

PATENTS ACT 1977

IN THE MATTER OF an application under Section 72 by Toyama Chemical Company Ltd for the revocation of European Patent (UK) No 0153580 in the name of Abbott Laboratories

FINAL DECISION

European Patent No 0153580 was granted on 25 January 1989 designating the United Kingdom as one of a number of states in which it would have effect.

On 13 March 1990, Toyama Chemical Company Limited applied under Section 72 of the Act for revocation of the patent but wrote to the Office, via their Agent, on 23 October 1990, withdrawing from the proceedings and requesting that the revocation action be deemed abandoned.

After considering the statement of case, however, the examiner considered that an objection of lack of novelty based on one of the documents referred to in the statement should be pursued in the public interest and this was done by the issue of an official letter on 28 January 1991. This course of action was disputed by the patentee and subsequently, following a hearing before me on 15 January 1992, I came to the conclusion that there is nothing either explicit or implicit in the Patents Act 1977 to suggest that the Comptroller should no longer pursue matters in the public interest, when he considers it to be justified, once an opponent has withdrawn from a properly launched revocation action. This decision followed practice under the 1949 Patents Act, a practice that had been supported by the decision in *General Motors (Turney & Barr's Application)* [1976] RPC 659.

In my interim decision, which issued on 25 February 1992, I gave the patentees a period of one month to respond to the objections raised in the official letter of 28 January 1991. Following correspondence the patentee submitted an amendment which appeared to the

examiner in the case to be allowable and to meet his objection. The applicant for revocation was informed of this prima facie view and did not contest dismissal of the proceedings. Subsequently, the amendment was advertised and there has been no opposition to it within the time allowed.

I am satisfied that the amendment overcomes the examiner's objection and does not add matter to or extend the protection conferred by the patent and, having reviewed the proceedings since the issue of my interim decision, I have come to the conclusion that the application for revocation in this case should be dismissed.

Dated this 3rd day of August 1993

P. J. Herbert

P J HERBERT
Superintending Examiner, acting for the Comptroller



THE PATENT OFFICE