

PATENTS ACT 1977

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IN THE MATTER OF an
application under Section 40
by Mr G D Drage with regard
to Patent GB2246302 in the
name of Garrison Limited

DECISION

Patent GB2246302 was granted to Garrison Ltd and names Mr D S Garrison and Mr G D Drage as joint inventors. The patent was filed on 7 May 1991, claiming priority from an earlier GB application No. 9014858 which was dated 4 July 1990, and the patent was granted on 14 October 1992. On 3 January 1995 an application for an award of compensation under Section 40 of the Patents Act was filed on behalf of Mr Drage by his patent agents, Lawrence Shaw & Associates.

In addition to the usual statement of case sent in on behalf of the applicant and a counter-statement sent in on behalf of the employers, the evidence in chief filed on 14 July 1995 consists of a statutory declaration by the applicant Mr Drage together with 5 exhibits and statutory declarations by Mac Chambers and David Thomason, a statutory declaration by Gerry Bary being filed later on 5 September 1995. The employer's evidence was filed on 3 November 1995 and consists of a statutory declaration by Mr D S Garrison together with four exhibits and three patent specifications, and the evidence in reply was filed on 15 January 1996 and consists of a second statutory declaration by Mr Drage and one exhibit.

This compensation application has been complicated by the fact that Garrison Limited went into voluntary liquidation on 4 April 1996, Mr J Sadler and Mr J Munn of Insolvency Practitioners F A Simms and Partners being appointed as joint Liquidators. Mr Drage was made aware of the liquidation but Lawrence Shaw & Associates confirmed in

a letter dated 10 May 1996 that he wished to continue with the Section 40 application. Mr Sadler, one of the joint liquidators, informed the Patent Office that it was not his intention to be represented at any hearing. Subsequently, a hearing was appointed for 31 January 1997, following an earlier postponement, but at the last minute Mr Shaw of Lawrence Shaw & Associates was unable to attend and, on behalf of the applicant, he asked me to decide the matter on the papers, which I shall now do.

The patent relates to a device for securing together two parts of a snooker cue. Claim 1 reads

"A device for securing together two parts of a snooker cue, the device comprising a first member adapted to be secured to one of the cue parts and providing an at least generally tapered cavity, and a second member adapted to be secured to the other of said parts and providing an at least generally tapered protrusion, the cavity and the protrusion being provided with mutually engageable formations capable of providing screw threaded engagement between the cue parts at locations distributed over a range of radial distance from the axis of the cue."

The patent, but not claim 1, was amended on 15 May 1996 to overcome a section 73(2) objection with regard to EP(UK) 0465202. This EP(UK) patent was granted on 3 May 1995 but ceased on 3 August 1995.

Sales of the device take place by (1) the patentee selling cues incorporating the device and (2) the patentee selling the devices to third parties such as rival cue manufacturers to incorporate in the cues they make and sell. Mr Garrison states in his statutory declaration that Garrison Limited is primarily a manufacturer of cues and that selling the devices for rival makers and sellers to incorporate in their cues represents a very small part of the company's interests.

In his statutory declaration Mr D S Garrison says that he was managing director and majority shareholder of Garrison Limited, a company which was set up by him in 1972 as a general machinery company and which in 1978 started to develop machinery for

manufacturing snooker cues. It is common ground from the statement of case and the counterstatement that Mr Drage was an employee of Garrison Limited at the time the device was developed and the application for the patent was made and it is further common ground from the statutory declarations of Mr Drage and Mr Garrison that Mr Drage voluntarily left the company in the autumn of 1994.

It is stated in the statement of case and it is agreed in the counterstatement that prior to making the invention Mr Drage was given the task of designing, developing and manufacturing quick release joints for cues. It is also stated in the statement of case that at the time of making the invention Mr Drage was dealing with sales enquiries and preparation of trade literature and the like and that by the time he left Garrison Limited he was additionally responsible for sales, production and procurement. In the counterstatement it is stated that this is not denied. Further, it is common ground from the statutory declarations that Mr Drage was involved in detail work connected with the invention.

The statement of case also provides information regarding the wages of Mr Drage, which were stated to be £300 per week as a starting wage and £307 per week at the time Mr Drage left the company, and in the counterstatement it is stated that this wage information is not denied. The £307 figure is confirmed in a copy of a letter, sent in as an exhibit by the applicant, dated 31 March 1994 from Garrison Limited to Norwich & Peterborough Building Society and signed by Mr D S Garrison saying that Mr Drage had filled the position of "General Manager which involves responsibility for UK Sales, production planning and procurement. The starting salary will be £16000 plus car and commission...".

In a letter to the Patent Office dated 10 May 1996 Mr Drage's patent agents said that they understood that all patent rights of Garrison in the patent in suit had been sold to a related company Kingsport Limited, and in a further letter dated 24 June 1996 they submitted that, since Garrison Limited and Kingsport Limited had common directors and addresses, they are connected persons within the meaning of Section 839 of the "Income and Corporation Taxes Act 1988". In addition, in this last mentioned letter, the attention

of the Patent Office was drawn to the control as defined by section 416 of that 1988 Act and to the ruling of the European Court that it is not proper for companies to transfer assets in such a way that the interests of employees suffers. Copies of various Companies House documents accompanied this 24 June letter, showing that Kingsport Limited changed its name to Garrison Engineering Limited on 30 January 1996 and confirming the common addresses and directors. Although Garrison Engineering Limited was sent a copy of the 24 June 1996 letter by the Patent Office and invited to comment, no reply was received. A copy of the abbreviated financial statement for Kingsport Limited for the year ended 31 May 1994 is one of the Companies House documents filed and it shows that Kingsport Limited is a small company, its net current assets in 1994 being £15,578 compared with £8,637 in 1993.

I am aware that on 18 February 1997, that is after the date of the cancelled hearing, an application was filed at the Patent Office to assign the patent to Hunt & O'Byrne Limited by virtue of an assignment dated 16 December 1996 between Garrison Limited in liquidation and Hunt & O'Byrne Limited. The assignment is signed by the joint liquidators on behalf of Garrison Limited and by Mr D S Garrison (director) and Mrs V A Garrison (company secretary) on behalf of Hunt & O'Byrne Limited. From this assignment it is clear that Hunt O'Byrne Limited, Garrison Limited and Kingsport Limited, which is now known as Garrison Engineering Limited, all have common directors and addresses. Further, the assignment states that Garrison Limited in liquidation assigns to Hunt & O'Byrne in consideration of the sum of £10,000 " two patents (given as the patent in suit and the EP(UK) patent 0465202 which ceased on 3 August 1995), and all right, title and interest therein and all rights, powers, privileges and immunities conferred on the proprietor thereof by grant of the patents free from all incumbrances and including the right to sue for damages and other remedies in respect of any infringement of the patents which may have occurred prior to the date hereof and the right to make application for amendment of the patents to hold unto Hunt & O'Byrne absolutely". I have not been provided with any information regarding the financial state of Hunt & O'Byrne.

Mr J Sadler, one of the joint liquidators, informed the Patent Office in a letter dated 18

April 1996 that " if any claim is determined, I would appreciate details to be agreed within the listing of unsecured creditors. I must advise you that from the information currently available, there is no possibility of any dividend being declared to the unsecured creditors and therefore any compensation claim against Garrison Limited is purely academic."

The patent was granted to Garrison Limited, it being declared on form 7/77, filed on 5 September 1991, that Garrison Limited derived the right to the patent by virtue of the employment of Dennis Stanley Garrison and Gary David Drage with Garrison Limited. Section 39 (1) provides that an invention made by an employee belongs to the employer if

"(a) it was made in the course of the normal duties of the employee or in the course of duties falling outside his normal duties, but specifically assigned to him, and the circumstances in either case were such that an invention might reasonably be expected to result from his carrying out his duties; or

(b) the invention was made in the course of the duties of the employee and, at the time of making the invention, because of the nature of his duties and the particular responsibilities arising from the nature of his duties he had a special obligation to further the interests of the employer's undertaking."

In the present case it is agreed by the parties that Mr Drage was an employee within the meaning of Section 39. It follows that the present application falls to be considered under subsection (1) of Section 40 rather than subsection (2) since the patent relates to an invention made jointly by employees but belonging to the employer. Under Section 40(1) I have to consider whether "the patent is (having regard among other things to the size and nature of the employer's undertaking) of outstanding benefit to the employer" and whether "by reason of those facts it is just that the employee should be awarded compensation to be paid by the employer". Section 40 draws a distinction between the patent and the invention and thus it is necessary to ascertain whether the patent, not the invention, is of outstanding benefit to the employer.

No legal precedents have been drawn to my attention in the papers. However, I am aware that it was recognised by Aldous J in Memco-med Ltd's Patent [1992] RPC 403 that the benefit from the patent may be readily recognisable where the patent is licensed and royalties are paid and, therefore, the first matter I shall consider is whether any licences exist on this patent and if so what royalties have been paid. It is stated in the statement of case that a third party named Intersport sought a non-exclusive licence at the rate of 7% of sales value. In their counterstatement the employers say that although Intersport was given a licence they have no knowledge that they (Intersport) have ever made the device and that certainly no income to the company has been derived from Intersport. It seems that no trace can be found of any draft licence agreement between the patentee and Intersport. Patent Agents Forrester Ketley & Co, who were acting for Garrison Limited, wrote to the Patent Office in a letter dated 24 April 1996 claiming that they had spoken to Directors of Intersport who confirmed that they were involved with Mr Drage in negotiations but that no licence agreement under the patent was ever executed by them. In this same April 1996 letter it was suggested that Mr Drage may have retained possession of any draft licence after he left Garrison Ltd but in a letter dated 10 May 1996 from Lawrence Shaw & Associates it is claimed that Mr Drage does not have a copy of the missing licence agreement. Mr Drage claims in his statutory declaration that he obtained offers from potential customers to buy a licence for them to use the device but was instructed by Garrison Ltd to decline such offers but this is disputed by Mr Garrison in his statutory declaration. Whatever the truth, no licence agreement has come to light and thus I cannot ascertain the benefit of the patent by reference to any licence.

In the Memco-med Ltd's Patent case Aldous J went on to comment that

" However, the task of the court will be more difficult in cases where an employer exploits the patent by manufacturing articles in accordance with the invention of the patent. In such cases, the court will need to differentiate between the benefit from using the inventive advance and that from the patent."

It seems to me that this is the situation in this present application. Aldous J took the

view that whether the patent is of outstanding benefit will depend on all the surrounding facts and that it is apt to answer two questions, namely "Has the patent been of benefit to the employer?" and "Is the benefit outstanding?". To answer the first question Aldous J considered that it is useful to assume that the patent was never granted due to some failure by the patent agents and thereafter to decide what would have been the position of the employer. As far as the second question is concerned, Aldous J said

"The word "outstanding" denotes something special and requires the benefit to be more than substantial or good. I believe that it is unwise to try and redefine the word "outstanding". Courts will recognise an outstanding benefit when it occurs".

Aldous J also said that he did not disagree with the hearing officer in GEC Avionics Ltd's Patent [1992] RPC 107 who said

"Moreover, it is noted that the word "outstanding" is used rather than "significant" or "substantial" or other such term. It must be something out of the ordinary and not such as one would normally expect to arise from the results of the duties that the employee is paid for. It is, I think for this reason that reference is made to the size and nature of the employer's undertaking.....The benefit (to the employer) must be looked at in the total context of the activities of the employer concerned to see whether it is outstanding".

That being the case, I shall now consider whether the benefit to Garrison Ltd was outstanding, making the assumption for the moment that the benefit was derived from the patent. Firstly, I need to consider whether Garrison Limited gained any benefit from the device, which both Mr Drage and Mr Garrison refer to as the "Spirolok" joint. In the statement of case it is claimed that the Spirolok joint has proved to be the answer to the long felt want for a commercially acceptable quick release cue for a cue, whereas Mr Garrison states in his statutory declaration that some manufacturers and some users dislike it, perceiving it to be less stable and less rigid than a conventional joint, to weaken the cue, to be more expensive to manufacture and more difficult to install and that there are other quick release joints on the market which are used by different manufacturers. It is

common ground that the Spirolok joint has had an effect on the company and that the company has enjoyed some profit from it which it would not have enjoyed otherwise but Mr Garrison, in his statutory declaration, claims that this profit must be balanced with the cost of patenting and the considerable management time involved in the development of the Spirolok joint and considers that had the resources of the company been devoted to other areas then other successes might have been enjoyed.

In his statutory declaration Mr Garrison has provided annual sales figures in terms of company turnover and turnover in cues and these figures show that the company turnover dropped from £426,784 in 1991 to £281,777 in 1992, to £237,771 in 1993, but then rose slightly to £238,046 in 1994, the biggest drop taking place from 1991 to 1992. The figures supplied also show that the turnover in cues (of all types) followed roughly the same pattern, dropping from £370,001 in 1991 to £223,790 in 1992 to £172,027 in 1993 and then rising slightly to £188,942 in 1994. These figures show that the turnover in cues accounts for a considerable portion of the company turnover.

It is also stated in the statement of case and agreed in the counterstatement that the number of employees of Garrison Ltd fell after 1991 and that the number of articles sold also fell. Mr Drage says in his statutory declaration that he considers that the general level of business in the snooker cue industry as a whole has fallen over the years and claims that the level of sales by the company remained substantially the same, against the general trend and in spite of the number of employees falling and the number of articles sold falling, because production had switched to the Spirolok joint. He claims that the profit margin must have improved, but this is challenged in the counterstatement which states that the profitability of Garrison Limited "decreased significantly since the Spirolok joint was first introduced" although it is stated that the profit margin is higher with the Spirolok joint than with conventional joints. The figures given by Mr Garrison in his statutory declaration support the view that the level of sales has not remained the same, although the years 1993 and 1994 are out of line with the earlier years.

Since the papers do not provide any information concerning the manufacturing costs of the Spirolok joint I cannot calculate the profit margin on the sale of a Spirolok joint or of

a cue fitted with a Spirolok joint. However, the papers do provide some limited information about the selling prices of the various cues and of the cue joints.

Cues which are fitted with joints come in two or three pieces. In the statement of case it is claimed that standard cue joints in small volume sell at about £3.00 per three piece set whereas the Spirolok joint sells at £12.50 to £15.00 for a three piece set, no year being given in which these prices apply. Further, it is claimed that "cues incorporating standard joints were sold by the Patentee for approximately £20 whereas those incorporating the patented joint now sell at an average price of about £70." The employers, in their counterstatement, state that these quoted prices show the disingenuity of Mr Drage. They consider that the £20 cue referred to is probably the "Maverick" cue which sold in 1991 at £21 with a conventional joint and in 1994 at £24.50 when fitted with a Spirolok joint, and that the £70 cue is probably the "Centurian" which sold in 1994 for £75 when fitted with a Spirolok and in 1992 for £75 with a conventional joint. These figures quoted by both sides present a confusing picture. A copy of the Garrison Limited trade price list for 1991 was filed as an exhibit. This price list gives the price of a standard Maverick two piece cue to be £15.95, which is not the price quoted by the employers, but perhaps they were quoting the price of a three piece Maverick cue which is not listed. The price list, which also does not list the Maverick cue when fitted with a Spirolok, indicates that a discount of 25% was available for non-Spirolok cues but not for Spirolok cues.

The difference in selling price in 1991 between standard cues and Spirolok joint fitted cues, taking the discount into consideration, ranged from about £4 at the bottom of the cue range to about £28 at the top of the cue range. Mr Garrison says in his statutory declaration that in the year of the price list, namely 1991, 207 standard "Saturn" cues were sold but only 47 (22%) of these were fitted with a Spirolok joint and that in addition 87 standard "Orion" cues were sold but only 2 (2%) were fitted with the Spirolok joint. According to the 1991 price list a difference of £24 seemed to apply for Saturn cues and £28 for Orion cues, taking a discounted price for the standard models, and less difference in price applied if no discount was allowed.

I have been supplied with little information as to the price of the various cues post 1991, neither has any information been supplied which indicates what proportion of the total number of cues sold in any year by Garrison Ltd were fitted with a Spirolok joint or any information which enables the profit, as distinct from the overall turnover, to the company from the sale of any type of cue to be identified.

Perhaps at this point I should say that Mr Garrison considers that Mr Drage did not make any significant contribution to the design of the Spirolok joint although he was involved in some of the detail work, which involved discussions with a company called D & S Engineering. Mr Garrison says in his statutory declaration that it would have been churlish not to name Mr Drage as co-inventor even though, in the view of Mr Garrison, Garrison Limited would have arrived at the same end if Mr Drage had not been present.

Mr Garrison also says in his statutory declaration that he himself had many years previously bought the rights in a patent concerned with a quick release joint, that this had planted the seed in his mind that a properly designed quick release joint might be commercially advantageous, and that this stayed in the back of his mind until in about 1989 a company called Cue Craft introduced a quick release joint which started to catch on. He says that he then asked Mr Drage, who in his view did not have any significant engineering background or knowledge of the snooker industry prior to joining the company, having been working in selling computers and financial services, to visit some engineering companies to see if the tapered joint could be manufactured with currently available machinery.

Mr Drage admits in his second statutory declaration that he did not have any prior knowledge of the snooker industry, but claims that he does have an engineering background, having gained in 1986 a Higher National Certificate in Mechanical and Production Engineering. A copy of this certificate is one of the exhibits. Mr Drage also says in his second statutory declaration that when he first joined Garrison Ltd he spent some time visiting customers learning the business. One customer had praised the quick release joint of competitors cues and this had led him to review the company's existing designs, create a range of possible designs and visit companies to make them, of which D

& S Engineering was one.

Mr Garrison says in his statutory declaration that D&S Engineering finished up believing that the Spirolok was their invention and challenged the patent application. I am aware that on 4 February 1992 third party observations were lodged at the Patent Office on the patent application prior to grant. These observations claimed that the invention was made available to the public before the priority date of the application, that the inventor was not the true inventor and that Garrison Ltd had no rights to the invention, the invention having been made available to the public at D & S Engineering. Subsequently, statutory declarations made on 25 June 1992 were filed by Mr Drage and two other people on behalf of Garrison Limited disputing these observations.

In contrast to Mr Drage's lack of knowledge prior to 1989 about the snooker industry, Mr Garrison applied for several patents in the snooker field, namely 2192800, 2223071, 2243597 and 2222091, the earliest being as far back as 1986. Some of these applications were terminated before grant and some were granted and then ceased. Only the present patent is still in force. I also note that patent No. 2243597, which was filed on 10 April 1990 and granted on 15 June 1994, ceased later that same year on 15 September 1994, and is entitled "Container for a cue", names Mr Drage and Mrs Drage as joint inventors with Mr D S Garrison, whereas Mr D S Garrison is the sole inventor of the other earlier patents.

As far as the patent, as distinct from the invention, is concerned Mr Drage contends in his statement of case that it has been of outstanding benefit to the patentee in that (a) one party (Canon Cues) on being made aware of the granted patent withdrew its allegedly infringing product from the market, (b) third parties of high reputation such as John Parris have adopted the product by buying patented joints from the patentee which they would not have done in the absence of the patent rights, and (c) a Dutch company Joba Leisure when notified of the pending EP patent agreed to pay £2000 by way of damages for infringement of the pending EP patent in respect of 170 allegedly infringing items.

However, it is claimed in the counterstatement that Canon Cues did not withdraw the

product but went into liquidation, but this is contested by Mr Drage who claims in his first statutory declaration that Canon Cues withdrew their rival product and only went into liquidation at a later date. Also, in the counterstatement it is admitted that John Parris bought joints from the patentee before the Spirolok was invented, and that he also bought Spirolok joints, buying 100 sets of Spirolok joints in 1993 at a cost of £1406 and a further 100 sets in 1994. However, Mr Garrison admits in his statutory declaration that at the time of the declaration John Parris was not currently buying Spirolok joints. Further, in the counterstatement it is stated that it is not denied that Garrison Limited received £2000 from Joba Leisure, although it is contended that it had nothing to do with any patent owned by the patentee. The Managing Director, Gerry Bary, of Joba Leisure B.V of Amsterdam has filed a statutory declaration saying that he paid this £2000 in 1992 "because of the Garrison patent". By this I take him to mean the equivalent EP application which had not been granted at that time.

In the counterstatement it is stated that the turnover in joints has not increased significantly with the Spirolok, apart from three orders made by a German manufacturer in 1993 for about 800 Spirolok joints, although it is held that this has nothing to do with any patent owned by the patentee. The EP(UK) had not been granted at this time. It is also stated that in 1994 636 Spirolok joints were sold at a turnover of £2759.

Statutory declarations have been filed by two persons, namely Mac Chambers and David Thomason, working in England in the snooker cue field who both state that they regard the Spirolok joint, which they have known about since 1991, as the best, most efficient quick release joint on the market, and that they were made aware of the patent situation by someone from Garrison Limited. Both Mr Thomason and Mr Chambers state that as far as they are aware the Spirolok connector is available only from Garrison Limited, Mr Thompson claiming that, in contrast, rival manufacturers offer the same or very similar quick release connectors. As far as the patent situation is concerned, the applicant has exhibited an advertisement showing that in February 1991, which is before the patent was granted, Garrison Limited was misleadingly claiming "The unique patented Spirolok".

As well as there being conflict over the benefit of the Spirolok joint to Garrison Limited

and the involvement of Mr Drage in the invention there is also conflict between Mr Drage and Mr Garrison over Mr Drage's conduct . In his statutory declaration Mr Garrison states that Mr Drage behaved badly over negotiations with the Dutch company called JOBA Leisure and a Spanish company called SAM Billiards. A letter dated 8 July 1994 from Joba Leisure BV to Garrison Limited is one of the exhibits, and it says that in July 1994 Joba Leisure were looking forward to appointing Garrison Limited as their sole UK distributor and supplying all their customers with Spirolok joints. Mr Garrison says that one of the sales persons left Garrison Limited with Mr Drage and that he believes that they have set up a company called Maydown Leisure Limited which has entered into an agreement with Joba Leisure and that there is no possibility now of Joba Leisure using the Spirolok joint.

Mr Garrison also contends, backed up by exhibited correspondence, that in the summer of 1994 Garrison Limited were close to reaching an agreement with SAM Billiards in Spain to sell their billiard tables in the UK but that Maydown Leisure Limited are now the exclusive UK distributor of SAM Pool Tables which has resulted in Garrison Limited losing the large order. This involvement by Maydown Leisure Limited with SAM Billiards is confirmed in an exhibited advertisement.

Mr Garrison also states that Mr Drage visited patent agents Forrester Ketley, acting for Garrison Limited, on several occasions before he resigned and obtained copies of a large amount of correspondence, much of it confidential, between them and Garrison Limited and between them and the Patent Office. Mr Garrison states that he believes that Mr Drage was able to set up his own business based on his knowledge and contacts he made while at Garrison Limited and that certain techniques used by Garrison Limited in the manufacture of snooker cues are now known to Joba's Taiwan suppliers which has seriously damaged Garrison Limited as these Taiwan cues are sold on the European market. In his second statutory declaration Mr Drage states that he is now employed by Maydown Leisure Limited who sell SAM tables but that it is not true that he disclosed proprietary manufacturing techniques information to third parties. He accepts that he did have frequent contact with Forrester Ketley and from time to time was given correspondence, but he says that he is unable to identify which documents Mr Garrison

categorises as confidential.

From the figures and incomplete information supplied it is very difficult to estimate with any real degree of accuracy the tangible benefits which were brought to Garrison Limited by the Spirolok joint, but nevertheless I have tried to do some calculations. The figures supplied for the sales of Spirolok cues and joints in 1991 are clearly very incomplete and those for 1992 are even sparser although I know that £2000 was obtained from Joba Leisure in connection with Spirolok joints. As far as 1993 is concerned Mr Garrison has given figures in his statutory declaration regarding the company turnover (£237,771) and the turnover from cues (£172,027). In the counterstatement it is admitted that 100 sets of joints were sold to John Parris in 1993 at a cost of £1406 and that about 800 joints were sold to a German manufacturer at a turnover of about £3100. This last figure is an estimated figure which I have made from information given with regard to 1994, when 636 joints were sold at a turnover of £2759. Thus, for 1993 the only sales of Spirolok joints that I know about came to approximately £4500. I am not even certain whether or not these sales of Spirolok joints for fitment into cues are regarded as falling within the heading "turnover from cues", but making the assumption that they do fall within the heading then these sales account for 2.8% of the turnover of all cues that year and about 1.9% of the total turnover of the company. The corresponding known sales of Spirolok joints and cues figure for 1994 would seem to come to about £4165, which is 2.2% of the cue turnover for 1994. I accept that it is highly probable that other Spirolok joints and cues with Spirolok joints were sold in these two years but I have no information about this. As far as the profit to the company in 1993 and 1994 of these Spirolok joints and cues is concerned, I have not been informed about the manufacturing costs of the Spirolok and so I cannot make an estimate of the profit.

Mr Drage received remuneration in the form of salary and other benefits during his employment by Garrison Ltd. and he must be regarded as having been rewarded to at least some degree for his activities leading to the patented invention. I have to bear in mind that, as held by Aldous J in Memco-med Ltd's Patent, "the onus of proof lies on the person seeking to invoke the provisions of section 40", namely Mr Drage, and that "each case must be decided on its own facts using the normal standard of proof in civil

proceedings, namely the balance of probabilities".

Although there are many disagreements between the two parties and obscurities in the information provided, one thing that is nevertheless clear is that the company was in decline during the years 1991 - 1995, culminating in voluntary liquidation in 1996. Apart from the figures given by Mr Garrison, the abbreviated financial statements for Garrison Ltd for the year ended 31 December 1994, filed by Lawrence Shaw & Associates with their letter dated 24 June 1996 show the story for the two years 1993 and 1994. Total assets less current liabilities were £154,432 in 1994, in contrast to £187,970 in 1993 and, after deducting the creditors amounts falling due after more than one year, the capital and reserves amounted to £53,540 in 1994 compared with £82,221 in 1993.

In addition to this company decline, I have also borne in mind the relatively small size of the company's total undertaking, the many obscurities and gaps in the information provided in the papers and the matters on which Mr Drage and Mr Garrison are in agreement as well as those matters over which there is conflict, and it seems to me that there is a strong balance of probability that the benefits to Garrison Limited from the Spirolok joint, whether regarded as being due to the invention itself or to the patent, were not very substantial let alone outstanding. Having concluded that the patent is not of outstanding benefit to Garrison Ltd there is no need to pass on to the question of whether or not it is just that Mr Drage should be awarded compensation.

Accordingly, I consider that the application should be refused and no order made for payment of compensation to Mr Drage.

No request for costs has been made by either side.

This being a substantive matter, the time in which an appeal may be lodged is six weeks from the date of this decision.

Dated this 6th day of March 1997

D. L. WOOD

Superintending Examiner, acting for the Comptroller



THE PATENT OFFICE