PATENTS ACT 1977

Dr P Ferdinando
3Y46

IN THE MATTER OF an application under section 40 by Bernard Frederick Fellerman for an award of compensation in respect of Patents Nos GB2132060 *et al* in the name of Thorn EMI Patents Limited

15/12/95

PROCEDURAL DECISION

Bernard Frederick Fellerman first applied to the Comptroller under section 40 on 3 March 1995, seeking an award of compensation in respect of Patents Nos GB2144956 and EP0146215. The application was accompanied by a statement. Following correspondence with the Patent Office Mr Fellerman modified his identification of the patents in respect of which his application was filed to refer to GB2132060 and an extensive list of foreign patents. The issue of the correct identification of the employer against whom Mr Fellerman was seeking an award was also raised in correspondence with the Office, and Mr Fellerman stated his view that his employer had been the Thorn EMI group, giving their "address for service" as the Director of Patents, Thorn EMI Patents Ltd. The correspondence culminated in the filing of an amended Form 26/77 on 5 May 1995, followed on 12 May 1995 by an amended statement and copies of the patents in suit. These documents, with minor amendments requested by Mr Fellerman on 23 May 1995, appear to define the final version of Mr Fellerman's pleadings.

Thorn EMI Patents Ltd filed a counterstatement on 23 June 1995, *inter alia* denying that they had ever been Mr Fellerman's employer and stating that the undertaking which had employed Mr Fellerman was now known as Kenwood Ltd. The counterstatement stated that since 1989 neither Thorn EMI plc nor Thorn EMI Patents Ltd had had any control over or association with Kenwood Ltd. Mr Fellerman responded on 10 August 1995 with a "written submission", essentially comprising a detailed reply to the counterstatement, and not departing from his original view as to his employer.

Both parties then indicated to the Office that they wished to be heard in the preliminary matter of the identity of the "employer" for the purposes of section 40, and a period was allowed for the filing of evidence on this issue. Thorn EMI Patents Ltd filed two statutory declarations, by Alan Cooper Sharp, a trainee patent agent employed by a subsidiary of Thorn EMI plc, and George Marsden Smith, Group Legal Adviser to Thorn EMI plc. Mr Fellerman filed two statutory declarations. The matter of the identity of the employer therefore came before me at a preliminary hearing on 10 November 1995, at which Mr Fellerman appeared in person and Thorn EMI plc and Thorn EMI Patents Ltd, whom to avoid confusion I shall refer to in the context of these proceedings jointly as the opponents, were represented by their patent agent Mr Robin Marsh. At the hearing Mr Marsh made it clear that the opponents were seeking to have the application struck out on the grounds that there was no cause of action against Thorn EMI plc or Thorn EMI Patents Ltd.

For the purposes of this decision it is sufficient to note that the subject matter of the patents in suit is concerned with cooker hobs in which the heat source comprises halogenated tungsten filament lamps which can be mounted under a ceramic hob surface. For convenience I will refer to these as halogen hobs.

Section 40(1) of the Patents Act 1977 reads as follows:

> "Where it appears to the court or the comptroller on an application made by an employee within the prescribed period that the employee has made an invention belonging to the employer for which a patent has been granted, that the patent is (having regard among other things to the size and nature of the employer's undertaking) of outstanding benefit to the employer and that by reason of those facts it is just that the employee should be awarded compensation to be paid by the employer, the court or the comptroller may award him such compensation of an amount determined under section 41 below."

It is evident therefore that questions to be decided under section 40(1) are between the employee and his or her employer, and it is necessary to be clear as to the meaning of the terms "employer" and "employee". These terms are defined in section 130(1) as follows:

"'employee' means a person who works or (where the employment has ceased) worked under a contract of employment or in employment under or for the purposes of a government department or a person who serves (or served) in the naval, military or air forces of the Crown:

'employer', in relation to an employee, means the person by whom the employee is or was employed."

Section 40 of the Patents Act 1977 thus specifies the circumstances under which an award of compensation is to be made, and states that the amount of compensation is to be determined in accordance with section 41. Since it is in this latter section that the concept of "connected persons", which formed a part of Mr Fellerman's argument, appears, I will quote subsections 41(1) and (2):

"(1) An award of compensation under section 40(1) or (2) above in relation to a patent for an invention shall be such as will secure for the employee a fair share (having regard to all the circumstances) of the benefit which the employer has derived, or may reasonably be expected to derive, from the patent or from the assignment, assignation or grant to a person connected with the employer of the property or any right in the invention or the property in, or any right in or under, an application for that patent.

(2) For the purposes of subsection (1) above the amount of any benefit derived or expected to be derived by an employer from the assignment, assignation or grant of -

(a) the property in, or any right in or under, a patent for the invention or an application for such a patent; or

(b) the property or any right in the invention;

to a person connected with him shall be taken to be the amount which could reasonably be expected to be so derived by the employer if that person had not been connected with him."

Section 43(8) (as amended) determines the meaning of "connected persons" as follows:

"(8) Section 839 of the Income and Corporation Taxes Act 1988 (definition of connected persons) shall apply for determining for the purposes of section 41(2) above whether one person is connected with another as it applies for determining that question for the purposes of the Tax Acts."

Certain features of the accounts of events relating to the invention and the issue of employment appear not to be in dispute in any significant respect between the parties. Mr Fellerman was employed from 1 August 1978 to 30 September 1986, initially within the Thorn group and, on integration with EMI in March 1980, within the Thorn EMI group. He worked initially as Chief Engineer (Cookers and Refrigeration) and then as Research Manager in North London, and subsequently at Havant. Mr Fellerman states in his evidence that he was employed throughout this period by a company called Thorn Domestic Appliances (Electrical) Ltd, and this does not appear to be inconsistent in any significant respect with the opponents' counterstatement, where it is stated that his employer for that period was Thorn EMI Domestic Appliances Ltd. The explanation for the apparent discrepancy in name appears to lie in the fact that, as was explained at the hearing, the name of this company changed over the years, the latter name being used following the integration in March 1980 of the Thorn and EMI companies. In fact, as will emerge, this is by no means the whole story as regards company name changes, and it is a feature of this case that my task in determining who is properly to be regarded as Mr Fellerman's employer for the purposes of these proceedings is made more difficult by what Mr Marsh referred to as the "very many changes of company names and corporate structures within Thorn EMI Domestic Appliances over this period". Mr Marsh went on to say that "it is very important to regard the timing as well as when which company was called which name".

It was Thorn EMI Domestic Appliances Ltd which applied in 1982 and 1983 for patents relating to halogen hobs, in which applications Mr Fellerman was identified as one of the three joint inventors. Thorn EMI Domestic Appliances Ltd was a part of the Thorn EMI group consisting, on Mr Fellerman's account, of divisions dealing respectively with cookers, refrigeration, laundry, and microwave ovens, and of the Kenwood division, which I understand dealt with small domestic appliances. Mr Fellerman's research department carried out work for all these divisions.

In 1985 there was a reorganisation of the field of domestic appliances, with the formation of Thorn EMI Major Domestic Appliances Ltd and Thorn EMI Small Appliances Ltd. Although it has not appeared in evidence and was not raised at the hearing, I note that it is a matter of public record on the open file of Patent No GB2132060 that the proprietors of the patent changed their name on 1 April 1985 to Thorn EMI Appliances Ltd. This name was, in fact, mentioned in Mr Fellerman's statement of case, where he stated that both Thorn EMI Major Domestic Appliances Ltd and Kenwood Small Appliances Ltd remained, at the time of the 1985 reorganisation, as parts of one division of this name. Mr Fellerman also notes in his statement that in 1986 his research department at Havant was closed and that some of the staff were split between Kenwood (Small?) Appliances at Havant and Major Appliances in Durham. Since the evidence establishes that Mr Fellerman was made redundant in 1986 (though accounts vary as to whether this occurred in September or December that year), it may be a reasonable supposition, albeit not expressly stated, that this coincided with the closure of the research department.

On 5 June 1987, some months after Mr Fellerman was made redundant, Thorn EMI Major Domestic Appliances Ltd, together with, according to Mr Marsh, various other of the group's activities, was sold to Electrolux Associated Companies Ltd. Assets such as patents went with the sale, with the exception of the patents relating to the halogen hob, which, as Mr Marsh noted, appear to have been regarded as part of the patent portfolio relating to major appliances and were assigned on 28 May 1987 to Thorn EMI Patents Ltd, which is owned by Thorn EMI plc. Mr Marsh commented that he thought it logical that the halogen hob patents would have gone to Electrolux had they not been assigned to Thorn EMI Patents Ltd, but I have been shown no explanation as to why that course was not followed in view of the general policy that patents went with the sale.

Thorn EMI Small Appliances Ltd, which was associated with the Kenwood brand name, was sold on 7 September 1989 to a company called Cabinhope Ltd, perhaps actually under the name Kenwood Ltd, though Mr Smith's evidence does not make this entirely clear on my reading. Mr Smith confirms that neither Electrolux Associated Companies Ltd nor Cabinhope Ltd either is or has been a subsidiary of Thorn EMI plc. It is clear that the halogen hob patents were not part of the property transferred with Kenwood Ltd to

Cabinhope Ltd, but that they remained at that time, and subsequently, assigned to Thorn EMI Patents Ltd. Mr Smith states that, prior to its sale by Thorn EMI plc, Kenwood Ltd traded *inter alia* as Thorn EMI Small Domestic Appliances Ltd (until 25 April 1985) and as Thorn EMI Kenwood Small Appliances Ltd (until 3 December 1985).

Mr Marsh argued that, for the purposes of section 40, as in all other respects, Mr Fellerman's employer was Kenwood Ltd, a company now unconnected with the Thorn EMI group. He drew attention to the evidence of Mr Sharp, exhibited to which was correspondence of May 1995 between Mr Sharp and the Senior Personnel Assistant of Kenwood Ltd, who confirmed that:

> "... the above named [Mr Fellerman] was employed by us (then known as Thorn EMI Domestic Appliances) from 01-08-78 to 10-09-86, when he was made redundant."

I note that the word "then" is perhaps not the most helpful aspect of this letter, since it is acknowledged by the opponents that the name of the company in question changed a number of times, it was certainly **not** known as Thorn **EMI** Domestic Appliances in 1978 when Mr Fellerman joined it, before the Thorn/EMI merger, and this name does not correspond with either of the names mentioned in Mr Sharp's evidence as applying during the period of Mr Fellerman's employment. Nevertheless, as will emerge, I regard this letter as of great significance in these proceedings.

Mr Fellerman, on the other hand, argued that, although he worked for most of the relevant period at Havant where the Kenwood division was apparently based, he was not actually employed by Kenwood. He exhibited copies of P60 tax forms for the tax years ending April 1979 to April 1985. Those for 1979 and 1980, when he was apparently working in North London, record the employer's name and address as Thorn Electrical Ind (Misc) Ltd of Cambridge House, Enfield. The remainder, apparently covering the period when he was working in Havant, record the employer as T.D.A. (Electrical) Ltd of New Lane, Havant. He argued that in each case the particular employer company by whom he was paid, as identified on the P60s, was for "administrative convenience". At the hearing he stated that it was Thorn EMI's policy to pay him by whichever was the most convenient accounts office.

Mr Marsh noted that the Kenwood letter did not state that Mr Fellerman was paid by Kenwood, but that he was employed by them. He added that the fact that the company was now called Kenwood did not mean that Mr Fellerman was at relevant times an employee of Kenwood. He was, to quote Mr Marsh directly, "an employee of a company **probably** called Thorn EMI Domestic Appliances which later, as a result of company reorganisation, became Kenwood". Mr Marsh's choice of the word "probably" encapsulates my difficulty in tracking my way through the complexities of the relevant corporate structural and name changes. Mr Marsh also did not demur from my tentative observation that perhaps it was more correct to say that **part** of Thorn EMI Domestic Appliances became Kenwood.

As I have already noted, Mr Fellerman has not sought to dispute that he was employed by the company he described as Thorn Domestic Appliances (Electrical) Ltd, which the opponents describe as Thorn EMI Domestic Appliances Ltd. Indeed, on the contrary, he has expressly stated as much in both of his statutory declarations, and confirmed it at the hearing. This might appear to be consistent with the P60 identification of "T.D.A. (Electrical) Ltd" as his employer from 1981 onwards, though it is not clear to me, from the evidence I have been shown about the complex history of company name changes, whether there was actually ever a company strictly named "T.D.A. (Electrical) Ltd". The "T." might, I suppose, be an abbreviation for "Thorn", or perhaps for "Thorn EMI" since these P60s cover a period subsequent to the merger of Thorn and EMI, but this has not been made clear, and I gain nothing from speculation. Certainly the employer's name recorded on the P60s is not Kenwood Ltd, nor is it either of the earlier names used by Kenwood Ltd according to Mr Smith's evidence, notwithstanding Mr Sharp's evidence that, according to Kenwood Ltd themselves, and as supported by their own letter, they employed Mr Fellerman for the whole of the relevant period. This, though, would be consistent with a policy of what Mr Fellerman called "administrative convenience". I note also that in an undated job advertisement which Mr Fellerman exhibited and which he stated was the one to which he applied for his initial posting in North London, applicants were invited to contact the Technical Director of Thorn Domestic Appliances (Electrical) Ltd.

Notwithstanding Mr Fellerman's effective agreement with the opponents as to his employer in what I might term general respects, it is central to his argument that the employer for the

purposes of his section 40 application should be identified as Thorn EMI plc. He relied on several points to support this contention:

(a) the parent and the subsidiary companies are "connected persons" under the statutes quoted above and are "associated employers" under certain employment legislation;

(b) the parent company, Thorn EMI plc, had ultimate control and direction of its subsidiary company and of Mr Fellerman and his terms and conditions of employment, had ultimate control of the patents, and has gained the benefit of the patents;

(c) the parent company in its Annual Reports, extracts of which for 1984 and 1986 were exhibited to Mr Fellerman's second statutory declaration, lauded the halogen hob as a company product, featured the chairman of the subsidiary company, and listed as its employees those employed by its subsidiary companies. As evidence on the latter point, Mr Fellerman produced, while under oath in the witness stand, the full Annual Report for 1986, and drew attention to a table of "average number of employees by product sector", totalling 85,700 for 1986 and 90,327 for 1985.

(d) liability for compensation under the Patents Act should not be avoidable by transferring the patents within a group of companies that are "connected persons".

Mr Marsh did not consider that the laudatory comments about the halogen hob in Thorn EMIs plc's Annual Report necessarily implied that this product, or any other activities in which the group as a whole were involved, was the "direct child" of Thorn EMI plc. Moreover, he did not regard the reference to employee numbers in the Annual Report as decisive on the issue of who was Mr Fellerman's employer, and he referred me to the case of *GEC Avionics Ltd's Patent* [1992] RPC 107 in which the employer was taken to be GEC Avionics and not the parent company GEC. He observed that if the employer was taken to be the holding company of a large conglomerate the employee's task in showing outstanding benefit having regard to the size of the employer's undertaking would be virtually impossible.

I do not necessarily accept the full apparent implication of Mr Marsh's argument in this regard. I note, for example, that in *British Steel plc's Patent* [1992] RPC 117 I found that in the circumstances of that case I had to consider the size and nature of the whole British Steel operation as the basis for determining whether the benefit due to the patent was outstanding, though I did not rule out the possibility that in appropriate circumstances the proper "undertaking" to be considered in relation to section 40(1) might be a particular sector or site of the total organisation. Nevertheless, I agree with him that the presentation of overall employee numbers, or of particular products, in the parent company's Annual Report cannot be regarded as decisive in relation to the specific question of who was Mr Fellerman's employer.

Mr Marsh also argued that the definition of "employer" in section 130 does not include persons associated or connected with the employer, and that on that basis neither Thorn EMI plc nor Thorn EMI Patents Limited are or were employers of Mr Fellerman for the purposes of section 40. Moreover, Thorn EMI Patents Ltd, and presumably equally Thorn EMI plc, could not at the same time be the employer and a connected person. The provisions of section 40 did not allow an employee to seek compensation from anyone other than the employer. Section 43(8), which defines "connected persons", was, he argued, relevant to the amount of benefit under section 41, and not to the question of who is the employer for section 40. The undertaking which employed Mr Fellerman was now known as Kenwood Ltd, and neither Thorn EMI plc nor Thorn EMI Patents Ltd had had any control over or association with that undertaking since 7 September 1989.

I am satisfied that the question of the identity of the employer must be decided, consistently with the section 130(1) definition, as a narrow question of fact, to be determined from the evidence relating to the circumstances of the employment. Considerations as to who might control or direct the employer, or who might have received benefit from the patents, at the time of employment or subsequently, are secondary and of relevance only to the extent that they shed light on the central question.

I am satisfied also that Mr Marsh is correct in regarding the concept of "connected persons" as of no relevance to this central question. The term arises in section 41(1) and (2), in a

context which shows that it is clearly intended to contribute to a determination of the amount of the benefit derived or expected to be derived by the employer within the framework of a determination of the amount of compensation to be awarded to a successful section 40 applicant, rather than to a determination of who the employer is. The formula in section 41(1) requires account to be taken of the benefit to the employer "from the assignment, assignation or grant **to a person connected with the employer**", and section 41(2) has the effect of requiring the benefit determined in relation to such assignment &c to be taken as that which could reasonably be expected to be derived in an arm's length transaction. I believe that Mr Marsh is correct in holding that the structure of these provisions precludes the possibility of a particular person being both employer and "person connected with the employer", and that Mr Fellerman has misled himself in placing reliance upon the concept of "connected person" as part of his argument.

I consider that the approach I should adopt in determining the issue of who is or was Mr Fellerman's employer for the purposes of section 40 is to decide first by which company he was employed at the time of his employment, and then to attempt to determine which company is now the successor to that company. The answer to the latter question will determine whether the opponents are correct in their contention that they are, in a sense, the wrong target in relation to Mr Fellerman's application for an award of compensation.

The first stage, then, is to determine who was Mr Fellerman's employer during the time when he was working within the Thorn, and then the Thorn EMI, group. I note in this connection that section 130(1) defines the "employee/employer" relationship in terms of a contract of employment. There is no evidence that Mr Fellerman had a written contract of employment, but neither party addressed me on whether this was of any significance in relation to the statutory definition. I take it, therefore, that I must seek to decide the question of the identity of Mr Fellerman's employer by reference to the evidence submitted concerning the circumstances of his employment.

While he sought to persuade me that the parent company, Thorn EMI plc, was the correct target for his section 40 application, Mr Fellerman has expressly accepted that he was in fact employed by the subsidiary company, variously referred to, *inter alia*, as Thorn Domestic

Appliances (Electrical) Ltd and Thorn EMI Domestic Appliances Ltd. The evidence I have been shown is consistent with this. I refer in this regard to the address for contact of the job advertisement, to the P60s, and to the letter from the Senior Personnel Assistant of Kenwood Ltd, but most particularly to Mr Fellerman's own statements. On the balance of probabilities that, to my mind, settles the matter during the earlier part of Mr Fellerman's employment, from its commencement in 1978, through the period around 1982 and 1983 when the invention of and the applications for the patents in suit were originated, and at least up to the time when corporate restructuring began to have a major impact upon this particular company. I am satisfied on this basis that, while it is not inconceivable that an organisation comparable in size and diversity to the parent company Thorn EMI plc might be structured in such a way as properly to constitute the employer for the purposes of section 40, the evidence does not point to that being the case as regards Thorn EMI plc themselves, but rather points to Mr Fellerman's employer being the subsidiary company which, at around the time of the invention, was probably called Thorn EMI Domestic Appliances - perhaps (Electrical) - Ltd, or something very like this. Mr Fellerman's references to the parent company Thorn EMI plc as his "ultimate employer" are, while understandable in relation to his position within a member company of the larger group, misleading in the present context. The fact that the parent company may have exerted control or direction over the subsidiary company, may have claimed credit for its inventions, and may have listed its employees as its own in its Annual Report, is not in any sense inconsistent with that conclusion.

Following the succession of the identity of Mr Fellerman's employer through 1985, when the Domestic Appliances operation was divided between Major and Small Appliances interests and the Kenwood name began to be used, apparently for the first time in this context, raises further questions. Mr Marsh has made it clear that the halogen hobs, with which Mr Fellerman's research team appears to have been primarily if not solely concerned, were regarded as part of the **major** appliance portfolio, and this might perhaps suggest at first sight that on division of the company Mr Fellerman and his team might have moved to the Major Appliances concern for employment purposes. However, Mr Fellerman himself noted that his team did research for all divisions of the Domestic Appliances undertaking, so perhaps the team's tie-in to halogen hobs may not have been an exclusive one. Mr Fellerman's reference to the fact that both Major and Small Appliances operations

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remained as parts of a single division, Thorn EMI Appliances Ltd, which appears from the pre-grant patent application file to be simply the new name for Thorn EMI Domestic Appliances Ltd, raises the possibility that staff of both operations continued to be employees of that company rather than of the separate Major and Small Appliances operations. I do not regard this as inconsistent with Mr Smith's evidence as to the names used for the Small Appliances operation during 1985, since Mr Fellerman himself acknowledged the use of distinct company names for each of the Major and Small Appliances operations while they remained under the umbrella Thorn EMI Appliances Ltd division.

The Kenwood letter exhibited by Mr Sharp states that Mr Fellerman was employed throughout the period from 1978 to 1986 by the company of which Kenwood Ltd is the successor. Mr Fellerman, on the other hand, denied that he ever worked for Kenwood, but since he acknowledged that he had been employed by Thorn Domestic Appliances (Electrical) Ltd, which, subject only to variation in the company name and in the scope of its business, was in fact the predecessor company to Kenwood Ltd according to the Kenwood letter, there appears in reality to be no conflict between the parties on this point . I note that no point was taken on the hearsay nature of the Kenwood letter, but even had such a point been taken by Mr Fellerman I would have regarded the letter as admissible as first-hand hearsay.

I find the Kenwood letter singularly persuasive, notwithstanding that it oversimplifies the sequence of names used by the company of which it declares Kenwood Ltd to be the successor. Kenwood Ltd are clearly, on the evidence, now entirely independent of the Thorn EMI organisation. Furthermore, by identifying themselves as the successors to Mr Fellerman's former employer they are effectively presenting themselves as potential respondents in a possible future section 40 action, and I can perceive no motive why any independent company should choose to do that unless the facts required them to do so. In my judgement that lends weight to their assertion. That Mr Fellerman should conscientiously have a different understanding causes me no surprise, since I can imagine that, from the perspective of an individual employee, the changing pattern of corporate structures and titles adopted within the Thorn EMI organisation over a period of years might have seemed distant and of little significance, except, of course, when it resulted in more traumatic events such as Mr Fellerman's eventual redundancy.

I am satisfied on the balance of probabilities that the implication of the Kenwood letter is that Mr Fellerman's employer, following the division of Thorn EMI Domestic Appliances Ltd into Major and Small Appliances operations, continued to be the umbrella Thorn EMI Appliances Ltd company, whether or not it used that exact name throughout the remainder of Mr Fellerman's term of employment. That, I am persuaded, remained the position up to the time of Mr Fellerman's redundancy in 1986.

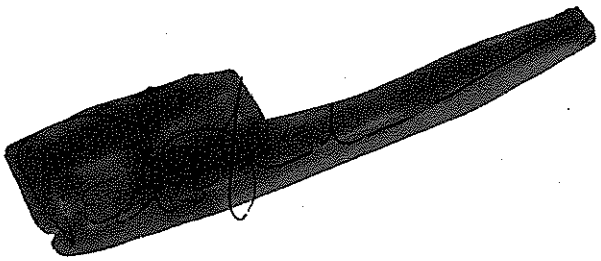
On the sell-off of the Major Appliances operation to Electrolux in 1987 it appears likely, from the Kenwood letter, that those employees of the former Thorn EMI Appliances Ltd who did not actually transfer to Electrolux continued to be employed by the part of Thorn EMI Appliances Ltd which remained within the Thorn EMI organisation, but which was apparently now primarily concerned with small appliances. On Mr Smith's evidence it seems likely that the name Kenwood had been incorporated into the title of the remaining company by this time. More importantly for the purposes of these proceedings, I am satisfied that the Kenwood letter establishes that for Mr Fellerman the succession of title of his former employer company continued at this stage to lie with this remaining company within the Thorn EMI group, and probably associated with the Kenwood name. When the Small Appliances operation, by now perhaps actually called Kenwood Ltd on the basis of Mr Smith's evidence, was sold to Cabinhope in 1989, transferring with it the Kenwood name, the chain of succession of Mr Fellerman's employer company moved with it, thereby moving out of the Thorn EMI organisation altogether.

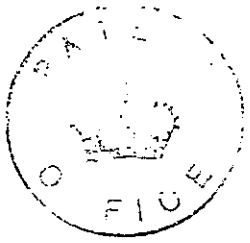
It is important in tracing this sequence of events to recognise that, for the purposes of section 40, proprietorship of the patents in suit and the chain of succession of the employer company are distinct questions of fact, to be separately decided as necessary on the evidence. The section requires the applicant for an award of compensation to apply to the comptroller with reference to the employer, **not** to the current proprietor. In determining whether an award is justified any consideration passing between the parties in return for transmission of rights in the patents at the time when the proprietorship and employer trails divided will be taken into account in determining whether the employer has enjoyed outstanding benefit. Any subsequent returns on the patent to the proprietor alone will **not** be part of the consideration.

The outcome of this consideration is that I find that, for the purposes of a potential application under section 40 by Mr Fellerman in respect of the halogen hob patents, his employers are not Thorn EMI plc or Thorn EMI Patents Ltd, but are, on their own evidence, Kenwood Ltd, as successors to Thorn EMI Domestic Appliances Ltd, the company which actually employed Mr Fellerman under one name or another throughout his time with the Thorn EMI organisation. Since, therefore, I find that in the present proceedings Mr Fellerman has, as Mr Marsh contended, no cause of action against Thorn EMI plc or Thorn EMI Patents Ltd, I dismiss this application under section 40.

I have received no submissions as to costs in this action and I therefore make no award of costs. This being a matter of procedure, any appeal from this decision to the Patents Court must be made within 14 days from the date of this decision.

Dated this 15 day of December 1995





Dr P FERDINANDO

Superintending Examiner, acting for the Comptroller

THE PATENT OFFICE

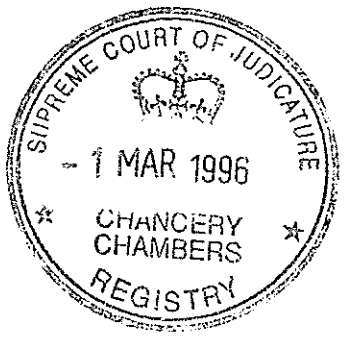
IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

PATENTS COURT

CH 1996 F.No. 1428

B E T W E E N :



BERNARD FREDERICK FELLERMAN

Appellant

and

THORN EMI PATENTS LIMITED

Respondent

NOTICE OF APPEAL TO PATENTS COURT

IN THE MATTER of an application by BERNARD FREDERICK FELLERMAN for compensation under s. 40 Patents Act 1977 and an opposition thereto by THORN EMI PATENTS LIMITED

TAKE NOTICE that the High Court of Justice, Chancery Division, Patents Court, will be moved before a Judge of the Patents Court at a time to be set by the Patents Court not less than twenty four days after service of this notice, or so soon thereafter as Counsel can be heard, by Counsel on behalf of the Appellant by way of an appeal from the decision of the Superintending Examiner acting for the Comptroller-General dated the 15th December 1995 whereby he dismissed the Appellant's application under s.40 Patents Act 1977.

AND FURTHER TAKE NOTICE that the grounds of this appeal are as follows:-

1. The Superintending Examiner erred in finding that the Appellant was employed

only by Thorn EMI Domestic Appliances Limited for the purposes of s.40 Patents Act 1977.

We ask the Patents Court to grant the following relief:

(a) That the Superintending Examiner's Order dismissing the Appellant's application for compensation under s.40 Patents Act 1977 be set aside.

(b) That the appellant's said application be remitted to the Patent Office for further consideration.

(c) That the costs before the Comptroller and the costs of and incidental to this appeal may be paid by the Respondent.

DATED this 1st day of March 1996

Messrs. Blake Lapthorn,
1 Barnes Wallis Road, Segensworth,
Fareham, Hants, PO15 5UA.

IN THE HIGH COURT OF JUSTICE
CH 1996 G.No. 1428

CHANCERY DIVISION

PATENTS COURT

B E T W E E N :

BERNARD FREDERICK FELLERMAN
Appellant

and

THORN EMI PATENTS LIMITED
Respondent

NOTICE OF APPEAL TO PATENTS COURT

Messrs. Blake Lapthorn
New Court, 1 Barnes Wallis Road
Segensworth, Fareham,
Hants PO15 5UA.