



PATENTS ACT 1977

APPLICANT	Mr Richard Perry
ISSUE	Whether three applications can be reinstated under section 20A and two patents restored under section 28
HEARING OFFICER	Mary Taylor

DECISION

Introduction

- 1 This decision concerns whether three patent applications can be reinstated under section 20A of the Patent Act 1977 ('the Act') and two granted patents restored under section 28 of the Act.
- 2 Three patent applications, all filed by Mr Richard Perry, are for consideration with regard to reinstatement.
- 3 Patent application GB1309588.0 was filed on 29th May 2013 and subsequently published as GB2514579 A on 3rd December 2014. An initial substantive examination report was issued on 13th June 2016 which led to a number of rounds of examination and amendment but the application was eventually treated as being refused as it was not in order for grant by the compliance date as set out under section 20, 29th November 2017. Mr Perry filed a Form 14, requesting that the application be reinstated, on 31st March 2021.
- 4 Patent application GB1310407.0 was filed on 7th August 2013 and subsequently published as GB2516812 A on 11th February 2015. A substantive examination report was issued on 1st February 2018 but no response was received from Mr Perry before the application's compliance date, 1st February 2019, at which point the application was treated as being refused as it was not in order for grant. Mr Perry filed a Form 14, requesting that the application be reinstated, on 31st March 2021.
- 5 Patent application GB1416515.3 was filed on 18th September 2014 and claimed a priority date of 19th September 2013 from earlier application GB1316622.8. GB1416515.3 was subsequently published as GB2521501 A on 14th June 2015. A substantive examination report was issued on 22nd October 2019 but no response was received from Mr Perry before the application's compliance date, 22nd October 2020, at which point the application was, as with the previous two applications,

treated as being refused on the basis that it was not in order for grant. Mr Perry filed a Form 14, requesting that the application be reinstated, on 31st March 2021.

- 6 Two patents which were originally filed by Mr Perry are for consideration in relation to restoration.
- 7 Patent application GB0916420.3 was filed on 21st September 2009, claiming a priority date of 13th January 2009 from earlier application GB0900457.3. The application was published on 13th January 2010 as GB2461652 A and, further to a number of rounds of examination and amendment, was granted on 24th November 2010. The patent remained in force until 21st September 2019, at which point it lapsed on account of the renewal fees not being paid. Mr Perry filed a Form 16, requesting restoration, on 31st March 2021.
- 8 Patent application GB1006066.3 was filed on 13th April 2010 as a divisional from application GB0916420.3, and so in turn also claimed a priority date of 13th January 2009 from application GB0900457.3. GB1006066.3 was subsequently published as GB2467861 A on 18th August 2010 and, following a number of rounds of examination, was granted on 24th November 2010. The patent remained in force until 21st September 2019 when it lapsed due to the renewal fees not being paid. Mr Perry filed a Form 16, requesting restoration, on 31st March 2021.
- 9 The matter came before me at a hearing on 15th June 2022, at which Mr Perry represented himself. Also present were Mr Darran Cooke, the Hearings Clerk, Mr Charles Jarman, my hearing assistant, Mr Michael Thear, the transcript writer, and Ms Yuko Oitogi, Mr Perry's fiancé.
- 10 In addition to the arguments put forward at the hearing, Mr Perry requested that he be given time in which to provide further submissions. I therefore provided Mr Perry until the end of July 2022 in which to do so. Mr Perry sent in two further submissions before the end of July. These consisted of a large bundle of papers which were received at the Intellectual Property Office on 17th June 2022, and a letter and three further documents which were received by email on 31st July 2022. I can confirm that I have reviewed and considered these submissions, including all the information contained within them, and have taken them into account when reaching my decision.

The Law

- 11 Section 20A of the Act sets out the requirements for the reinstatement of an application:

20A.- (1) Subsection (2) below applies where an application for a patent is refused, or is treated as having been refused or withdrawn, as a direct consequence of a failure by the applicant to comply with a requirement of this Act or rules within a period which is –

- (a) set out in this Act or rules, or*
- (b) specified by the comptroller.*

(2) Subject to subsection (3) below, the comptroller shall reinstate the application if, and only if –

- (a) the applicant requests him to do so;*
- (b) the request complies with the relevant requirements of rules; and*
- (c) he is satisfied that the failure to comply referred to in subsection (1) above was unintentional.*

12 Section 28 of the Act sets out the requirements for the restoration of a lapsed patent:

28.- (1) Where a patent has ceased to have effect by reason of a failure to pay any renewal fee, an application for the restoration of the patent may be made to the comptroller within the prescribed period.

(1A)...

(2) An application under this section may be made by the person who was the proprietor of the patent or by any other person who would have been entitled to the patent if it had not ceased to have effect; and where the patent was held by two or more persons jointly, the application may, with the leave of the comptroller, be made by one or more of them without joining the others.

Arguments

- 13 The question of whether Mr Perry can seek to reinstate the aforementioned applications and restore the aforementioned patents rests, in the first instance, on a single issue, namely whether or not Mr Perry is the legal applicant/proprietor of the applications and patents.
- 14 Section 20A(2) of the Act makes clear that only the applicant of an application which has been treated as refused or withdrawn can request that such an application be reinstated. Similarly, Section 28(2) sets out that only the person(s) who was the proprietor or would have otherwise been entitled to the patent if it had not ceased may seek to restore a lapsed patent.
- 15 Mr Perry did initially file and prosecute the applications and owned the patents in question. However, on 30th April 2015 a bankruptcy order was made against him. This resulted in the ownership of these applications and patents being transferred to the Official Receiver as part of the bankruptcy estate. Mr Perry is therefore not eligible to request to reinstate or restore the applications and patents unless he can prove that he has regained ownership of them.
- 16 Mr Perry spoke at length at the hearing about the circumstances which led to his bankruptcy. He alleges numerous acts of fraud and criminality were performed against him which ultimately resulted in him losing the rights to his applications and patents. It is clear that Mr Perry believes that the applications and patents should rightfully be his in light of these allegations. However, when I pressed him on this matter at the hearing he admitted that he had not re-acquired the rights from the Official Receiver.
- 17 As previously noted, Mr Perry requested time to file further submissions following the hearing which I allowed. I have carefully reviewed all of the information provided with

those submissions, which run to many hundreds of pages of correspondence and other papers including correspondence between Mr Perry and the Official Receiver, the Police and others involved in the applications and patents. However, there is nothing included within the submissions which shows that Mr Perry has regained ownership of the applications and patents. Mr Perry has sought to set out a history of the circumstances which led up to his bankruptcy and included details of his interactions with the Official Receiver and others over a period of a number of years. Mr Perry clearly believes that the applications and patents should not have been taken from him. However, a belief that something should not have been taken from you does not mean that you are the owner of something. Ultimately, I have been presented with no evidence that Mr Perry has regained ownership of the applications and patents from the Official Receiver and Mr Perry admitted during the hearing that he had not regained the ownership. As such, Mr Perry has no ability under the Act to seek that the applications in question be reinstated or the patents be restored.

Conclusion

- 18 Mr Perry has not shown at the hearing or in his later submissions that he is currently the applicant or proprietor of the applications and patents, indeed Mr Perry himself admitted during the hearing that he has not reacquired the applications or patents from the Official Receiver. Therefore, I have no choice but to refuse the requests for reinstatement and restoration.

Appeal

- 19 Any appeal must be lodged within 28 days after the date of this decision.

MARY TAYLOR

Deputy Director, acting for the Comptroller