

## **PATENTS ACT 1977**

IN THE MATTER OF an application  
under section 72 by Radiuscrown Limited  
for the revocation of Patent No GB2240559  
in the name of Ash & Lacey Building  
Products Limited

### **DECISION**

#### **Introduction**

- 1 This decision is concerned with an application for revocation of patent GB2240559, granted to Ash & Lacey Building Products Limited in March 1994, under section 72 of the Patents Act 1977. The applicant for revocation is Radiuscrown Limited.
- 2 On 7 February 2002 I issued a preliminary decision as to the admissibility of an amended statement of grounds, together with certain other findings. My decision included an order for costs in respect of the period up to the filing of the amended statement, though I stayed the order for the time being. In my decision I allowed the defendant, Ash & Lacey Building Products Limited, four weeks in which to (a) confirm that it intended to continue contesting the proceedings; or (b) confirm that it did not wish to continue contesting the proceedings; or (c) offer to surrender the patent. I also invited it to make submissions on costs in respect of the period subsequent to the filing of the amended statement.
- 3 The defendant has responded by stating that it does not wish to continue contesting these proceedings, ie selecting option (b) above. Further, both sides have made submissions on costs. I must now therefore decide whether to revoke the patent and make a final order as to costs. Both sides have confirmed that they do not wish to be heard, so I shall base my decision on the submissions in the correspondence on file.
- 4 I should add that both have also taken the opportunity to criticise certain aspects of my previous decision. I do not consider it proper for me to respond to those criticisms in this decision, so I shall make no mention of them.

#### **Revocation**

- 5 When, as in this case, a defendant does not contest a revocation action, it is the comptroller's practice to consider the statement as if each specific fact in it were conceded, except insofar as it is contradicted by other documents available to the comptroller, and if on this basis it is determined that a ground has been made out, the comptroller will then revoke the patent. I am not sure why the comptroller has traditionally considered the statement even to this limited degree, since I doubt whether the courts would do so under their "default judgement" procedures if they were in an analogous situation - they would simply revoke. However, in reality it is unlikely to make much difference because it would be extremely unusual for a statement in an

uncontested revocation action to disclose no *prima facie* ground for revocation, so I am content to follow normal practice in this case.

- 6 As far as the present statement (in its amended form) is concerned, it asserts, with reasons, lack of novelty and lack of inventive step, and treating these as conceded by the defendant, I am satisfied that grounds for revocation have been made out. I will therefore revoke the patent.

### **Costs**

- 7 Before considering the submissions on costs, I must first reiterate what I said in my previous decision, that the costs order I made then only extended to costs up to the filing of the amended statement that was admitted by the decision. I could not have gone beyond that as the parties had not at that time been given the opportunity to make submissions as to the proceedings since then. What I am now dealing with are the costs in respect of the proceedings since the amended statement was filed.
- 8 In its submissions the claimant discusses some earlier proceedings which did not involve the present claimant. I do not regard any of this as relevant. It acknowledges that before my previous decision it offered the defendant a sum in settlement which was larger than the sum which I awarded in that decision. However, it submits that because of the way the defendant has handled this case, it has been obliged to incur further costs since that offer was made which are in excess of what it offered. I interpret this as meaning that the defendant is pressing for costs.
- 9 The defendant argues that the parties had settled everything by 8 October because it had agreed to the admission of the amended statement and the claimant had conceded costs. It submits that everything that has gone on since then has only been necessitated by the “protracted” way in which the Patent Office has handled the proceedings, and that therefore it should be for the Patent Office to pay costs to the parties for the proceedings subsequent to the filing of the amended statement.
- 10 Even leaving aside the question of whether there is any legal basis on which a tribunal or court could be held financially liable to parties that appear before it, I cannot accept this submission because its basis is unsound. In the period between the filing of the amended statement and my earlier decision, there are four letters on the Office file from the defendant, and the same number from the claimant. These told the Office that the parties were in discussion about settlement, and then notified the failure of these discussions. It is perfectly clear from these papers that the parties were not agreed, because they could not agree on costs and the defendant’s concessions were conditional on this. Moreover, the defendants themselves, in their letter dated 10 December 2001, raised a new issue on which I had to rule in my decision.
- 11 In my view costs between the parties should be settled on the normal basis. Since I have found above that the patent must be revoked, it is the claimant who has been successful on the substantive issue. It is therefore entitled to the costs of making the (amended) claim, but not for considering any defence as none was offered. I see no reason for departing from the comptroller’s normal scale, and this would point to a contribution of £300.

- 12 I also consider that I should also allow the claimant a contribution towards its costs for its submissions subsequent to the filing of the amended statement in connection with the matters considered in my preliminary decision, because of the three matters that were then in dispute, the defendant only won one (costs), and that was a pyrrhic victory as I awarded it less than the claimant had already offered. I consider £200 to be an appropriate amount for this.
- 13 Thus I award the claimant the sum of £500 in total. This exactly offsets the costs I awarded against the claimant in my previous decision, thereby leaving no costs for either side. In effect, although the claimant has won, it is being penalised for not presenting its case fully at the outset by being denied the costs to which it might otherwise have been entitled. The defendant had argued that the costs order made in my previous decision should be made payable within 14 days, but I think the conclusion I have just reached confirms that staying the previous order was appropriate.

### **Order**

- 14 I order that patent number GB2240559 be revoked.
- 15 I order that each side should bear its own costs. For the avoidance of doubt, this order covers the entire proceedings and supercedes the order in my previous decision.

### **Appeal**

- 16 Any appeal from this decision must be lodged with 6 weeks.

Dated this 4th day of April 2002

**P HAYWARD**

Divisional Director, acting for the comptroller

**THE PATENT OFFICE**