

PATENTS ACT 1977

IN THE MATTER OF an application under
section 72 by Cego Limited for the revocation of
Patent No GB2081804B in the name of
Securistyle Limited

SUPPLEMENTARY DECISION

This application for revocation was made by Cego Ltd on 20 February 1992. The principal ground of objection to the patent was that the apparatus that was the subject of the patent had been sold and used commercially by the patentees before the priority date of the patent. This was denied by the patentees, and evidence was then filed by the two sides in support of their cases.

An application was made on 26 May 1993 by the applicants for revocation for discovery of documents in the patentees' possession, power or control relating to the period shortly before the priority date. Arrangements were set in train for a hearing to be appointed to deal with the application for discovery, but by a letter dated 27 January 1994, the applicants for revocation stated that they had decided not to proceed with their application for revocation.

Patent Office practice in these circumstances is for the ground of objection to the patent to be considered in the public interest, and this process culminated in a decision issued on 21 February 1994 deciding to make no order for the revocation of the patent. An official letter was also issued, on 4 March 1994, inviting comments within one month on two outstanding issues, namely the matter of costs, and an application by the patentees for a certificate of contested validity under section 65.

As regards costs, a letter has has been received from the applicants for revocation containing submissions that "a significant award of costs is not justified", or that at least the award should be no more than one that was in accordance with the Comptroller's published scale. I have carefully considered this submission, and also the submissions of the patentees in their letter of 11 February 1994. I consider that the proper amount to award as a contribution to

the patentees' expenses in this matter is £350, and I direct that the applicants for revocation, Cego Ltd, pay this sum to the patentees Securistyle Ltd.

As regards the application by the patentee for a certificate of contested validity, the preliminary view of the Patent Office, given in the official letter of 4 March, was that

".. the comptroller should not exercise his discretion to issue a certificate [while the patent is likely to be amended under section 27] since the validity of the amended claim will not have been contested. This view appears to be supported by the decision in *PLG Research Ltd v Ardon International Ltd* [1993 FSR 698].....

Further it is the preliminary view of the Office that the issue of the validity of the patent was not properly joined because the [applicants for revocation] withdrew their action without there being any opportunity to test the evidence of their witness, J E Buckley...."

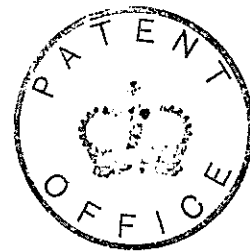
This preliminary view has not been contested by the patentees and I am satisfied that it is right. Moreover, a decision has now been made under section 27 allowing the application to amend. I therefore decline to issue a certificate of contested validity.

Dated this 21 day of April 1994



W J LYON

Superintending Examiner, acting for the Comptroller



THE PATENT OFFICE