

PATENTS ACT 1977

BETWEEN

Airscience Technology International Ltd Claimant

and

Benrad Aktiebolag Defendant

PROCEEDINGS

Application under section 72 of the Patents Act 1977
for revocation of patent EP(UK) 0 800 407 B1HEARING OFFICER Stephen ProbertDr Alicia Instone (Scott & York) represented the claimant
Mr Paul Howard (Carpmaels & Ransford) represented the defendantHearing date: 23rd September 2011**TRANSCRIPT OF ORAL DECISION**

- 1 In these proceedings, Airscience Technology International Ltd (“Airscience”) seeks revocation of patent EP(UK) 0 800 407 B1 (“the patent”) on the grounds of lack of novelty and inventive step. The defendant, Benrad Aktiebolag (“Benrad”), has filed a counterstatement denying that the patent is invalid.
- 2 Airscience commenced these revocation proceedings on 16 March 2011 by filing Patents Form 2 accompanied by a statement of grounds. Benrad submits that the proceedings contravene section 74(7) of the Patents Act¹ because on the day the proceedings were commenced, the patent was the subject of infringement proceedings pending before the court². For this reason, Benrad asks that these revocation proceedings be struck out.

¹ Section 74(7) — Where proceedings with respect to a patent are pending in the court under any provision of this Act mentioned in sub-section (1) above, no proceedings may be instituted without the leave of the court before the comptroller with respect to that patent under section 61(3), 69, 71 or 72 above.

² The infringement proceedings before the court (ref. HC 10C00716) were brought by Wallenius Water AB (previously known as Benrad Aktiebolag) against Airsteril UK Ltd. Airsteril UK Ltd has since been placed into voluntary liquidation. The Managing Director of Airsteril UK Ltd was Mr Brian Dewsbery. Mr Dewsbery is also a director of Airscience.

- 3 I have some sympathy with Airscience and its director (Mr Brian Dewsbery) when they say that they didn't believe that the infringement proceedings before the court were 'active' on 16 March 2011. The defence in the infringement proceedings had been struck out on 10 February 2011 by order of Mr Justice Norris. Although Mr Dewsbery (who represented Airsteril UK Ltd in court) was given 28 days to serve an amended defence, he did not do so, and therefore believed that after the 28 days had expired (on 10 March 2011), the case would be 'over' and his new company (Airscience) would be able to apply for revocation of the patent at the IPO.
- 4 Nevertheless, it was clear to me following the submissions from Mr Howard and Dr Instone at the hearing, that the infringement proceedings in the court were still pending on 16 March 2011. For example, as late as 18th May 2011, there was an order by Mr Justice Mann giving Airsteril UK Ltd a further 7 days to serve a defence. (A copy of the court order was supplied by Benrad in correspondence in these proceedings.) Consequently I have no alternative but to strike out these revocation proceedings using rule 83(2)(c)³ — ie. because proceedings under section 72 were instituted without the leave of the court.
- 5 Benrad had also requested security for costs in the event that these proceedings continued. Clearly in view of my decision on striking out, that request falls away.

Costs

- 6 Benrad has requested an award of costs in respect of its expenses to date, including today's hearing. Costs in proceedings before the IPO are generally awarded in accordance with a standard scale, unless there are exceptional reasons for going above the scale. I'm not aware of any reason why I should depart from the standard scale in this case. As proceedings are terminating before any evidence has been filed, and Benrad has not had to pay any official fees or travel expenses for witnesses, only two items from the standard scale apply, and I have assessed them as follows:-

Considering Airscience's statement, and preparing a counterstatement	£300
Preparing for, and participating in, the telephone hearing today	£300
Total	£600

ORDER

- 7 I order the claimant, Airscience Technology International Limited, to pay the defendant, Benrad Aktiebolag, six hundred pounds (**£600**) as a contribution to its costs in these proceedings.

³ Rule 83(2) - If it appears to the comptroller that—

(a)

(b)

(c) there has been a failure to comply with a section, a rule or a previous direction given by the comptroller,

he may strike out the statement of case.

Appeal

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

S PROBERT

Deputy Director acting for the Comptroller