

19th July 2007

PATENTS ACT 1977

BETWEEN

GMC Tools (UK) Limited

Opponent

and

Makita Corporation

Proprietor

PROCEEDINGS

Opposition to a request under section 117 to correct
patent number EP(UK) 0570903

HEARING OFFICER

R Walker

DECISION

- 1 Makita Corporation (“Makita”) are the proprietors of patent number EP(UK) 0570903 (“the patent”) and on 5 December 2006 they made a request to the comptroller to correct a mistake in the patent. This request was opposed by GMC Tools (UK) Limited (“GMC”) who were seeking revocation of the patent in the Patents County Court. At an earlier stage in these proceedings Makita were anxious for the comptroller to decide the allowability of the requested correction before the case was heard in the Patents County Court. GMC did not agree and argued that the comptroller should stay the request for correction until the court had disposed of the revocation action. It therefore fell to a hearing officer to decide whether the request for correction should be stayed.
- 2 In a decision, dated 9 May 2007, Mr. Hayward, acting for the comptroller, ordered that the request for correction should be stayed pending resolution of the revocation action in the Patents County Court. However, Mr. Hayward left the door open so that Makita could come back to the comptroller in the event of a significant change in the circumstances.
- 3 Shortly after Mr. Hayward’s decision GMC withdrew its opposition to the correction and indicated that they agreed to the lifting of the stay. Makita

responded by waiving any rights to costs against GMC in this matter in view of GMC's withdrawal of its opposition to the correction request and its agreement to lifting the stay. Makita also informed the comptroller that the application to revoke the patent was being discontinued and subsequently confirmed that this had happened. Makita now ask for the stay to be lifted so that the request for correction can proceed.

Order

- 4 In the light of the changed circumstances I can see no reason why the correction proceedings before the comptroller should not now continue. Therefore, I lift the stay ordered by Mr. Hayward in his decision dated 9 May 2007 so that the correction proceedings before the comptroller can resume.

Costs

- 5 Neither side has asked for costs. Indeed, Makita has waived any rights to costs against GMC in this matter. Therefore, I make no order for costs.

Appeal

- 6 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

R J Walker

Divisional Director acting for the Comptroller