

PATENTS ACT 1977

IN THE MATTER OF references by Vitold Mikhailovich Bakhir and Yuri Georgievich Zadorozhny under Sections 13(1), 13(3) and 37(1) in respect of Patent Nos. GB 2253860 & GB 2257982 in the name of Solenzara International Limited

DECISION

Introduction

- 1 These proceedings centre around three individuals and four companies. The three individuals are:

Dr Bakhir	Vitold Mikhailovich Bakhir, one of the two claimants
Dr Zadorozhny	Yuri Georgievich Zadorozhny, the other claimant
Mr Kirk	Ronald Francis Kirk.

The four companies are:

Kirk Limited	Kirk and Company International Limited, formerly Kirk and Charashvili International Fine Arts Company Limited
JV Emerald	A joint venture between Kirk Limited and a Russian company
CC Emerald	A controlling company controlling, <i>inter alia</i> , JV Emerald
Solenzara	Solenzara International Limited, the current proprietors.

Of course there are other individuals and companies who come into the plot, but they play less central roles.

- 2 The proceedings relate to two patents, GB 2253860 ("860") and GB 2257982 ("982"). '860 was filed as application GB9105171.4 in the name of Kirk and Charashvili International Fine Arts Company Limited on 12 March 1991, and '982 was filed in the name of Kirk and Company International Limited on 24 July 1991. The applications proceeded to grant on 11 October 1995 and 8 February 1995 respectively. Both patents were subsequently assigned to Solenzara. In both patent applications the inventors were named as Mr Kirk and Dr Zadorozhny.
- 3 The references under Sections 13 and 37 were filed on 13 October 1997 in respect of '860 and on 5 January 1998 in respect of '982. Under Section 13 the claimants, Dr Bakhir and Dr Zadorozhny, sought to have Dr Bakhir's name added as inventor and that of Mr Kirk removed on both patents. Under Section 37(1) they sought to have themselves named as proprietors of both patents to the exclusion of any other person.
- 4 Following the usual evidence rounds, Solenzara consented to the relief sought by the claimants under Section 13, namely the removal of Mr Kirk's name as inventor and the

addition of Dr Bakhir's. Both parties requested that a formal ruling on the Section 13 references be issued in advance of the substantive hearing on the Section 37 references. As a result I issued a decision on 13 January 2000, granting the claimants the relief they sought under Section 13, so as things now stand Dr Bakhir and Dr Zadorozhny are the named inventors. In passing I observe that it would appear from the evidence that the relevant parties at the time of filing the applications deliberately misidentified the inventors on the declaration of inventorship to avoid possible problems with Russian law. Whatever the motives, such deliberate misrepresentation is to be deplored. However, neither party has made an issue of this and since neither party's hands are completely clean in this respect I will say no more about it.

- 5 Following my decision on the references under Section 13, the parties were invited to submit a revised statement and counterstatement respectively so as to focus attention on the issues that were still in dispute, and this they did. The hearing on the Section 37 references was eventually appointed for 31 October 2000. At the hearing, Drs Bakhir and Zadorozhny were represented by Mr T Moody-Stuart (instructed by Marks & Clerk) and Solenzara were represented by Mrs M Heal (instructed by David Keltie Associates). No witnesses were called for cross-examination.

Background

- 6 Both patents relate to the purification of drinking water by electrolytic methods. In '860, water under pressure is subjected to an electric current to purify it as it moves upwardly through an anode (or cathode) chamber of a membrane electrolyzer, a gas bubble-induced upwardly directed flow of mineralised water passing through the cathode (or anode) chamber, gas being removed from the mineralised water before being recycled. In '982 the water to be purified passes upwardly through the anode chamber of a membrane electrolyzer, is passed through a carbon granule filter, and then passes upwardly through the cathode chamber. As the question of inventorship has been settled, I need not go into any greater detail regarding the inventions nor recite the claims of the patents; the outstanding issues relate not to the technical subject matter but to agreements or understandings that the various players may have had between them.
- 7 The inventions to which the two patents relate were made between 1988 and 1991 by Drs Bakhir and Zadorozhny. At the time, Dr Bakhir was employed by VNIIMT, a part of the Russian state health organisation, whilst Dr Zadorozhny worked for a private company "Titan". Both parties agree that Drs Bakhir and Zadorozhny, together with *inter alia* Marina Kirk, wife of Mr Kirk, founded JV Emerald as a Russian-British joint venture enterprise between a Russian company and Kirk Limited.
- 8 The precise timing of the formation of JV Emerald relative to the filing of the patents is not wholly clear. In their statement, the claimants say that JV Emerald was set up "around June 1991", but they then say that "on 29 to 30 May 1991 an agreement was made to form a controlling company in order to coordinate the management of *inter alia* Kirk Limited and the JV Emerald". This is presumably a reference to the protocol, Protocol No. 1, from a meeting that took place on those dates between the claimants, a representative of Kirk Limited and others. The protocol specifies the setting up of a controlling company to coordinate the management of a number of companies

including both Kirk Limited and JV Emerald and thus implies JV Emerald came into being on or before 29 May 1991. Moreover, the claimants say that the founders of JV Emerald agreed that the patents in suit would be filed in the name of Kirk Limited in order to circumvent any possible problems with Russian patent legislation in the wake of the break up of the Soviet Union, and the application for '860 was filed as early as 12 March 1991. This could be construed as meaning JV Emerald was in being as early as March, although more probably the reference to the “founders” of JV Emerald may just be a way of identifying the individuals rather than a statement that the company itself played a part in the decision. However, at the end of the day the exact chronology is not of crucial importance since both parties agree that the applications were made by Kirk Limited or its predecessor with the agreement of the inventors, Drs Bakhir and Zadorozhny. Furthermore, it is not disputed by either party that there is no written agreement between the inventors and Kirk Limited or JV Emerald regarding the ownership of the patents in suit.

- 9 In July 1991 - ie soon after the patent applications had been filed - Drs Bakhir and Zadorozhny signed contracts to become paid employees of JV Emerald. A further protocol, Protocol No. 2, records the decisions taken at a further meeting “of the coordination company Emerald (CC Emerald)” involving a number of “founders of Emerald” which took place on 18 November 1992. This protocol lists the patents in suit among intellectual property under the control of CC Emerald and also directs that the management of JV Emerald shall execute before 1 February 1993, an agreement to share any “compensation gained from using the patents” in suit amongst a number of individuals including the two claimants.
- 10 In December 1992, following the coming into force of new Russian patent legislation, Dr Bakhir signed an agreement with his state employers VNIIMT which granted him retrospective rights in all inventions made by him during his employment by them, *ie* from 1987.
- 11 The patents in suit were granted in 1995, '82 being granted on 8 February 1995, and '860 being granted on 11 October 1995. On 10 January 1996 both patents were assigned to Solenzara International Limited. On 12 May 1997 both inventors resigned from JV Emerald. As I said in the introduction, the present references in relation to '860 were filed on 13 October 1997 and in relation to '82 on 5 January 1998. The proceedings were subsequently consolidated.

The issues

- 12 Save as to costs, the references under Section 13 are disposed of, so I am now concerned only with the entitlement references under Section 37. There are three issues that I have to decide in this respect. First, are the references effectively time-barred by virtue of Section 37(5)? If not, did the claimants transfer rights in the patents to Kirk Limited? And finally, if they did, do they nevertheless retain some rights in the patents themselves? It should be noted that the assignment from Kirk Limited to the present proprietors, Solenzara, is not in itself an issue, since the claimants’ argument is that Kirk Limited never had the patents to assign.
- 13 I will consider the three issues in turn, but first I will summarise the law and the

evidence.

The law

14 The relevant parts of Section 37 are as follows:

- (1) After a patent has been granted for an invention any person having or claiming a proprietary interest in or under the patent may refer to the comptroller the question -*
- (a) who is or are the true proprietor or proprietors of the patent,*
 - (b) whether the patent should have been granted to the person or persons to whom it was granted, or*
 - (c) whether any right in or under the patent should be transferred or granted to any other person or persons;*
- and the comptroller shall determine the question and make such order as he thinks fit to give effect to the determination.*
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- (5) On any such reference no order shall be made under this section transferring the patent to which the reference relates on the ground that the patent was granted to a person not so entitled, and no order shall be made under subsection (4) above on that ground, if the reference was made after the end of the period of two years beginning with the date of the grant, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to him that he was not entitled to the patent.*

15 I also need to have regard to the question of who may apply for and obtain a patent, and this is governed by Section 7 of the Act which reads as follows:

- (1) Any person may make an application for a patent either alone or jointly with another.*
- (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.

(3) *In this Act "inventor" in relation to an invention means the actual deviser of the invention and "joint inventor" shall be construed accordingly.*

(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 subsection (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.*

16 It is common ground between the parties that if Kirk Limited had acquired any rights in the patents, those rights were obtained by the operation of Section 7(2)(c) in respect of events after the inventions had been made, rather than by operation of Section 7(2)(b) in respect of circumstances existing when the inventions were made. In other words, it is common ground that, as the inventors, the claimants were the first owners by virtue of Section 7(2)(a) and the question is whether ownership has subsequently passed out of their hands.

17 I will also need to consider Section 30(6) regarding transactions relating to patents and patent applications. Section 30(6) reads as follows:

Any of the following transactions, that is to say -

(a) any assignment or mortgage of a patent or any such application, or any right in a patent or any such application;

(b) any assent relating to any patent or any such application or right;

shall be void unless it is in writing and is signed by or on behalf of the parties to the transaction (or, in the case of an assent or other transaction by a personal representative, by or on behalf of the personal representative) or in the case of a body corporate is so signed or is under the seal of that body.

18 It is not in dispute between the parties that in actions under Section 37 the onus is upon the claimants to show that they are entitled to the relief sought - in the present case to be named as proprietors of the patents in suit.

The evidence

19 Most of the evidence relates to the question of inventorship, and very little relates to the matter of entitlement. As I see it, apart from the general background information on which the parties largely agree, there are only four items of evidence that directly bear on the matter of entitlement. Firstly Dr Bakhir, for the claimants, says in his first affidavit:

“...I have not concluded any labour contracts with either Kirk and Charashvili

International Fine Arts Company Limited or Kirk and Company International Limited transferring my ownership rights in inventions. Also, I have not otherwise assigned or transferred ownership rights in my inventions to these companies in any written agreement.”

20 Secondly, in his second affidavit Dr Bakhir says:

“... I deny having agreed to grant or assign my rights in the FEM-1 invention to Kirk Limited and confirm that Yury Zadorozhny has no recollection of ever having either granted or executed any assignment.”

The reference to the FEM-1 invention relates to the subject-matter of the '860 patent. As regards the '982 patent, Dr Bakhir admits that by the time of filing that application, he and Dr Zadorozhny had signed work agreements with JV Emerald, but states that all or most of the invention would have been completed before they entered into the work agreements, so these work agreements have no bearing on the ownership of the '982 patent. The defendants have not disputed that.

21 The third relevant item of evidence is Dr Zadorozhny’s own, very short, affidavit, and what is relevant there is not so much what he says but what he doesn’t say. He merely asserts that he and Dr Bakhir were the only people involved in making the invention. He says nothing about whether or not there was any transfer of rights in the invention.

22 Finally, for the respondents, there is an affidavit from Mr Djeiranishvili, Director-General of JV Emerald. In it he says:

“I confirm that it was agreed between Drs Bakhir and Zadorozhny, Marina Kirk, myself and the remaining founding members of JV Emerald that the patents were to be filed in the name of Kirk and Charashvili Fine Arts Company Limited (hereinafter Kirk Limited). It was the agreed intention of the founders of JV Emerald, including Drs Bakhir and Zadorozhny, that beneficial ownership of the patents would rest with Kirk Limited.”

Do the references fail on Section 37(5) grounds?

23 I will now turn to the first of the three issues I have to decide. Section 37(5) effectively places a time-bar of two years from the date of grant on actions under Section 37 unless it can be shown that the proprietor knew at the time of grant, or, as the case may be, at the time the patent was transferred to him that he was not entitled to the patent. The defendants did not argue this issue on '860. As far as '982 is concerned, the claimants in their original statement acknowledged that they were launching the claim outside the two year period, but suggested that Kirk Limited, in naming Mr Kirk as inventor knowing that he was not an inventor and omitting Dr Bakhir when they knew that he was an inventor, were aware that they could not derive title to be granted a patent solely from the inventors named.

24 Before me, Mr Moody-Stuart for the claimants argued that Solenzara had not taken issue with this point in their original counterstatement, although Mrs Heal for Solenzara replied that they had, by virtue of the reference to the time delay in bringing this action.

I feel Mrs Heal is on weak ground here since the reference to the time delay was not tied in any way to Section 37(5). Nevertheless, I accept that the whole tenor of the original counterstatement clearly implies that Kirk Limited believed that it was entitled, so I see it as disingenuous of the claimants to say now that they thought this was not in issue.

- 25 Neither party makes specific reference to this matter in their revised statements of case, although Solenzara again refers to the long delay in bringing the action. These revised statements were filed after the claimants should have filed evidence to deal with it following the filing of the original statements, so it is not correct to suggest that the claimants have not had an opportunity to file evidence on this point. On the other hand, I do agree that if the defendants still intended to make an issue of this, they should have made this clear in their revised counterstatement.
- 26 Against this somewhat unsatisfactory background, I have concluded that the point has been sufficiently pleaded and that the claimants do therefore have an onus to discharge in this regard. However, I accept the argument put by Mr Moody-Stuart that this does not necessarily give the claimants a separate burden to discharge in the circumstances of this particular case because Kirk Limited's state of knowledge at the time of grant may be deducible from my finding on whether, leaving aside Section 37(5), Kirk Limited did or did not have rights in the patent. Accordingly, I will leave the issue of Section 37(5) till later, and look first at the other substantive issues.
- 27 In passing, I observe that neither party addressed the question of whether Section 37(5) requires the claimant to show that Solenzara were not entitled when the patent was transferred to them, as distinct from Kirk Limited knowing they were not entitled at the time of grant.

Did the inventors transfer their rights?

- 28 Turning now to the issue of whether the inventors transferred their rights to Kirk Limited, it is common ground between the parties that there was no written agreement to this effect. Mr Moody-Stuart said this was fatal to the case because of Section 30(6), which states that any assignment or mortgage of a patent or any such application, or any right in a patent or any such application, or any assent relating to any patent or any such application or right is void unless it is in writing and is signed by or on behalf of the parties to the transaction.
- 29 Mrs Heal disagreed. She said Section 30(6) did not bite because the agreements referred to in the declarations of inventorship filed in connection with the patent applications were agreements pertaining to the inventions and not in relation to foreshadowed applications or the patents themselves. She argued that Mr Moody-Stuart's interpretation of the statutes led to a far too restrictive limitation on an inventor unless he had the foresight to transfer his rights before he made an invention. I am not persuaded by Mrs Heal's argument in this respect since *prima facie* Section 7(2)(c) could operate before an application was made, and likewise a "right in a patent or application" referred to in Section 30(6) could apply before an application was filed. Also, in circumstances such as present I am not convinced that "succession in title" could, as Mrs Heal also argued, arise otherwise than by explicit or implicit assignment.

- 30 However even assuming Section 30(6) does bite, that is not, contrary to Mr Moody-Stuart's assertion, fatal to the case because this section deals solely with legal ownership and does not address rights in equity. In entitlement disputes the Comptroller has always interpreted sections such as 37(1) as requiring her to take account of equitable rights too. That means that my order will need to reflect any equitable rights that I find exist, and so the question of who, but for my order, might have been the strict legal owner becomes academic.
- 31 Mrs Heal tried to read implications about the ownership of the present patents into the two protocols I mentioned earlier, but neither protocol seems to me to provide much assistance. The first one talks generally about patenting, but says nothing about ownership and does not identify any specific patents or inventions. The second one does refer to the present patents and correctly identifies their "holder" as Kirk Limited, but that does not take us beyond what we know anyway from the patent application files, save possibly to confirm that their ownership by Kirk Limited was not apparently being challenged by the claimants at that stage.
- 32 I now need to look at the two inventors separately, and will turn first to Dr Bakhir. Mrs Heal argued that there was no conflict between the Dr Bakhir's assertion that he had not transferred ownership rights by a labour contract or written agreement and Mr Djeiranishvili's assertion that beneficial ownership was intended to rest with Kirk Limited, because Dr Bakhir had not denied the latter. I would be more confident about what I could deduce from these assertions if the two deponents had been cross examined to find out just what they had in mind in making these statements. Nevertheless, I do attach some weight to the fact that Dr Bakhir has not actually denied Mr Djeiranishvili's assertion. Mrs Heal also argued there was an inconsistency between Dr Bakhir's statement in his first affidavit that he had made no **written** (emphasis added) agreements assigning or transferring ownership of his inventions and the statement in his second affidavit denying that he agreed to grant or assign his rights in '860 whilst saying nothing about '982. I agree this difference between his two affidavits casts doubt on his position, although again cross examination might have clarified whether or not he really was shifting his ground here. I should say that I am not reading anything adverse to either party into the fact that neither requested cross-examination, but the absence of cross examination makes me slightly more cautious about agreeing too readily with Mrs Heal's submissions on these points. Nevertheless, because the onus rests on Dr Bakhir these submissions must carry some weight.
- 33 I do not, however, have to rely solely on the assertions by these deponents. I am quite satisfied from the rest of the evidence that from the time the patent applications were filed to the time he left employment with JV Emerald, Dr Bakhir behaved consistently as though he had transferred entitlement to Kirk Limited, and led the company to believe this was the position. The claimants admit that the founders of JV Emerald - who included both inventors - agreed to file in the name of Kirk Limited, so although not named as an inventor at the time, Dr Bakhir was party to the agreement that Kirk Limited should be the applicant. Mr Moody-Stuart argued that the agreement was between the inventors and JV Emerald, and not between the inventors and Kirk Limited, but that is not what Dr Bakhir's own statements say - he indicates his agreement to file the applications in the name of Kirk Limited, with a later agreement

that JV Emerald be set up to exploit the inventions.

- 34 Mr Moody-Stuart sought to distinguish between the inventors giving Kirk Limited the right to apply for a patent and their giving them the right to be granted a patent. There is no such distinction. The patent application form, Form 1/77, is unambiguously entitled a “request for grant of a patent”, and similarly the right declared by Form 7/77 is a right to grant of a patent, not merely a right to apply for a patent. Thus if Dr Bakhir agreed that the patent applications should be filed in the name of Kirk Limited - and he acknowledges that he did so - that is tantamount to agreeing that the patents should be granted to Kirk Limited.
- 35 Further, Dr Bakhir then became an employee of JV Emerald, which by 1992 was under the same holding company (CC Emerald) as Kirk Limited, and there is no evidence to show that Dr Bakhir took any steps throughout his employment period and the patent granting process to challenge what was going on.
- 36 Taking all this into account, I am satisfied that Dr Bakhir’s actions are consistent only with the presumption that he was indeed transferring his right to be granted the patents to Kirk Limited. That transfer may never have been perfected by a formal written agreement, but Dr Bakhir’s actions certainly gave equitable rights in the patents to Kirk Limited. This conclusion is reinforced by Mrs Heal’s submissions on the interpretation of the affidavits, especially by Dr Bakhir’s failure to deny expressly Mr Djeiranishvili’s assertion that beneficial ownership was intended to rest with Kirk Limited.
- 37 I have already indicated that my decision must take account of equitable rights. Accordingly, as between Dr Bakhir and Kirk Limited, I find that the company is the beneficial owner and that Dr Bakhir’s claim under Section 37(1) that they are not entitled fails. It follows that Dr Bakhir must also fail under Section 37(5) in respect of '982, because I have effectively found that Kirk Limited had every reason to believe that at the time of grant they were entitled to the patent.
- 38 I now turn to Dr Zadorozhny. In my judgement, his claim to entitlement falls at the first hurdle because he has failed to file any relevant evidence to support his case on ownership of the patents. His affidavit, it will be remembered, is totally silent on the issue. True, Dr Bakhir asserts in his second affidavit that he can “confirm that Yury Zadorozhny has no recollection of ever having either granted or executed any assignment”, but as I said at the hearing, I am not prepared to attach any weight to this assertion. It is hearsay that is reinforced neither by an explanation from Dr Bakhir as to how he knows what Dr Zadorozhny can recall nor by evidence to explain why Dr Zadorozhny hasn’t told us himself what he recalls.
- 39 Mr Moody-Stuart argued that if Dr Zadorozhny’s position is not the same as Dr Bakhir’s this points to there having been two agreements. I do not see where this argument leads. So what if there were two agreements? This is not implausible, especially as originally the positions of the two men were different in that Dr Zadorozhny was named as a joint inventor whereas Dr Bakhir was not. Moreover, if I were to accept Mr Moody-Stuart’s submission that I must assume the two inventors must have been on the same footing, Dr Zadorozhny’s silence simply weakens Dr Bakhir’s case even more.

40 I find, therefore, that Dr Zadorozhny's case fails on onus. Had I not found this and instead agreed with Mr Moody-Stuart's submission that the two men must be seen in the same light, his case would still have fallen with Dr Bakhir's. There is, though, one other point that is worth mentioning. Although it was not necessary for him to do so, Dr Zadorozhny actually signed the Form 7/77, and as this form sets out the applicants' right to be granted a patent, he could hardly deny that he was content for the patent to be granted to Kirk Limited.

Do the inventors have any rights?

41 The findings I have just made do not dispose of the case entirely, because at the hearing, Mr Moody-Stuart suggested that there might be a case for finding that the claimants and defendants should be jointly entitled. He argued that if I was persuaded that some rights had transferred to Kirk Limited but it was not clear to me what, then I could make an order for joint ownership, or grant the claimants an irrevocable licence. That approach is wrong. Joint entitlement is not a compromise available to me as a way of avoiding having to come to a clear conclusion. It would only be appropriate to go for joint entitlement in the present circumstances if I am satisfied that the inventors had agreed to share entitlement with Kirk Limited.

42 So was there an agreement to share? Arguably the inventors have ended up with nothing, and I accept that in giving the patent rights to Kirk Limited, they cannot have been intending to end up with nothing themselves. That, though, does not mean that they intended to end up with joint ownership or a licence.

43 The real problem appears to be a failure by all concerned to sort out clearly what rights the inventors were to have, either when agreeing originally to file the applications in the name of Kirk limited or when the two protocols were agreed. The closest they got to it was the statement of intention in the second protocol to reach an agreement on "an equitable distribution of compensation gained from using the patents" amongst the two inventors and five other people. I have no evidence that agreement was ever reached, and I certainly have no evidence to suppose there was any understanding that the "compensation" would take the form of some share in the ownership rights or the right to a licence. Indeed, though I cannot be sure, it seems more likely that what the inventors were going to get was a share in the ownership of the companies, not a share in the patent rights or a licence under the patents. It is also arguable that they received compensation in the form of salaried employment with the companies for several years.

44 Thus I am not satisfied there was any agreement to share the patent rights and can find no basis for awarding the claimants any rights under the patent. They may have expected to get benefits from the patents indirectly by partial ownership of the companies and employment by them, but since it appears that it was they who chose to walk away from those companies, they must take the consequences.

Conclusion and costs

45 I conclude that the references under Section 37 fail in their entirety, and so I make no order in respect of the ownership of, or rights in, the patents.

- 46 On the question of costs, both parties agreed that they should be on the usual scale. Further, as I indicated in my earlier decision under Section 13, I also need to take into account the costs associated with the dispute as to inventorship. The claimants have succeeded on inventorship, but failed on entitlement. Whilst entitlement is clearly the more important issue at the end of the day, the issue of inventorship took up most of the evidence even though the matter was settled without the need for a hearing. Certainly I do not accept Mrs Heal's contention that there were no costs relating to the inventorship issue that would not have been incurred by the claimants anyway.
- 47 As these actions were launched before 22 May 2000, it is the 'old' scale of costs which apply. I will make some allowance for the fact that there were two patents involved, but because the proceedings were consolidated at an early stage, the allowance will be a modest one. On that basis, I have decided that the claimants ought be awarded costs of £650 in relation to the references under Section 13, but that the defendants ought to be awarded costs of £800 in relation to the references under Section 37. The difference is almost too small to warrant an order, but I will make one. Accordingly, I order the claimants to pay to the defendants the sum of £150 as a contribution towards their costs.
- 48 Finally, I must offer my apologies to both parties for the delay in issuing this decision.

Appeal

- 49 As this decision does not relate to a matter of procedure, any appeal should be lodged within six weeks.

Dated this 30th day of March 2001

P HAYWARD

Divisional Director, acting for the comptroller

THE PATENT OFFICE