

PATENTS ACT 1997

Pat/Linda
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IN THE MATTER OF an application under section 72 by Robert William Hewitt for revocation of Patent No. 2265358 in the name of Patrick McCann

DECISION

Introduction

Patent No 2265358 was filed on 25 March 1992 in the name of Patrick McCann and was granted on 23 March 1994. No earlier priority date was claimed. On 21 January 1997, Robert William Hewitt applied under Section 72 of the Patents Act for revocation of the patent. He initiated the proceedings in the prescribed manner by filing Form 2/77 accompanied by a statement (and annexes) purporting to demonstrate that the invention subject of the patent was not new on the filing date of the application.

The proprietor, Mr P. McCann, failed to file a counterstatement and the application is therefore being treated as undefended. I will consider each specific fact set out in the statement as if it is conceded, except in so far as it is contradicted by other documents available to me.

The Patent

UK Patent No. 2265358 relates to a cargo container having a curtain system. The container has a load receiving compartment comprising a floor, opposite side walls and a roof, tracks extending along at least part of the length of the sidewalls and located below and adjacent the roof, a cross member bridging the container and travelling in the tracks, a curtain depending from the cross member, and sealing means mounted on the cross

member and extending up towards the roof.

The patent includes nine claims. Claim 1, the only independent claim, requires all the features set out above and also specifies the following additional requirements relating to the sealing means -

"...sealing means being resiliently mounted on the cross member, the sealing means at rest extending from the cross member towards the roof and being movable towards a substantially horizontal position when it contacts an obstruction adjacent the roof of the container."

Patentability of invention

According to the applicant's statement, between summer 1991 and November 1991 a company trading as Simark Engineering Co. of Griffin Industrial Estate, Penncricet Lane, Rowley Regis, Warley, West Midlands, produced and offered for sale a cargo container curtain system. This system was to a design shown in two photographs filed by the applicant as an annex to his statement. These two photographs together with written documents, also filed as annexes to the applicant's statement, were previously presented by solicitors acting for P McCann Ltd, trading as Simark Engineering Ltd., in January 1996 in the course of infringement proceedings in the High Court of Justice, Chancery Division, Patent Court initiated by the present applicant.

According to the written documents submitted on behalf of P McCann Ltd in the infringement proceedings, one photograph shows a prototype curtain system fabricated and installed by the proprietor in summer 1991 pursuant to a commission from UCD St Ivel Ltd. and the other photograph depicts a curtain system according to the same design to an order from UCD St Ivel Ltd dated 20 November 1991.

In the absence of any documents indicating the contrary, I accept, bearing in mind not only the photographs but also the contents of the applicant's statement and the written documents

filed as annexes to the statement, that on a balance of probability the curtain system illustrated in the photographs has all the features of claim 1 of the patent in suit. Thus, I am satisfied that the invention as claimed in claim 1 was not new on the filing date of the patent.

Order for revocation

By not filing a counterstatement the proprietor did not avail himself of the opportunity to offer to amend the application under section 75. He has not tried to save the patent from revocation.

In these circumstances, I order that the patent be revoked.

Costs

Neither side has asked for costs, and I therefore make none.

Appeal

Under section 97 of the Patents Act any appeal from this decision lies to the Patents Court. Any such appeal shall be filed within 6 weeks from the date of this decision.

Signed this 16th day of July 1997

LINDA HARDEN

Principal Examiner, acting for the Comptroller

