

IN THE MATTER OF an application
under Section 46(3) by Ryco (UK) Limited
for settlement of terms of a licence of right
under Patent No 1556761 in the name of
Book Protectors and Company

DECISION

Patent No 1556761 in the name of Book Protectors and Company ("BP") has a date of 1 September 1977 and, under paragraph 3(1)(b) of Schedule 1 to the Patents Act 1977, is a "new existing patent" which, under paragraph 4(2)(c) of that Schedule, became subject to licences of right on 1 September 1993. Ryco (UK) Limited ("Ryco") applied to the Comptroller on 6 April 1994 under section 46(3) for settlement of terms of a licence of right. The application was accompanied by a draft licence. Pleadings then followed the normal course. BP filed a statement on 13 July 1994 to which they attached an alternative draft licence, and Ryco filed a counterstatement on 12 September 1994. As is usual the opportunity was then given for the filing of evidence in chief by BP and by Ryco, and then evidence in reply by BP. BP did not, however, take either opportunity, and the only evidence lodged was from Ryco, in the form of a statutory declaration by their Managing Director, Gerald Ryan. On completion of the evidence rounds, BP indicated that they did not wish to be heard and asked that the matter be determined on the basis of the papers that had been filed. Ryco did, however, ask to be heard and at the hearing on 1 December 1995 were represented by their patent agent, Mr G O'Sullivan. I would observe that the fact that the only submission I have had from BP is their statement and the draft licence which accompanied it has meant that I have felt the lack of argument in support of certain measures which BP propose in their licence to be a handicap in settling appropriate terms.

The main claim of the patent is directed to a method of covering paperback books and reads:

"1. A method of covering a paperback book (as herein defined) comprising adhering a flexible plastics film over the spine of the book and over regions of the front and back faces of the book adjacent the spine and adhering form retaining plastics sheets over the faces of the book."

Although the patent is therefore concerned with a method of covering a paperback book, the business of both BP and Ryco is concerned with the manufacture and sale of book covers. The covers are relevant to the patent if they have a construction such that when they are applied to a paperback book the method of the patent is carried out, and an issue of contributory infringement under section 60(2) of the Patents Act 1977 may arise where an unauthorised party supplies such covers. Such an infringement action between the parties to this application is in fact pending in the High Court.

The facts which form the background to the present application and which are not disputed between the parties are as follows. Ryco are owned jointly by Mr Gerald Ryan and his son. At one time Mr Ryan had business links with an American company called Kent Adhesive Products Inc which trades as Kapco and is also in the field of book covers. He was involved in distributing Kapco products in the Republic of Ireland until the end of May 1993 when he and his son started to sell a new book cover under the name "Protec". In February 1994 BP wrote to Ryco alleging that the Protec product infringed the patent in suit and stating that BP would not be willing to grant Ryco a licence. Ryco denied the allegations and requested to take a licence, proposing a royalty rate of 1%. BP were however unwilling to grant a licence and maintained their position. Ryco repeated their request for a licence and improved their proposed royalty rate to 2% in the interests of early settlement. They also undertook to take a licence on terms to be settled by the Comptroller. These exchanges did not lead to any resolution, and the present application was accordingly made. High Court proceedings for infringement were instituted by BP by a writ dated 10 May 1994. The extra 1% offered by Ryco in its final offer of 2% was said by Mr O'Sullivan to be an attempt to save the costs of an infringement action and was effectively withdrawn when that action commenced.

This is not the first licence to be negotiated under this patent. Kapco had taken a licence in 1992, the terms of which had been settled by agreement with BP. A copy of this licence has

been submitted and shows that the licence was granted to an Irish company called Fabington Limited in which half the shares are owned by Kapco's Irish arm, Kapco Ireland. Fabington were granted a non-exclusive licence under the patent to import and sell their competing book cover in the United Kingdom at a royalty of 1% of net invoice price. I will refer to other features of the Kapco licence below.

I consider first the issue of royalty. Ryco propose a royalty of 1% of net selling price, whereas BP propose 10%. Both parties base their percentages on Ryco's net selling price, and I will proceed on this basis.

Ryco base their proposal on the 1% rate which appears in the Kapco licence, pointing out that this licence was arrived at by agreement. Mr O'Sullivan submitted at the hearing, and I agree with him, that it is established that I am required to set a royalty rate equivalent to that which would be agreed between a willing licensor and a willing licensee. I also agree with him that it is established that, where such assistance is available, the best indication of such a rate is to be obtained by consideration of comparable licences already in existence, preferably but not necessarily for the same invention and/or granted by the same proprietor.

Mr O'Sullivan pointed out that the Kapco licence, although settled after litigation, was entered into before the end of the 16-year term of the patent, that is before BP were required to grant licences of right. I take him to be arguing here that the circumstances leading to the Kapco licence and its 1% royalty rate indicated at least a degree of willingness between the parties, and I see nothing in the evidence to imply otherwise. There was certainly not that element of compulsion on the proprietors to which they are now subject in granting a licence of right.

The extent to which the rate included in a supposedly comparable licence should be taken into consideration must depend on the comparability of the circumstances. Three factors in the Kapco licence which are identified in BP's statement as, they contend, constituting significant differences relative to the licence which is to be settled here are as follows:

- (a) Kapco were not permitted to manufacture in the United Kingdom;

(b) Kapco were obliged to use Fabington as their sole distributors in the United Kingdom;

(c) Kapco gave BP a cross-licence to sell Kapco products forming the subject of certain Kapco patents and patent applications royalty-free in the United Kingdom and to be sole distributors here.

Mr O'Sullivan dismissed these factors on the grounds either that they merely reflected what was happening anyway (*eg* that Kapco were **not** manufacturing in the United Kingdom) and thus imposed no practical limitation on the licensee, or that they were not going to be exploited anyway (*eg* BP has never to Ryco's knowledge distributed Kapco's products). Mr O'Sullivan maintained that the "core issue" in the Kapco licence was its 1% royalty rate.

I do not, however, consider that I can dismiss these factors as lightly as Mr O'Sullivan would like me to. The terms in question are present in the licence, albeit perhaps with more potential than actual effect, and they must contribute to determining the relationship between licensor and licensee. They are therefore factors to be taken into consideration when assessing the extent to which the Kapco licence is comparable to that sought here by Ryco.

In arguing that under the "comparables" approach I should take account of a royalty rate which was settled after litigation, as was the case in the Kapco licence, Mr O'Sullivan referred briefly to *Dellareed's Patent* (SRIS O/155/94), in which one of a number of prior licences taken note of by the Hearing Officer was a royalty-free licence ordered by the Court in termination of an infringement action. Mr O'Sullivan did not take me to the *Dellareed* decision itself, but a careful reading of the decision shows that the fact that the licence in question was settled following litigation was not in itself a significant factor in the Hearing Officer's reasoning. The way in which this particular licence influenced him in settling the royalty in the case before him lay in the fact that there were in all three royalty-free licences, which he considered were likely to affect market conditions sufficiently to justify reducing the royalty rate under consideration.

Mr O'Sullivan also referred to *Fairfax's Patent* (SRIS O/7/93), where litigation had found the patent valid and infringed, and the evident commercial importance of the patent was sufficient to justify a higher royalty rate. However, in the present case I do not, on the evidence, consider that I have any compelling reason to give the Kapco royalty rate any special weight as a result of litigation that might have preceded that agreement. I do, however, agree with Mr O'Sullivan's general point that I should take the royalty rate of the Kapco licence into account. In so doing I shall have regard to other provisions of the Kapco licence and any other relevant circumstance of that licence.

BP have proposed a royalty rate of 10%, but have not offered any argument or evidence to support that specific figure. It is, of course, many times greater than that accepted in the Kapco licence. I can see no justification for regarding it as a figure likely to have been agreed in negotiation between willing licensee and willing licensor. In response to approaches by Ryco prior to the commencement of these proceedings BP made it clear that they did not wish to grant a licence to Ryco, and in that context the figure of 10%, set against Ryco's opening offer of 1%, has for me something of the flavour of a high opening bid intended to discourage further interest by the would-be licensee. Were one able to move from that unpromising opening position to what is in the present circumstances, as in most situations associated with licence of right applications, the fictional notion of an agreement between willing parties, I have no doubt that a royalty rate some way below 10% would have been settled on.

Thus in the present case it appears that, notwithstanding its limitations as a precedent, I have no better guidance available to me than the Kapco licence. As I have reviewed it, however, the scope of the Kapco licence is more circumscribed and balanced by factors such as the cross-licensing provision than the licence I am required to settle, and I am satisfied therefore that, in moving from the Kapco circumstances to those before me, it would be appropriate to settle on a royalty somewhat higher than the 1% Kapco figure. On the evidence of the Kapco licence alone, however, I have no clear guidance as to how much higher I should go.

The limited evidence in the case points to the fact that there were in effect the opening stages of a negotiation which might, in principle at least, have led on to an agreement. In response to BP's opening allegation of infringement Ryco offered a royalty of 1%, which was refused.

The offer was increased to 2%, and when this was not accepted either the present proceedings were initiated (in which the offer reverted to only 1%), in response to which BP demanded 10% and opened infringement proceedings. It seems not unreasonable to suppose that, had these fledgling negotiations continued to a successful conclusion, they would have resulted in a royalty rate not less than 2%, and to the extent that this also offers a figure "somewhat higher than the 1% Kapco figure", it might be argued that this represents the minimum figure on which I might settle. I have no evidence to enable me to assess with any confidence whether a figure of 2% represents an adequate adjustment to the Kapco figure to take sufficient account of the respects in which the circumstances of that licence differ from those in the present case, and it is difficult therefore to escape the conclusion that an element of arbitrariness must enter my final settlement. Subject to this, in all the circumstances, including the very different levels of interest and commitment which the two parties have respectively demonstrated in their approach to these proceedings, I find that the royalty which Ryco should pay to BP should be 2.5% of Ryco's net selling price.

BP seek a minimum royalty payment of £500 in any one accounting period, an advance payment of £20,000 on execution of the licence, and a bank guarantee of royalty payments. Ryco resist all three provisions. In their statement BP seek to justify the advance payment on the basis that Ryco is a new company with no track record and in an uncertain financial position, but their doubts as to Ryco's track record are unsubstantiated by evidence. They seek to justify the bank guarantee on the basis of difficulties they say they have experienced under the Kapco licence with payments of royalties, but they have provided no evidence to substantiate their claim that these were attributable to Mr Ryan, and I therefore accept Mr Ryan's denial of this. All three of these proposed terms are of types which have not in general been approved in earlier licence of right settlements, and I am satisfied, particularly in view of the complete absence of any supporting evidence from BP to justify their inclusion, that I must exclude them.

Ryco are themselves proposing that the licence should include royalties for sales made before the coming into force of the licence. BP's draft licence also includes a clause under which Ryco would pay a lump sum representative of damages for past infringements occasioned by sales of Ryco's book covers. BP's proposed lump sum is equivalent to 20% of the product

price, which diverges widely from Ryco's offer of back-royalties at their proposed 1% rate, or even at the rate of 2.5% which I have concluded should apply under the licence.

At the hearing Mr O'Sullivan argued that although retrospection had generally in the past been disallowed following the judgment of Lord Diplock in *Allen and Hanburys vs Generics* [1986] RPC 203 at pages 243 to 255, the facts of the present case were different enough to warrant the opposite conclusion on this issue. Mr O'Sullivan appeared to make two points. First, Lord Diplock had drawn attention to legal uncertainties which would arise if, as requested by the applicants in that case, the licence were to be made effective from the date of application to the Comptroller, but with terms which would not be known until the Comptroller's decision issued. Mr O'Sullivan noted that one of the major uncertainties in that case concerned importation, it being a possibility that a licence might be refused altogether. This, he said, was not the case here since importation was not at issue. Thus Mr O'Sullivan presumably felt that the "commercially nonsensical" consequences described by Lord Diplock were not so severe in the present circumstances. His second point touched on the uncertainty to the public which might accrue from retrospection where royalties were pitched at the high levels of 20 or 40% encountered with pharmaceutical inventions. This, Mr O'Sullivan argued, was not applicable here since the royalty levels were much lower.

I believe that two separate issues are being confused here. Lord Diplock's ruling was essentially concerned with the starting date of the licence, and in this regard I note that in all subsequent cases that ruling has been regarded as completely general in its effect. I am satisfied that there is nothing in the present case which could justify any conclusion other than that the licence should come into effect on the date of this decision settling the terms. However, Ryco are not actually seeking such back-dating of the licence itself, but rather that I should provide in the licence for payment of royalties in respect of past acts. In this respect also I am satisfied that I must decline to include any clause of such a retrospective nature, since my jurisdiction lies in the settlement of terms of a licence of right, not, except to the limited extent provided for in section 46(3)(c), in determining payments, whether characterised as damages or as back-payments, in respect of acts which took place earlier. Therefore, however it is presented, I decline to include provision for payment in respect of past sales.

BP seek that Ryco should be prohibited from manufacturing their book covers in the United Kingdom or the Isle of Man, the territory to which the licence applies, stating that such manufacture would give Ryco "a substantial and unfair competitive advantage" over Kapco. Mr O'Sullivan made it clear that Ryco wish to manufacture in the United Kingdom and in the Republic of Ireland, and to import from the latter country. Although the House of Lords in *Allen & Hanburys Ltd v Generics(UK) Ltd*, *op cit*, made it clear that the Comptroller has power to limit the scope of a licence of right, for example in relation to importation from a country which is not a member of the European Union, I am satisfied that, before I could consider including a term prohibiting a licensee from performing an act as central to the working of an invention as manufacture in the United Kingdom, I would require something much stronger than a mere assertion, unsupported by any evidence, that an existing licensee would thereby be subject to unfair competition. It seems to me that Parliament must have envisaged, in passing this particular provision of the 1977 Act, that the proprietor and any existing licensee may be subject to competition from licensees of right during the four year additional term of the patent. As to BP's assertion that Ryco competitive position would be **unfairly** advantageous relative to Kapco, I draw attention to section 46(3)(b), under which the holder of a licence granted before the patent became subject to licences of right may apply to the Comptroller for that licence to be exchanged for one settled by the Comptroller, in default of agreement. The licence will accordingly allow manufacture within the territory. It follows from the European Court of Justice ruling in *Allen & Hanburys Ltd v Generics (UK) Ltd (Case 434/85)* [1988] FSR 312 that I must also permit Ryco to import from the Republic of Ireland, as a member state of the European Union, as requested by Mr O'Sullivan.

BP's draft licence would prohibit Ryco from sub-licensing or sub-contracting under the licence, although their statement is silent on this issue. The issue is not touched upon at all in Ryco's draft licence or in their counter-statement, and Ryco have thus not included a request to be allowed to sub-licence or sub-contract in their pleadings in these proceedings, and have submitted no evidence in support of such a request. Nevertheless, at the hearing Mr O'Sullivan stated that Ryco wished to be able to sub-contract manufacture whilst selling under their own name. Although Mr O'Sullivan sought to distinguish what he now said Ryco wished to do from sub-licensing, it seems to me, in view of the fact that manufacture in the

United Kingdom is one of the core acts which will be permitted under the licence, that what he proposed at the hearing would in fact amount to sub-licensing. It is established, primarily by Falconer J. in *Hilti AG's Patent* [1988] RPC 51, that the Comptroller has discretion under section 46(3)(a) to include within a licence of right terms which grant to the licensee the right to sub-licence, although in the circumstances of that case he did not regard it as appropriate to exercise that discretion in favour of the applicant, and such provision has only exceptionally been included in licences of right settled by the Comptroller. In the present case I am satisfied that, in the absence of formal pleadings or evidence on the matter from Ryco, and recognising that BP **did** expressly state at the outset that they opposed sub-contracting or sub-licensing, I would not be justified in including any provision along the lines requested at the hearing by Mr O'Sullivan, whether characterised as sub-contracting or sub-licensing. The licence will therefore contain no such provision.

Ryco requested in their counterstatement that the acts to be licensed should include the grant to their customers of the right to use the book covers, stating that this was appropriate because the patent was to a method which would involve such a use. However, Mr O'Sullivan did not address me on this point, nor have I had the benefit of counter-argument from BP. In the absence of such assistance I conclude that I have no need to include such a provision, since it appears to me that book covers placed on the market under the terms of the licence will be authorised for use by their association with the licence. If I am wrong in this, and if the true legal position is that the use in accordance with the claims of the patent of book covers manufactured, imported or sold under the licence **would** in itself constitute infringement, then it does not appear to me appropriate that I should, at least on the strength of the very limited submissions I have received on this issue, include in the licence before me anything as open-ended as the provision requested. The strictures, for example discussed in *Hilti*, upon the circumstances in which I am free to include in a licence of right terms permitting sub-licensing are such that I do not believe that it would be appropriate to include a provision which would have the effect of granting a free licence to all potential customers of Ryco, whether direct or indirect.

There does not appear to be a great distance between the parties in respect of the substance of the other licence terms, although the lack of active involvement of BP in the proceedings following the pleadings stages has meant that I have not had the benefit, usual in licence of right proceedings, of the parties agreeing the text of uncontested clauses. Mr O'Sullivan did, however, comment on both draft licences. In doing so he said that he had no objection to many of the BP clauses, admitting that Ryco's draft had been prepared in haste. In view of this I have taken the BP draft licence as my starting point and have varied its terms in the light of my conclusions above, as well as in certain areas where either Mr O'Sullivan was not able to agree to BP's draft or BP have not provided justification for going beyond standard licence terms. In addition to the issues on which I have already differed from the BP draft licence, I have also concluded that the BP draft should be departed from in the following respects.

1. The Territory will include the Isle of Man, as requested in Ryco's draft.
2. The Net Selling Price has been limited to exclude incidental charges (other than VAT). Mr O'Sullivan contended that the correct price here was the ex-factory price, to exclude both VAT and all incidentals. The price conventionally used in licences of right is however that charged to independent third parties inclusive of tax but exclusive of incidentals such as packaging and transport, and no compelling reason has been given to depart from that.
3. BP's licence draft clause 2.2 deals with manufacture and with third-party rights, but adds nothing to their clauses 2.1 and 11, or has been dismissed above insofar as it relates to manufacture of the products. The clause has therefore not been included.
4. BP's draft licence states that the royalty is payable on the occurrence of any licensed act. This might arguably occasion double royalty payments on the same book covers, for example on both importation and sale. This would clearly be inappropriate, and since the rest of the licence relates royalty payment to sale of the covers I do not consider that any lack of clarity or injustice to BP would result from omitting BP's provision.

5. BP's draft clause 4.3 relates to inspection of Ryco's books, and Mr O'Sullivan expressed concern that the accountants used should be truly independent and that there should be no "leakage of information", eg as to Ryco's customers, back to BP. I observe however that the word "independent" is used in BP's clause, and I have further adopted the requirement which appeared in Ryco's licence that the accountant be appointed solely for that purpose. I believe that these safeguards, taken together with the professional integrity to be expected from a chartered accountant as to client confidentiality, should be sufficient to meet Mr O'Sullivan's concerns without a clause specifically binding the accountant not to disclose customer information.

6. BP's clause 6 refers to Ryco's usual place of business in the United Kingdom. Mr O'Sullivan wished to allow for a place of business in the Republic of Ireland and, in the absence of any further argument on behalf of BP, that appears to me a reasonable request. The simplest course is to delete reference to the country of the place of business and this has been adopted.

7. BP's draft clause 7.3 requires Ryco to undertake all stages of importation, distribution and sale. This appears of doubtful relevance to the rest of clause 7, which deals largely with use of trade marks in sale of the products, and may overlap with the provision dealing with sub-contracting. This provision has thus been deleted.

8. Parts of BP's draft clause 8.1 were criticised by Mr O'Sullivan as unclear or unnecessary. The second sentence calls on Ryco to indemnify BP against "any claims", which certainly appears too sweeping. I have therefore qualified this using conventional wording to relate to claims made in the exercise of any rights by Ryco under the licence. The third sentence requires Ryco to confer with BP prior to the settlement of claims. I cannot see the justification for such a provision and have therefore not included it. Mr O'Sullivan said that in general he could not understand the need for any provisions as to indemnities. It is, however, common for such clauses to be present, and I have therefore not changed BP's clause 8 in other respects.

BP's draft clause 9.2(i) provides for termination of the licence upon written notice by BP if Ryco has failed to pay royalties within 28 days of the due date. This was criticised by Mr O'Sullivan as unduly severe since it did not allow any period for payment following service of the notice. However, this is conventional wording and reflects the obligation placed on the licensee to pay royalties promptly and without notice. A grace period of 28 days is already allowed in this clause and it therefore does not appear severe not to allow any further period. I have therefore adopted this clause.

BP's draft clause 9.5 allows the substantive provisions of the licence to survive termination long enough to allow accounting of royalties which were due. Mr O'Sullivan suggested substituting a more limited requirement to keep books and accounts for a reasonable period following termination. Again, this wording has been used in previous licences of right, and appears to be a necessary provision for ensuring that there are legal provisions in existence to determine the collection of royalties outstanding at the time of termination of the licence proper. I therefore adopt this clause.

In the light of the above, I order that the proprietors, Book Protectors & Company, grant to the applicants, Ryco (UK) Limited, a licence under patent number 1556761 in the terms appended to this decision, to take effect from the date of this decision.

Mr O'Sullivan sought to persuade me that the conduct of the proprietors was such as to justify my diverging from the normal practice of making no award of costs in licence of right proceedings before the Comptroller under section 46(3). He drew attention to BP's lack of participation in either the present proceedings or the High Court infringement proceedings, to what he described as their delaying tactics, for example in making two requests for extension of the period for filing evidence and then failing to file any evidence, to their attempts to blacken Mr Ryan's reputation by attributing payment defaults to him, and to their seeking licence terms to which they were not entitled, for example a royalty rate for which they showed no basis. Mr O'Sullivan went further by asking for a payment of his true costs, rather than the scaled contribution usual before the Comptroller. I consider it necessary only for me to say that I see no justification to differing from the normal practice in such cases, and I therefore make no order as to costs.

Any appeal from this decision must be lodged within six weeks from the date of the decision.

Dated this 29 day of January 1996.



DR P FERDINANDO

Superintending Examiner, acting for the Comptroller

THE PATENT OFFICE

LICENCE OF RIGHT

BETWEEN:

BOOK PROTECTORS & COMPANY ("Book Protectors") of Protector House, 76 South Grove, Walthamstow, E17 7NJ; and

RYCO (UK) LIMITED ("Ryco") of 4 Kenwyn Street, Truro, Cornwall TR1 3DJ.

WHEREAS

A. Book Protectors is the Proprietor of United Kingdom Patent No 1,556,761, which is deemed to be endorsed "Licences of Right" under Section 46(3) of the Patents Act 1977.

B. Ryco has made an application to the Comptroller General of Patents, Trade Marks and Designs for settlement of terms of a Licence of Right.

C. The Comptroller has settled the terms of a Licence of Right as set out below commencing on the date of the decision to which this Licence of Right is appended.

1. DEFINITIONS

In this licence of right the following expressions shall have the meanings set out below:

the Patent United Kingdom Patent No. 1,556,761.

the Products covers for paperback books for use in the method of the invention which is the subject of the Patent.

the Territory the United Kingdom of Great Britain and Northern Ireland and the Isle of Man.

Net Selling Price the price at which Ryco sells the Patented Products to independent third parties, having no connection with Ryco and inclusive of Value Added Tax. Packaging charges, freight charges and other incidental charges shall not be included in the Net Selling Price.

Accounting Period the quarters ending on 31 March, 30 June, 30 September and 31 December.

2. GRANT

Book Protectors hereby grants Ryco a non-exclusive Licence of Right to:

- (i) make, use and sell the Products in the Territory;
- (ii) import into the Territory Products manufactured wholly within the EC.

3. ROYALTY

3.1 In consideration for the rights granted under this Licence of Right, Ryco shall pay to Book Protectors a royalty at the rate set out below:

- (i) in respect of each Product sold or otherwise disposed of by Ryco, the sum of 2.5% of the Net Selling Price;
- (ii) in the event that Ryco sells or otherwise disposes of Products in the Territory at a price which is less than the cost price to Ryco, or in the event that Ryco sells or otherwise disposes of Products to a company or

other organisation which is connected with or associated with Ryco, then the royalty payment defined in paragraph 3.1(i) above shall be replaced by a value of 2.5% of Ryco's mean Net Selling Price during the preceding period of twelve months.

4. PAYMENT

4.1 Within 28 days of the end of each Accounting Period, Ryco shall provide Book Protectors with a full and accurate written account:

- (i) of all importation of Products, detailed on a month-by-month basis;
- (ii) of all Products sold or otherwise disposed of within the Territory, detailed on a month-by-month basis;

in respect of that Accounting Period, such statement to be accompanied by a cheque in pounds sterling for the sum shown to be due without any deductions whatsoever. This sub-clause shall apply, mutatis mutandis, to any period (being less than a full Accounting Period) between the commencement date and the next following 31 March, 30 June, 30 September or 31 December as the case may be.

4.2 If any sum payable by Ryco under this Licence of Right shall not have been paid to Book Protectors by the due date then (without prejudice to any other claim or remedy of Book Protectors, including the right to terminate this Licence of Right) Ryco shall pay interest thereon at an annual rate of 3% above the base lending rate of Barclays Bank Plc from time to time published in respect of the period commencing with the due date and ending on the actual date of payment.

4.3 Ryco shall permit Book Protectors at any time during business hours to have an independent chartered accountant appointed by Book Protectors solely for this purpose examine all relevant documents, books and records of accounts (including information

contained in computer readable form) and to take copies of all such documents, books and records to determine whether all appropriate accounting of royalties hereunder and payments thereof have been made.

5. BOOKS AND RECORDS

Ryco shall at all times keep at its usual place of business complete and accurate books and records of all dealings in the Products including without prejudice to the generality of the foregoing full particulars of:

- (i) all Products imported into the Territory;
- (ii) all Products sold or otherwise disposed of within the territory and where such dealings are not at arms length, the actual terms of such transactions and any associated transactions.

6. SALES/PROMOTION

6.1 Ryco shall not make reference to Book Protectors or this Licence of Right in any verbal or written promotion of the Products, nor in any advertising literature, packaging or other material relating thereto.

6.2 Ryco shall not use a trade mark on or in relation to the Products which is the same as or substantially similar to any trade marks owned or used by Book Protectors or any associated organisation, or import any reference to any such trade marks.

6.3 Ryco shall use or dispose of the Products to third parties under its own trade name.

7. INDEMNITIES

7.1 Book Protectors shall not be responsible for any damages or losses suffered by Ryco arising directly or indirectly out of any activity undertaken pursuant to the Licence of Right. Ryco shall indemnify and hold Book Protectors harmless from any claims including legal fees made in respect of the exercise of any rights by Ryco under this licence.

7.2 Book Protectors shall not be responsible for and Ryco shall indemnify and hold Book Protectors harmless from any claim, action or damages asserted by any third party on the grounds that the use, sale or disposal of the Products infringe upon the patent, trade mark or any other intellectual property owned or controlled by such third party. Ryco shall immediately notify Book Protectors of any assertion of infringement by such third party.

8. TERM AND TERMINATION

8.1 Subject to the provisions set out below, this Licence of Right shall commence on the date of the decision of the Comptroller settling the terms of this licence of right and shall continue in force until the expiry of the Patent.

8.2 Book Protectors may terminate this Licence of Right with immediate effect against Ryco:

- (i) by serving written notice on Ryco if it shall have failed to pay royalties due within 28 days of the due date;
- or (ii) if Ryco shall have failed to cure a breach of any term of this Licence of Right within 28 days after receiving a written notice specifying the breach and requiring its remedy;

or (iii) in the event that Ryco assigns or attempts or purports to assign this Licence of Right to any third party.

8.3 This Licence of Right shall terminate with immediate effect if Ryco shall enter into liquidation or shall have a Receiver appointed over any part of its assets or shall enter into a composition in satisfaction of its debts or a scheme of arrangement of its affairs.

8.4 On termination of this Licence of Right under the provisions of Clauses 8.2 or 8.3:

- (i) Ryco shall not use, sell, or otherwise dispose of Products in its possession, custody, power or control and shall immediately cease all importation and manufacture of the Products;
- (ii) within 30 days of such termination, Ryco shall deliver up to Book Protectors all Products in its possession, custody, power or control;
- (iii) within 30 days of such termination Ryco shall account to and pay Book Protectors all royalties due:
 - (a) in respect of Products sold or disposed of since the end of the last Accounting Period;
 - and (b) in respect of the Products in stock at the date of termination, such Products to be treated for this purpose as though they had been sold at Ryco's mean Net Selling Price taken over the previous twelve month period.

8.5 The provisions of Clauses 1, 3, 4, 5, 6 and 7 shall survive termination for so long as may be necessary to allow proper accounting for all royalties due in relation to any dealings in the Products prior to termination.

8.6 Any rights or remedies accrued up to the date of termination shall not be affected by termination.

9. NO WAIVER

The failure of Book Protectors to enforce at any time or for any period any one or more of the provisions of this Licence of Right shall not be a waiver of them or of the right at any time subsequently to enforce all of the provisions of this Licence of Right.

10. ASSIGNMENT AND SUB-LICENCE

This Licence is to be personal to Ryco and Ryco shall not assign, sub-licence or sub-contract any of the benefits or obligations under this Licence of Right. Ryco shall not be entitled to grant to any third party a right to do any action which would otherwise be an infringement of the Patent.

11. NOTICE

11.1 Notices to Book Protectors and Ryco shall be addressed in accordance with the appropriate address set forth at the beginning of this Licence of Right.

11.2 Any notice required or provided for by the terms of this Licence of Right shall be in writing, and shall be delivered by hand or sent by registered post, fax or telex. Notices given by fax or telex shall be deemed to have been received on the date of dispatch provided that, on the date of such dispatch, a copy is also sent by registered post. Either party may, by notice given in writing, change the address to which notices are to be given.

12. GOVERNING LAW

This Licence of Right shall be interpreted by and shall be construed in accordance with the laws of England, and the parties hereto hereby submit to the jurisdiction of the English Courts.

13. MISCELLANEOUS

The headings in this Licence of Right are for convenience of reference only, and shall not affect its interpretation.

