

BLO/167/95

Mr Hayward
3R56

PATENTS ACT 1977

IN THE MATTER of an application
under Section 72 by Ultra Marketing
(UK) Ltd for the revocation of UK
Patent No. 2241601 in the name of JAT
Extrusions Ltd.

INTERIM DECISION

Patent application No. 9104209.3, which relates to the framing of sign panels, was filed in the names of James Alfred Till and Euro UK Sign and Display Systems Ltd ("Euro") on 28 February 1991, claiming priority from five separate applications, the earliest having a filing date of 1 March 1990. The application was published under serial number GB 2241601 A on 4 September 1991 and subsequently granted on 28 September 1994. By virtue of assignments dated 5 January 1993, title passed to the present proprietors, JAT Extrusions Ltd (JAT).

The patent relates to framing of sign panels in which a sign panel is mounted in a rectangular frame typically comprising extruded aluminium sections. The frame sections are channel-shaped and the panel is suspended from within the upper frame member by means of a projecting rib at or near the upper edge of the panel which engages a flange provided within the channel. The panel can be mounted in the frame from the front by holding it at an angle to the frame, inserting the upper edge of the panel into the channel of the upper frame member and returning the panel to the vertical, thereby engaging the rib and flange.

The claims of the application as filed were considered by the examiner to comprise more than one invention, and matter relating to certain aspects of the sign construction were

divided out and made the subject of separate applications under section 15(4). Patents were subsequently granted on these applications. They play no part in these proceedings.

The main claims of the granted patent relate to four separate embodiments of such signs and read as follows:

1. A sign in which sign frame members have longitudinal channels therein to receive the edges of a sign panel, the panel is suspended from within the upper frame member so that the panel edges normally lie invisible within the frame, and the panel is fittable in the frame from the front by inserting an upper edge of the panel, provided at or near the panel edge with a projecting rib, into the channel of the upper frame member at an angle to the plane of the frame and then moving the panel into the suspended condition in which the rib rests on a flange provided within the channel, wherein the flange carries an upwardly projecting portion and the rib is adapted to engage with the upwardly projecting portion in such a way that the fitted panel is resistant to movement in one or more horizontal direction (as herein defined).

2. A sign in which sign frame members have longitudinal channels therein to receive the edges of a sign panel, the panel is suspended from within the upper frame member so that the panel edges normally lie invisible within the frame, and the panel is fittable in the frame from the front by inserting an upper edge of the panel, provided at or near the panel edge with a projecting rib, into the channel of the upper frame member at an angle to the plane of the frame and then moving the panel into the suspended condition in which the rib rests on a flange provided within the channel, wherein the upper frame member has a front wall and a back wall spaced apart by an interposed web to define the longitudinal channel, first and second flange means being provided, the said first flange means extending forwardly from the back wall into the channel and the said second flange means extending rearwardly from the front wall into the channel so that the said first and second flange means define between them a channel mouth for admitting the upper edge of the panel on fitting of the panel into the frame, the said second flange

Instead, I determined that the applicant should be given two weeks from the date of the hearing to file an amended statement which clarify the issues. It was stressed that this did not give leave for the introduction of new grounds or the filing of new evidence on the part of the applicant, but was merely for clarification of the case upon which the applicant is relying so that the proprietor has a clear case to answer. Following filing of an amended statement, I set a period of one month for filing of an amended counterstatement in reply.

As regards the attachments to the statement containing foreign language matter, with the exception of one letter from the firm Anocacem which clearly does not comply with Rule 113, I note that the potentially offending material comprises drawings with marginal foreign language anotations which have also been entered as evidence and the issue is conveniently dealt with under that head.

As a third issue, Mr Brown also touched upon some matters about the evidence. He submitted that the evidence was deficient in general terms with reference to Rule 75 paragraphs (4) to (6) of the Patents Rules 1995, included matter inadmissible by virtue of being 'hearsay', and also suffered from two formal defects in that (1) the affidavit of Mr Coombes dated 18 May 1995 does not begin with the prescribed words; and (2) certain drawings exhibited to affidavits filed with the applicant's evidence include explanatory or reference matter in foreign languages, contrary to Rule 113 of the Patents Rules 1995.

As regards foreign language material, the relevant provision is Rule 113 (1) which states:

Subject to the provisions of rules 6, 40, 81, 82 and 85, paragraph (3) below and paragraph 5 of Schedule 4, where any document or part of a document which is in a language other than English is filed at the Patent Office or sent to the comptroller in pursuance of the Act or these Rules, it shall be accompanied by a translation into English of the document or that part, verified to the satisfaction of the comptroller as corresponding to the original text. Where the document is or forms part of an application for a patent, the Patent Office shall not, in the absence of such a translation, take any further action in relation to that document, unless the comptroller otherwise directs.

Mr Brown has argued that a drawing is a drawing, but if it is to anticipate an invention, there must normally be some sort of instruction with it as to what is going on and what it is for. However, that is a question the answer to which will vary in the case of each drawing, and I am not prepared to exclude them all as a preliminary matter without individual consideration. I therefore indicated that I was prepared to provisionally admit the drawings bearing textual matter not in English. Each will be considered as necessary when it comes to the substantive issues. In so far as it is necessary to rely upon the foreign wording on the documents, then without a proper translation they will not be admitted. If it is not necessary to rely on the wording, then the drawings can speak for themselves and I will admit them. Mr Coombes has been given the opportunity to file translations of the foreign language material, but he has declined to do so. That decision is his and he will have to accept the consequences if some of his evidence is not admitted.

Since the hearing was adjourned to allow the amendment of the pleadings before consideration of the substantive issue, the objections raised in respect of the content of the applicant's evidence were not fully argued and will be dealt with at the substantive hearing. As I indicated at the hearing, Mr Coombes is of course free to correct the formal defect in the affidavit when he resubmits his statement.

As regards costs, the question of an interlocutory order for costs was raised by Mr Brown in view of my decision to allow amendment of the pleadings, but as I indicated at the hearing, I prefer to leave the matter of costs until the conclusion of the proceedings.

As the matters decided are procedural, the time within which an appeal may be lodged is 14 days from the date of this decision.

Dated this 15 day of December 1995

G M BRIDGES

Superintending Examiner acting for the Comptroller

THE PATENT OFFICE

