

PATENTS ACT 1977

BETWEEN

Michael Farmer and AeroSmart
Technologies Limited

Claimant

and

Christopher Yardley

Defendant

PROCEEDINGS

Reference under sections 8, 10 and 12 of the Patents Act 1977 in respect of patent applications numbers GB 0404328.7, GB 0508571.7 and corresponding international and foreign applications.

HEARING OFFICER

P Marchant

PRELIMINARY DECISION

1 This preliminary decision concerns whether the defendant should be allowed an extension of time in the period set by the UK Intellectual Property Office for the filing of a counter-statement in this action.

2 The counter-statement is due today - on 22 February 2008, that date having been set by the official letter of 11 January 2008 at the date 6 weeks after serving of the claimant's Statement of Grounds.

3 In a letter of 15 February 2008, Barlow Robbins LLP acting for Mr Yardley requested that the date be extended by 4 weeks. They cite as reasons that the case is complicated, that their client is busy, being in full time employment, and that he is looking for evidence in the form of e-mails and correspondence dating from before June 2006. Also they wish to involve counsel. They say that they are not in a position to finalise the counter-statement by 22 February.

4 Keltie, acting for Mr Farmer in their letter of 21 February 2008 resist any extension, certainly one as long as 4 weeks.

5 The period of 6 weeks has been set by the Office as one which is generally considered long enough for the defendant to put together a counter-statement. It is the case that in some actions the claimant has as long as he wishes to prepare his position, and that if it is extensive, the defendant may be unfairly disadvantaged by having a much shorter period to respond. However this is not one of those cases. The claimant's pleadings are fairly lengthy, but on the other hand, the issue is clearly one that is very much alive between the parties. I consequently do not think that the issue of complexity suggests a longer period is warranted.

6 I appreciate that Mr Yardley may be busy, but as Keltie say, most of us are busy and unless Mr Yardley is able to point to some particular issue which has prevented him progressing the matter in good time, I do not see that there is anything on which I am able to exercise discretion to allow him more. The preparation of the counterstatement is of course a joint undertaking between the claimant and his advisors and it is the responsibility of all those parties to ensure the deadline is met.

7 I am told that Mr Yardley is collecting further evidence which may affect the pleadings. While it is very helpful to a party to have all its evidence assembled at the outset, there is a continuing period for the collection of evidence after the counter-statement has been filed. The apparent fact that Mr Yardley is well acquainted with the issues also persuades me that there is little likelihood of injustice if a counter-statement is to be filed sooner rather than later. Broadly, I take the same view of this point as I do of the assertions that the case is complex and that Mr Yardley is busy. That is to say, he needs to get on with it.

8 I am very conscious of the costs to parties of running intellectual property actions and that an important factor in increasing costs is the time spent on all aspects of the case and the overall duration of the case. In view of that, while taking due account of the particular circumstances, it is my view that extensions of time should be avoided where possible and otherwise kept to a minimum. Barlow Robbins discuss factors put forward by Keltie as to the escalating costs in any delay resolving the issue between the parties. That reinforces this view and although some of those factors may not bite particularly in the current few weeks, they are still in operation and are to be avoided if possible.

9 I note both parties' willingness and attempts to engage in mediation and I commend them for that. I should point out that the first letter that will issue from the Office following filing of the counter-statement will be one urging them to engage in mediation and I strongly suggest they should do so now. The benefits of mediation are clear, particularly in actions such as the ownership of patents. It is likely to be quicker and cheaper, to allow both parties to come away with some benefit and to limit the damage to the relationship between them.

10 Barlow Robbins have said that they cannot finalise matters by today but they have not said they are unable to do so by any particular date after that. My consideration of the factors put forward suggest to me that there is no real justification in terms of the preparation work that needs to be done to allow an extension, but because of the timing of the request it will be necessary to allow a short one to allow for the practicalities of compliance. And I am not entirely

unsympathetic to Mr Yardley having a little more time to find more evidence of older e-mails and correspondence. I will consequently allow a further week, and Mr Yardley and Barlow Robbins will then need to prepare the counter-statement by next Friday 29 February 2008.

Order

11 I order that the date for filing the counter-statement in this action, set at 22 February 2008 in the official letter of 11 January 2008, now be set at 29 February 2008.

Costs

12 I make no order for costs arising from the issues considered in this preliminary decision.

Appeal

13 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

P Marchant

Deputy Director acting for the Comptroller