

PATENTS ACT 1977

IN THE MATTER OF Applications GB9007952.6
(Serial No 2244247) and PCT/GB91/00543
in the names of Graham Brooks
and Michael Harold Cope
and

0171/93

IN THE MATTER OF five references by
Graham Brooks and Michael Harold Cope
under sections 8, 10, 12 and 13

PRELIMINARY DECISION

These proceedings are all closely related and concern a dispute as to who made the invention and who owns the rights in the two patent applications. The PCT application claims priority from the UK application and both are progressing through the usual stages with the PCT application having entered the regional phase as a European application and the UK application now ready for substantive examination under section 18.

The matter came before me at a hearing on 3 June 1993 at which I heard only certain arguments concerning how these proceedings should progress, after which the hearing was adjourned. Mr Harry Funge, formerly of M'Caw & Co and now retired, appeared for Mr Brooks. Mr Cope represented himself. This decision confirms the directions I gave at the hearing.

Firstly and with the agreement of both parties, I directed that all five proceedings should be consolidated with the consequence that the evidence filed on any one could be taken into account for all of the proceedings.

Secondly, I accepted Mr Funge's argument that the proceedings instituted by Mr Cope under sections 8(1)(b) and 12(1)(b) have not been properly drawn as these sections provide for the circumstances in which any of two or more co-proprietors question whether any rights should

be transferred to a third party. That is not the case here. Nonetheless, the remaining proceedings will permit me to decide and make appropriate orders concerning the key questions, which are firstly, who made the inventions in the two applications and secondly what, if any, were the contractual relations between the parties which had a bearing on the matters at issue.

Thirdly, I indicated that much of the evidence was not acceptable. Evidence from Miss Tarrant, Mr Worthington, Mr Lister, Mr Shaun Cope, Mr Booth, and Mr Brooks is in the form of unsworn statements giving their recollection of events, exhibited to the statutory declarations of other people. In a case such as this, where the testimony of the two sides is incompatible and moreover there is a possibility that witnesses are not telling the truth, it is important to my mind that the best available evidence is produced. Evidence should be given by the persons concerned making statutory declarations in these proceedings, so that there is no doubt that the sanctions of the Perjury Act are available.

In addition, where the authenticity of material documents has been questioned, the originals should be produced, or an explanation given for their non-availability. Examples are Exhibits MHC5 and MHC6, which Mr Cope says are photocopies of his original drawings of the wheel clamp that is the subject of the two patent applications. In contrast, the authenticity of the cheques that are Exhibit MHC2 does not appear to have been challenged, and there is therefore no need for the original cheques to be produced.

I therefore directed that a period of one month from the date of the hearing should be set for either party to put in formal versions of their informal evidence. This should not add any additional evidence but merely formalise the existing evidence. I further directed that an additional one month should be set for either party to reply to the formal evidence, following which a fresh date for the substantive hearing will be set, if possible in Manchester.

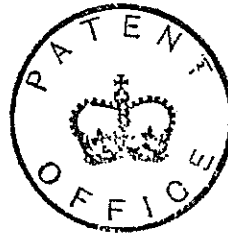
Both parties agreed that it would be desirable for both Mr Brooks and Mr Cope to be available for cross examination at the resumed hearing, and confirmed that they do appear for that purpose. Either party may of course apply to cross examine any of the witnesses on their formal evidence.

I heard arguments from Mr Funge that Mr Cope's statutory declarations made on 19 May 1993 and the accompanying informal exhibits should not be admitted. I decided that they should be admitted, subject to the directions I have given about formalising the unsworn statement and allowing an opportunity for evidence to be given in reply.

Finally I made a direction under section 10 that the substantive examination of the UK application should proceed and that the report under section 18 should be sent to the two applicants' registered address for service at Urquhart-Dykes & Lord and copied to Mr Funge at his private address.

This being a procedural matter, any appeal should be lodged within 14 days of the date of this hearing.

Dated this 11 day of June 1993.



W J LYON

Superintending Examiner, acting for the Comptroller

THE PATENT OFFICE