

Section 72

166

Secretary

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0143/91

PATENTS ACT 1977

IN THE MATTER OF
an application by
Aristocast Originals Ltd
for the revocation of
Patent No 2192411 in the name of
Highspire Ltd

DECISION

SHB 147

This application for revocation, made on 22 February 1990, was based on prior use and on illicit amendment. In a preliminary decision dated 5 November 1990 I refused to extend further the time for the applicants to file their evidence in chief, but said that it was open to them subsequently (that is to say when they had been able to obtain evidence of prior use) to apply to introduce it into the proceedings.

The applicants subsequently applied to introduce new evidence into the proceedings, but in the face of opposition from the patentees, have applied, in a letter dated 12 February 1991, to withdraw their application, with the intention of using the evidence in a new application for revocation. The new application has in fact now been made.

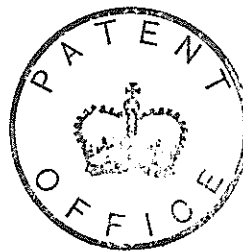
I have considered the objections raised in the present application and am satisfied that I should make no order to revoke the patent and should allow the application to be withdrawn.

In the circumstances, I award the patentees Highspire Ltd the sum of £150 as a contribution to their costs and direct that this sum be paid to them by the applicants Aristocast Originals Ltd. In so deciding I have borne in mind the applicants' submissions about costs, set out in their agents' letter dated 27 February 1991, which can be summarised as a submission that the two applications for revocation should be considered together. However, it seems to me that extra expense has inevitably been incurred as a result of the applicants launching this application before the evidence they needed was available, and it is appropriate to deal with that now, rather than at the conclusion of the new proceedings.

Dated this 25 day of March 1991


W J Lyon

Superintending Examiner, acting for the Comptroller



PATENT OFFICE