



23 December 2010

PATENTS ACT 1977

BETWEEN

Philip Hadley

Claimant

and

Welland Medical Ltd

Defendant

PROCEEDINGS

Reference under sections 8 and 12 of the Patents Act 1977 in
respect of patent application number GB 0907051.7

HEARING OFFICER

A C Howard

PRELIMINARY DECISION

- 1 In these proceedings, which are scheduled for a substantive hearing before me on 15-16 February 2011, the defendants had until 22 December to file their evidence in reply. On 17 December, a telephone request was made for a short extension. The reasons given were the volume of the claimant's evidence and the approaching Christmas break. This was followed up by an email on 22 December confirming that the request was for an extension until 10 January. In the meantime an email was received from the claimant's patent attorneys resisting the request on the grounds that the defendants have had "ample time" to prepare their evidence and "since the majority of [the claimant's] evidence [...] simply corroborated the previous statements" there was little new material which needs to be addressed.
- 2 In view of the absence of agreement between the parties on whether an extension should be allowed, I have to decide this as a preliminary matter. The parties have agreed that this can be done on the basis of the papers on file.

- 3 These proceedings are being conducted under Part 7 of the Patent Rules 2007, and in accordance with Rule 81 of the said Rules I have the power to change any period of time which has been specified under that Part. In doing so I am bound by Rule 74 which I shall quote in full:

Overriding objective

- 74.—** (1) The rules in this Part set out a procedural code with the overriding objective of enabling the comptroller to deal with cases justly.
- (2) Dealing with a case justly includes, so far as is practicable—
- (a) ensuring that the parties are on an equal footing;
 - (b) saving expense;
 - (c) dealing with the case in ways which are proportionate—
 - (i) to the amount of money involved,
 - (ii) to the importance of the case,
 - (iii) to the complexity of the issues, and
 - (iv) to the financial position of each party;
 - (d) ensuring that it is dealt with expeditiously and fairly; and
 - (e) allotting to it an appropriate share of the resources available to the comptroller, while taking into account the need to allot resources to other cases.
- (3) The comptroller shall seek to give effect to the overriding objective when he—
- (a) exercises any power given to him by this Part; or
 - (b) interprets any rule in this Part.
- (4) The parties are required to help the comptroller to further the overriding objective.

- 4 The claimants' only argument against granting the extension seems to be based on the premise that the defendants have had enough time to do what they need to do, and so shouldn't be given any more. They have not raised the possibility of any particular disadvantage to their position. Having said that, it is clearly one consequence of granting an extension that the claimants will have less time to finalise their preparations for the substantive hearing, although the bulk of the time that would be lost to them in the event I agree an extension does come in the Christmas break.

- 5 On the other hand, the effect on the defendants of a refusal to grant an extension would be to deny them the possibility of filing potentially important evidence. While it could be said that they have exposed themselves to this risk by making their request at such a late stage, it would nevertheless be a harsh result for the sake of a few working days.
- 6 In these circumstances I believe the interests of justice and fairness to both parties are best served by granting the extension. I therefore allow the defendants until 10 January 2011 to file their evidence in reply.

Costs

- 7 The question of costs has not been raised in this context.

Appeal

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

A C HOWARD

Divisional Director acting for the Comptroller