

PATENTS ACT 1977

IN THE MATTER OF an application to amend European patent (UK) number EP 0329959 B1 in the name of Hans-Gerd Kaiser

and

IN THE MATTER OF oppositions thereto filed by Anthony Malcolm Morgan and John Bedford Gallienne Schmidt

DECISION

1. This is a final decision in proceedings which began with an application under Section 72 for revocation of European patent (UK) number EP 0329959 B1 (hereafter "the patent") in the name of Hans-Gerd Kaiser (hereafter "Kaiser" or "the patentee") filed on 29 November 1995 by Anthony Malcolm Morgan (hereafter "Morgan").

2. I should also note here the sad fact that Mr Kaiser died in early June. Title to the patent has been inherited by his daughters, Bettina Warlies and Sabine Suchy, although the relevant assignment documentation has not yet been filed in this Office.

3. The patent relates to cleaning machine parts, in particular removing plastics residues from moulding machines upon changeover from one kind of moulding material to another. According to the prior art, it is said that following changeover of material (eg to a different colour of plastics) in a moulding machine, the previous material used is typically purged from the machine by the action of the new material. Contamination from the old material means that the first mouldings to be produced are unacceptable and have to be discarded. This is said to take up to several hours and waste large amounts of material. In order to minimise the amount of wastage, it has previously been proposed to dismantle the mould assembly for cleaning, which is expensive, or to introduce abrasive particles with organic solvents to the feedstock in a special

- cleaning phase, which poses safety and environmental problems.
4. According to the patent, at least one salt in solution with a polar solvent is introduced into the operating machine with the first batch of subsequent material within a certain temperature range. This is said to reduce considerably the number of rejects before acceptable mouldings are produced. In the example, the agent used is an aqueous solution of 10% by weight sodium carbonate or sodium metasilicate, but the claims envisage the possible use of organic salts and/or solvents as well as the addition of further substances as listed.
 5. A substantive hearing on the application for revocation was held on 21 February 1997. In his decision dated 29 August 1997 (hereafter "the decision") the Hearing Officer (Mr S N Dennehey) held all the claims of the patent to be invalid for want variously of novelty and inventive step, having regard to a prior published Japanese patent document and common general knowledge. Key to these conclusions were two findings as to the construction of the claims of the patent: first, the words *preferably as a solution* used in claim 1 in connection with the means of introducing the salt were construed as extending the claim to encompass the introduction of the material in a form other than as a solution (ie in solid form), and secondly, claim 6 (which is of the form "use of liquid ... for carrying out the process according to claims 1-5 ...") was construed so as to encompass any liquid *per se* meeting the composition requirements of claim 1 and suitable for use in carrying out the claimed process.
 6. The decision (which was not appealed) allowed Kaiser the opportunity to offer amendments with a view to rectifying the defects.
 7. Kaiser's agents filed proposals for amendment of the patent with their letter dated 23 December 1997, and the proposed amendments were advertised in the Official Journal.
 8. The claims as proposed to be amended are as follows, with changes from the granted claims shown in **redline** and ~~strikeout~~.

1. Process for cleaning poorly accessible machine parts in the transport and/or moulding of materials in the pasty state, in particular for removal of moulding material residues on changeover of the material, characterized in that at least one organic and/or inorganic salt in solution with one or more polar inorganic and/or organic solvent(s) which dissolve the salt or these salts, is introduced into the operating machine together with the first batch of the subsequent material, ~~preferably as a solution~~, if appropriate with addition of further substances,

such as ~~surfactants~~ **surfactants**, organic solvents, alkalinizing agents, emulsifiers, abrasion particles and the like, the melting point of the organic or inorganic salt(s) being above the processing temperature of the subsequent material, and the boiling point of the solvent(s) being below the processing temperature of the subsequent material: **, the concentration of the salt or salts being at least 0.5% by weight, based on the total weight of the solution.**

2. Process according to claim 1, characterized in that the solvent is water.

3. Process according to claims 1 or 2, characterized in that the salt component of the solution comprises alkali metal carbonate(s), alkali metal metasilicate(s), alkali metal tartrate(s), alkali metal acetate(s) or mixtures thereof.

4. Process according to claims 1 to 3, characterized in that the boiling point of the solvent(s) is at least 30EC below the processing temperature of the subsequent material.

5. Process according to claims 1 to 4, characterized in that the melting point of the anhydrous salt or salts is at least 50EC above the processing temperature of the subsequent material.

~~6. Use of liquid readymade cleaning agents for carrying out the process according to claims 1 to 5, characterized in that the cleaning agent comprises at least one inorganic and/or organic salt in solution with one or more inorganic and/or polar organic solvent(s), wherein the melting point of the salt or these salts is above the processing temperature of the subsequent material and the boiling point of the solvent(s) is below the processing temperature of the subsequent material.~~

~~7. Use **6. Process** according to ~~claim 6~~ **any of claims 1 to 5**, characterized in that the concentration of the salt(s) **or salts is up** is at least 0,5% by weight, based on the total weight of the solution, preferably 5% by weight to 20% by weight **based on the total weight of the solution**, and the salt concentration can be up to the saturation limit at room temperature.~~

~~8. Use **7. Process** according to **any of claims 1 to 6 and 7**, characterized in that the pH-Wert of the cleaning agent **solution** is in the range of 4 to 14, preferably in the range of 8 to 11.~~

~~9. Use according to claims 6 to 8, characterized in that salt(s) and solvent(s) comprised in the cleaning agent correspond to ~~claim 2 to 5.~~~~

9. Through his agent's letter of 12 January, 1998 Morgan objected to the proposed amendments on the grounds that

- the amendments do not rectify the defects found in the patent as granted;

- they are not based on the original specification;
 - Morgan disputes that he had agreed to Kaiser being given the opportunity to amend;
 - discretion to amend should be refused having regard to the knowledge and conduct of the patentee.
10. The Office, in a letter dated 25 February 1998, reported the hearing officer's view that the question of the patentee's knowledge and conduct had been settled in the decision of 29 August 1997 and could not be re-addressed. However, following the subsequent intervention by a further opponent Schmidt (see below), the Office accepted that Morgan should not be in a less favourable position than Schmidt having regard to the right to raise arguments in opposition to the proposed amendments.
 11. Formal statements opposing the amendments accompanied by Forms 15/77 were lodged on 29 May 1998 by Gill Jennings & Every on behalf of both Morgan and Schmidt. This was the point at which Schmidt became involved in the proceedings. Where convenient, I shall refer below to Morgan and Schmidt collectively as "the opponents".
 12. On 12 April 1999 Kaiser filed evidence in support of the application to amend. This was in the form of statutory declarations by Kaiser and his German patent attorney (Dr Margarita Heiber). Although the timetable agreed between the parties allowed for the applicants to file evidence of their own on the question, they declined to do so at that stage although on 20 September 1999 they filed a statutory declaration by Morgan and exhibits relating to an apparent attempt by Kaiser to assert the patent against a firm called "Marlow Industrial Products". The reason for requesting admission of evidence at this stage was that they had been planning to introduce it in the course of cross-examination of Mr Kaiser but in the event cross-examination seemed likely not to be possible on grounds of his health.
 13. A hearing was arranged and took place before me on 29 September 1999, at which the whole of each party's case on the substantive patentability grounds was heard. As regards the argument that discretion to amend should be refused having regard to the knowledge and conduct of the patentee, both sides agreed that in the light of recent judgments of the Patents Court, especially the case of *Kimberly Clark -v- Procter and Gamble*, the knowledge and conduct of the patentee were not factors which could be taken into consideration by the comptroller (at least as the law at that time stood) in cases such as this. However in the light of pending appeals in the precedent cases in question, counsel

for the opponents argued that they should be given leave to introduce the fresh evidence relating to the previous activities of Kaiser in attempting to enforce the patent. I rejected these arguments in a procedural decision dated 1 October 1999 and refused to admit the additional evidence on the grounds that it was not relevant to any question before me. This decision was itself appealed and I agreed that the extension of the appeal period should run until after the decision of the Court of Appeal in the *Kimberley Clark* case.

14. The parties subsequently agreed that it would be in the interests of expediency for me to issue a further interim decision on the substantive matter only, it being understood that a final decision on the amendment of the patent and terminating the proceedings would only be issued once the law relating to the conduct and knowledge of the patentee was settled through the appeals processes referred to above. Accordingly, I issued a decision on 2 November 1999 in which I held the proposed amendments were held to be allowable from the point of view of what I shall refer to as "substantive patent law", by which I mean that the claims as notionally amended in the manner requested were found to meet the requirements of novelty and inventive step and did not contravene s.76.
15. On 24 November 1999 the Court of Appeal gave judgement in the case of *Kimberly Clark -v- Procter and Gamble* (case No 99/0810/3). This had the effect of reversing the earlier decision of Laddie J and confirming the traditional view in accordance with *Smith Kline & French Laboratories Limited v. Evans Medical Limited* [1989] 1 FSR 561 that the patentee's behaviour should be taken into account when considering whether to allow amendment.
16. Consequent to this judgment, it was agreed with both parties that the procedural decision dated 1 October 1999 refusing to allow the additional evidence should be withdrawn and a new timetable set for filing evidence and pleadings in respect of the case against discretion to amend. This was done by letter dated 7 December 1999, in which it was further ordered that the period for appeal against the interim decision dated 2 November 1999 (on the allowability of the proposed amendments from the perspective of substantive patent law) should be extended to expire simultaneously with the period which will be set in this decision.
17. Pleadings were filed by the opponents by letter dated 10 January 2000. They did not take up the opportunity to file new evidence but did seek to rely on their evidence filed in September 1999. The pleadings are solely concerned with the conduct of the patentee

and can be summarised as follows:

(a) The patentees have delayed unreasonably in that they made no offer to amend until after the decision of the hearing officer which held all claims to be invalid having regard to common general knowledge and published prior art.

(b) The patentees have failed in their obligation to make full disclosure of all relevant matters because they did not disclose the instance of assertion of the patent against Marlow.

(c) The equivalent US and Canadian patents were granted with claims corresponding to those now sought. The patentee has not explained why the present patent was not amended in the same way at that time and has therefore failed to make full disclosure of all relevant matters.

18. The opponents also requested, in the alternative that the amendments are allowed, an order be granted on terms that the patent may not be enforced prior to the date of the amendment.

19. By letter dated 17 February 2000 the patentee filed pleadings and further evidence in the form of further statutory declarations by Kaiser and his German attorney Margarita Heiber. The case for exercise of discretion can be summarised as follows:

(a) The incident involving Marlow is not material because the validity of the patent was not in issue at that time; nothing further happened beyond the issue of a letter. Moreover the opponents were already aware of the Marlow affair because it was they who had originally drawn it to the attention of the patentees, so there can be no question of bad faith or the patentees attempting to cover anything up. It is the opponents who are acting in an underhand manner as they have been aware of this at all time and have only now sought to introduce this evidence.

(b) The US and Canadian patents were granted with different claims because of differences in the approach of those offices to allowance of claims containing the words "preferably as a solution". At the time the patentee had no reason to believe his European claims would not stand up. Failure to disclose or explain this cannot amount to culpable behaviour.

(c) At no time before the issue of Mr Dennehey's decision of 17 August 1997 did the patentee have reason to believe that his patent was bad in relation to the prior art. Indeed, legal advice and precedent cases suggested he had a good chance of winning. The fact that having taken account of the prior art, the hearing officer still allowed the patentee an opportunity to amend means that it is not now open to the opponent to argue against exercise of discretion on the basis that the patentee should have applied to amend earlier.

(d) The request for an order limiting retrospective enforcement of the amended claims is opposed on the grounds that the patent was framed in good faith.

20. The parties came before me at a hearing on 27 July 2000 at which the patentee was represented by Mr Mark Lunt of Harrison Goddard Foote and the opponents were represented by Ms Lucy Samuels of Gill Jennings & Every.
21. Before I proceed further, I should deal with the issue of the evidence which Morgan and Schmidt have sought to introduce comprising the statutory declaration of Morgan dated 16 September 1999. I formally refused to admit this in my decision of 1 October 1999, but this decision was subsequently withdrawn in the light of the *Kimberley Clark* judgment. However Mr Lunt made it clear in his submission to me that the proprietor had at no time consented to the admission of this material. Thus its status remains unclear.
22. The opponents' explanation for the late submission of this evidence was that they had intended to "spring" it on Mr Kaiser in the course of cross-examination, presumably in an attempt to demonstrate lack of good faith, and that when it became clear that cross-examination would not be possible they applied to have the evidence admitted in the normal way. I have to say that had Mr Kaiser been cross-examined and the opponents had produced the evidence in the manner indicated, I would have considered it relevant to the question in point and been prepared to admit it. In these circumstances, I see no reason why I should not admit it now. I would also comment that it makes little difference to the determination of the question now before me since the fact that Mr Kaiser wrote to Marlow in May 1993 drawing their attention to the patent has effectively been admitted in the patentee's pleadings filed on 17 February 2000.

The facts

23. A considerable volume of evidence is now on file, including the prosecution histories of the equivalent applications in the US and Canada. Some of these papers were incomplete when first filed and material was received just before the hearing. While these late papers have not had a significant influence on the main thrust of my decision, I confirm that I have admitted and taken into consideration all the material filed.
24. The basic facts are not in issue between the parties. I shall briefly go over the salient points.
- (a) The European application was filed on 24 January 1989 and granted on 24 June 1992.
- (b) On the advice of the US attorney, the draft of the equivalent US application was amended to delete the word "preferably" from the phrase "preferably as a solution" in claim 1 before it was filed on 18 July 1990.
- (c) The Canadian application was amended in similar manner in July 1994 in response to an objection made by the examiner in the course of prosecuting the application.
- (d) Kaiser wrote on 5 May 1993 to Marlow Industrial Products drawing attention to the patent and inviting justification of their marketing of a product which was stated to fall within the scope of the patent. Kaiser did not disclose any information about this incident to the comptroller at the time of requesting amendments to the patent following the decision of 29 August 1997.
- (e) Kaiser was unaware of the specific Japanese prior art which was ultimately held to render the patent invalid until it was first cited by the opponents on 29 November 1995.
- (f) Legal advice to Kaiser was that his patent stood a good chance of standing up in the face of the revocation proceedings and that there was no need to propose amendments. Acting on this advice he did not seek amendment at that time, but did so when invited and within the timescale set in the decision of the hearing officer of 29 August 1997 which held all claims invalid.

The law

25. As commented above, following a series of cases decided in the Patents Court, there had

been a question mark over the extent, if any, to which the behaviour of the patentee could or should be taken into account in considering whether to allow amendment of a granted patent. However, the Court of Appeal in the case of *Kimberly Clark -v- Procter and Gamble* has now confirmed the traditional view that the patentee's behaviour should be taken into account when considering whether to allow amendment. There was no argument on this point from either party. Accordingly, I shall apply the criteria summarised in *Smith Kline & French Laboratories Limited v. Evans Medical Limited* [1989] 1 FSR 561. To quote from the comments of Aldous J reported on page 569:

"The discretion as to whether or not to allow amendment is a wide one and the cases illustrate some principles which are applicable to the present case. First, the onus to establish that amendment should be allowed is upon the patentee and full disclosure must be made of all relevant matters. If there is a failure to disclose all the relevant matters, amendment will be refused. Secondly, amendment will be allowed provided the amendments are permitted under the Act and no circumstances arise which would lead the court to refuse the amendment. Thirdly, it is in the public interest that amendment is sought promptly. Thus, in cases where a patentee delays for an unreasonable period before seeking amendment, it will not be allowed unless the patentee shows reasonable grounds for his delay. Such includes cases where a patentee believed that amendment was not necessary and had reasonable grounds for that belief. Fourthly, a patentee who seeks to obtain an unfair advantage from a patent, which he knows or should have known should be amended, will not be allowed to amend. Such a case is where a patentee threatens an infringer with his unamended patent after he knows or should have known of the need to amend. Fifthly, the court is concerned with the conduct of the patentee and not with the merit of the invention."

26. In my understanding, the requirement to make full disclosure of all relevant matters is one which to some extent overarches the other principles set out in *Smith Kline & French* because the comptroller must first be in possession of all relevant facts before coming to an informed decision on questions such as whether there has been an unjustified delay and whether the patentee has sought to gain unfair advantage from the patent. To this end, the patentee is under an obligation of utmost good faith to make the whole story known. This includes information which is already in the possession of the other party to the proceedings, because it is not good enough for an applicant to support an amendment by mere argument, even if the other side should agree to it. It is for the comptroller to decide what is relevant and it is clearly in the patentee's interest to err on the side of caution in deciding what to disclose.

Application of the law to the facts

27. The opponents' arguments against the exercise of discretion are interrelated to the extent that if it can be shown that the patentee was aware at an early stage of the need to amend his patent, this suggests that the delay in seeking amendment might have been culpable and that any attempt to assert the patent was unfair. It is therefore most convenient in this case to consider first when Kaiser became aware, or should have become aware, when his patent was bad, and then move on to consider whether he has made full disclosure of all relevant matter.
28. On the evidence there is no suggestion that Kaiser had *actual knowledge* that his patent was invalid and ought to be amended prior to the commencement of these proceedings. Furthermore the unchallenged evidence of Dr Heiber is that Kaiser was advised and had good reason to believe that he had a good chance of winning the revocation action. Under these circumstances, the date at which Kaiser became actually aware of the need to amend was the date of Mr Dennehey's decision, ie. 29 August 1997, and I conclude that there was no unreasonable delay in making the application to amend.
29. As regards the incident involving an alleged attempt to assert the patent, it is not enough however that the patentee did not know of the need to amend. The test in *Smith Kline & French* requires that an attempt to gain advantage from a patent will be considered unfair if the patentee at the relevant time knows *or should know* that it ought to be amended.
30. The opponents' case is that because the patent was held invalid in the light of common general knowledge, and the inventor (who is also the patentee in this case) is deemed to have been aware of all such knowledge as of the date of the invention, Kaiser must therefore be deemed to have been aware of subject-matter later held to invalidate the patent and was thus in the position of one who maintains claims which he "ought to have known" were invalid. While this is an ingenious argument, I do not feel that I can accept it on the facts of this case: the "common general knowledge" referred to in the decision of Mr Dennehey amounts to little more than use of a solution of an unspecified salt for any purpose. He found the "use" claims to be invalid on the basis of a particular interpretation of the wording of claim 6. To put it another way, the "use" claims are invalid on grounds of what the notional skilled but non-inventive worker might term a "technicality". I do not believe that this situation is on all fours with the case where there exists a particular prior publication or a specific instance of prior public use of which a patentee exercising due diligence should have been aware.

31. No specific argument has been put to me to the effect that the patentee ought to have been aware of Mitsui, but for the avoidance of doubt I confirm that I have considered this possibility in the light of the evidence in view of the comptroller's function of guarding the public interest, and I have come to the conclusion that this document is not one which the skilled worker exercising normal diligence ought to have been aware.
32. I shall now move on to consider whether the patentee has discharged his obligation to make full disclosure of all relevant matter.
33. The most serious allegation against the patentee is that he failed to disclose an incident involving assertion of the patent, the "Marlow affair".
34. I have commented above that it is established that the patentee wrote to Marlow in 1993 drawing attention to the patent. For the purposes of these proceedings I need to make three determinations. *First*, whether the letter amounted to an attempt to seek to obtain an advantage from the patent; *second*, if the answer to the first question is in the affirmative, whether the advantage sought was unfair, and *thirdly*, whether the incident constituted a "relevant matter" and therefore one which the patentee ought to have disclosed at the time of making the request for amendment. The answer to the third question depends in part, but not completely, on the second question.
35. As regards the first point, it was suggested to me by Mr Lunt that the letter sent to Marlow does not amount to an attempt to seek to obtain an advantage from the patent because it merely draws attention to the patent and invites comments. I reject this point of view. While the letter is drafted in words which avoid direct threats of legal action (no doubt with s.70 of the Act in mind), it clearly asserts that use and offering for use of the product marketed by Marlow falls within the scope of the patent and leaves no room for doubt on the part of the addressee that trouble is in prospect if he has indeed been conducting the alleged activity. To quote from the letter:

"European Patent 0 329 959 prohibits use and offering for use agents that have the chemical and physical specification set out in its claims. Therefore you will understand that we cannot tolerate any infringement of Mr Kaiser's patent claims.

[text omitted]

"Especially, if [Morgan and Schmidt] are correct, please let us know why you feel entitled to act

commercially within the scope of European patent 0 329 959 and why you feel justified in using third party intellectual property.

"We expect to have your reply by May 22, 1993.

"You will understand that we are forced to place this matter in the hands of our UK solicitors, should your answer not reach us in due time."

36. I believe the above extracts speak for themselves and I have no hesitation in finding this to be an instance of a patentee who is seeking to obtain an advantage from a patent.
37. As regards the question of whether the advantage sought is "unfair", the answer to this must clearly be in the negative in the light of my findings above that the patentee did not know, and had no reason to know, that the patent ought to be amended.
38. Finally I come to the question of whether the "Marlow affair" should have been disclosed by the patentee when applying for the amendment. In Mr Lunt's submission, this incident could not be relevant because the letter was sent more than two years before the commencement of these proceedings. Moreover, there could not be any question of bad faith because the opponents knew of the incident and indeed it was they who had drawn the attention of Kaiser to the alleged infringement.
39. I believe this is missing the essential point about what is relevant and has to be disclosed. Key to this is what information the comptroller needs in order to make an informed decision. Irrespective of my actual conclusion above about what the patentee ought to have known, I would not have been able to come to that conclusion had I not been in possession of the facts surrounding the assertion of the patent. The position taken by the opponents was certainly arguable, but even if it had been a complete non-starter, I would say that in the light of *Smith Kline & French*, it is difficult to escape the conclusion that any instance involving assertion of a patent is relevant to the question of whether discretion may be exercised, because there is always the possibility of raising a question over what the patentee ought to have known. I note that Mr Kaiser did apparently receive very strongly worded advice from Mr Lunt about the importance of full disclosure upon which, for reasons not entirely clear to me, he failed to act. In conclusion, I am in no doubt that the incident in question was relevant and should have been disclosed.
40. Although my finding above is sufficient in itself to warrant refusal to exercise discretion to allow amendment, I shall consider briefly the other arm of the opponents' arguments, namely the patentee's failure to disclose the fact that the US and Canadian patents had

been granted with different claims and the reasons for this.

41. Here I discern two separate aspects. First is the removal of the word "preferably" from the claims of the US and Canadian applications. Although this change has the effect of narrowing the scope of the protection, I consider it to be in essence a point of examination practice in these jurisdictions. There is no suggestion that the change was made in order to avoid prior art, or of anything else which might have a bearing on the European Patent. This aspect is therefore not relevant and the patentee was under no obligation to disclose it.
42. The second aspect relates to the lower limit of the concentration of salt in the added solution. Ms Samuels put it to me that the patentee had accepted as long ago as 1994 that a salt concentration of at least 0.5% was essential to the invention. This is of course one of the amendments being sought only now in these proceedings. Ms Samuels' justification for this position was drawn from a letter dated 20 May 1994 from Sim & McBurnley (Kaiser's Canadian patent agent) to Margarita Heiber in which it was stated that the Canadian Examiner believed that a salt concentration of at least 0.5% by weight was an essential of the invention, and Dr Heiber's response dated 21 July 1994 in which she agreed to the claims being limited accordingly. I note that Dr Heiber on behalf of the patentee did not actually concede that the concentration range in question is in fact essential to the invention; she merely agreed to the requested amendment. Having considered the arguments in the light of the evidence, I have come to the conclusion that this also falls within the ambit of normal variations in examination practice and there was nothing which might have led the patentee or his professional advisors to conclude that this matter had any bearing on the equivalent European application or issued patent.

Conclusions and order

43. For the reasons explained above, I find that Kaiser failed to disclose relevant matter in connection with the assertion of the patent against Marlow and has not therefore fulfilled the conditions necessary in order for discretion to be exercised to amend the patent as set out in *Smith Kline & French Laboratories Limited v. Evans Medical Limited* . Accordingly I refuse to allow the requested amendments.
44. The unamended patent having previously been found to have no valid claims, revocation is inevitable. Accordingly I hereby order the revocation of European Patent (UK) No. EP 0329959 B1.

Costs

45. The matter of costs in the original revocation proceedings was deferred at that time and falls to be dealt with now. I note that the original revocation action was wholly successful in that all claims of the patent as granted were found to be invalid, and the opponents of the amendments have been successful in persuading me that the amendments should be refused and the patent revoked. In these circumstances I see no reason to depart from the usual practice of awarding the winning party a contribution toward costs on the basis of the comptroller's published scale. In doing so I shall consider the revocation and amendment actions as separate and warranting their own respective awards. The appropriate scale to use is the old one, both these actions having been commenced before 22 May 2000. Ms Samuels did ask me to make separate awards to each of the two opponents, Schmidt and Morgan, which would increase considerably the amount awarded in respect of the amendment action, but I see no justification for going down that route.

46. Taking all the above into account, I assess the award in respect of the revocation action to be £1,035 and in respect of the opposition to the amendment to be £1335 and I hereby order that the sum of £1,035 be paid by the patentee to the applicant for revocation Anthony Malcolm Morgan and the sum of £1335 be paid by the patentee to the combined opponents of the amendments, Anthony Malcolm Morgan and John Bedford Gallienne Schmidt, by way of contributions to their costs in the respective proceedings.

Appeal

47. This being a decision on a substantive matter, the period for appeal is six weeks. I note that by my decision communicated by letter dated 7 December 1999, the period for appeal against my the decision dated 2 November 1999 on the substantive patent law matter will expire at the same time. The parties should note that while the period for appeal against the present decision may be extended once upon application to the comptroller, this opportunity has already been used in respect of the 2 November 1999 decision, and any further extension of the period for appeal against that decision can only be granted upon application to the Patents Court.

Dated this 14th day of August 2000

G M BRIDGES

Divisional Director, acting for the Comptroller

THE PATENT OFFICE