

PATENTS ACT 1977

IN THE MATTER OF an application
under section 28 by Keith Graham Longhurst
for restoration of Patent GB2263131

DECISION

Background

1. The seventh year renewal fee in respect of the patent fell due on 14 December 1997. The fee was not paid by that due date or during the six months allowed under section 25(4) (“the six-month period”) upon payment of the prescribed additional fees. The patent therefore lapsed as of 14 December 1997. The application for restoration of the patents was filed on 17 July 1998, within the 19 months prescribed under rule 41(1)(a). After considering the evidence filed in support of the restoration applications an official letter was sent to the proprietor Mr Keith Graham Longhurst informing him that the Patent Office was not satisfied that the requirements for restoration, as laid down in section 28(3), had been met.

2. Mr Longhurst requested to be heard in the matter and a hearing was arranged with his agreement, for 29 April 1999. Unfortunately, Mr Longhurst did not turn up for the hearing and subsequently informed the Patent Office that this was because his son was ill. The hearing was rescheduled, again with Mr Longhurst’s agreement, for 29 June 1999 on the understanding that if he did not attend the rescheduled hearing I would issue a decision based on the papers he has filed in support of his application. However, Mr Longhurst failed to attend the rescheduled hearing. In the circumstances, it is necessary for me to consider the application for restoration on the basis of the written evidence. That evidence consists of an affidavit by Mr Philip Bruce Archer, of Urquhart-Dykes & Lord dated 15 July 1998 and an affidavit by Mr Longhurst dated 4 September 1998.

The Facts

3. The system used by Mr Longhurst to ensure that annual renewal fees for his patent were paid in time involved Computer Patents Annuities (CPA), a well-known patent annuity paying agency, sending him four reminders. Two reminders would be sent before the renewal due date and, if Mr Longhurst had not issued any instructions by that date, a further two would be sent to him within the six-month period. If Mr Longhurst wished to renew his patent, he was required to instruct CPA to pay the renewal fee and any additional fees that may be due by returning the tear-off portion of one of the reminders suitably annotated.

4. If the renewal fee was not paid by the due date, Mr Longhurst would also receive the official renewal reminder notice which the Patent Office issued in accordance with rule 39(4). These official reminder notices were sent to Mr Longhurst, c/o Urquhart-Dykes & Lord and would be forwarded to Mr Longhurst with a covering letter from Mr Archer.

5. In his affidavit Mr Longhurst says that he was aware that he could pay the renewal fee with additional fees in the six months grace period following the renewal due date, as he had done with renewal fees for previous years. He says that on receiving CPA's reminders he would enter the due date in the two diaries he kept and issue instructions before the six-month period expired.

6. In the case of the seventh year renewal fee CPA sent Mr Longhurst four reminders dated 13 July 1997, 14 September 1997, 12 January 1998 and 12 May 1998. The Patent Office's rule 39(4) reminder notice dated 12 January 1998 was also forwarded to Mr Longhurst under cover of a letter from Mr Archer dated 14 January 1998. None of this correspondence specified the actual date when the six-month period expired and so Mr Longhurst decided to calculate the date himself by using a date on CPA's third reminder. Unfortunately, he took the date of the reminder, ie 12 January 1998, to be the renewal due date. He says the reason he chose that date was because it was "far more prominent and is stated twice above the line underneath which is stated "Due Date Annuity"".

7. As 12 January 1998 was almost one month after the correct due date, Mr Longhurst thought the six-month period would expire almost one month later than it actually did. Consequently, because he had decided to delay instructing CPA to pay until towards the end of the period, the patent ceased before he issued those instructions. Mr Longhurst says that in previous years "I made no mistake about the extended due date because I received from Mr Archer . . . a notice making matters clear, such as (see his 15 January 1997 letter): "the fee can be paid up to 14 June 1997 with a fine"".

Assessment

8. It is quite reasonable for Mr Longhurst to rely upon a professional annuity agency like CPA to send him reminders and act on his instructions. It is also reasonable for him to delay paying a renewal fee until towards the end of the six-month period. The question is, was his failure to pay the renewal fee before that period expired due to a lack of reasonable care on his part?

9. With regard to Mr Longhurst's comment that the letters he received from Mr Archer on previous occasions were clearer, I note that Mr Archer's letter of 15 January 1997 in respect to the sixth year renewal fee gave the actual date the six-month period expired. However, the letters that Mr Archer sent on 23 January and 9 May 1996 in respect to the fifth year renewal fee did not give a date for the expiry of that period. Mr Longhurst must have issued instructions in time for the fifth year fee to be paid as it was paid with additional fees before the end of the six-month period. Presumably, on that occasion he used the correct date when calculating the end date of the six-month period which begs the question, why did he choose a different date for the seventh year fee?

10. As for Mr Longhurst's comment that the 12 January 1998 date was "far more prominent and is stated twice above the line underneath which is stated "Due Date Annuity"", I note that the actual due date of 14 December 1997 is also shown twice. Moreover, although 12 January 1998 is above the line under which the words "Due Date" are shown, it is not directly above those words but approximately three inches to the right. Furthermore, the words "Due Date" are

included in a row of headings between two horizontal lines directly below which is data relating to those headings, effectively forming columns though admittedly they are not separated by vertical lines. For instance the first heading reads:

"Country
Type
No."

11. Directly below this heading is printed:

"Great Britain
Patent
2263131"

12. Likewise, the next headings read:

"Due Date
Case
Expiry"

13. The data directly below this heading reads:

"14 December 1997
14 December 2011"

14. Therefore, the data below the two horizontal lines corresponds with the headings within those horizontal lines directly above the data, eg "14 December 1997" corresponds with "Due Date" while "14 December 2011" corresponds with "Case Expiry". I find it difficult to appreciate how Mr Longhurst could have thought that 12 January 1998 corresponded with "Due Date". Choosing that date as the basis for his calculation seems an arbitrary decision to take and does not suggest to me that Mr Longurst took reasonable care.

15. It is also apposite to note that CPA's third reminder stated that the cost up to 14 February 1998 was £259.00. To establish what he would have to pay after that date, bearing in mind that he intended delaying payment until towards the end of the six-month period, Mr Longhurst would have either had to have contacted CPA to ascertain how much he had to pay at the end of that period or obtained that information from CPA's fourth and final reminder dated 12 May 1998. There is no evidence that he contacted CPA. Moreover, had he check that final reminder, which I would consider a reasonable thing to do in the circumstances, he would have realised his mistake as it would have been apparent that the date above the line on that final reminder was different from the date that was above the line on the third reminder. In contrast, the date below the line, directly under the heading "Due Date" in the final reminder, remained the same, ie 14 December 1997.

16. CPA's final reminder also included a note advising Mr Longhurst that he should let CPA know "IMMEDIATELY" if he wished to renew the patent. This suggested that the end of the six-month period was imminent. However, Mr Longhurst took no action to instruct CPA to pay the renewal fee on receipt of that reminder nor did he check that the date he had entered in his diary was correct. This inaction again suggests a failure on his part to take reasonable care.

17. Although the rule 39(4) reminder notice, which Mr Longhurst received a few days after CPA's third reminder, did not give the actual end date for the six-month period it did give the due date in the title and stated:

"The patent may still be renewed by paying the renewal fee, together with the appropriate extension fee within a maximum period of six months from the due date shown above."

18. Therefore, it should have been clear from that notification that the six-month period expired on 14 June 1998. The fact that Mr Longhurst did not change the date in his diary indicates that he either did not read that notification or did not read it with sufficient diligence. I do not consider this reasonable in the circumstances, particularly given the fact that Mr Longhurst had had to calculate the end date himself in the absence of a specific date being given in CPA's reminders and Mr Archer's letter.

19. All in all, I am not convinced that Mr Longhurst took reasonable care to see that the seventh year renewal fee was paid and therefore I am not satisfied that the requirements of section 28(3) have been met. Accordingly, I must refuse the application for restoration.

20. Any appeal against this decision must be lodged within 14 days of the date of this decision.

Dated 29th day of July 1999

M C Wright

Senior Legal Adviser, acting for the Comptroller

THE PATENT OFFICE