront of his mind. He also recalled that he had been told how busy the Office was in his 5 July 2011 phone call and this was on top of information he had from a patent attorney he had used on another patent application, who had also told him about significant backlogs within the Office and that he should not worry unduly about delays.

16 All of this contributed to his not chasing up this application sooner.

## **Analysis**

### Consideration under rule 107

17 In order to be successful under this ground Mr Todman must convince me that there has been an irregularity of procedure and it was attributable wholly or in part, to a default, omission or other error by the Comptroller, and examiner or the Patent Office.

18 Mr Todman could not point to any specific Office irregularity. Although stressing he did not receive the official letters, he could not direct that failure to the Office in any way.

19 Given this, I conclude that Mr Todman cannot succeed under the rule 107 ground.

### Consideration under rule 111

20 In order to determine whether the comptroller's powers under rule 111 may be utilised, it is first necessary to determine what was the failure to do something under the Act or Rules? The failure was in effect two-fold:

- a) Not to file amendments to or observations on the objections raised in the second examination report under section 18(3) dated 1 August 2011 by the date specified in that report of 3 October 2011, and
- b) Not to put the application in order for grant by the rule 30 compliance date of 22 November 2011.

21 I must now consider whether these failures were wholly or mainly attributable to a delay in, or failure of, a communication service.

22 That Mr Todman received the Official letter of 22 November 2010 and that that letter clearly stated the rule 30(2)(b) compliance date is not in dispute.

23 At no point in the letter does it explain the implications of that paragraph or does it suggest that it is the applicant's responsibility to continually make checks to ascertain the status of the application. It does however state; "if after receiving your reply there are still points which need attention, I will contact you again". It also states that "The application may be refused unless you reply to this report by the date set", which of course Mr Todman did.

24 Mr Todman replied via his letter of 24 March 2011. As he did not hear from the Office for some time after that, he telephoned on 5 July 2011. He was informed that the Office was very busy, but could not be given a timeframe in which he should expect a reply. He noted his records that "it could still take some time".

25 In actual fact the evidence shows that the Official letter in response to Mr Todman's 24 March 2011 letter issued on 1 August 2011, just some 27 days after his telephone call. Earlier than perhaps he was led to believe or the "it could still take some time" period he had noted. Given the telephone call Mr Todman made to the Office; the

message he was given in that call which led him to believe he should expect an extended delay in any official response and the similar advice he had received from his patent attorney on another application, I can certainly see that Mr Todman was not expecting any kind of official communications as early as August 2011. As such I would not have expected him to have chased the IPO when no communication arrived in that period.

- 26 Mr Todman in his skeleton and at the hearing stated he finds it difficult to explain why something was not received. He did however provide anecdotal and hard evidence of another occasion when correspondence from the IPO on another of his patent applications had erroneously been sent to him instead of to his attorneys on that case, but which had not arrived at his address. This suggested to him that official correspondence can and does go astray from time to time.
- 27 At the hearing Mr Todman struck me as an honest and credible witness. On the balance of probabilities I am satisfied that he did not receive either Official letters of 1 August 2011 and 16 November 2011. Further, I can fully understand why, given the message of delays in the IPO he was given when he rang the office on 5 July 2011 and from his patent attorney, and with his own pressure of other work, that he did not contact the Office again until December 2012.
- 28 It is unclear what more Mr Todman could have done. He was awaiting an official response to his letter of March 2011, but was told in July 2011 that he could expect some delay to this. He therefore had no expectation of a reply in August 2011, so when the official reply was issued but did not arrive, there was no reason for Mr Todman to be suspicious that something had gone wrong.

### **Conclusion**

- 29 In these circumstances, it is my considered view that the failure to file a response to the Official letter of 1 August 2011 was wholly attributable to a failure in the communication service and the failure to put the application in order for grant by the compliance date of 22 November 2011 was in the very least mainly attributable to a failure of a communication service.
- 30 I remit the application back to the Office so that the Official letter of 1 August 2011 is reissued and a new reply by date and compliance period is set and for further processing.

**S.W. Bender**  
Hearing Officer  
Acting for the Comptroller