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For Creativity and Innovation

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PATENTS ACT 1977

APPLICANT	Martin Lister
ISSUE	Whether patent applications GB0316230.2, GB0323428.3, GB0407525.5 and GB0501156.4 are patentable inventions.
HEARING OFFICER	John Rowlatt

DECISION

Introduction

1 Patent applications GB 0316230.2, GB0323428.3, GB0407525.5 and GB0501156.4 have been filed by Mr. Martin Lister. On each case, the examiner has reported during the examination process that the invention defined in the claims as originally filed is excluded from patentability as a method of treatment of the human body and therefore incapable of industrial application. Following amendment on each case, the examiner has maintained his patentability objections and also raised objections that the amended claims add matter. Additionally, each case has further deficiencies as will be outlined later.

2 On each case, although he has used certain comments from the examiner to change his applications, Mr. Lister has failed to directly address in argument or amendment any of the examiner's objections.

3 The earliest of the applications, GB0316230.2 has reached the end of the compliance period and it was agreed that all four cases should be dealt with together. The matter therefore came before me at a hearing on 15 January 2008. The applicant appeared in person and the examiner, Dr. Patrick Purcell, also attended.

4 Shortly before the hearing, Mr. Lister provided a list of points he wished to discuss. I shall go through much of this first as most of them have no bearing on the examiner's objections.

5 Mr. Lister complained that the 'Sale of Goods and Services Act' required that

goods and services should be supplied with due care and skill, that under contract law agreed terms must be carried out, that there was negligence in not implementing those agreed terms and supplying patents, and that he had been caused distress by the Office not supplying the services "*they have been paid to supply*". In essence, he insisted that having paid his fees he should receive his patents. It was explained several times at hearing that payment of fees covers the search and examination processes, but does not give automatic entitlement to grant. It was made very clear that, within those processes, it is necessary to comply with the requirements of patent law for a patent to be granted. I shall repeat them in detail here so that there will be no doubt, with emphasis relevant to the points raised by Mr. Lister:

6 Under section 17(1)(c)(ii) a fee, the 'search fee', is required as part of the process by which an application is referred to an examiner for a search; under section 17(4), with two exceptions of which only that under section 17(5) is relevant here, the examiner "s*hall make such investigation as in his opinion is reasonably practicable and necessary for him to identify the documents which he thinks will be needed to decide, on a substantive examination under section 18 below, whether the invention for which a patent is sought is new and involves an inventive step.*"; under section 17(5)(b), "*On any such search the examiner shall determine whether or not the search would serve any useful purpose on the application as for the time being constituted and ….. (b) if he determines that the search would not serve such a purpose in relation to the whole or part of the application, he shall report accordingly to the comptroller and ….. the applicant shall be informed of the examiner's report.*"

7 Under section 18(1) a fee, the 'examination fee', is required before the application can be referred to an examiner for substantive examination. Under section 18(2), "*On a substantive examination of an application* ***the examiner shall investigate****, to such extent as he considers necessary in view of any examination carried out under section 15A above and search carried out under section 17 above,* ***whether the application complies with the requirements of this Act and the rules and shall determine that question and report his determination to the comptroller.***" Under section 18(3), "*If the examiner reports that any of those requirements are not complied with, the comptroller shall give the applicant an opportunity within a specified period to make observations on the report and to amend the application so as to comply with those requirements* ***(subject, however, to section 76 below)****, and* ***if the applicant fails to satisfy the comptroller that those requirements are complied with, or to amend the application so as to comply with them, the comptroller may refuse the application***."

8 On all four applications the search and examination procedures above were met so that the Office has complied with all necessary requirements of the Act. In particular, the examiner's examination reports under section 18(3) reported exactly as he was required to do in law that, in his opinion, the applications failed to meet the requirements of the Act. The payment of fees to the Office is for search and examination to be undertaken and does not lead to automatic grant. Grant only occurs if the full requirements of the law are met. My role at hearing is to decide whether the applications meet those requirements and whether to

permit amendment to or refuse those applications which do not.

9 Mr. Lister went on to complain that "*trifling issues*" were hindering the taking up of his ideas and the grant of his patents. When questioned about what he considered those issues to be, it was clear he was referring to the examiner's objections to added matter and that the inventions were not patentable. I explained, again several times, that these fall under major requirements of the law and are certainly not trifling; they are fundamental and meeting them was paramount in order to obtain a patent. However, he had a particular issue with added matter; he considered that "*they should be allowed in the way they have come about in the end.*" That is, he believes he should receive patents for how he *now* perceives and claims his inventions, with all the additional features and examples, not as he originally filed them.

10 Unfortunately, it did not prove possible in written communication, and certainly not at hearing, to move Mr. Lister from his entrenched positions. He would not budge from his view that simple payment entitled him to a patent and that he need only show his inventions were "*new, not obvious and a combination of features not done before*". He steadfastly would not acknowledge the significance of the search and examination fees, and their purpose under sections 17 & 18 of the Act. He steadfastly would not acknowledge that the law required other factors to be considered, such as those inventions specifically excluded by section 1(2)(a) and section 4A(1). He steadfastly would not accept that he was limited to matter as filed as required by section 76. No matter how many times I explained that certain inventions were forbidden, and that he could not add information which was not originally present, he never argued or questioned, merely restated his point of view.

11 Having been through, at hearing, all the specific topics he wished to discuss, as considered above, Mr. Lister was asked several times what comments or arguments he would like to make on each of his applications so that we could discuss each case in detail; unfortunately, he was not interested in engaging in such a dialogue and continued to refer solely to the specific topics outlined above. Mr. Lister was not prepared to respond in any form to the examiner's objections to added matter or whether the inventions are patentable.

12 Finally, after much effort, Mr. Lister agreed that I should decide the issue on the basis of what was already on file and his comments on the day, albeit that those comments had no direct bearing on the issues.

Application GB0316230.2

13 The application is titled "General cure to disease idea" and the sole original disclosure is a single paragraph of description and a single claim:

> "Description: *A mould is created from the white of the blood of the patient and a sample of the diseased matter which may be obtained by injection and exposure to oxygen and saliva of the patient. The diluted mould is injected into a horse so that antibodies to the disease are created in the*

horse. White of the blood of the horse is obtained which contains antibodies to the disease. The antibodies to the disease are then injected into the patient to fight the disease."

and

"Claim: *A general cure to diseases*."

14 The application was published with an amendment to the claim:

"1. *A general cure to diseases idea such as Aids by using a mould based on the diseased matter of the disease to be treated, which for a cure to Aids may use a sample of diseased matter from an Aids black spot under patients arm who is suffering from Aids and then injecting the diluted mould into a horse i.e. a Trojan Horse such as an egg, such as chickens egg which is undergoing growth antibodies could be produced to treat diseases generally, the general cure to diseases is substantially as described herein with reference to the accompanying description*."

15 In a preliminary examination Mr. Lister was advised that for medical applications such as his it was usual to provide one worked example which demonstrated the effectiveness of the invention and that without it, given the lack of detail in the description, the application would lack industrial applicability and/or would contain insufficient disclosure. He was also advised that the amended claim included added matter.

16 Mr. Lister either misunderstood these comments or did not understand their relevance and took them to be an invitation to include an example, which he provided and expanded on over several items of correspondence; however, the substantive examination took place on the amended claim at paragraph 14 above.

17 In that substantive examination the examiner objected that there was added matter in the reference to the specific disease Aids and to the use of an egg in preparing antibodies. He considered that the invention was a method of treatment, that it was also an idea which had not been put into practice and that it was defined in terms of a desirable end result.

18 In response, Mr. Lister provided an "elucidation" of his invention, then a completely revised amended claim, followed shortly afterwards by another claim, which Mr. Lister regards as "perfect", incorporating all the points from his other amended claims and from his previous correspondence:

"1. *A sample of blood of the patient is taken as it contains the disease, and can keep the disease alive at least initially, the disease in the blood is then subjected to acid/alkali bombardment by acid/alkali solution being put into the blood sample so that the disease cells outer shell is weakened, the acid/alkali bombardment is due to the disease being weakened as far as possible without it being destroyed this can be determined using calculus, the weakened disease cell is then put into a horse containing the immune system, the immune system of which attacks the weakened disease cells*

such that the resultant reprogrammed and strengthened immune system can combat even disease cells which have not been weakened by acid/alkali bombardment, a mould created such as by a solution of phlegm and resultant immune system on pieces of paper water milk sugar coffee tea subjected to oxygen and sunlight in a vat can thus be produced based on the resultant immune system and vat production commenced to produce further anti disease immune system by allowing the mould to grow and multiply, the mould thus produced can then in solution be tested using standard testing techniques such as seeing whether it will ward off disease cells that are put in the vicinity of the mould, and then if it does it could be injected into the patient to cure the patient, the mould can be used to inoculate or vaccinate a patient, the General Cure To Diseases Idea is substantially as described herein with reference to the accompanying."

19 Not surprisingly, the examiner did not accept this last claim as a valid amendment due to the earlier, and to further, added matter. The examiner maintained his objection that the invention was defined by the result to be achieved and that there was insufficient information for a third party to put the invention into practice. He did not explicitly comment again on whether the invention was a method of treatment, presumably because of the added matter objection and the other outstanding objections.

Added matter

20 The examiner has therefore reported that the amended published claim as at paragraph 14 and the latest proposed claim as at paragraph 18, which latter has not been accepted as a valid amendment, contain added matter. In the former claim, matter now specifically identified is the reference to Aids, the sampling of diseased matter from an Aids black spot under a patient's arm and the use of a "Trojan horse such as an egg, such as a chicken's egg which is undergoing growth". Additionally in the latter claim, there is identified the use of a sample of blood [rather than the white of the blood], and subjecting it to acid/alkali bombardment by acid/alkali solution, a mathematically determined test of cell weakening, and the use of phlegm to generate a mould in a vat, with other compounds, in new steps. I take those to be the oxygen and sunlight treatment in a vat of a solution of the mould on paper treated in an undisclosed way with water, milk, sugar, coffee or tea.

The law

21 Section 76 of the Act concerns amendment of applications not to include added matter; the relevant part of the section reads:

> 76(2) No amendment of an application for a patent shall be allowed under section 15A(6), 18(3) or 19(1) if it results in the application disclosing matter extending beyond that disclosed in the application as filed.

Interpretation

22 The question of what to assess in consideration of whether a later, amended version of a specification involves added subject matter, involves a comparison of

the disclosure of the later version with that of the original. In *Bonzel*[1], Aldous J set out his approach to the question as follows:

> *"The decision as to whether there was extension of disclosure must be made on a comparison of the two documents read through the eyes of a skilled addressee. The task of the court is threefold:*
> *(1) To ascertain through the eyes of the skilled addressee what is disclosed, both explicitly and implicitly in the application.*
> *(2) To do the same in respect of the patent as granted.*
> *(3) To compare the two disclosures and decide whether any subject matter relevant to the invention has been added whether by deletion or addition. The comparison is strict in the sense that subject matter will be added unless such matter is clearly and unambiguously disclosed in the application either explicitly or implicitly."*

23 Matter may be regarded as having been disclosed if the skilled addressee would realise that it was implicit in the original document[2]. However, matter which is not disclosed, but which the skilled addressee would find it obvious to add, is not regarded as having been implicitly disclosed[3].

24 In assessing who would be the skilled addressee, I consider that the invention could be undertaken by a medical technician, a technician working in the field of biology or biotechnology, a medical practitioner or a physician.

25 The sole original disclosure is that at paragraph 13. From a comparison of that disclosure with the claims of paragraphs 14 & 18 it is clear to me that a skilled addressee could not possibly have concluded from the specification as filed that an egg, such as a chicken's egg, could be used, a sample of whole blood could be used rather than "white of the blood", that an acid/alkali solution should be used to weaken cell walls, that calculus should be used to test for that weakening, that a mould should be prepared based on phlegm and the "immune system" derived from putting the weakened cells into a horse, on paper treated in some undisclosed way with water, milk, sugar, coffee or tea, treated in a vat with oxygen and sunlight, or that the mould could be used to vaccinate or inoculate. Further, in respect of the earlier claim, although AIDS might well be an obviously applicable disease it has not been implicitly disclosed, nor has the use of a sample from an Aids black spot, although that too might be obvious.

26 There is no doubt that there is added matter contrary to section 76 and that, contrary to Mr. Lister's view, this is no trifling issue; I conclude that no claim on this application can be allowable which includes any of the features listed in paragraph 25 above.

27 We are then left with the original disclosure on which to assess the invention in the light of the examiner's other objections to it being a method of treatment, a claim by desired result, and insufficient.

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[1] Bonzel (T.) and Anr v Intervention Limited and Anr [1991] RPC 553
[2] DSM NV's Patent [2001] RPC 35
[3] Direction Indicators Ltd's Application [1994] RPC 207

Method of treatment

The law

28 In his substantive examination report, based on the amended claim of paragraph 14, the examiner has argued that the claimed invention relates to subject matter excluded from patentability under section 4A(1) of the Act, in that it is a method of treatment. The relevant parts of the section read:

> 4A(1) A patent shall not be granted for the invention of –
> (a) a method of treatment of the human body or animal body by surgery or therapy, or
> (b) a method of diagnosis practised on the human or animal body.

Interpretation

29 The Manual of Patent Practice, on the basis of case law, provides a sensible review of what falls under 4A(1)(a) of this section:

> "It appears that any medical treatment of a disease, ailment, injury or disability, i.e. anything that is wrong with a patient and for which he would consult a doctor, as well as prophylactic treatments such as vaccination and inoculation, is to be regarded as therapy. The same considerations apply for animals as for human patients, so that for example prophylaxis and immunotherapy in animals are regarded as therapy."

30 The purpose of section 4A(1) is to prevent a medical practitioner being inhibited by legal monopolies; it is again helpful to consider who would in practice carry out the method. As at paragraph 24, I believe that the skilled addressee would be a medical technician, a technician working in the field of biology or biotechnology, a medical practitioner or a physician.

The arguments

31 As is clearly apparent from paragraph 13 above, the original sole claim of GB0316230.2 could never be acceptable; it contains no information of the invention and is entirely meaningless and unsupportable. Consequently, due to my finding on added matter above, I am restricted to interpreting the single short paragraph constituting the description.

32 The examiner has considered that the steps of the invention represent a method of treatment. It appears to me that a skilled addressee would certainly interpret a method from the original description: a mould is created from a mixture of white of the blood, diseased matter, saliva and oxygen, a dilution of the mould is injected into a horse to create antibodies, the white of the blood of the horse is used to harvest those antibodies and the antibodies are then injected into the patient.

33 As previously indicated, during prosecution of this application Mr. Lister has not presented any argument against this being a method of treatment, although it is noted that the last form of claim includes the step that the tested solution of

mould ***could be*** injected into the patient to cure the patient. However, among his pre-hearing comments is the phrase ".. *the enhanced immune system is processed before injected into the patient so it is a product*."

34 Would a skilled addressee interpret that the final step, the injection of antibodies into the patient in order to fight the disease, is not intended to occur or is optional? Further, would the skilled addressee consider that the invention was actually meant to be a method of making antibodies, or that the invention was to the mould, or to the antibodies from the horse? I do not believe so; to do so would render the purpose of the invention, "the cure of the disease" as meaningless, would leave the limited description without context and the description is clearly not constructed in a way by which a skilled addressee could envisage any single product as being the invention. Mr. Lister's own comment is relevant; clearly, anything injected has to involve a product, but the fact that there is a definite and essential step of injection confirms my view. Consequently, I must find that the invention as disclosed is a method of treatment falling under the exclusion of section 4A(1).

35 Although it is now unnecessary to do so, for completeness I will consider the examiner's other objections against the original disclosure, to the invention being no more than an idea defined in terms of an end result, to lack of support and that the invention is insufficient.

36 As stated previously, preliminary examination suggested that the lack of at least one worked example which would demonstrate the effectiveness of the invention, along with the lack of detail in the description, was insufficient for the invention to be worked. I have already found that Mr. Lister's response in adding such information does not comply with section 76 so my decision is again based solely on the original description.

The idea

37 The examiner considered that the invention failed to comply with section 1(2)(a) as being framed in terms of a desired outcome, a disease cure. To support this view he considered that the disclosure contained no technical detail of how the result could be achieved.

38 Section 1(2)(a) reads:

> 1(2) It is hereby declared that the following (among other things) are not inventions for the purposes of this Act, that is to say, anything which consists of -
>
> (a) a discovery, scientific theory or mathematical method.

39 The idea underlying this invention is a scientific theory, that a skilled addressee following the steps in the disclosure might result in a disease cure. Mr. Lister claims to have supplied a worked example but, in fact, it is merely a suggestion: "*A component could be included which could be a cure to cancer. The production of the mould could use cancer cells from where the cancer resides as the diseased matter which may be extracted by syringe as a component to the antibodies which are a general cure diseases to cure the patient of cancer by integration into the mould which also uses white blood cells and oxygen and*

saliva." Even allowing for this being added matter, it is clearly not a worked example. I have reviewed the correspondence on file at length and the view is clear: at no point has Mr. Lister put into practice any of his invention - it is and always has been no more than an idea, a theory which he thinks might work.

Sufficiency

40 The examiner also has objection that there is lack of support for the invention and that the disclosure is insufficient. Section 14(3) reads:

> 14(3) The specification of an application shall disclose the invention in a manner which is clear enough and complete enough for the invention to be performed by a person skilled in the art.

41 The examiner considers that the original description outlines a number of steps but that none of them are in enough detail that a person skilled in the art could easily follow them in a way which would lead to the final result. Specifically, the description is silent on whether the mould is the disease causing organism, especially as many diseases are not fungal in origin. As the mould is created from a mixture of the white of the blood, diseased matter and saliva, it is not clear whether the mould has any connection with the disease or whether it is fungal in origin from other microorganisms, for example from the air. Further, he suggests that it is not apparent what antibodies are produced in the horse. Finally, there seems to be no direct link between the original disease and any antibodies which may, or may not, be produced to form the cure or whether, in the absence of information supporting efficacy, the result might be a cure. I agree. There appears to be no way in which a skilled addressee following the steps could possibly know whether the invention was being properly performed; there is simply not enough information for another person to properly undertake the invention.

Application GB0323428.3

42 This application is titled "Breast cancer cure idea 2" with a single brief claim:

> "1. *A cure to breast cancer by using a mould based on diseased matter from the breast of the patient and then injecting the diluted mould into a horse antibodies could be produced to treat breast cancer*."

43 The application was published with an amendment to the claim:

> "1. *A cure to breast cancer by using a mould based on diseased matter from the breast of the patient and then injecting the diluted mould into a horse i.e. a Trojan horse such as an egg, such as a chickens egg which is undergoing growth antibodies could be produced to treat breast cancer, the breast cancer cure idea is substantially as described herein with reference to the accompanying description*."

44 This claim was the subject of substantive examination; the examiner objected to added matter, that the invention was unpatentable as a method of treatment, that

there was insufficient information for it to be put into practice and that it was an idea which had not been put into practice. Further, there was considerable argument from the examiner on what mechanisms might be involved, particularly how the mould as proposed could result in antibodies to a disease being generated in a separate host and that there was no clear and direct link from the initial disease to any curative agent.

45 The latest proposed form of amended claim is considerably more detailed and, as with the previous application, Mr. Lister considers it to be perfect. Most of it will also be familiar from paragraph 18 above:

> "1. *A sample of blood of the patient is taken as it contains the disease, such as Breast Cancer, and can keep the disease alive initially, the disease in the blood is then subjected to acid/alkali bombardment by acid/alkali solution being put into the blood sample so that the disease cells outer shell is weakened, the acid/alkali bombardment is due to the disease being weakened as far as possible without it being destroyed this can be determined using calculus, the weakened disease cell is then put into a horse containing the immune system, the immune system of which attacks the weakened disease cells such that the resultant reprogrammed and strengthened immune system can combat even disease cells which have not been weakened by acid/alkali bombardment, a mould created such as by a solution of phlegm and resultant immune system on pieces of paper water milk sugar coffee tea subjected to oxygen and sunlight in a vat can thus be produced based on the resultant immune system and vat production commenced to produce further anti disease immune system by allowing the mould to grow and multiply, the mould thus produced can then in solution be tested using standard testing techniques such as seeing whether it will ward off disease cells that are put in the vicinity of the mould, and then if it does it could be injected into the patient to cure the patient, the mould can be used to inoculate or vaccinate a patient, the Breast Cancer Cure Idea 2 is substantially as described herein with reference to the accompanying description*."

46 Despite the obvious grammatical errors and lack of clarity it is possible to interpret this claim. In doing so, the examiner did not accept the claim as a valid amendment due to added matter and explained that it could not be included in the specification.

Added matter

47 In applying the law as indicated in paragraph 21 above, and the approach of paragraphs 22-24, it is clear that, from the application as originally filed and the published amended claim, a skilled addressee could not possibly have concluded that an egg, such as a chicken's egg, could be used, a sample of whole blood could be used rather than "white of the blood", that an acid/alkali solution should be used to weaken cell walls, that macrophage digestion of the weakened cell occurs, that calculus should be used to test for that weakening, that a mould should be prepared based on phlegm and the "immune system" derived from putting the weakened cells into a horse, on paper treated in some undisclosed way with water, milk, sugar, coffee or tea, treated in a vat with oxygen and

sunlight, or that the mould could be used to vaccinate or inoculate. There is no doubt that there is added matter contrary to section 76; I conclude that no claim on this application can be allowable which includes any of the features listed in this paragraph.

Method of treatment

48 I will apply the law as indicated in paragraph 28 above, and the interpretation of paragraphs 29 & 30. The examiner has objected that the invention is a method of treatment, due principally to the opening phrase of the claim being "A cure to breast cancer." However, although that phrase is present in the claim as filed and in the published amended claim, and indeed it is the hope of the invention, a corresponding explicit expression is not found in the description. The steps by which any treatment might occur are only conveyed as optional, with more emphasis being placed on the steps leading to potential treatment. Accordingly, despite the opening of the claim, I do not find the invention to be a method of treatment.

Sufficiency

49 The examiner has objected that there is insufficient information for the invention to be put into practice, with the law as outlined in paragraph 40 above. I have already found that Mr. Lister's latest claim does not comply with section 76 so my decision is again based solely on the original description.

50 The original disclosure includes a number of optional features, including production of a mould from the white of the blood and the diseased matter, the testing for efficacy of the antibodies derived from the horse and the possibility of using those antibodies in a patient as treatment. The question is whether, without those optional features, there is enough disclosure for a patentable method or product.

51 Whilst there is insufficient for an identifiable product to be characterized in a claim, there appears to be enough for a patentable method with, using Mr. Lister's phraseology, the steps of:

- preparing a mixture of the white of the blood of a patient and a sample of diseased matter from the breast of a patient,
- combining that mixture with a mould formed from phlegm placed in a solution of hot water, sugar and milk and coffee or tea and exposed to sunlight,
- diluting the resultant mould mixture with water and injecting it into a horse to create an immune response,
- obtaining white of the blood of the horse.

52 This is simply a series of easily-undertaken steps with no requirement for production or detection of particular antibodies and the nature of the mould is not relevant. I can see no difficulty for a person skilled in the art following this method to conclusion.

53 The application was not searched. Consequently, I shall refer it back to the

examiner for search and examination of the above method. However, my review of the disclosure leads me to conclude that anything other than a claim based on the above would not comply with the requirements of patent law.

Application GB0407525.5

54 This application is titled “General cure to diseases idea 2”, claims priority from GB0316230.2 above, and has a single claim:

> “1. *A general cure to diseases idea such as Aids by using a mould based on human DNA which could be obtained by phlegm, white of the blood of the patient which contains antibodies or partial antibodies to infection and the diseased matter of the disease to be treated, which for a cure to Aids may use a sample of diseased matter from an Aids black spot under patients arm who is suffering from Aids and then injecting the diluted mould into a chickens egg which is undergoing growth antibodies could be produced to treat diseases generally, the general cure to diseases 2 is substantially as described herein with reference to the accompanying description*.”

55 This claim was the subject of substantive examination; the examiner objected that the invention was unpatentable as a method of treatment, that it was an idea which had not been put into practice and that there was insufficient information for it to be put into practice. Further, there was considerable argument from the examiner on what mechanisms might be involved, particularly how the mould as proposed could result in antibodies to a disease being generated in a separate host and that there was no clear and direct link from the initial disease to any curative agent.

56 As with the previous applications, Mr. Lister submitted an amended claim which he considers to be perfect. Most of it will again be familiar from paragraph 18 above:

> “1. *A sample of blood of the patient is taken as it contains the disease, such as Leukaemia, and can keep the disease alive initially, the disease in the blood is then subjected to acid/alkali bombardment by acid/alkali solution being put into the blood sample so that the disease cells outer shell is weakened, the acid/alkali bombardment is due to the disease being weakened as far as possible without it being destroyed this can be determined using calculus, the weakened disease cell is then put into an egg containing the immune system, the immune system of which attacks the weakened disease cells such that the resultant reprogrammed and strengthened immune system can combat even disease cells which have not been weakened by acid/alkali bombardment, a mould created such as by a solution of phlegm and resultant immune system on pieces of paper water milk sugar coffee tea subjected to oxygen and sunlight in a vat can thus be produced based on the resultant immune system and vat production commenced to produce further anti disease immune system by allowing the mould to grow and multiply, the mould thus produced can then in solution be*

tested using standard testing techniques such as seeing whether it will ward off disease cells that are put in the vicinity of the mould, and then if it does it could be injected into the patient to cure the patient, the mould can be used to inoculate or vaccinate a patient, the Breast Cancer Cure Idea 2 is substantially as described herein with reference to the accompanying description."

57 Despite the obvious grammatical errors and lack of clarity it is possible to interpret this claim. In doing so, the examiner did not accept the claim as a valid amendment due to added matter and explained that it could not be included in the specification.

58 It should again be borne in mind that at no time has Mr. Lister made any attempt whatever to refute the examiner's objections.

Added matter

59 In applying the law as indicated in paragraph 21 above, and the approach of paragraphs 22-24, it is clear that, from the application as originally filed and the published amended claim, a skilled addressee could not possibly have concluded that that an acid/alkali solution should be used to weaken cell walls, that calculus should be used to test for that weakening, that a mould should be prepared based on phlegm and the "immune system" derived from putting the weakened cells into an egg, on paper treated in some undisclosed way with water, milk, sugar, coffee or tea, treated in a vat with oxygen and sunlight, or that the mould could be used to vaccinate or inoculate. Further, the blood sample being taken from a leukaemia sufferer rather than use diseased matter from the Aids black spot of an Aids patient could not have been envisaged. There is no doubt that there is added matter contrary to S.76; I conclude that no claim on this application can be allowable which includes any of the features listed in this paragraph.

Method of treatment

60 I will again apply the law as indicated in paragraph 28 above, and the interpretation of paragraphs 29 & 30. The steps by which any treatment might occur are only conveyed as optional, with more emphasis being placed on the steps leading to potential treatment, particularly the use of an egg. Accordingly, I do not find the invention unequivocally to be a method of treatment.

Sufficiency

61 The examiner has objected that there is insufficient information for the invention to be put into practice, with the law as outlined in paragraph 40 above. I have already found that Mr. Lister's latest claim does not comply with section 76 so my decision is again based solely on the original description.

62 The examiner considers that the original description outlines a number of steps but that none of them are in enough detail that a person skilled in the art could easily follow them in a way which would lead to the final result. Specifically, his

examples of case law[4,5] indicate that the description is deficient in not providing embodiments or examples which support the broad nature of the claim. Even if that were not so, the little description there is does not provide detail of the nature of the antibodies produced, such as their structure or antigen, the nature of the mould apart from what it is cultured on, or why a fungal mould should relate to an Aids infection.

63 I agree, and would add more. An important phase in the whole process of this invention is the use of an egg to produce antibodies. To my mind a skilled addressee could not glean enough from the description to be able to work this part of the invention in two crucial areas: first, unless the egg has a significantly developed chick it is not possible to obtain blood [line 24 – "*Blood is then obtained from the egg by syringe*"], nor therefore white of the blood [line 25 – "*White of the blood of the egg is then obtained*"]; secondly, if this was meant to refer to the white of the egg, which I do not accept it does, I believe there would be no antibodies present since, if at all, these would develop only in the yolk [line 26 – "*The white of the blood of the egg will contain antibodies to the disease*"].

64 Consequently, it is not possible for a person skilled in the art ever to perform this invention.

65 I need not fully consider whether Mr. Lister has ever put any of this idea into practice. However, Mr. Lister has commented on his ideas [20 December 2004], that "*they may work so I think they should be searched and tested correctly*", which strongly suggests he has not.

Application GB0501156.4

66 This application is titled "General cure to diseases idea 3" and the sole original disclosure is a very brief passage of description and a single claim which is virtually identical to the description:

> "Description:
>
> *A General Cure To Diseases which does not use a horse or an egg. Diseased matter cells which could be obtained from the blood of the patient and subjecting this to alkali/acid and then in solution applying this to the immune system of a human so that this fights the reduced strength disease and antibodies to the disease are thus produced from which a cure to the disease can be obtained to be used on the patient too, so that not even a chickens egg let alone a horse need be used risked cure can be tested on a Petri dish using standard testing methods so that a human need not be risked too. Applying this cure principle of engineering the mould and antibodies this solution can be applied to animals too*."

and

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[4] Biogen Inc v Medeva plc [1997] RPC 1

[5] Kirin-Amgen Inc v Hoechst Marion Roussel [2005] RPC 9

"Claim:

Diseased matter cells which could be obtained from the blood of the patient and subjecting this to alkali/acid and then in solution applying this to the immune system of a human so that this fights the reduced strength disease and antibodies to the disease are thus produced from which a cure to the disease can be obtained to be used on the patient too, so that not even a chickens egg let alone a horse need be used risked cure can be tested on a Petri dish using standard testing methods so that a human need not be risked too, applying this cure principle of engineering the mould and antibodies this solution can be applied to animals too, the General Cure To Diseases Idea 3 is substantially as described herein with reference to the accompanying description."

67 Before search Mr. Lister filed an amended claim which referred, among other things, to Aids and macrophages. In his search report the examiner warned Mr. Lister that he considered the invention to be a method of treatment, that the amended claim included unsupported matter which he had ignored for search, that the core of his invention was very well known and, as with the previous applications, he had not provided any worked examples with results demonstrating the efficacy of the invention so that the application merely describes an idea.

68 Mr. Lister subsequently filed a further amended claim which was published alongside the original:

"Claim:

A General Cure To Diseases Idea which does not risk an egg or horse, a sample of blood of the patient is taken as it contains the disease, such as Aids, and can keep the disease alive initially, the disease in the blood is then subjected to acid/alkali bombardment by acid/alkali solution being put into the blood sample so that the disease cells outer shell is weakened, the acid/alkali bombardment is due to the disease being weakened as far as possible without it being destroyed this can be determined using calculus, the weakened disease cell is then put into a fresh sample of blood containing the immune system, the immune system of which attacks the weakened disease cells such that the resultant reprogrammed and strengthened immune system can combat even disease cells which have not been weakened by acid/alkali bombardment, a mould created such as by a solution of phlegm and resultant immune system on pieces of paper water milk sugar coffee tea subjected to oxygen and sunlight in a vat can thus be produced based on the resultant immune system and vat production commenced to produce further anti disease immune system by allowing the mould to grow and multiply, the mould thus produced can then in solution be tested using standard testing techniques such as seeing whether it will ward off disease cells that are put in the vicinity of the mould, and then if it does it could be injected into the patient to cure the patient, the mould can be used to inoculate or vaccinate a patient, the General Cure To Diseases Idea 3 is substantially as described herein with reference to the accompanying description."

69 The examiner's substantive examination, and all subsequent examinations, are

based on this claim, which remains unamended. The actions outstanding are that it includes added subject matter, is unpatentable as a method of therapy, is not novel, and the invention is an idea which has clearly not been put into practice.

70 It should be stressed here, as with the other cases above, that at no time has Mr. Lister made any attempt whatever to refute the examiner's objections or arguments and that, in his opinion, his claim is perfect. Moreover, and surprisingly in view of the discussion at hearing when he stated many times that he need only show his invention to be "*new, not obvious and a combination of features not done before*", he has not actually formed any defence to the examiner's arguments that it is not in fact new with respect to the cited prior art.

Added Matter

71 In applying the law as indicated in paragraph 21 above, and the approach of paragraphs 22-24, it is clear that, from the application as originally filed, a skilled addressee could not possibly have concluded that calculus should be used to test for cell weakening, that a mould should be prepared based on phlegm and the derived "immune system", on paper treated in some undisclosed way with water, milk, sugar, coffee or tea, treated in a vat with oxygen and sunlight, or that the mould could be used to vaccinate or inoculate. Further, although AIDS might well be an obviously applicable disease it has not been implicitly disclosed. There is no doubt that there is added matter contrary to S.76; I conclude that no claim on this application can be allowable which includes any of the features listed in this paragraph.

Novelty

72 Whichever claim is analysed, that filed originally or the amended claim with added matter removed, it is clear that the substance of the invention is the use of acid or alkali to weaken disease cells, those weakened cells being used to provoke an immune response. This is a very well known technique and is clearly demonstrated in the cited prior art. Consequently, the invention is not new.

Method of treatment

73 In applying the law as indicated in paragraph 28 above, and the approach of paragraphs 29 & 30, the pertinent passages of the very brief description are clear: as well as being directed specifically to "*A general cure to diseases*" there are two indicative phrases, ".. *antibodies to the disease are thus obtained from which a cure to the disease can be obtained to be used on the patient*", and "*Applying this cure principle of engineering the mould and antibodies this solution can be applied to animals too*." I have no doubt that, lack of novelty notwithstanding, the invention is a method of treatment.

74 As before I do not need to consider whether Mr. Lister has conceived anything more than an idea and worked his invention, but he does not appear to have done so.

Conclusion

75 I have found that the invention of GB0316230.2 in the form published and in the last proposed claim contains added matter and therefore does not comply with the requirements of section 76. Once the added matter is removed I have found that the invention relates to a method of treatment and is excluded from patentability under section 4A(1). After close inspection of the application as filed, in my opinion there is nothing in it which could form the basis of a patentable invention. I therefore refuse the application under section 18(3).

76 I have found that the invention of GB0323428.3 in the form published and in the last proposed claim contains added matter and therefore does not comply with the requirements of section 76. Once the added matter is removed I have found that the invention is not a method of treatment as such. I have been able to find in the description a method which could form the basis of a patentable invention in the amended application, although it is limited. I therefore refer the application to the examiner for search and subsequent further action under section 18(3).

77 I have found that the invention of GB0407525.5 in the last proposed claim contains added matter and therefore does not comply with the requirements of section 76. Once the added matter is removed I have found that the invention fails to comply with the requirements of section 14(3) in that the application is not clear and complete enough for it to be performed by a person skilled in the art. I have been unable to find in the description a method or product which could meet the requirements of section 14(3). I therefore refuse the application under section 18(3).

78 I have found that the invention of GB0501156.4 in its amended form contains added matter and therefore does not comply with the requirements of section 76. Once the added matter is removed I have found that the invention is not new and therefore fails to comply with section 1(1)(a). It also relates to a method of treatment and is excluded from patentability under section 4A(1). After close inspection of the application as filed, in my opinion there is nothing in it by which the substance of the invention could avoid the cited prior art or which could form the basis of a patentable invention. I therefore refuse the application under section 18(3).

Appeal

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

John Rowlatt
Deputy Director acting for the Comptroller