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THE PATENTS ACT 1977

IN THE MATTER OF an application under
Section 72(1) by Mr P A Richter for
the revocation of Patent No 2155793
in the name of T D Francis and
D R De Glanville.

6/10/94

DECISION

Mr P A Richter has applied for the revocation of Patent No 2155793 under section 72(1)(a) on the grounds that the invention is not a patentable invention because each of the claims is not novel and/or does not involve an inventive step in the light of common general knowledge and three prior published documents, *viz* French Patent No 2337563, United Kingdom Patent specification 2118843A and US Patent No 3897060.

The applicant's statement was filed on 9 February 1993. Subsequently the proprietors, Mr T D Francis and Mr D R De Glanville, instituted infringement proceedings in the Patents County Court against the applicant in relation *inter alia* to the patent in suit, and requested a stay in the revocation proceedings pending the decision of the Court. The Office declined a stay. The possibility that the revocation proceedings might be transferred to the County Court was also raised by the proprietors, but not pursued. The proprietors have not pursued the Patent County Court action.

Evidence in the proceedings comprises statutory declarations by the applicant, Mr Richter, and statutory declarations by each of the proprietors, Mr Francis and Mr De Glanville. The matter came before me at a hearing on 8 August 1994 at which the applicant was represented by Mr S A Craske of Craske & Co, and the proprietors by Mr R D Weston of Phillips & Leigh.

The patent in suit relates to a scrummage machine for use in training by rugby forwards, and in particular to a development of the scrummage machine described in the proprietors' earlier

Patent No 21188433 which was published on 9 November 1983 and which is still in force. This prior machine includes a pad carrier mounted on a frame which pivots about a horizontal axis. Rugby players push with their shoulders against pads and pivotal movements of the frame about the transverse axis are resisted by vertical springs fixed between the frame and the main body of the machine. Horizontal movement is resisted by the deadweight of the machine or by braked rollers on which the machine rides.

The application for the present patent was filed on 6 March 1984 without any claim to an earlier priority date. The improvement relative to the earlier patent is to the structure and mounting of the frame. As described, the frame of the earlier patent is replaced by a ladder frame with hollow, longitudinally extending side members. As before, the frame pivots about a horizontal axis against the action of vertical springs. The pad carrier, however, is now mounted on side arms which pass through the hollow arms of the ladder frame and are attached at their far ends through springs to the frame. Thus, the machine will accept not only up and down, pivotal movements of the frame resisted by the vertical springs as in the earlier patent, but also simultaneous horizontal in and out movements resisted by the springs located between the side arms and the frame.

The claims of the patent in suit are as follows:

> "1. A scrummage trainer including a pad carrier supported and guided by a support frame mounted on a substantially horizontal axle for linear movement transverse to and pivotal movement about the horizontal axle, spring-loading means being provided between the carrier and the support frame and between the support frame and the trainer to resist a thrust applied by a forward to a pad on the carrier; the result of the spring-loadings being directly opposed to forward applied thrust from an arcuate range of directions.
>
> 2. A trainer as claimed in claim 1, wherein the support frame has a pair of hollow, longitudinally extending side members and the pad carrier has a pair of side arms to slide within and be linearly guided by the side frames.

3. A trainer as claimed in claim 2, wherein tension springs are connected with one end of each tension spring connected to a respective one of the support frame side members and the other end of each tension spring anchored to a respective one of the pad carrier side arms.

4. A trainer as claimed in any (*sic*) claim 2 or claim 3, wherein tension springs are connected between the support frame and the trainer, on either side of the horizontal axle.

5. A trainer as claimed in any of claims 1 to 4, wherein damper means are connected between the pad carrier and the support frame to control relative movement therebetween.

6. A scrummage trainer substantially as described with reference to or as shown by the drawings."

The first ground for revocation alleged by the applicant is that claims 1, 2, 3 and 6 are not novel in the light of the cited French patent specification 2337563 ("Balineau"). This document was annexed to the applicant's statement together with a verified translation into English. It is not disputed that Balineau was published on 5 August 1977, before the filing date of the patent in suit. Although the proprietors initially accepted the translation of Balineau, at the hearing Mr Weston handed me another translation of a part of it which he felt more accurately represented the disclosure of one particular paragraph. I will refer to this later.

In addressing this issue, both Mr Weston and Mr Craske began not by construing claim 1, but by analysing the disclosure of Balineau and seeking to persuade me that it did, or did not, read onto the words of the claim of the patent in suit. It became clear, however, that their respective views of the relationship between Balineau and the invention claimed in claim 1 of the patent in suit rested on very different interpretations of that claim, and in particular of the last phrase of the claim, *viz* "the result of the spring-loadings being directly opposed to forward applied thrust from an arcuate range of directions." While this suggests that I

should, as is conventional, start by construing claim 1 of the patent in suit, and in particular its last phrase, I accept that it is sensible to do this in terms of the relationship between the claim and Balineau, since this helps in understanding the true scope of the claim.

It is therefore necessary first to outline the disclosure of Balineau. This document describes a scrummage training machine in which three forwards thrust against a pad shaped to represent the opposing scrum. The pad carrier is mounted on arms which pass through hollow members of a frame, permitting sliding movement along the direction of thrust against adjustable springs operating between the arms and the frame, and the pad carrier is mounted also to swivel about a longitudinal axis parallel to the direction of thrust against the action of two springs located at an angle between the frame and the main body of the machine on respective sides of the longitudinal axis ("the angled springs"). A weight may be positioned on a support above where the head of the left-hand prop forward is located, against which weight the prop would have to push in order to lift his end of the pad thereby to swivel the pad carrier. The frame is additionally mounted to pivot about a transverse horizontal axle, there being two chains, carrying tension adjusters, located respectively between spaced positions on the base of the machine and a common attachment position on the frame.

Claim 1 of the patent in suit begins by specifying :

> "A scrummage trainer including a pad carrier supported and guided by a support frame mounted on a substantially horizontal axle for linear movement transverse to and pivotal movement about the horizontal axle, spring-loading means being provided between the carrier and the support frame ...".

There is I think no difficulty with this part of the claim, which concerns the mounting of the pad carrier for in-and-out movements against the springs located between itself and the frame, and for pivotal movement about a transverse axle. It was accepted by Mr Weston that this part of the claim is disclosed in Balineau.

The claim goes on to require that there are also spring-loading means provided:

"... between the support frame and the trainer ...".

The function of both spring-loading means is:

> "... to resist a thrust applied by a forward to a pad on the carrier; the result of the spring-loadings being directly opposed to forward applied thrust from an arcuate range of directions."

A simple matter to dispose of is that there is no dispute that in this passage the words "forward applied thrust" refer to thrust applied by a forward. The second spring-loading means clearly corresponds in the disclosure to the vertical springs against whose action the ladder frame pivots about a horizontal axis. In Mr Craske's view this feature of the claim was met by the angled springs in Balineau, a view which Mr Weston did not accept. Mr Weston argued that the function of the angled springs in Balineau was simply to balance pivotal movement of the pad carrier frame about the longitudinal axis. So far as pivotal movement about the transverse axle is concerned, Mr Weston argued that rotation away from the horizontal position of the pad carrier assembly in Balineau in a direction tending to lower the overall position of the pad carrier was prevented by the chains, and rotation in the opposite direction would simply unload the springs. Thus, he argued, there was nothing in Balineau which disclosed this final requirement of claim 1.

Mr Weston argued that this part of the claim had to be construed in the light of the description in the patent in suit which, at pages 3 and 4, states:

> "... a thrust on pad 12 will, depending on its direction, force the carrier to move longitudinally (in the direction of arrow c) into the support frame against the loading of springs 18 and 19, and if the thrust is not horizontal, the support frame will also pivot up or down against the loading of spring 10 or spring 9, by this means a thrust on pad 12 from an arcuate range of directions will meet a spring-loaded resistance against both the vertical and horizontal components of the thrust."

Mr Weston submitted that in the light of this description, the final phrase of claim 1 should be taken to require that the pad carrier frame must pivot away from the horizontal in both senses about the transverse axis, and that there must be spring-loading resistance to pivotal movement in both senses. On this basis, he argued that since in Balineau pivotal movement of the pad carrier away from the horizontal in one sense about the transverse axis was prevented by the chains, the requirement of the final phrase of claim 1 was not disclosed in this document.

Mr Craske on the other hand argued that the final phrase of claim 1 was no more than a description of the result provided by the combination of elements defined in the earlier parts of the claim. He submitted that, at their broadest, the words "thrust applied from an arcuate range of directions" would cover thrust applied parallel to the arms of the pad carrier and support frame, the arcuate range of directions arising from the application of thrust in a range of pivotal positions of the carrier and frame about transverse axle. On this construction, since thrust is only ever applied along the arms of the pad carrier, in the context of the disclosure of Balineau, the result would be that the thrust would invariably be directly opposed by the springs connected between the pad carrier and the support frame and the terms of claim 1 of the patent in suit would accordingly be met.

Alternatively, in the event that claim 1 were found to require that pivotal movement about the transverse axis was resisted by spring-loading, Mr Craske disputed Mr Weston's argument that in Balineau, downward pivotal movement of the pad carrier assembly about the transverse axis away from the horizontal was prevented by the chains. He pointed to the "tension adjusters" and argued that the presence of adjusters necessarily implied that they would be adjusted, whereupon some pivotal movement of the pad carrier assembly against the angled springs would be possible. He also suggested that since the chains were shown as being attached to the tension adjusters by open mouthed hooks, these hooks could be detached with the result that full pivotal movement against the action of the angled springs would be possible. Furthermore, since there was nothing in the claim to require that the pivotal movement about the transverse axis of the pad carrier assembly had to be away from the horizontal in both senses, the requirement of claim 1 was met by Balineau.

Finally, Mr Craske submitted that even if I were to find that claim 1 of the patent in suit did require that pivotal movements of the pad carrier assembly away from the horizontal in both senses about the transverse axis each had to be resisted by spring-loading, the weights which Balineau indicates can be placed on the pad carrier above the loose head prop forward would provide a spring-loading means which would resist upward movement of the pad carrier. In this latter respect, Mr Craske argued that the word "spring-loading means" used in the claim would be recognised as a very broad term encompassing the provision of weights to resist movement. In support of this he pointed to claim 4 which referred to tension springs as one example of spring-loading and suggested that the recitation of this specific example underlined the view that the broader term was of very wide scope and covered things other than springs. This, in combination with the pivotal movement allowed in the opposite sense by virtue of the adjustment, or disconnection, of the tension adjusters, would meet the terms of the claim.

I do not accept Mr Craske's argument that the use of weights to resist pivotal movement of the pad carrier assembly meets the terms of the claim. I regard the reference to "tension springs" in claim 4 as merely indicative of the particular kind of spring involved and not in any sense indicating that weights might constitute "spring-loading means". In my view, the reference to "spring-loading means" in the context of claim 1 does not cover the use of weights. I would also add that while I accept that the primary purpose of the angled springs in Balineau is to balance the pad carrier against pivotal movement around the longitudinal axis, I would also accept that in the event that an upwardly directed thrust on the pad carriers were to result in pivotal movement of the pad carrier around the transverse axle, then the effect of the angled springs would be to oppose that movement directly as required by claim 1. However, I do not accept that Balineau discloses that the tension adjusters can be adjusted, or disconnected, so as to allow pivotal movement of the pad carrier assembly against the action of the angled springs. In my view, this suggestion goes beyond what Balineau actually discloses and is pure speculation as to possible ways in which the operation of the Balineau machine might be modified.

In seeking to construe the final part of claim 1, the first thing of significance that I note in the disclosure of the patent in suit is that, as Mr Craske pointed out, since the springs located

between the carrier and the support frame automatically pivot with the carrier and frame in response to the direction of thrust from the forwards, they will always be aligned so as directly to oppose that thrust. It thus appears to me that the first-mentioned of the two "spring-loading means" of claim 1 will by itself inevitably satisfy this requirement of the claim. However, I note that claim 1 requires that "the result of the spring-loadings (is) directly opposed to forward thrust from an arcuate range of directions", the plural here perhaps arguably implying that both spring-loading means necessarily have to cooperate to oppose the applied thrust. I am not convinced that this latter interpretation is supported by the apparatus actually described, since in fact the springs that I have referred to as "vertical" will actually always, on my reading, act at right angles to the direction of thrust by the forwards. I therefore conclude that this is a weakness of drafting of the claim, and construe claim 1 in the light of the description and drawings, as required by section 125(1), in such a way that the final passage encompasses the situation in which the direct opposition to the applied thrust may be provided by only one of the two spring-loading means.

This is a very significant conclusion in relation to Balineau, since, as I have already noted, there is no dispute that Balineau discloses "spring-loading means .. between the carrier and the support frame", and there is equally no dispute that this particular spring-loading means operates in essentially the same manner as its equivalent in the patent in suit. So, as long as I am satisfied that the Balineau machine permits the application of "applied thrust from an arcuate range of directions", it must follow that the springs in Balineau operating between the pad-carrier arms and the frame meet the final requirement of claim 1.

Although the chains in Balineau would clearly have the effect of preventing thrust being applied in an upward sloping direction along the arms of the pad carrier, and, contrary to Mr Crasks's submission, there is no justification for reading into Balineau disclosure of releasing the chains from the hooks, they would, I am satisfied, permit restricted pivotal movement and the application of thrust in a downward sloping direction, since they would go slack if such thrust were applied. Thus, the Balineau arrangement is such that thrust may be applied "from an arcuate range of directions". As Mr Weston noted, in this case the angled springs will not in themselves "directly oppose thrust from an arcuate range of directions", but I have concluded both that this part of claim 1 is met as long as one of the

spring-loaded means meets this requirement, and that the Balineau springs operating between the pad-carrier arms and the frame do precisely this.

Once a requirement that the angled springs should themselves directly oppose the direction of thrust has been removed by the construction I have found it necessary to place on claim 1, I am satisfied that Mr Weston's objection to the identification of the angled springs with the second spring-loading means of claim 1 also falls away, since I consider that, in operating to counter swivelling motion of the pad carrier, these springs must "resist a thrust applied by a forward to a pad on the trainer".

I am not convinced by Mr Weston's submission that claim 1 should be construed in a limited sense to require pivotal movement away from the horizontal in both sensesabout the transverse axis. I accept, of course, as Mr Weston implied, that section 125(1) points me towards the specification to interpret the claims, and also that I must have in mind the principles of purposive construction set out in *Catnic Components Ltd v Hill & Smith Ltd* [1982] RPC 183. This leads me to take note of the statement of object on page 1 of the specification, which states:

> "It is an object of the present invention to provide a scrummage trainer that not only enables a prop forward to thrust against a pivotal pad carrier with the upwards or downwards component of his thrust being resisted but to additionally resistively accommodate generally horizontal thrusts."

Nevertheless, in the present case I can see no sound reason for imposing upon claim 1 a limitation which is not evident on the face of the wording of the claim itself, and I am not convinced that such a limitation would have suggested itself to the proprietors had they not been confronted by a prior disclosure anticipation by which could be avoided by such a narrow claim construction.

It follows from these conclusions that I find that the invention defined in claim 1 of the patent in suit is not new having regard to French Patent Specification No 2337563 (Balineau). Mr Weston did not seek to argue that if claim 1 fell for lack of novelty, claims 2 or 3 would

survive relative to Balineau, and I find that these claims also are not new. Claim 6, the omnibus claim, was also attacked for lack of novelty, but this was not argued vigorously, and I am satisfied that the embodiment in the present invention described with reference to the drawings differs in a number of important respects from that disclosed in Balineau, and that this claim does not lack novelty.

Since my finding of lack of novelty against claims 1 to 3 relies upon a difficult construction of claim 1, and since furthermore other claims in the patent in suit were either not attacked in respect of novelty or have survived the attack, I will move on to consider the charge that the invention so far as claimed in claims 1, 2, 3, 4, and 6 does not involve an inventive step having regard to the proprietors' earlier patent specification no 2118843A ("843"), to Balineau and to common general knowledge. In essence, Mr Craske's argument for the applicant is that longitudinally sprung pad carriers and support frames of the kind shown in Balineau were well known and that it would have been obvious that this feature should be combined with the machine disclosed in 843, thereby producing the invention set out in claim 1 of the present specification.

In seeking to persuade me that the invention claimed in claim 1 of the patent in suit would not have been obvious, Mr Weston first argued that in order to arrive at the invention claimed in claim 1 starting from the disclosure of Balineau, it would be necessary to add spring resisted pivotal movement of the pad carrier assembly to Balineau. Since however, there is nothing to suggest that Balineau should be modified in this way, it follows that the invention was not obvious. In this connection, Mr Weston referred me to his new, partial translation of Balineau. The original translation provided by the applicant, at page 1, says:

> "To increase the training possibilities of such a machine, the central longitudinal axle around which a frame can swivel, is itself rigidly attached to a tube freely rotating around a transversal axle, this allowing not only a horizontal push, but also upwards or downwards thrust."

Mr Weston's alternative translation reads:

"In order to further improve the training possibilities of an apparatus of this kind, the central longitudinal axle about which this frame can pivot is itself rigidly fixed to a tube rotating freely about a transverse axle, thereby allowing for pushing not only in the horizontal direction, but also in an upward direction or in a downward direction."

As I understood Mr Weston's arguments, he was making two points. First, his new translation made it clear that there is free rotation about the transverse axis so that Balineau contains no directions to spring-load pivotal movement about the transverse axis. Second, he suggested that by using the two words "push" and "thrust", the original translation incorrectly reflected the teaching of Balineau. I confess to having had some difficulty with Mr Weston's argument on this point; perhaps he was suggesting that the use of the two words "push" and "thrust" as against the one word "push" implied there were two sources of force, namely those using the machine who pushed against it, and the machine itself which produced thrust in response to the users pushing upwardly or downwardly, and that the new translation in contrast, by referring only to "pushing", made it clear that the description at this point in Balineau is concerned only with forces applied by those using the machine and is saying nothing at all about any forces stemming from the machine itself. Either way, he was arguing that on a fair reading of Balineau, there was nothing which would lead the notional skilled person to modify it by adding spring-loading acting to resist pivotal movements of the pad carrier assembly about the transverse axle.

Alternatively, Mr Weston argued that in order to arrive at the invention claimed in claim 1 of the patent in suit starting from 843, which did disclose spring-loading acting to resist pivotal movement of the pad carrier assembly about the transverse axle, it would have been necessary to modify the disclosure of 843 to include the longitudinally slidable pad carrier with spring means connected between the carrier and the support frame from Balineau. His contention was that there was nothing to suggest that this should be done and that accordingly, the combination set out in claim 1 of the patent in suit is not an obvious one.

Whatever the merits of these lines of argument may be, I do not think that they are central to the point at issue as this was subsequently put by Mr Craske at the hearing. His argument

was that Balineau begins with a reference to the prior art in which, in the applicant's original translation, it states:

> "Machines are known for training rugby scrummaging which include a scrumhead against the face of which three forwards in the front line of a rugby scrum can rest their shoulders and push, engaging their heads in cutouts designed to this effect in the lower edge of the scrumhead, said scrumhead being mounted on a frame permitting a sliding motion parallel to itself and the pushing direction, this being counteracted by the reaction of adjustable springs, thereby allowing progressive training."

Although the partial translation of Balineau handed to me by Mr Weston included a translation of this paragraph in slightly different terms, I did not understand Mr Weston to be suggesting that there was any difference of substance between the two translations in relation to this paragraph. Nor indeed do I think there is any such difference. Nevertheless, for completeness I should quote Mr Weston's translation, which states:

> "Training apparatus for rugby scrummaging are known, comprising a scrumhead against one face of which the three forwards of the front line of a rugby scrum can bear via their shoulders and push, engaging their heads in cutouts provided to this end in the lower edge of the scrumhead, the said scrumhead being mounted on a frame allowing it to slide parallel to itself and in the pushing direction against the opposing action of adjustable springs, so as to allow for progressive training."

Thus, as I understood him, Mr Craske was not concerned with any of the details of the invention disclosed in Balineau, but was merely citing this document in support of his argument that when Balineau was published, on 5 August 1977, it was already known in rugby scrummage training machines to have a scrumhead against which training forwards push, the scrumhead being mounted for linear, in-and-out movement against the action of springs. Mr Craske then argued that, given that this represented common general knowledge to those skilled in the field of rugby scrummage machines, it would have been obvious to the notional skilled person to incorporated this known feature into the machine disclosed in 843, which showed spring loading acting to resist pivotal movement of the pad carrier assembly

about the transverse axle, thereby producing the invention claimed in claim 1. Mr Craske also argued that no special skill was needed to combine these features and that the combination gave no surprising result.

On this last point, Mr Weston argued that the results were indeed surprising in that the combination of spring-loading resistance to both in-and-out and to pivotal movement of the pad carrier assembly worked better than had been expected, and that it was only when the in-and-out movement of the pad carrier assembly had been added that the commercial success of the machines improved dramatically. On the first point, while I am happy to accept that the result of the combined spring-loadings was better than the proprietors had expected, the question of obviousness has to be determined against the skills, knowledge and expectations of the notional skilled person in the art, and Mr Weston has adduced no evidence directed at this. Moreover, there can be many reasons for commercial success which have nothing to do with whether an invention is or is not obvious to the notional skilled person and, in the absence of any evidence or detailed argument on the point, I do not think I can assume that commercial success of itself necessarily means that the invention is not obvious.

In this respect, I should say that while neither Mr Craske nor Mr Weston addressed me on the legal authorities which I should have in mind when determining this issue, it seems to me that I should be guided by the remarks of Oliver LJ in *Windsurfing International Inc v Tabur Marine (Great Britain) Ltd* [1985] RPC 59. In his judgment Oliver LJ indicated that :

> "the question of whether the alleged invention was obvious has to be answered objectively by reference to whether, at the material time (that is, immediately prior to the priority date), the allegedly inventive step or concept would have been obvious to a skilled addressee, ..."

He also indicated that it was the view of the Court that there are four steps to be taken in answering the question, namely :

> "i) identifying the inventive concept embodied in the patent;

ii) imputing to a normally skilled but unimaginative addressee what was common general knowledge in the art at the priority date;

iii) identifying the differences if any between the matter cited and the alleged invention; and

iv) deciding whether those differences, viewed without any knowledge of the alleged invention, constituted steps which would have been obvious to the skilled man or whether they required any degree of invention."

Applying these steps to the present case leads me to the view that the alleged inventive concept in the present claim 1 is the provision of spring-loading to resist both longitudinal and pivotal movements of the pad carrier in a scrummage training machine. As for common general knowledge in the art at the priority date of the patent in suit, I believe that it is clear from the introduction of Balineau which I have quoted above that it was already known in rugby scrummage machines in 1977 to have a scrumhead against which training forwards push, the scrumhead being mounted for linear, in-and-out movement against the action of springs. I therefore believe that a normally skilled but unimaginative addressee would have been aware of this and of the proprietors' earlier patent 843 showing the idea of a pad carrier pivoting about a transverse axis against spring-loading. The field of rugby scrummage training machines is a specialised one, and it appears to me reasonable to expect that the notional skilled person in the art would have been aware of both of these documents, as well as of the common general knowledge described in the introduction to Balineau. On that basis, the difference between what was known and the invention claimed in claim 1 was that the invention combined the two, individually known, elements of spring-loaded resistance to pivotal and longitudinal movement respectively, and the question I must ask is whether it would have been obvious to the skilled person to form this combination, or whether it would have required any degree of invention.

Like Mr Weston, Mr Craske did not adduce any evidence specifically to help me in answering this question. Indeed, the evidence which was filed was mainly concerned with who devised which features of the invention when, and would not therefore have been out of place had the issue been one of entitlement. However, Mr Craske did refer me to the proprietors' evidence, and specifically to Mr Francis' statutory declaration, which traces the

development of the proprietors' scrummage machines. Mr Francis states that he first developed an idea for an improved scrummage machine when teaching in the late 1970's. Subsequently, in co-operation with Mr De Glanville, prototypes were developed and their earlier patent application covering the machine was filed in March 1982. In April 1982 Mr Richter was engaged to produce machines on a cost-plus basis. After some success with their machine, Mr Francis went to South Africa to set up production facilities there. Among various ideas for modifications to the original machine conceived around this time, was the idea of horizontally moveable scrum pads. In paragraph 13(b) of his declaration, Mr Francis states:

> "The constant requests for, and a positive and lucrative order for, a machine whose scrum pads would move on a horizontal axis (the existing one only moved on a vertical axis) against reasonable resistance from the then coach of the Transvaal Rugby Team, prompted me to look into the possibility of incorporating this facility into the existing machine."

Mr Craske also referred me to paragraph 14 of Mr Francis' declaration, where he refers to the original production of the horizontally moveable scrum pads and states that while he was in South Africa:

> " I met an enlightened Italian engineer ..... [and] discussed the idea of the push back pushers with him and he came up with the simple idea of using box steel of different but close fitting sizes which would slide backwards and forwards one inside the other against the resistance of the elastic we used for the vertical resistance. The idea was simple and obvious ....."

Mr Craske argued that in this paragraph, Mr Francis was effectively conceding that the broad idea of spring-loading to resist horizontal in and out movement was obvious. Having looked at this, I do not find Mr Francis' remarks conclusive. It seems to me that they are equally open to the interpretation that what was simple and obvious was the way in which what he describes as the "push back pushers" should be constructed from box steel, and not the provision of "push back pushers" *per se*. On the other hand, paragraph 13(b) of Mr Francis'

declaration does refer to the fact that there were "constant requests for" scrum pads which would move horizontally against resistance, and, in the absence of any other evidence, I think it is right to interpret this as strongly suggesting that the incorporation of horizontally moveable scrum pads into the machine disclosed in the proprietors' earlier patent was indeed an obvious modification. Moreover, given that I have found that pad carriers mounted for linear, in-and-out movement against the action of springs of the kind shown in Balineau were known, I believe that it would have been obvious to the notional skilled person to make the modification by using such a spring-loaded arrangement. Consequently, I believe that the combination claimed in claim 1 of the patent in suit would have been obvious to the notional person skilled in the art at the date on which the present patent was applied for, *viz* on 16 March 1984.

Turning now to claims 2, 3 and 4, Mr Weston accepted that all the subject matter of these claims is disclosed in one or other of Balineau and 843, and that, if I find claim 1 to be obvious, it would follow that claims 2, 3 and 4 must also be obvious. I believe that this is right because the obvious way for the notional skilled person to have constructed the combination set out in claim 1 of the patent in suit would have been to have used the features disclosed in these two prior documents and thus to arrive at the arrangements defined in claims 2, 3 and 4, which I therefore believe do not involve an inventive step.

Although neither party advanced any argument in relation to claim 5 at the hearing, Mr Craske formally maintained the applicant's attack that the invention defined in that claim was not a patentable invention because it did not involve an inventive step, and Mr Weston accepted that this was so, and that claim 5, and indeed claim 6, stood or fell with claim 1.

In relation to claim 5, the argument in the applicant's statement rested on the disclosure in an American specification, US 3897060 ("Jennings"), which shows the American equivalent of a scrummage trainer, *ie* a blocking apparatus. In broad terms, this apparatus is different from rugby scrummage machines in that it only admits of linear, fore and aft movement. What Jennings does however show is the use of dampers between the pad carrier and support frame to prevent the pad carrier snapping back when the thrust applied is released. And it is precisely this which is the subject of claim 5. Claim 6 is an omnibus claim and therefore

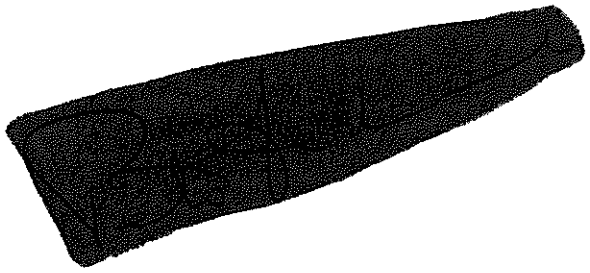
includes all the features disclosed in the present specification, including the dampers covered by claim 5. In essence, therefore, what this amounts to is that the applicant is arguing that the notional skilled person, in addition to combining the use of spring-loading to resist both longitudinal and pivotal movements of the pad carrier assembly, would also have used dampers such as are shown in Jennings to produce the invention of claim 5, and that any additional matter in claim 6 is so ordinary that it cannot involve an inventive step. In the absence of any evidence on this point, and in the light of the proprietors' admission that claims 5 and 6 stand or fall with claim 1, I am satisfied that claims 5 and 6 do not relate to patentable inventions because they do not involve an inventive step in relation to the cited prior art.

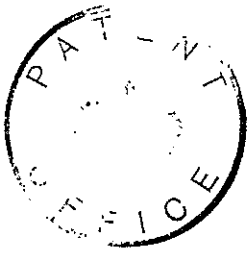
Thus, in summary, I believe that the applicant has established that the invention so far as claimed in claims 1, 2 and 3 is not novel having regard to the French specification 2337563 (Balineau), and that he has established that the invention so far as claimed in claims 1 to 6 does not involve an inventive step having regard to Balineau, United Kingdom Patent specification 2118843A, US Patent No 3897060 and common general knowledge. Accordingly, I find that the invention claimed in all of the claims of the patent in suit is not a patentable invention and that the application for revocation under section 72(1)(a) succeeds. Moreover, since I believe that claim 6 does not relate to a patentable invention on the basis that, as an omnibus claim, it includes all the features described in the present specification but still does not involve an inventive step, it follows that I can see no amendment which could be made to the claims which could circumvent my finding. I therefore hereby revoke the patent in suit, No 2155793.

On the question of costs, while neither Mr Craske nor Mr Weston referred to this at the hearing, both the applicant and the proprietors asked in their statement and counterstatement respectively for full costs. It is however the practice of the Comptroller not to award full costs but only a contribution to costs. The applicant's intervention has resulted in the revocation of an invalid patent, and he has succeeded in all significant respects with his pleadings. On this basis, I award the applicant the sum of £650 to be paid to him by the proprietors as a contribution to his costs.

Any appeal from this decision should be lodged within a period of six weeks from the date of the decision.

Dated this 6th day of OCTOBER 1994.





Dr P FERDINANDO

Superintending Examiner, acting for the Comptroller.

THE PATENT OFFICE