

0142/93

PATENTS ACT 1977

IN THE MATTER OF a reference under
Section 8(1)(a) by Allan Coombes
in respect of Patent Application
No 8905101.5 (Serial No 2216455) in the
name of Blagden Industries Plc.

DECISION

Patent application No 8905101.5 was filed on 6 March 1989 in the name of Blagden Industries Plc, (hereinafter referred to as the applicants), claiming priority from an earlier application No 8805196.6 dated 4 March 1988. The application was published on 11 October 1989, and the examiner's substantive examination report was issued on 25 June 1991. The examiner reported that in his opinion the application related to three inventions, and that the first invention lacked novelty. The applicants did not contest that opinion and the application was treated as being refused on 4 September 1992 by operation of Section 20(1).

However, on 26 April 1989 a reference under Section 8(1)(a) had been filed by Allan Coombes (hereinafter referred to as the referrer) as to whether he was entitled to be granted a patent in respect, initially, of application No 8805196.6, but this was subsequently amended to refer to the application in suit. The reference also raised the question of whether he would have any rights in the application, or in any patent granted thereon.

At the time of filing the reference the referrer also filed a statement in the form of a letter setting out his claim to the application. The statement was subsequently amended to remove some passages which were objected to by the applicants, and its final form is that filed on 19 February and 4 April 1990. The applicants filed a counterstatement on 12 December 1989 refuting the allegations made by the referrer in his statement, and giving their reasons for filing the application. The referrer then filed, on 7 August 1990, a further statement in reply together with a copy of a report from the Bioengineering Centre at Roehampton (where the referrer worked), and also copies of some correspondence between the referrer and the

applicants intended to show how the invention developed. The referrer confirms in an affidavit dated 14 September 1990 that the facts stated in the further statement, and what he calls the supporting evidence, are true. No evidence has been filed by the applicants. The proceedings in this case have been delayed apparently by attempts by the parties to reach a settlement, and it was not until January 1993 that both parties finally agreed that the matter should be decided on the basis of the papers already on file.

The subject matter of the application relates to the blowmoulding of plastics, and claim 1 of the application as filed relates to a blowmoulding process in which a parison, after extrusion into the mould and before blowing, is cooled or allowed to cool to a temperature low enough to create inherent stress in the blown article, but which also allows the parison to be blown without fracture. The application also discloses the cooling of the parison in the mould by passing gas through its interior before blowing, a method in which the preform obtained by blowmoulding is located around a final mould and reheated to shrink it on to the final mould. The application also describes a construction of blowpin which allows gas to be fed to the interior of the parison and vented prior to blowmoulding, and a mould for use in blowmoulding having a recess in its internal wall extending around the pinch-off line of the mould. The processes described are stated to be particularly suitable for manufacturing preforms for prosthetic limbs or parts thereof wherein the preform would finally be shrunk on to a positive mould of a stump of a leg in a vacuum forming process, and the particular mould form is designed to prevent formation of a bulge or ridge on the internal surface of the preform which could cause discomfort to the wearer. The application of the invention to prosthetic limbs explains the involvement of the Bioengineering Centre and thus the referrer in the project.

As far as the invention claimed in claim 1 of the application is concerned, it is not entirely clear from the documents on file exactly when or how the idea of cooling a parison in the mould before blowing to create stress in the moulded article arose. The referrer states in the second paragraph of his further statement of 7 August 1990, that the Bioengineering Centre was considering prosthetic socket manufacture using heat shrinkable plastics preforms in 1985, and further that blowmoulded preforms were also under consideration. In paragraph 6 of their counterstatement, the applicants refer to work they had undertaken in the early

1980's in conjunction with Loughborough University of Technology into the blowmoulding of polypropylene below normal moulding temperatures to produce inherent stress in the mouldings. It would seem that the technique was known to both parties and further doubt on its novelty is cast by the documents cited in the official search report on the application.

In respect of the wider disclosure of the application, the counterstatement refers, in paragraph 18, to a letter dated 13 August 1986 sent by the referrer to the applicants in which he states that the applicant's work on cooling the interior surface of parisons by air flushing is interesting. A copy of this letter is not on file, but reference is made to this point in the third paragraph on page 2 of the referrer's further statement, wherein he attempts to infer that parison cooling in this way is not of importance in the circumstances. It would seem that the idea of parison cooling using air flushing arose from the applicant's work with Loughborough University of Technology, and not from any suggestion of the referrer. It is admitted by the referrer in the last paragraph on page 6 of his further statement that he claims no part in the design of the blow pin disclosed in the application. There is also the matter of the mould construction and knifing design to avoid the formation of a bulge or ridge on the internal surface of the blowmoulded article. It is clear from the evidence on file that whatever contribution was made by the applicants, the referrer also made a significant contribution in this respect, in an effort to provide the desired characteristics in the moulded preform.

However, at the material time at which the invention disclosed in the application in suit was devised, the referrer was employed by the Bioengineering Centre at Roehampton, and moreover was specifically engaged on their behalf on the development work which led to the application. Thus, under the terms of Section 39(1), any invention made by the referrer at that time would become the property of his employers. This matter is raised by the applicants in paragraph 11 of the counterstatement, and is accepted by the referrer in paragraph 6 on page 6 of his further statement of 7 August 1990. Furthermore, the applicants state in paragraph 5 of their counterstatement that the Bioengineering Centre was aware that the application in suit had been filed, and had raised no objection. This assertion is not denied by the referrer.

The application in suit was filed to protect the technology that the applicants had contributed

to the project, and that although the referrer also contributed in some way to the invention of the application in its broadest sense, any contribution that he so made would have been the property of the Bioengineering Centre by virtue of his employment and the nature of his duties there. In consequence, I find that the referrer has not established any entitlement to the application, and that the application shall remain in the name of the original applicants.

In all the circumstances, I award the applicants Blagden Industries Plc the sum of £250 as a contribution to their costs and direct that this sum be paid to them by the referrer Allan Coombes.

Signed this 25 day of March 1993

W J LYON

Superintending Examiner, acting for the Comptroller



THE PATENT OFFICE