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PATENTS ACT 1977

IN THE MATTER OF UK Patent
Application No 81-01209 in the
name of Brockhouse PLC
and

IN THE MATTER OF a reference
pursuant to Section 8(1)(a)
and an application pursuant
to Section 13(1) and 13(3) by
Brian Richard Davis

DECISION

Following my preliminary decision dated the 20 December 1984 the respondents filed a properly headed counter-statement in respect of the Section 13 proceedings. There being no appeal against the preliminary decision the respondents have thus formally joined issue in both the Section 13 and the Section 8(1)(a) proceedings. These matters accordingly proceeded to the appointment of a substantive hearing which was held before me on the 20 and 21 May 1985, when Mr Davis again appeared in person and Mr M Fysh appeared as counsel for the respondents.

Before the hearing the respondents submitted further evidence in the form of a second declaration by Mr R A Spencer, the stated purpose of which is to exhibit certain publications referred to in Mr Spencer's original declaration, and sought admission thereof into the proceedings. Mr Fysh had expressed the intention of referring to these publications within the terms of Rule 88(3) at the preliminary hearing on the 9 November 1984. Mr Davis raised no sustainable objection at the substantive hearing to the admission of this declaration, and I formally admitted it into the proceedings.

During the hearing Mr Fysh made a formal application to amend the respondents' counter-statements in both proceedings to introduce a question of estoppel, and submitted that amendment of the counter-statements was admissible at this late stage. This amendment was presented in writing. He opposed Mr Davis's application for adjournment of the hearing to enable further evidence on this issue to be filed, on the grounds that in his view all the evidence relevant to the amendments had already been filed by the respondents as evidence-in-chief, and that Mr Davis had not sought to file any evidence in reply. After careful consideration of all the arguments I gave a verbal decision allowing the respondents to file amended counter-statements in both proceedings, which were formally submitted after the hearing and I allowed Mr Davis to give oral evidence at the

hearing directed solely to the issue of estoppel. I propose to return to the question of estoppel later.

Application No 8101209 was published under Section 16 on the 3 September 1981 as application No 2070098A, the sole inventor named on Forms 1/77 and 7/77 being Mr R A Spencer (the second respondent in these proceedings). It is stated at Section 111(ii) of Form 7/77 that Brockhouse PLC derived right to be granted a patent upon the application as "we are the assignees of the inventor and the inventor's employer".

In respect of the Section 8 proceedings, which by virtue of Section 9 fall to be decided under Section 37 following a grant of a patent on the application, the Comptroller is requested to determine (1) whether Mr Davis is the sole inventor, (2) whether Mr Davis and Mr Spencer are co-inventors, (3) whether if Mr Davis is the sole inventor he solely is entitled to the grant of a patent, and (4) whether, if Mr Davis and Mr Spencer are co-inventors, Mr Davis is entitled to the grant of a patent jointly with Brockhouse. In respect of the application under Sections 13(1) and 13(3) the Comptroller is requested to issue a certificate to the effect that Mr Davis is the inventor and has a right to be mentioned as such, and that Mr Spencer ought not to have been mentioned as sole or joint inventor. It is thus apparent, as tacitly agreed by the parties, that the principal issue to be determined in each set of proceedings is whether Mr Davis is the inventor of the article which is the subject of the Brockhouse application. The respondents in both proceedings are named as (1) Brockhouse PLC, (2) Mr R A Spencer and (3) GRP Components Ltd.

The specification in suit is concerned with a panel structure for use in building, particularly for flooring, which is in the form of a grid of fibre reinforced resin. The specification explains that flooring grids have for many years been made of metal, but that recently a need has arisen for comparable grids of corrosion resistant materials. However when plastics materials are used for the manufacture of gratings it is necessary, if they are to have similar load bearing characteristics to their metal counter parts, to incorporate reinforcement therein. A prior procedure for the manufacture of a non-metallic grating of glass fibre-reinforced moulded synthetic resin in which strands of glass fibre are laid within a mould is described as a time-consuming and tedious process, and also to be disadvantageous in that if the panels so produced are inadvertently positioned the wrong way up, the load bearing capacity is greatly reduced. In accordance with the invention the grid is of pre-formed elongated elements each comprising composite fibre/synthetic resin material in which the fibres are oriented lengthwise of the element and closely packed together, and is embedded in a mouldable synthetic resin. The elongated elements are preferably formed by

the process known as "pultrusion" in which the fibres, suitably of glass, are wetted with the appropriate resin and drawn through a die to pack them tightly together while the resin is cured. The pultruded stock may be cut into individual elements of pre-determined lengths which are laid in the mould, suitably in two mutually transverse sets, the elements being interleaved at the points where they cross, and the mould then filled with a curable synthetic resin and subjected to a vacuum to release entrapped air. The mould may comprise a flat base plate on which are mounted appropriately shaped blocks in a manner such that channels are provided which define the bars constituting the grating. The width of the bars may taper downwardly at their inner faces and each bar may comprise a vertically aligned stack of spaced elements.

It is common ground between the parties that the inventive step involved in the specification in suit is the use in the formation of the grid of the pre-formed fibre/resin elongated elements, suitably pre-pultruded slats, embedded in synthetic resin. In the statements filed in respect of these proceedings it is alleged that Mr Davis suggested orally to Mr Spencer the concept of making a floor panel of grid type construction by a moulding process in which elongated elements, preferably pre-pultruded slats cut from stock lengths of pultruded material, preferably of glass-reinforced plastic, are laid within mould cavities and embedded in mouldable synthetic resin, the slats being positioned in the mould cavities at right angles to each other and interlocking alternately to form a grid. It is also alleged that in order to ensure impregnation of resin within the slats Mr Davis suggested vacuum injection technique, and that he suggested abrasion of the pre-pultruded slats during manufacture to improve the adhesion thereto of the resin. It is stated that he also provided drawings and calculations for the fabrication of a mould capable of producing the floor panel, and designed, manufactured and developed the prototype of the mould, subsequently reproduced to a larger scale for commercial manufacture. Whilst not denying that Mr Davis constructed the mould, the respondents deny that Mr Davis is the inventor or joint inventor of the panel, and say that the concept of using pre-pultruded slats was the idea of Mr Spencer and have produced evidence with a view to establishing this.

In essence the greater part of the argument at the hearing was directed to establishing who was the inventor ie who had the idea of using pre-pultruded slats in the formation of the grid and, more particularly, at what point in time did they have that idea. Much of the evidence and argument in this case turns upon the question of dates and it is convenient in analysing the evidence to draw up a schedule of dates which are not contested by either party, or for

which there is no conflict of evidence; as a framework within which it may be analysed.

Background

- prior to 1978 Mr Davis was employed as production engineering manager by BTR Limited and upon leaving that company he and Mr Spencer, who had also been employed by BTR as Pultrusion Manager of their pultrusion shop, considered setting up their own business in the plastics industry in the area of the pultrusion process, with Mr Bowles, Mr Northfield and Mr Macauley (all of whom had also previously been employed by BTR).

14 June 1978

- A meeting took place at the Master Brewer Hotel in Hillingdon between Mr Davis, Mr Spencer and Mr Bowles, and Brockhouse, represented by Mr Parkes and Mr Kirk, the purpose of which was to seek the business interest of Brockhouse in their proposed venture. After the meeting Mr Parkes and Mr Kirk showed them an industrial floor panel made by Chemgrate of America but sold or manufactured under licence in Britain by Brockhouse, and asked them whether they would be able to produce a product of similar quality for them to sell for use in the building and plant construction industry. Mr Spencer took away the Chemgrate panel.

Between July 1978 and December 1978

- Mr Spencer burned off the resin matrix from the Chemgrate panel and established that the panel was of an entirely conventional glass roving type.

October 1978

- The proposed business GRP Components Ltd came into existence.

21 December 1978

- Brockhouse agreed to put down a small prototype die or mould for use in producing a panel.

- 12 January 1979 - Brockhouse placed an order for a prototype mould which was to be made to the dimensions of a standard stair-tread.
- February 1979 - The prototype mould was made by Mr Davis at his home.
- 9 March 1979 - The prototype was delivered to GRP components (see exhibit RASP3).
- Between 8-11 March 1979 - Mr Spencer first tried using pre-pultruded slats in the prototype mould.
- 28 May 1979 - First mouldings with pre-pultruded slats invoiced to Brockhouse (see exhibit RJA2)
- 6 June 1979 - Testing of mouldings by Mr Cooper Bagnall of Brockhouse.
- October 1979 - Mr Davis joined GRP as an employee.
- 12 November 1979 - Brockhouse gave an official order for the preparation of a full-scale mould.
- 15 January 1980 - First application for patent filed.
- 15 January 1981 - Application for patent in suit filed claiming priority from application filed on 15 January 1980.

Mr Davis' case as it emerged from his evidence is that between August and October 1978 he hit upon the idea, shown in a rough sketch (exhibit BRD1) which he made to explain to the others the concept of his design on the back of an estate agents particulars (said to have been typed and sent out on the 25 May 1978), of using pre-pultruded slats instead of glass fibres. He says that he originally thought of using existing ground stock which they had available, since at that time there were no flat sections available. Later he developed and made toolings so that two flats could be ground onto an existing round section of pultruded grp, and at the beginning of 1979 used this type of slat in a small prototype mould which successfully proved the techniques of this proposal and justified manufacture of purpose-made flat slats for the full size panel moulding

later produced. At the time when he suggested using pre-pultruded slats Mr Spencer objected that it would be impossible to fill the mould cavities with resin because of the mould obstruction which would result in the intersection of the grid of slats.

Mr Davis says that he then produced further sketches and calculations (exhibit BRD2) towards the latter part of 1978, certainly not later than October 1978, which illustrate his idea of using a mould bed or table containing pre-positioned die segments or blocks fixed to the bed, in between which were to be laid the pre-pultruded slats in layers of progressively different width according to the angle of the die segments. He concluded that the resin mixture should be injected into the mould under vacuum and the slats abraded to improve adhesion, and the others accepted this, although Mr Northfield pointed out that vacuum injection might lead to insufficient adhesion of resin^{to} the pultruded slats, and it was feared that abrasion of the surface of the slats might prove cost prohibitive. Mr Davis says that he had the idea of modifying the pultrusion machine by using a device having high speed steel blades mounted on adjustable holders above and below and at right angles to the slats in the process of manufacture which provided a controlled continuous scraping action against the moving surfaces of the slats during exit from their forming die. When this device had been made everyone accepted that the panel he had proposed was at least worth trying out in prototype manufacture.

In his affidavit Mr Davis further explains that since their new company had limited funds it was decided to report the progress which they had made to Brockhouse, with the suggestion that they might help to finance the manufacture of pultrusion dies to produce suitable slats together with the building of a small prototype mould. Various discussions ensued with Brockhouse in January 1979, who eventually agreed to finance construction of the proposed prototype restricted to producing an approximately quarter scale panel in the form of a stair tread which would be of commercial value, but suggested that existing sections of pultrusions should be hand dressed for use in testing the product.

In his statutory declaration Mr Spencer, who when employed by BTR Limited was production manager of their pultrusion shop, says that whilst he readily admits that Mr Davis played a significant part in the capacity of a sub contractor in the development of tooling used in the production of various test panels and pre-production panels, he did not at any time contribute to the basic concept of the invention, as already described, which was solely his. He refers to a pultrusion production note book (exhibit RAPS1) which he opened on the 29 August 1978 for the proposed company GRP, the first 88 pages of which contain

a log of experiments with the pultrusion equipment and materials from the 29 August 1978 to March 1979, page 85 carrying the date the 8 March 1979, and draws attention to page 89, the heading "Stair Grid" being the first entry relating to the development of a flooring panel for Brockhouse. He explains that initially he was exploring the possibility of making a grid using glass fibre rovings laid into the mould to form a grid of similar construction to the samples supplied by Brockhouse. However from his notes on page 90 which he explains were written on the same day as those on the previous page, between the 8 and 11 March 1979, he noted the alternate possibility of using pultruded section, using suitably shaped strips of different kinds for each of the two sets of channels which define a grid in the mould. He says that it was not until about March 1979 that work was commenced on this development, and as far as he can recall no work whatsoever was done in connection with the design or development of a flooring panel for Brockhouse until early in 1979 when Brockhouse gave GRP Components an order for the necessary development work to be carried out at their expense.

In a declaration on behalf of the respondents Mr Alborough, director and general manager of Brockhouse Industrial Flooring Ltd, a wholly owned subsidiary of Brockhouse PLC, confirms that the first series of prototype mouldings produced from this die incorporated glass rovings with a top layer of rods to keep the glass rovings in place, but this was unacceptable to Brockhouse and he understands that it was Mr Spencer who then suggested a series of rods be used instead. The concept of using a mixture of glass rovings and prepultruded rods seems to be supported by the entries in RAPS1 at pages 93, 94, 95 and 96 which date from March 1979.

It is I think clear from the evidence filed in these proceedings that, as is acknowledged by the respondents, Mr Davis played a significant part in the development and production of the prototype mould, and in preparing drawings and costings for the full-scale mould. However the claims of the specification in suit are directed not to the moulding apparatus but to the panel structure and its method of production, and the alleged inventive step, as acknowledged by the parties, resides in the use for the grid of pre-formed elements of composite fibre/synthetic resin material.

Mr Davis says that in about August 1978 he had the idea of using pre-pultruded slats for the grid as shown in the sketch exhibited as BRD1. As stated by Mr Spencer in his affidavit it is not entirely clear what this drawing, upon which Mr Davis particularly relies, is intended to show, and it does not clearly show use of pre-pultruded slats. Furthermore, although from the estate agents

particulars it is apparent that the drawing was not produced prior to the 25 May 1978, the drawing is undated. Mr Davis has said that the drawing was produced when he had the idea of using pre-pultruded slats, although Mr Macauley, who was a director of GRP Components Ltd until September 1980, and in an affidavit on behalf of the referror says that he agrees with Mr Davis's affidavit so far as it concerns matters before he severed links with the company at that date, admitted when cross-examined at the hearing that he had not seen the drawing before. When cross-examined he said that he recalled the conversation when Mr Davis suggested the use of pre-pultruded slats for the grid and was of the impression that Mr Spencer appeared surprised by the suggestion, although he was operating the pultrusion machine at the time and did not remember when the conversation took place or that Mr Davis produced the sketch to illustrate his idea. He was however relieved to hear Mr Davis's suggestion that pre-pultruded slats should be used, since he did not like working with glass fibres, which Mr Spencer's suggestion would have involved. At the hearing Mr Spencer said he had no recollection of the conversation, or Mr Davis's sketch (exhibit BRD1), or any recollection of surprise as stated by Mr Macauley, although there were many conversations later after experiments had commenced using the prototype tool.

Whilst it seems to me that the conversation was indeed the first occasion on which Mr Macauley became aware of the suggestion to use pre-pultruded slats, in view of his stated relief of avoiding the use of glass fibres and doubts of the feasibility of using pre-formed slats, he was unable to give any clear indication under cross-examination when it took place and whether or not it was before or after the prototype mould had been set up. Furthermore although it may have been the first occasion on which Mr Macauley became aware of the idea of using pre-pultruded slats, this does not clearly identify Mr Davis as the inventor, and it may be that Mr Spencer is unable to recall the conversation because it had been discussed previously between himself and Mr Davis, particularly having regard to the proposed company's presumed interest in finding fresh outlets for the pultruded products with which they were chiefly concerned. It was emphasised by Mr Davis at the hearing that, particularly initially, discussions and meetings between the five members of the company were carried out very informally, often while operating a machine, and without any written record. It is thus not surprising that the sketch is undated, and in view of the length of time which has elapsed it may be, as Mr Fysh sought to persuade me at the hearing, that Mr Davis has not at this late stage accurately recalled the various dates upon which he now relies.

The other exhibit upon which Mr Davis particularly relies to show he and not Mr Spencer is the inventor of the claimed panel is exhibit BRD2. This again is undated and, whilst it apparently shows the use in the grid of pre-pultruded slats, insofar as it relates to the mould, has been identified by Mr Macauley when cross examined at the hearing, and by Mr Spencer in his declaration, as the full scale mould. In his declaration at paragraph 11 Mr Spencer says that it was not until late 1979/early 1980 that the dimensions of the full size panel were determined.

From Mr Spencer's work book (exhibit RAPS1) it is clear that pultruded strips were used in March 1979, but this does not indicate whose idea it was to use such strips. It seems to me that there is a diversity of evidence as to whose idea it was, and that there is no ^{independent} evidence to support Mr Davis's allegation that he put forward the idea prior to the experiments in March 1979 recorded in Mr Spencer's book.

Now Section 7(2) of the Act reads as follows:-

- (2) A patent for an invention may be granted -
- (a) primarily to the inventor or joint inventors;
 - (b) in preference to the foregoing, to any person or persons who, by virtue of any enactment or rule of law, or any foreign law or treaty or international convention, or by virtue of an enforceable term of any agreement entered into with the inventor before the making of the invention, was or were at the time of the making of the invention entitled to the whole of the property in it (other than equitable interests) in the United Kingdom;
 - (c) in any event, to the successor or successors in title of any person or persons mentioned in paragraph (a) or (b) above or any person so mentioned and the successor or successors in title of another person so mentioned;

and to no other person.

Moreover, Section 7(4) of the Act states that

(4) Except so far as the contrary is established, a person who makes an application for a patent shall be taken to be the person who is entitled under sub-section (2) above to be granted a patent and two or more persons who make such an application jointly shall be taken to be the persons so entitled.

The Form 7/77 filed with the application names Mr R A Spencer as inventor and Brockhouse PLC have thus applied for the patent by virtue of the provisions of Section 7(2)(c). It therefore seems to me that it follows as a corollary from Section 7(4) when read in conjunction with Sections 7(2)(a) and (c) that the onus is upon Mr Davis to show that he is the inventor and not upon Mr Spencer or the other respondents. This follows the normal rule that he who asserts must prove and not he who denies.

In the light of the conflict in the evidence that I have before me and that I have so far reviewed, I consider that it is already open to me to find that Mr Davis has not discharged the task, which I must admit is a difficult one in this sort of case, of showing that on the balance of probabilities he is the inventor. But I consider that the evidence goes further than merely being in conflict. Much of Mr Davis' evidence in chief was directed towards showing his general involvement with the project and the various dies or moulds required. Mr Fysh in trying to establish that Mr Davis' recollection as to when certain work took place was faulty, and thus presumably his recollection concerning the invention and his ideas in relation to it, drew my attention to a number of inconsistencies in his evidence. In going through the evidence I have also come across some inconsistencies myself. I therefore propose to review some of these inconsistencies since they go some way towards showing that there is at least a possibility that Mr Davis' recollection as to his conception of the invention is faulty particularly as regards dates and thus that in exhibit RASPl, the pultrusion notebook, Mr Spencer pre-dates him.

Firstly, in Mr Spencer's note-book (exhibit RASPl), which appears to be the only record of work carried out on the panel grid which can be accorded a date with any degree of precision, there is a reference on page 46 dated 11 November 1978 to "Brockhouse Chemgrate after burning" followed by various references to glass and sand which I presume to be the burning off of the resin matrix from the Chemgrate panels by Mr Spencer. However this is at least three months later than the date implied by Mr Davis in paragraphs 5 of his affidavit.

Secondly, Mr Davis at paragraph 15 of his affidavit alleges that BRD5 relates to costings he made in January 1979 for producing the prototype stair tread mould. However, prices are quoted for what seem to be work actually carried out up to and including March 1979 and the figures are fully consistent with the sales invoices of exhibit RJA1 to Mr Alborough's declaration which are dated 22 March 1979. Again Mr Davis would appear to be two or three months out.

Thirdly exhibit BRD8 to Mr Davis' affidavit contains at page 8 the draft of a letter accepting a verbal quotation for, amongst other things, 1740 die segments the number required for the full size mould. At paragraph 17 of his affidavit Mr Davis alleges that he made these notes concerning the full size mould at the same time as he made the prototype mould ie February 1979 or thereabouts. However exhibit BRD10 page 2 to Mr Davis' affidavit contains a letter which he wrote on 29 November 1979 which in all material particulars is identical with the draft in BRD8. Again Mr Davis would appear to be 9-10 months out so far as BRD5 is concerned.

Fourthly, Mr Davis alleges that BRD2, a document which he relies on heavily in his argument that he is the inventor, dates from the end of 1978 (see paragraph 8 of his affidavit). However, on page 3 of this exhibit various prices are quoted - GKN £3.79/100 and Pillar Engineering £4.17/100. These figures also appear on page 1 of exhibit BRD9 which Mr Davis seems to allege in paragraph 20 of his affidavit dates from February 1979 when he made the prototype. However, the figure of £1.17 each for the die segments of which 1740 were required for the full-scale mould which is found halfway down the first page of BRD 9 is consistent with the quote accepted in Mr Davis' letter dated 29 November 1979. It seems unlikely that at this time prices would remain constant from the end of 1978 to November 1979 thus it seems likely that so far as the prices given on p.3 of BRD2 and in BRD9 are concerned Mr Davis is up to a year out and thus BRD2 does not establish the date he alleges for the drawings of the invention and is more likely to date from November 1979. This is consistent with what Mr Spencer says in paragraph 9 of his declaration.

I have already referred to the conflict of evidence as to whose ideas formed the basic concept of the invention ie the use of pre-pultruded elements in the form of a grid. The analysis which I have just given shows inconsistencies in the evidence given by Mr Davis concerning the surrounding circumstances and in particular throws doubt upon Mr Davis' ability to recall when certain events happened. In the light of all this I find that Mr Davis has not discharged the burden of proof which lies upon him of showing that he is the inventor and in particular he has not shown that he conceived the basic concept before Mr Spencer.

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Apart from this basic concept Mr Davis also alleges that it was his idea (see paragraphs 7, 10 and 11 of his affidavit) to use abraded slats and to use injection under vacuum for the moulding. So far as the abrading is concerned this feature is not mentioned or claimed in patent No 2,070,098B and is thus not in issue. So far as the use of slats ie roughly rectangular pre-pultruded material and the vacuum technique for moulding are ^{my} concerned, Mr Spencer's claim to have contributed these ideas is corroborated by his exhibit RASPl at pages 105 and 106, which shows that he ground down the rods that he had originally used on 19 March 1979, and RAPS4 at page 5, where ^{the} mention is made of the vacuum technique, but the latter can only be dated as prior to 15 March 1980 in view of the date on page 11. Mr Davis has not produced any independent evidence to corroborate the statement in his affidavit that he had these ideas at the end of 1978 and early 1979 and Mr Macauley was not able to help him on this in cross-examination. I must accordingly find that Mr Davis has not established that he contributed to the invention with these ideas ie he has not shown that he conceived them prior to Mr Spencer.

In his affidavit Mr Davis says that although GRP Components Ltd formally came into existence in October 1978 he did not actually become a full time employee of the company until October 1979, that the work he did prior to this on the panel and mould was in his own time while he was unemployed and living on social security, and that he was merely reimbursed for the cost of the materials used to make the prototype mould. It is therefore his claim that the invention which he alleges was his idea in late 1978 is his and did not belong either to GRP Components or to Brockhouse. It seems to me that this would be the case if it were to be shown that the idea of using pre-pultruded and these other ideas were put forward by Mr Davis at that time. However as argued by Mr Fysh at the hearing the onus to establish that the invention was his idea rests upon Mr Davis. In view of the findings that I have made I am not persuaded that Mr Davis has discharged the duty upon him in these proceedings of showing that, on the balance of probabilities, he is the inventor of all or part of the invention. In these circumstances I do not accede to his request in either the Section 8 (now Section 37) or Section 13(1) and 13(3) proceedings to find that he is either the sole or joint inventor and thus do not propose to issue any certificate to that effect or to hold that he is in anyway entitled to the patent.

Returning then to the matter of estoppel, the respondents allege in their amended counter-statements that Mr Davis is stopped from obtaining any relief in these proceedings because at all material times (a) he was aware of the existence of the patent application in suit and/or (b) he was aware of the nomination of the second respondent as the inventor thereof and/or (c) he was aware that the patent

application had become assigned to the first respondents, and (d) he was a director of the third respondents.

At the hearing Mr Fysh argued that since Mr Davis was a director and company secretary of GRP Components in January 80 and January 81 when two patent applications directed to the panel were filed by Brockhouse, the former subsequently being withdrawn and used solely as a priority document, he must be presumed to have been aware that patent rights in respect of the panel had been assigned to Brockhouse, and that Mr Spencer had been named as inventor in both applications. Thus having knowingly allowed the patent applications to proceed with Mr Spencer named as inventor when, as he now alleges, he has at all times considered the invention to be his, Mr Davis was in his view now estopped from prosecuting the present referral proceedings.

Turning to the evidence, Mr Davis says in his affidavit that during the period between the end of 1979 and early 1980 he was asked by Mr Spencer to look over a draft patent agreement for the panel structure (exhibit BRD15) between GRP Components and Brockhouse, and saw that Mr Spencer had been named as inventor. When asked by Mr Davis why he had stated that he was the inventor when plainly he was not, Mr Spencer said that he agreed that he was not the inventor, but that it was only a draft and that it didn't matter who was named as the inventor as it was being done for the good of the company. Mr Davis says that as far as he can recall he told Mr Spencer that the name of the inventor would have to be changed.

He says that he did not think further about the matter as he expected to remain with the company for the remainder of his working life, although he had always opposed acquisition of rights in the panel by Brockhouse as the others knew. Mr Spencer in his declaration denies that he had admitted to Mr Davis that he was not the inventor. Mr Davis in his affidavit also refers to a letter dated the 12 November 1979 (exhibit BRD16) from Brockhouse to Mr Spencer, to which is attached a minute of a meeting to discuss GRP Flooring on the 9 November 1979 at Birmingham Road attended by Mr Cooper-Bagnall, Mr Spencer, Mr McBride and Mr Alborough, paragraph 10 of which says that it was agreed that Mr Alborough should liaise with Dr Harrison of Forrester Ketley to discuss the designs now evolved with a view to taking out a UK patent or registered design. Mr Davis says that he did not know that Brockhouse in fact applied for a patent in respect of the panel in January 1980 and again in January 1981. Furthermore he was still unaware that Brockhouse had applied for the patent when in March 1981 he was forced to leave the company following a severe difference of opinion arising when Mr Spencer persuaded the other members of the firm and Brockhouse to cease manufacture of full size panels because of problems which had developed in

ejection of the panels from the mould causing damage to the mould. He says he thought Mr Spencer's draft was the only document which raised or mooted the assignment of any rights in the product to Brockhouse.

In his declaration Mr Alborough says that in November 1979 it was arranged with Dr Harrison that a patent application should be made with Mr Spencer to be named as inventor and the right to the invention assigned to Brockhouse. He says that the patent application number 8001235 was filed on the 15 January 1980 with the full knowledge of Mr Davis and the other directors, and the patent rights assigned to Brockhouse in return for GRP Components having sole manufacturing rights in the flooring. In support of his contention he refers to exhibit RJA3, which is a proposal set out in a letter to him dated the 22 January 1980 from GRP Components and signed by Mr Davis. This letter refers to various discussions regarding reaching an agreement over the transfer of design and patent rights for the composite floor panel system, and says that GRP Components Ltd would agree to assign all design and patent rights to Brockhouse in return for sole manufacturing rights for a period of two years. On the 19 September 1980 the directors of GRP Components, including Mr Davis, met the chairman of Brockhouse and it was agreed that GRP Components should abandon their attempts to make the flooring. In order to compensate GRP in some way for their assignment of patent rights to Brockhouse it was agreed to pay them a percentage royalty on the rods used in the manufacture of floor panels by any other manufacturer. He believes that Mr Davis actually drafted the agreement in his capacity at that time as company secretary, specifically referring to Mr Spencer as inventor, and as far as he is aware at no time during any discussion was this fact challenged by Mr Davis. Furthermore although following his resignation Mr Davis expressed his feelings in great detail in a letter dated the 20 March 1981 to Mr Parkes (exhibit RJA4), in which he listed what he regarded as his contribution to GRP Components Ltd, he did not suggest that he was the inventor or that he had any personal rights in the invention.

At the hearing Mr Davis said that he typed the letter of the 22 January 1980 (exhibit RJA3) to Brockhouse in response to the wishes of the other members of the company because he did the typing, and that he regarded it merely as a proposal for consideration and negotiation which was not binding, and that he understands that it was in fact ignored, and the assignment of the patent was not finalised until about May 1981 after he had been dismissed from the company. He pointed out that at this stage he had no idea that Mr Spencer had put his name down as inventor. In fact when he found out, as stated in his affidavit, that previously Mr Spencer regarded himself as inventor, he had challenged him on the matter, but he did not inform Brockhouse of this because he regarded

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this as an internal dispute within the company. When cross-examined he admitted that he had added the wording in contrasting blue ink at the top of exhibit BRD15 which says "This draft letter is in Ray Spencer's own handwriting and claims, wrongly, himself as the inventor" to identify the documents to his solicitors, and added the underlining and question mark in red ink where Mr Spencer is named as inventor although he could not recall precisely when this had been done. He reiterated the statement made in his affidavit that he was unaware that Brockhouse had in fact filed patent applications, notwithstanding the reference in exhibit BRD16 to the proposal in November 1979 to consult Dr Harrison of Forrester Ketley with a view to taking out a UK patent or registered design, which may have been in his possession at the time, although he failed to appreciate its significance due to his involvement in various engineering problems. He admitted that he became aware of the patent applications only after he had left the company.

Mr Fysh sought to persuade me that the letter of the 22 January 1980, which Mr Davis had typed and signed as company secretary and director on behalf of GRP Components to Brockhouse, was more than a mere proposal as Mr Davis contended, and was of binding significance. However there is no indication in this letter, or indeed in the letter of the 12 November 1979 from Brockhouse to Mr Spencer and accompanying minute (exhibit BRD16), as to who is to be named as inventor in the proposed patent application and the letter certainly does appear to be no more than a proposal. Furthermore there is no indication in the evidence before me to rebut Mr Davis's contention that assignment of the patent was not finalised until about May 1981, after he had left GRP Components. Nor is there any evidence, apart from exhibit BRD15, which is merely a proposed draft for a patent assignment, which Mr Davis says he challenged when shown it, to indicate that Mr Davis knew that Mr Spencer considered himself and was to be named as inventor, or indeed that patent applications were actually filed, notwithstanding his position in GRP Products when patent applications were filed by Brockhouse in January 1980, and again in January 1981. Mr Fysh sought to persuade me that Mr Davis' conduct and, in particular, his writing of the letter dated 22 January 1980 amounted to conduct which estopps Mr Davis from maintaining that he is the inventor or has any rights in the invention. In order to raise an estoppel I consider that Mr Davis' conduct must have a clear and unequivocal interpretation. It seems to me that the letter of 22 January 1980 merely concerned the assignment of the patent rights and was quite consistent with Mr Spencer or Mr Davis being the inventor. It is possible that Mr Davis would have well intended that he should be named as inventor in any eventual patent and that he would assign, whether for a consideration or not, his rights to GRP who in their turn would assign them to Brockhouse. If such had been the case

his letter could still have been the same. In my view there is no clear and uncontested evidence that Mr Davis had acknowledged or represented, even by inaction, that Mr Spencer was the inventor or that he, Mr Davis, had abandoned his rights to the invention. In these circumstances I am not persuaded that Mr Davis is estopped from seeking relief from these proceedings, although as I have indicated previously I do not accede to his request to be named as sole or joint inventor in either proceedings.

Having regard to all the circumstances of the case I award the respondents the sum of four hundred and fifty pounds (£450) as a contribution towards their costs in these proceedings, and direct that this sum be paid to them by the referrer, Mr B R Davis.

Dated this *5th* day of *August* 1985

M F VIVIAN

Superintending Examiner acting for the Comptroller



PATENT OFFICE