Dr P Ferdinando
3Y46

PATENTS ACT 1977

IN THE MATTER OF an application under Section 46(3) by Fabrikat (Nottingham) Ltd for settlement of terms of a licence of right in respect of Patent No 1585498 in the name of Douglas Lunan Stewart.

10/11/94

DECISION

Patent No 1585498 is dated 17 May 1978 and is therefore a new existing patent as defined by paragraphs 3(1)(a) and (b) of Schedule 1 of the Patents Act 1977. In accordance with paragraph 4(1) of the Schedule the term of the patent is extended from sixteen to twenty years and during the four years of the extended term of the patent licences are available as of right. The patent is concerned with a modified form of safety rail for pedestrians which provides improved visibility between the vertical bars of the rail when viewed at a relatively shallow oblique angle to the run of the rail.

On 20 May 1993 the applicants, (Fabrikat) who are in the business of manufacturing and supplying street furniture, applied to the Comptroller to settle the terms of a licence of right which they wished to obtain from the patentee Dr Stewart. Certain terms of the licence proposed by Fabrikat were objected to by Dr Stewart in a Statement filed on 20 August 1993, the terms he proposed instead being set out in an amended draft licence filed earlier on 13 April 1993. Following the filing of a Counterstatement by Fabrikat and evidence by both parties, a hearing was appointed and took place on 7 October 1994, Dr Stewart being represented by counsel Mr D Alexander and Fabrikat being represented by counsel Mr P Colley.

The evidence filed prior to the appointment of the hearing was brief. It consisted of statutory declarations by Dr Stewart and by Mr O'Neill who is a joint managing director of Fabrikat. Central to Dr Stewart's evidence is a licence under the patent which was granted to a

company (which I shall refer to simply as "Logan") in 1978, this being the only licence which had been granted under the patent. However, only a matter of days before the hearing, Dr Stewart indicated that he wished to submit as further evidence a statutory declaration by a Mr Pacitti, a chartered patent agent with the firm of Murgitroyd & Co acting for Dr Stewart, together with exhibits including some recent correspondence between the parties to these proceedings and a licence which had been granted on 31 August 1994 to another company called Alpha Rail Ltd (Alpha). The introduction of this further evidence into the proceedings at this late stage was strenuously opposed by Fabrikat and it fell upon me to decide as a preliminary matter whether or not to admit it.

Although it was accepted by Mr Colley that Fabrikat, by a letter dated 5 September 1994, had been notified that a new licence had been granted and at that time had been given details of what were, for present purposes, the most important terms of the new licence, he argued that it had been very late in the day before it was made clear that the other side wished to introduce it as evidence and would be relying on it. Fabrikat had been able to produce a second declaration in reply by Mr O'Neill which they requested to be admitted if I allowed Mr Pacitti's evidence and the new licence into the proceedings, but it was argued by Mr Colley that in the absence of any evidence as to the background against which the Alpha licence agreement was entered into, the licence was of little value in providing a persuasive indication of terms which a willing licensor and willing licensee would agree. I indicated at the hearing that, in my view, the absence of such background evidence left the relevance of the Alpha licence as a comparable licence open to question , and, if I admitted the licence as evidence, I would have to view it with caution.

With that rider I did not believe that the applicants would be seriously prejudiced by the lateness of the submission of the Alpha licence even though they have been unable in the time available to make investigations into the circumstances associated with that licence. Fabrikat had been made aware of the most important terms of the Alpha licence in early September and possibly before that (there is a reference in the letter of 5 September indicating that the licence was essentially that enclosed with an earlier letter). Fabrikat chose not to accept terms similar to those of the Alpha licence, and I think it was that which was the deciding factor leading to the late request to admit the Alpha licence.

Furthermore, it is established that in settling disputes over the terms of a licence of right truly comparable licences, when they exist, are of great importance, and I attach especial importance to them in this case because apart from the Logan licence, which is not recent and, as will appear later, may have special factors associated with it, there is little else in the evidence to which I may look for assistance. It is for these reasons that I decided to admit the further evidence at the hearing, but I will emphasise again that I approach the Alpha licence with caution in view of the lack of persuasive evidence that there are no factors associated with the agreement which are peculiar to Alpha. I also admitted Mr O'Neill's second declaration and directed that the accompanying exhibit giving his estimate of Fabrikat's selling price for the patented product should be treated as confidential under Rule 94(1) and that only Dr Stewart's counsel and patent agent should have access to it.

It also became apparent at the hearing that, as a result of the Alpha licence being granted, Dr Stewart was now proposing terms for the Fabrikat licence which differed in a number of important respects from those in the amended draft licence filed on 13 April 1994, in particular the size of the initial payment asked for was reduced from £20,000 to £10,000 and the royalty rate proposed was reduced from 10% to 7½% in line with corresponding terms of the Alpha licence.

Turning then to consideration of the substantive issues, I shall begin with the question of whether or not the licence should include a term requiring an initial lump sum payment. The arguments for such a term seem to me to be twofold. Firstly, the Alpha licence was argued by Mr Alexander to be the most relevant comparable licence available and as Alpha had agreed to make an initial payment of £10,000, the present licence should include a term requiring an initial payment of equal size. That of course begs the question as to the true comparability of the Alpha licence. Mr Colley suggested that there could be special reasons for Alpha having agreed to the initial payment, such as obtaining early entry into the market without having to make an application to the Comptroller under section 46(3), or making a settlement of some earlier infringing activity. I can accept the former as a possibility, but I doubt the latter because Mr Pacitti has stated that the agreement with Alpha was negotiated freely, and it would have been very misleading to make that statement knowing, as I am sure he would have known, that settlement of alleged infringing activity had been a factor.

Viewing the Alpha licence with the degree of caution which I believe is necessary under the circumstances, I cannot accept that the mere presence of the initial lump sum payment term in the Alpha licence gives sufficient reason for including a similar term in the present licence. I would also add at this point that although there was an initial payment in respect of the Logan licence it was of such a small amount that it was of very little significance.

Secondly, Mr Alexander argued that there are other reasons why such a payment would be appropriate in the case of Fabrikat's licence. (a) Obtaining this licence will enable Fabrikat to extend its range of products and hence it will be able to bid for contracts to supply a complete range of "street furniture". In the absence of evidence directed to this matter I am unable to accept as a matter of established fact that Fabrikat will gain any such benefit from the licence, let alone to quantify it in terms of a lump sum payment. (b) Dr Stewart states that a lot of money and effort has been spent by the patentee and the licensee (Logan) in establishing a market for the patented product. Again I am unable to accept that such a vague and unquantified statement provides justification for an initial lump sum payment and certainly not that it justifies a payment of the magnitude proposed.

It has been the consistent practice of the Comptroller when settling the terms of licences of right under section 46(3) not to include a contested term requiring the payment of an initial lump sum upon taking up the licence except where there was a transfer of know-how or some other accompanying benefit or reason which would provide justification for the payment. There is nothing in the evidence before me to indicate, and it was not argued, that there is to be any transfer of know-how in this case, and I have not identified any other positive benefit to Fabrikat or any reason why it would be appropriate for them to make an initial lump sum payment.

There is another good reason in my view for not including a corresponding term in the licence and it is consistent with the view taken by the hearing officer in the unreported case of Smith & Nephew O/126/87. Even at a royalty rate of 10%, with less than four years of the patent term to run and on Mr O'Neill's rather tentative but unchallenged prediction of Fabrikat's likely level of sales, any substantial initial payment would effectively boost the overall percentage royalty rate payable during the period of the licence by a considerable

amount. This effective uplift would be increased if sales do not reach the expected level and conversely would be decreased should sales exceed expectations. It cannot be right in my view to allow the rate of remuneration received by the patentee to fluctuate in that way. It seems to me to be fairer all round for the amount of remuneration to be tied to the value of the licence to the licensee, ie to the licensee's sales in the absence of any other benefits, whilst taking into account the various appropriate factors which should set the basic rate of remuneration.

I have therefore decided that there should not be any term in the licence requiring an initial lump sum payment.

The next major issue to determine is the royalty rate, this, in the absence of any initial payment, being the sole means by which the remuneration of the patentee will be determined. It is established that the Comptroller in determining this remuneration should have regard to section 50(1)(b):

> "the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the nature of the invention"

Mr Alexander referred me to Smith Kline and French Laboratories Ltd's (Cimetidine) Patents [1990] RPC 203. Headnote (3) on page 207 of that case says:

> "The best evidence of reasonable remuneration was what other licensors and licensees had in fact agreed in the most closely comparable cases. Having arrived at an appropriate figure, it would be wrong to modify it by reference to other cases which were not truly comparable so as to bring it into line with a predetermined range."

It is not disputed that royalty rates for "mechanical" inventions, into which general category the present invention falls, have often been set in the 5% to 7% range, though rates a few percent above this have been set where there were special circumstances to warrant it. Arguments in support of the existence of comparable licences and seeking to justify a royalty rate above the normal range were put to me in this case.

The Logan licence is long-standing and dates from 1978. The royalty rate was 7% on the first 500 licenced products and then 10% thereafter. The licence is not in terms an exclusive licence but it has been operated as such. A brochure exhibited by Dr Stewart refers to the safety rail being manufactured exclusively by Logan, and Dr Stewart says:

> "no other licensees have been appointed, nor would I have granted any other licence, in keeping with my relationship with my licensee"

The licence took effect well before the patent was granted and this too may be indicative of a closer relationship between the patentee and licensee than would be the case in normal arms length dealings.

Mr Alexander pressed me to accept Alpha rather than Logan as being the most closely comparable licence. In respect of its time of coming into effect it most certainly is, and quite possibly in respect of being agreed at arms length too, but the reason why Alpha agreed to the initial payment of £10,000 is still unknown to me. If that payment is solely in the nature of an early payment for early entry into the market then it would indicate that the effective royalty rate agreed was somewhat higher than the basic 7.5% on sales which is payable as royalty under that licence.

Mr Alexander's main contention for a higher than normal royalty rate was that this particular invention makes a valuable contribution to safety and for that reason the patent should attract a higher royalty than usual. I am not persuaded that merely because an invention has a safety aspect it necessarily follows that it commands a higher royalty rate. I must of course have regard to the nature of the invention and in particular to the expenditure and effort which went into the making of the invention and its development, as well as the establishment of the market for it. As I have already made clear, the evidence is of no great assistance to me in this matter, but I should perhaps make it plain at this point that I do not consider that this particular market, where local authorities are the principal end users of the product, is so out of the ordinary as to merit special consideration. However, I am confident that there has not been the same degree of investment in developing the safety rail covered by this patent and establishing a market for it as one has become accustomed to seeing in some other areas

where much higher royalty rates are necessary in order to compensate the patentee for that investment.

As to the so-called normal range of 5% to 7% for royalties on licenced mechanical inventions, it would not be correct for me to accept that range in the face of existing truly comparable licences which provide for a royalty rate outside that range. Of the two licences put forward in this case as comparables the Logan licence seems to me to have special circumstances associated with it which reduce its value as a comparable, and the background to the Alpha licence is obscure so that it would be unwise to attach too much weight to it.

Nevertheless, I think I can obtain some assistance from the Logan and Alpha licences. The relatively high 10% main royalty rate of the Logan licence could be explained by the special relationship between the parties which, on my reading of the evidence, seems to exist, and by the effectively exclusive way in which the licence has been operated. There is also an argument, though it was not put to me at the hearing, that the royalty rate could have been even higher had the licence not been taken out at such a very early stage. Fabrikat, whilst not having exclusivity, will benefit from being able to enter an established market.

As to the Alpha licence, the basic royalty rate is 7½% but this is effectively uplifted by virtue of the lump sum payment of £10,000. Using Mr O'Neill's figures as to the likely effect of spreading the lump sum over the duration of the licence and on the assumption that the effect for Alpha would be much the same, I conclude that the net effective royalty rate to be paid by Alpha will probably be a little in excess of 10%, but higher levels of sales would reduce this figure without of course getting as low as 7½%. To attempt to put things into perspective here, one or two percentage points up or down on 10% makes very little difference in cash terms at the sort of price level Mr O'Neill is contemplating, though I am aware of the need for manufacturers to be very cost-conscious to remain competitive in the current economic climate.

Balancing all this as best I can, I have come to the conclusion that the appropriate royalty rate for the present licence is 10% of the licensee's Net Sales Value as defined in clause 1.1

of the draft licence accompanying the application.

The patentee has also proposed in his draft licence that the clause setting out the royalty rate should contain a proviso worded thus:

> "provided always that the royalty payable on each two metre length of Licenced product shall not be less than £2.50"

Mr Colley resisted the inclusion of this proviso on the grounds that its presence in the licence would prevent the licensee from following through any cost reductions which might come about through changes in manufacturing processes or whatever. The nature of the product and the figures supplied by Mr O'Neill make the likelihood of the proviso ever biting extremely remote in my view at the level of royalty I have set. The proviso seems to me therefore to be largely otiose, but as such it can not damage the licensee's position and I leave it in place.

As a final element of the remuneration to the patentee which would be provided under the terms proposed by him, his clause 3.1 (iii) provides for a payment of

"a minimum annual royalty equivalent to the royalty payable on 1000 metres of Licenced product, the minimal (sic) annual royalty being payable in advance in four equal instalments before 31 March, 30 June, 30 September and 31 December of each calendar year during the continuance of this Licence."

There had been raised in the evidence some question over the financial standing of the applicants for a licence but at the hearing Mr Alexander made it clear that the clause in question was really concerned with payment in advance rather than with the matter of security of payment. Mr Colley saw the provision as imposing a minimum annual royalty pure and simple, and I must say that I sympathise with that view. The patentee would be rewarded by a fixed amount whether or not sales reached the threshold of 1000 units. In elaborating on the patentee's reason for wanting this minimum royalty payment Mr Alexander again advanced the argument that the licensee would gain the benefit of being able

to bid for complete street furniture contracts. To my mind such benefit, if it exists, does not justify advance payment on sales which might not be achieved, or for the dubious benefit of being able to bid for a contract which in the event might not be awarded, and I decline to include a minimum annual royalty clause in the licence.

To avoid the possibility of there being any doubt over my full reasons for not including this clause I will say this much further. The Logan licence contains a minimum annual royalty clause couched in rather different terms, ie equivalent to 7% on the retail selling price of 50 licenced products, which would be a relatively insignificant amount hardly comparable with what is now being sought by the patentee. The Alpha licence contains a precisely similar clause but there may be reasons why it was agreed to which do not apply to Fabrikat, for example the anticipated level of sales may be much higher than Mr O'Neill has suggested it might be for Fabrikat. I am aware of the fact that in this event the effective royalty rate paid by Alpha will be lowered, possibly even below the rate I have set for Fabrikat, but there is at least a modicum of compensation for Fabrikat in that they will not have to make any sort of minimum payment either in advance or otherwise.

The remaining point disputed at the hearing is of a relatively minor nature. The patentee is concerned about being able to distinguish between licenced products in use and infringing products which may appear on the streets. That is the reason for him requesting that clause 3.2, which deals with quarterly reports to the patentee on the amount of licenced products manufactured and sold, should also require the licensee to report details of the site where those products are to be erected where such details are available to the licensee. Mr Colley objected to this as being an obligation to disclose confidential customer information. As Dr Stewart is not a manufacturer himself, it seems to me that there is a simple remedy by including in the clause an undertaking by the patentee to treat such details as confidential. My intention is that Dr Stewart should be constrained from using or allowing others to use the information in any way other than for the policing of possible infringement. If the wording I have inserted at the end of clause 3.2 in any way fails to satisfy that intention the parties are free to agree to more suitable wording between themselves.

A number of other points have been agreed between the parties since these proceedings

began. Amongst these points of agreement it is settled that the licence should permit sub-licensing to subsidiaries of the licensee and also assignment of the licence, upon obtaining prior written approval of the patentee, such approval not to be unreasonably withheld. Similar agreement has been reached on the wording of the clause permitting sub-contracting. There is no need for me to comment on these agreed clauses except perhaps to express the opinion that they are unusual in my experience of settling terms of licences and that they may provide further justification for the level of royalty in the present licence and in the effective royalty in the Alpha licence. It has also been agreed that the reporting period shall be 30 days instead of the 15 days originally proposed by the patentee.

Finally, since the hearing the applicant has written in to say that although no argument was directed by either party to the proposed insertion by the patentee of the word "manufactured" in clause 3.1(ii), the applicant does not accept that inclusion and it therefore falls to be determined by the Office. No observations on this point have been submitted by the patentee. The relevant parts of clause 3.1 (with the insertion and the royalty rate I have determined) reads:

> "3.1 .....the Licensee shall pay to the Patentee....
> (ii) a royalty of 10% of the Net Sales Value of all Licenced Products manufactured, sold or otherwise disposed of pursuant to this Licence or any sub-licence granted hereunder"

I am not quite sure what the applicant's concern is in this matter unless it be that payment should not be made until the licenced products are sold or otherwise disposed of. No objection stands against the wording appearing at the end of clause 6.1:

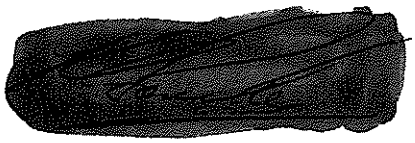
> "The Licensee will be liable for all royalties on Licenced Products manufactured under sub-contract and subsequently sold by Licensee."

I have therefore adopted what I believe to be a consistent approach with regard to sub-clause 3.1(ii) by deleting the comma after "manufactured" and inserting the word "and".

Taking into account the various matters set out above, I order that the prorietor Douglas Lunan Stewart shall grant to the applicant Fabrikat (Nottingham) Ltd a licence under the patent in the terms appended hereto, the licence to be effective from the date of this decision.

Neither party addressed me on the matter of costs, and as has become customary in licence of right cases settled under section 46(3), I make no award.

Dated this 10 day of November 1994



K E PANCHEN
Superintending Examiner, acting for the Comptroller

THE PATENT OFFICE

Dated:

Parties:

1 DOUGLAS LUNAN STEWART of Benview, Peterculter, ABERDEEN AB1 ONT ("the Patentee")

2 FABRIKAT (NOTTINGHAM) LIMITED whose registered office is at Hamilton Road Sutton-in-Ashfield Nottingham NG17 5LN ("the Licensee")

Operative provisions:

1 Interpretation

1.1 In this Licence the following terms shall have the following meanings unless the context otherwise requires:

Terms	Meaning
"Effective Date"	means the date hereof
"Licensed Patent"	means United Kingdom patent number 1,585,498
"Licensed Products"	means guard-rails falling within any claim of the Licensed Patent
"Net Sales Value"	means the invoiced ex-works sales value of the Licensed Products in an arm's-length transaction exclusively for money after deduction of normal trade discounts actually granted and of any credits actually given by the Licensee for returned or defective goods and excluding or making proper deductions for any costs of packing, insurance, carriage and freight and value added tax or other sales tax and, in the case of export orders, any import duties or similar applicable governmental levies or export insurance costs. In any sale or other disposal of any Licensed Products otherwise than in an arm's-length transaction exclusively for money, the fair market price (if higher) in the country of sale or disposal shall be substituted for the Net Sales Value

"Territory"	means the United Kingdom and the Republic of Ireland

1.2 Headings are for ease of reference and shall not be taken into account in construing this License.

1.3 Where appropriate words denoting the singular shall include the plural and vice versa.

1.4 Reference to any statute or statutory provision shall include a reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

2 Licence

2.1 The Licensee is hereby granted a non-exclusive licence under the Licensed Patent:

2.1.1 to manufacture, have manufactured and use Licensed Products in the United Kingdom; and

2.1.2 to sell or otherwise dispose of Licensed Products in the Territory that have been manufactured under the licence of clause 2.1.1.

2.2 The Licensee on obtaining prior written approval from the Patentee (such approval not to be unreasonably withheld) may grant sub-licences hereunder to any subsidiary (as defined in S.736 of the Companies Act 1985) of the Licensee for the time being.

2.3 The Patentee warrants that to the best of its knowledge and belief the exercise by the Licensee (and/or any sub-licensee of the Licensee) of the rights granted to the Licensee hereunder will not result in an infringement of any patent or other right of any third party. Should the Licensee (and/or any sub-licensee of the Licensee) be sued for any such infringement, the Patentee shall at the request and expense of the Licensee (and/or any such sub-licensee) assist the Licensee (and/or the sub-licensee) in its or their defence of such action.

3 Royalties

3.1 In consideration of the rights hereby granted the Licensee shall pay to the Patentee in the manner and at the time provided for below:

(i) a royalty of 10% of the Net Sales Value of all Licensed Products manufactured and sold or otherwise disposed of pursuant to this Licence or any sub-licence granted hereunder provided always that the royalty payable on each two metre length of Licensed product shall not be less than £2.50.

3.2 The Licensee will report to the Patentee within 30 days of 31 March, 30 June, 30 September and 31 December during the continuance of and next following the termination of this Licence the amount of Licensed Products manufactured and sold by the Licensee during the preceding calendar quarter and the Net Sales Value and with such report shall pay all royalties shown thereby to be due. Each such report shall include details of the site where the Licensed products are to be erected where such details are available to the Licensee. The Patentee undertakes to treat such details as confidential.

3.3 The Licensee shall keep true and accurate records containing such information as is necessary for the determination of the royalties payable hereunder and at the request of the Patentee will permit an independent auditor or other person to whom the Licensee shall have no reasonable objection to inspect on reasonable notice and at any reasonable time during normal business hours such books and records. Such auditor or other person shall report to the Patentee only the amount of royalties due and payable to the Patentee hereunder and also the other site details recited in 3.2 above.

3.4 All sums payable hereunder shall be paid in full without any deductions whatsoever except for such tax as the Licensee is legally bound to withhold in which event the Licensee shall furnish the Patentee with certificates of tax so withheld in such form as the Patentee may reasonably require. The Licensee shall at the request and expense of the Patentee co-operate with the Patentee to enable the sums to be paid gross under the provision of any applicable double tax conventions.

3.5 All sums payable hereunder are exclusive of Value Added Tax which in so far as applicable shall be paid by the Licensee at the rate ruling at the relevant tax point on receipt of the Patentee's tax invoice.

4 Infringement and Licences

4.1 The Licensee may by written notice request the Patentee to take steps (including Court proceedings) to halt any infringement by a third party of the Licensed Patent. If the Patentee refuses to do so or fails to take Court proceedings within two months after the said written request the Licensee may take steps and proceedings in its own name and/or in the name of the Patentee.

The Licensee shall be responsible for the costs of such steps and proceedings taken by it and shall be entitled to retain the whole of any sums, (including damages and costs) thereby recovered.

4.2 If the Patentee should hereafter grant any licence with the right to sell the Licensed Products in the Territory or any part thereof on different terms as to royalties than those contained herein it shall give written notice of such licence and all its terms to the Licensee forthwith and the Licensee shall have the option, to be exercised within 28 days of receipt of such notice, of adopting all the terms of the later Licence with effect from the date it was granted and shall be bound thereby including any which are less favourable.

5 Term and Termination

5.1 The Licence hereby granted shall come into force on the Effective Date and unless earlier terminated under any provision hereof shall continue in force until expiry of the Licensed Patent.

5.2 If either party ("the Defaulting Party"):

5.2.1 shall be in material breach of any of its material obligations hereunder and fails or is unable to remedy such default within 30 days of receiving written notice thereof from the other party ("Non-Defaulting Party") requiring the same to be remedied; or

5.2.2 shall have a receiver appointed over all or any part of its assets; or

5.2.3 makes any composition with its creditors; or

5.2.4 goes into liquidation whether voluntary or compulsory (otherwise than for the purpose of amalgamation or reconstruction); or

5.2.5 has a bankruptcy order made against him; or

5.2.6 becomes subject to or bound by any event or circumstance similar to any of the above in any jurisdiction then the Non-Defaulting Party may by written notice to the Defaulting Party forthwith terminate this Licence, provided always that such termination shall be without prejudice to any rights accrued at the date of such termination.

5.3 The Licensee may at any time terminate this Agreement without reason upon giving three months written notification to the Patentee.

5.4 On termination of this Agreement for any reason the Licensee shall continue to have the right for a period of twelve months from the date of termination to complete deliveries of Licensed Products under contracts in force at that date and to dispose of Licensed Products already manufactured or in the process of manufacture subject to payment to the Patentee of royalties thereon in accordance with clause 3 above.

6 General

6.1 This Licence may not be assigned by Licensee without the prior written approval of the Patentee (such approval not be unreasonably withheld). The Licensee shall not be entitled to grant sub-licences save as mentioned at clause 2.2 above but shall be entitled to subcontract the manufacture of Licensed Products or any part thereof after obtaining the written approval of the Patentee (such approval not to be unreasonably withheld). The Licensee will be liable for all royalties on Licensed products manufactured under sub-contract and subsequently sold by Licensee.

6.2 All notices or other documents to be given under this Licence shall be in writing and shall be delivered by hand or sent by post, telex or facsimile to the party concerned at the address set out at the head of this Licence or such other address as one party may from time to time designate by written notice to the other. Any such notice or other document shall be deemed subject to evidence to the contrary to have been received by the addressee if delivered, upon delivery; if posted, on the third working day following the date of posting; if sent by telex when the appropriate recipient machine's answerback code is received by the transmitting machine following transmission of the whole telex; and if sent by facsimile, when a complete and legible copy of the communication, whether that is the copy sent by facsimile or the hard copy sent by post or delivered by hand, has been received at the appropriate address.

6.3 The construction validity and performance of this Licence shall be governed in all respects by English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

7 Marking

7.1 Each licensed product dealt in by Licensee shall be marked with the UK patent number and a statement that it is manufactured under licence.