

Neutral Citation Number: [2022] EWHC 1255 (Pat)

Claim No. HP-2020-000018

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INTELLECTUAL PROPERTY LIST (ChD)**  
**PATENTS COURT**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: Tuesday, 24th May 2022

**Before:**

**MR. JUSTICE MEADE**

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**Between:**

**SHENZHEN CAR KU TECHNOLOGY CO., LTD**  
**(a company incorporated under the laws of the**

**Claimant**

**People's Republic of China)**

**- and -**

**THE NOCO COMPANY**

**(a company incorporated under the laws of Ohio,**  
**United States of America)**

**Defendant**

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**MR. HUGO CUDDIGAN QC** and **MR. EDWARD CRONAN** (instructed by **Powell Gilbert LLP**) appeared for the **Claimant**.

**MR. JAMES ABRAHAMS QC** and **DR. ADAM GAMSA** (instructed by **Taylor Wessing LLP**) appeared for the **Defendant**.

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**JUDGMENT**

**MR. JUSTICE MEADE :**

1. This is an unedifying argument about pleadings in a patent threats and patent infringement claim. The trial of this matter is due to take place towards the end of the summer term. Validity and infringement are in issue, and also there is an allegation which is of some importance commercially, and also to my judgment, of threats.
2. The dispute is this: it is alleged on behalf of the claimant (who I will refer to as "Carku") that threats were made by the defendant patentee (who I will refer to as "NOCO") focusing on Amazon. In particular, paragraph 12 of the particulars of claim, in the form that I have to consider, was as follows (this does not show the markup of earlier amendments not relevant to my consideration today):

"12. As set out above, the Defendant has written to customers and distributors of the Claimant, and alleged that the Delisted Products infringe GB '858.

**PARTICULARS**

- a) The Defendant has written to Amazon UK, and complained of the sales of and offers to sell car jump starters on the website amazon.co.uk under the following brands: iClever, Gooloo, Grepro, Ring, Tacklife, Vtin and Victsing.
  - b) As a result of the Defendants' complaints to Amazon UK, Amazon has removed at least the Delisted Products from sale on amazon.co.uk."
3. Paragraph 12 beginnings with the words "As set out above", and that is a reference back to paragraph 4, and, in particular, paragraphs 4D, E, F, G and H.
  4. There is no dispute that NOCO used an Amazon complaints procedure to notify Amazon that it considered that Carku's products infringed the patent in suit, and there is also no dispute that Amazon, in due course, delisted those products. It is also not in dispute that the gentleman at NOCO who was in charge of

launching the complaints procedure, Mr. Nook, foresaw that Amazon would pass on the gist of the complaint to Caraku's distributors, as indeed.

5. NOCO says that the communication to Amazon was not a threat at all. It alleges that although it is possible for something that A says to B about an intention to bring proceedings against C could be a threat, that is not possibly how Amazon interpreted the communications in question. I may not have appreciated the full nuances of this argument, and it is unnecessary for me to pass comment on its strength at the moment.
6. In any event, the debate before me today is whether Caraku ought to be allowed to advance a case that there was what has been referred to as an indirect threat, and as I understand it, what the parties mean by "indirect threat" is NOCO's writing to Amazon who then passed the complaint on to the distributors, as opposed to the communication to Amazon itself, or any communication that NOCO made direct to the distributors, which is something that certainly did happen in relation to at least one distributor called Ring.
7. What has happened is that the claimant, Caraku, put forward a pleading explicitly running this indirect threat allegation, NOCO objected to it, and Caraku retreated to the position that it did not even need to make the amendment, because indirect threats was already comprehended in the existing pleading.
8. My overall impression is that the allegation of indirect infringement is a small corner of this litigation. It could turn out to be important, but the trenchant submissions that I have heard about it at this application, in my view, conceal the fact that it is not what is fundamentally at issue between the parties. What is fundamentally at issue between the parties is the validity and infringement of

the patent, and the communication by NOCO to Amazon. I appreciate that it is possible that NOCO might make good the contention that what it said to Amazon was not itself a threat, and in that case the indirect threats allegation could become important, but that does not detract from the fact that it is still a small part of the picture.

9. I was attracted, because I think this is a relatively peripheral issue, to putting back the question of the indirect threats to any inquiry which might take place in relation to threats, which assumes, of course (and this may turn out to be wrong), that it turns out at trial that the patent is invalid, and/or that there is no infringement. Carku would be prepared to agree to that, but NOCO is not. The submission of Mr. Abrahams QC, who appears for NOCO today, is that if the indirect threats allegation is not comprehended within the existing pleading, then for it to be raised within the litigation there must be an amendment. That amendment, he says, would be late, and should be refused, and his submission, I put it rather colloquially, is that in that scenario Carku should not be let off the hook by the procedural means of putting the issue back to any inquiry.
10. I have no doubt that I have power within CPR 3 to put it back, but that does not address Mr. Abrahams's objections, which are that this is, in substance, a late amendment, and would prejudice his client, and that simply deferring something is not an answer to a late amendment.
11. I will not go into all of the details of all of the pleadings and all of the evidence, because I think picking the bones out of that is not necessary to my decision. However, having looked at the paragraphs of the Particulars of Claim that I have mentioned, at the paragraphs of the Defence relevant to threats (and in particular

paragraph 12 where it is admitted that NOCO wrote to Ring), to a request for further information that was made and the response and to Mr. Nook's evidence, my conclusion is that Carku's pleading, as it stands, was not adequately clear about its scope, but certainly was understood by NOCO to involve some real investigation, at least, of the impact of the defendants writing to Amazon on distributors. Otherwise I do not see why there would have been a pleading back by NOCO, which included an admission of writing to Ring, or why NOCO would have responded as it did to the request for further information, or why, indeed, Mr. Nook would have covered the matters in his witness statement that he did.

12. That said, I accept Mr. Abrahams's submissions that the pleading is deficient in certain respects. It certainly does not explicitly set out indirect threats in the sense that I have defined them, so as to reflect my understanding of what the parties are saying. I do, however, equally certainly think that the pleading went beyond just an allegation of writing to Amazon. There is no question about that, because the introductory words of paragraph 12 refers to the defendant writing to customers and distributors of the claimant. In my view, the pleading is imperfect, but was not understood, or could not reasonably have been understood by NOCO, to be limited simply to what was said by it to Amazon.
13. However, my reason for the course I am going to take is the pragmatic one, that even if I considered that Carku was raising this afresh for the first time, which I do not think it is, for reasons I have touched on, I do not think it would be very difficult to get an adequate determination of the question of indirect threats at the trial in July. What was said to Amazon is accepted. It is accepted that it

was foreseeable that what was said to Amazon would be passed on to the distributors, and that it was. It is accepted that interpretation of what was said is an objective matter, and that subjective evidence from neither Amazon nor the distributors is necessary.

14. Primarily what it is said could not be dealt with in time for the forthcoming trial in the summer term is a determination of whether the distributors in question were importers of the products or not (which might provide a defence even if the threats allegation was otherwise successful). I approach with some considerable scepticism NOCO's assertion that it might have a reasonable case that they were the importers, since the state of the pleadings at the moment on both sides, so far as I can understand it, asserts that Carku was. Mr. Abrahams's reply to that is that the situation as to who was the importer might not be the same for all of the products, and that inquiry ought to be focused in on a particular distributor to determine whether or not they were an importer.
15. As I say, I am very sceptical about that, but if this issue were being pleaded completely afresh, and if the question for me was whether it could be accommodated at trial, it would not be necessary to look at every distributor, and Mr. Abrahams accepted that. It would be necessary to look at a sample distributor who, Carku would allege, was not an importer, and, as I understand it, Carku's own position would be that it was the importer, as is asserted in the pleadings.
16. I do not think that would be much of a burden at all, and I think that NOCO's assertions that it would be a difficult or big job are thoroughly unconvincing, and they are freighted with the misunderstanding that I referred to earlier in this

judgment about the significance or otherwise of this issue in the context of the case as a whole. I do not think much more would be involved than for Caraku to put forward a particular distributor to consider, with the commercial documents, like the invoice or the bill of sale, to show who was the owner of the products at the time of importation. It cannot wholly be excluded that that might be a matter which required material further investigation, but it seems very unlikely to me.

17. I therefore conclude that, even if the indirect threats issue was completely new (which I have said already I do not think it is entirely), it could quite readily be accommodated in the July trial. That is not to say that it should be. I think it should not be, because I think the July trial should focus on what plainly is already in issue and what is important between the parties, which is validity, infringement and the communications to Amazon alleged to amount to a threat. I think resolution of those issues will advance the case enormously towards an overall resolution. Since I conclude that the amendment would be permissible, even if made afresh now, because it could be accommodated within the trial, I reject Mr. Abrahams's contention that NOCO is trying to get round the burden that it would face of making a late amendment. I think it would be a permissible amendment.
18. With that obstacle cleared out of the way, I think there is no further hindrance to my exercising my case management powers under CPR Part 3 to direct that the indirect threats aspect of the case is to be tried with any inquiry as to threats or at such other time as the court may direct following judgment on the summer trial.

19. I should also return to what I said at the beginning of this judgment: that this is an unedifying dispute. I really think it is. I think NOCO has fought every inch of the way in a thoroughly uncooperative way to make it harder and harder and harder to resolve what is obviously a reasonable point; it might be right or wrong, but a perfectly triable point, and I have not found NOCO's attitude to this dispute helpful at all. That is not entirely to absolve Carku of having put in a pleading which is sub-par, but this could easily have been resolved without resort to the court.
  
20. I am therefore directing that indirect threats is to be tried either with any inquiry as to damages to threats or at such other time as the court directs after the summer trial.

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