

0/126/93

PATENTS ACT 1977

IN THE MATTER OF an application under
Section 27 to amend Patent No 2107689
in the name of Wittenborgs Automatfabriker A/S

DECISION

On 25 March 1993, Wittenborgs Automatfabriker A/S ("the applicants") applied under Section 27 to amend their GB Patent No 2107689. The application arose out of a third party letter, filed in the Patent Office on 29 July 1992, alleging that the "patent is manifestly invalid for lack of novelty in view of prior art known to the patentee for at least 7 years".

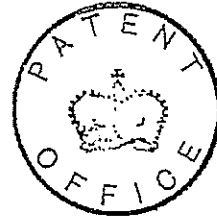
On 4 June 1993, the applicants' agents informed the Office that their clients intended to take no further action to maintain the patent which would be allowed to lapse through non-payment of the next renewal fee due 28 September 1993. They therefore no longer wished to pursue the application to amend. In response to a telephone inquiry from the Office, the applicants' agent filed a further letter stating that their letter dated 4 June 1993 was to be regarded as notice of immediate withdrawal of the Section 27 proceedings.

In an Official Letter dated 14 July 1993, it was stated that it was a preliminary view of the Office that the discretion of the Comptroller ought not to be exercised to permit withdrawal of the application. The judgments in *Upjohn Co. (Beal's) Patent*, [1973] RPC 77, at page 81, line 40, to page 82, line 7, and *Emulsol Corporation's Application*, 57 RPC 256, at page 258, lines 16 - 30, were referred to in support of this view. In reply, letter dated 19 July 1993, the applicants' agents suggested that consideration of the present application be delayed until after expiry of the extended period for payment of the next renewal fee so that it will be clear that the proprietors do not wish to maintain this patent.

In response, by Official Letter dated 3 September 1993, the applicants were informed that the contents of the letter dated 19 July 1993 were noted but that the Office intended to conclude the present proceedings by the issue of a decision. In addition, the applicants were advised that the Comptroller took the *prima facie* view that he should not exercise his discretion to allow the proposed amendments. One month was given for the submission of any comments. No reply to this letter has been received.

In the circumstances of the present case, as set out above, I therefore refuse to the present application, under Section 27 of the Patents Act 1977, to amend Patent No 2107689.

Dated this 21 day of October 1993



Y J PEGLER

Principal Examiner, acting for the Comptroller

THE PATENT OFFICE