

## **PATENTS ACT 1977**

**IN THE MATTER OF** a reference under  
Section 37(1) and applications under  
Sections 13(1) and 13(3) by Christopher  
Ronald Tasker in respect of Patent **m** GB  
2304361 B in the name of Victor John  
Colley

## **DECISION**

### **Introduction**

1. Patent **m** GB 2304361 B was granted on 25 November 1998. It names Victor John Colley as the proprietor and inventor. On 8 February 1999, Christopher Ronald Tasker made a reference to the comptroller under section 37(1), alleging that he is the true proprietor of the patent. At the same time, he applied under section 13(1) and (3) for a certificate from the comptroller to the effect that Mr Colley ought not to have been mentioned as inventor and that he, Mr Tasker, was the only person entitled to be mentioned as inventor.

2. Mr Colley opposed the reference and application, and both sides filed evidence-in-chief. Mr Tasker elected not to file any evidence-in-reply because he wanted to have the matter decided as quickly as possible, and the matter eventually came before me at a hearing on 21 September 1999.

3. During these proceedings each side has acted for himself, ie neither Mr Tasker nor Mr Colley has used the services of a patent agent or lawyer to help him prepare his case (although I think Mr Colley may have had some informal legal assistance). This has caused some difficulties, especially as the general approaches of the two sides could not have been more different. Mr Colley has adopted what I might politely call a minimalist approach in that his

counterstatement was just a few sentences and his evidence a mere two pages of statutory declaration. Mr Tasker, on the other hand, has filed a large quantity of correspondence and other paper which is all a rather confused mix of facts, evidence and argument, leavened with a good sprinkling of documents whose status and purpose is not always obvious. Staff from the Patent Office tried to help Mr Tasker understand what it was he needed to do, but as always in such matters, they are severely limited in the help they can offer by the need to remain strictly impartial and not give the appearance that the Office is helping one side in a dispute to the detriment of the other. This, of course, is precisely why private litigants are always strongly advised to seek legal advice. Nevertheless, I have managed to extract enough from the material provided by both sides to reach a decision.

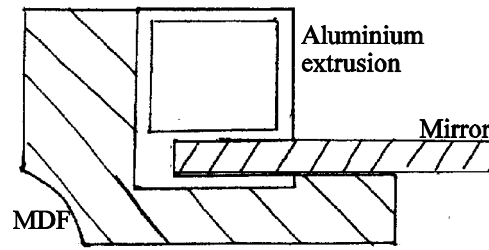
4. At the hearing, Mr Tasker attended in person to represent himself. Mr Colley chose not to attend and was not represented, though he maintained his opposition to the reference and application.

5. Before looking at the details of the case, there is one formal matter which I should dispose of first. Mr Tasker tried to put together statements made on Mr Colley's behalf in proceedings before the patent was granted with his counterstatement to show that all Mr Colley can be disputing is whether the inventor is Mr Tasker or one of two other people, a Mr Glover or a Mr Hallett. This submission of Mr Tasker's is incorrect because it is based on a misunderstanding of the burden of proof. The burden of proof rests on Mr Tasker. It is for Mr Tasker to show that Mr Colley was not an inventor and that he, Mr Tasker, was. If Mr Colley can show Mr Tasker has not made out his case, he does not have to go on to prove positively that he, Mr Colley, was the inventor. I do not think there can be the slightest doubt from the papers that Mr Colley continues to maintain that he is the sole inventor.

## **Background**

6. The patent concerns a door for a storage unit (for example, a sliding door for a wardrobe) in which a rectangular frame supports a central panel. The frame comprises metal stiffening

elements which are fully concealed from the front of the door by decorative members of less structural rigidity. It is perhaps easiest to explain this by reference to the following drawing, which shows in cross section one of the styles of a sliding door in a specific embodiment of the invention.



From the front of the wardrobe, the style appears to be made of medium density fibreboard (MDF). However this on its own would not be rigid enough, so it is stiffened by an aluminium extrusion having a box section portion with an L-shaped extension on the front side. The central panel - in this instance, a mirror - is held between the main box section and one arm of the extension.

7. The patent has only one independent claim, claim 1:

“A door for a storage unit comprising a rectangular frame and a central panel supported within the rectangular frame, said frame providing structural rigidity for the door and being formed by four metal stiffening elements each extending along a respective horizontal or vertical side of the frame, the four stiffening elements being secured to each other at respective corners, and decorative door styles and door rails being mounted on the exterior of the stiffening elements to conceal fully the stiffening elements from the front of the door, the door styles and door rails being formed of a material of less structural rigidity than the stiffening elements, and the door styles comprising two limbs at right angles to each other, one limb concealing a front face of a stiffener and a second limb concealing an edge of the stiffener.”

Clearly the claim is not restricted to the use of MDF for what it calls the “decorative door styles and door rails” and aluminium extrusions for what it calls the “stiffening elements”, but because

those are the materials which are most likely to be used in practice, I will for convenience refer to these materials, rather than the broader terms of claim 1, throughout much of this decision.

8. There are also a number of subordinate claims directed at various features of the preferred embodiment, and an omnibus claim.

### **The law**

9. So far as this particular case is concerned, the law is very straightforward and I do not need to quote it in full. Mr Tasker claims he, not Mr Colley, was the inventor. Section 7(2) of the Act states that a patent for an invention may be granted primarily to the inventor or joint inventors, so if Mr Tasker's assertion that he was the inventor is right, it follows that he is the one who is entitled to the patent.

10. The ability to challenge entitlement comes from section 37, which enables any person with a proprietary interest in a patent to ask the comptroller to decide who is the true proprietor of the patent, and to transfer rights in the patent to some other person accordingly. There are a number of grounds upon which a person may dispute the true proprietorship of a patent, but on this occasion the basis of Mr Tasker's claim to entitlement is simply that he made the invention and not Mr Colley.

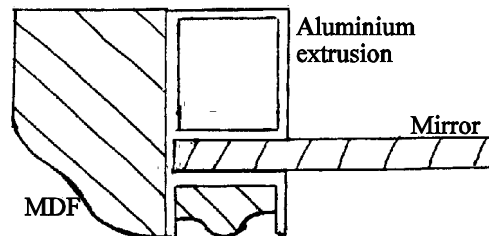
11. Section 13(1) gives each and every inventor a statutory right to be mentioned as an inventor in any patent granted in respect of an invention, and it is under this subsection that Mr Tasker claims that he has a right to be mentioned as the inventor.

12. Section 13(3) provides that where a person has already been mentioned as inventor, any other person may apply to the comptroller for a certificate to the effect that the person mentioned as inventor ought not to have been so mentioned. It is under this subsection that Mr Tasker has claimed that Mr Colley should not be mentioned as an inventor.

13. Finally, the Act contains a couple of useful definitions. Section 7(3) says that the term inventor “in relation to an invention means the actual deviser of the invention and ‘joint inventor’ shall be construed accordingly”. Section 125(1) says that “an invention . . . for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification . . .”.

### History of events

14. By the end of the evidence rounds much of the history of events was becoming clear. Mr Tasker was making sliding mirror-door systems for wardrobes which used an aluminium extrusion to hold the mirror. In an earlier system, known as “Series 300”, the aluminium holding the mirror was, it would seem, not concealed in any way. He then came up with the “Series 400 MK1” which he says he first sold in 1993. This used the same aluminium extrusion as the Series 300 but added MDF profiles to conceal much of the aluminium. I am satisfied from the evidence that this is what a door style of the Series 400 MK1 looks like in cross section:



It bears a number of similarities with the invention, although the aluminium extrusion differs from that shown in the patent specification in that it has a channel section facing forward (ie when looking at the door from the front). As I understand it, the Series 300 needed this channel section to provide a handle for opening the door. Further, the MDF mouldings are in two separate parts, and whilst most of the aluminium is concealed from the front, there are some parts which are still showing. Even Mr Tasker recognised that the fact that there is still some aluminium showing is significant because, as he explained at the hearing, it makes it necessary to anodise the whole extrusion, a relatively expensive step.

15. Mr Colley is a wardrobe fabricator. In August 1994 Mr Tasker visited Mr Colley, regarding him as a potential customer. I am satisfied on the evidence that Mr Tasker showed him the Series 400 MK1 at this meeting. Indeed, Mr Colley himself now accepts this. However, Mr Tasker claims he went further and told Mr Colley about the present invention at that meeting, whereas Mr Colley denies this. As will be seen, what transpired at this meeting lies at the heart of this dispute.

16. One year later, in August 1995, Mr Colley filed the patent application which eventually matured into the present patent. Mr Colley also started selling wardrobe doors in which the MDF mouldings fully conceal the aluminium extrusions. Mr Tasker acknowledges that he himself did not sell any such doors before Mr Colley.

### **What is the “invention”?**

17. If I am to determine the inventor, the first question I must ask myself is, what is the invention? This is an issue that has caused difficulty in previous entitlement disputes, particularly when the dispute has taken place prior to grant of the patent, when the final form of the patent was still unknown. The concern has been to avoid having an enquiry into the relationship between the alleged invention and the prior art in what is supposed to be simply an entitlement action, because that could turn an entitlement action into an enquiry into validity. Thus practice pre-grant (which has been endorsed by the courts) has been to take as the invention that which was conceived by the patent applicant to be the invention at the time he filed his application, whether patentable or not.

18. I am aware that the same practice has been followed post grant in some cases, with the agreement of both sides. However, in the present case I think it would be wrong to pay no attention whatsoever to the relation between the patent and the prior art because this relationship has already been the subject of a formal pre-grant decision. As originally filed, the claims of the patent application only required that the stiffening elements (ie the aluminium extrusions) be “concealed”. During the examination process, Mr Tasker filed letters and sworn evidence

drawing attention to what we now know to be his Series 400 MK1 doors. These were construed by the examiner as observations under section 21, and on the basis of the information contained in them the examiner objected that the invention as claimed was not novel. A hearing followed, at which the Hearing Officer acting for the comptroller held that the Series 400 MK1 doors were indeed part of the prior art and that the invention as then claimed was not distinguished from them.

19. Following the Hearing Officer's decision, the scope of the main claim was narrowed in two important respects. Firstly, instead of simply saying that the "styles" and "rails" (ie the MDF mouldings) *concealed* the "stiffening elements" (ie the aluminium extrusions), claim 1 was amended to require that the styles and rails *fully concealed* them from the front of the door, the claim also being restricted to doors for storage units presumably so that the word "front" would be meaningful. Secondly, the last clause of the claim as it now stands was added, requiring the styles to comprise two limbs at right angles, concealing a front and an edge of the stiffener respectively.

20. Against this background, I consider I must work on the basis that the present invention cannot reside in any features of the Series 400 MK1, because it has already been decided that this is prior art so far as the present patent is concerned. This means that even if Mr Colley arrived at the present invention by developing Mr Tasker's Series 400 MK1, that in itself is not sufficient to make Mr Tasker an inventor - although to be fair to Mr Tasker, he has not attempted to argue it is sufficient. Further, I consider that, so far as claim 1 is concerned, I must also work on the basis that the invention resides in the features that were added to the claim to avoid anticipation by the Series 400 MK1.

21. That, however, is not the end of the story, because in principle each of the individual features disclosed and claimed in the patent could form the basis of a right to entitlement. This follows from the definition of "invention" in section 125(1). It is also consistent with the power given to the comptroller under section 37(4) whereby a partially successful claimant can be allowed to file a fresh patent application for part of the matter in the specification of the patent as granted. Having said that, very often many of the subordinate claims in a patent are for known

features whose provision is unlikely to be inventive, and the present case is no exception. Indeed, it is evident from a brief glance that most, if not all, the extra features claimed in claims 2 to 13 in the present patent specification were already known from the Series 400 MK1. However, the specification does include detailed drawings, such as the cross section of a style embodying the invention reproduced earlier in this decision, and these drawings are covered by claim 14, an omnibus claim. I must therefore allow for the possibility that there may be a claim to entitlement on the basis of something shown in these detailed drawings.

22. In what I have said so far I have concentrated very much on the door styles. Doors, though, do not just have styles. They also have top and bottom rails which, to comply with claim 1, also have to be fully concealed. However, Mr Tasker has himself submitted evidence to show that the idea of fully concealing the top and bottom rails with MDF was already in the public domain by June 1993. This comes from the affidavit of a Mr Glover, another wardrobe installer, who says that Mr Tasker's company, Alvista Wardrobes, supplied him in 1993 with additional front mouldings and cornices to completely conceal the aluminium bottom and top rails. Thus it is essentially in the concealment of the styles that any invention must reside.

23. In short, then, what I need to establish is whether Mr Tasker invented, whether alone or jointly with someone else, the idea of full concealment of the aluminium extrusion in the styles using two limbs of MDF at right angles concealing a front and an edge of the aluminium respectively, and/or the specific style design shown in the detailed drawings.

### **Can Mr Tasker claim to be the sole inventor?**

24. I now need to look in more detail at what Mr Tasker alleges he told Mr Colley during their crucial meeting in August 1994. Mr Tasker says that he showed Mr Colley samples of his 200, 300 and 400 Series wardrobes and gave him a full sales presentation on his products. He also says he discussed the products of two competitors that Mr Colley had been selling, pointing out that they had used solid wood rather than MDF and that this was prone to warping, and that they



had not fully concealed the aluminium in the styles. Of course the aluminium was not fully concealed in the styles of Mr Tasker's own product either, but he says he told Mr Colley that he planned to conceal it fully.

25. Let me suppose for the moment that everything Mr Tasker says about this meeting is true. There is still nothing in the evidence to suggest that Mr Tasker told Mr Colley *how* he was going to conceal the aluminium fully. In particular, there is no suggestion that he disclosed the idea of using two limbs of MDF at right angles, let alone the specific design shown in the drawings of the patent specification.

26. When I pressed Mr Tasker on this at the hearing, he started to submit that he had gone into more detail with Mr Colley about how he was proposing to alter the styles on the 400 Series, but this is not in the evidence and I do not believe he did so. He did, however, assert that once one has decided to alter the styles of his Series 400 design in order to achieve total concealment of the aluminium, there is really only one way to do it - the way shown in the patent specification. He submitted that one would obviously remove the channel section, because that is only there to provide a handle when there are no MDF mouldings at all, as on his original 300 Series, and then join the mouldings together.

27. I reject this argument, on two counts. Firstly, if one was starting with the aluminium section used in Mr Tasker's Series 400 doors, it is immediately apparent that there are other ways of achieving full concealment. For example, referring to the drawing of the Series 400 style, one could retain the channel section but put a deeper moulding in it, slotting over the right hand limb of the channel and also covered the end of the left hand limb. Since the channel section must help stiffen the aluminium extrusion, quite apart from any function it may have had as a handle, I do not accept that one would obviously want to remove it. Secondly, even if Mr Tasker could persuade me that the only way to conceal all the aluminium in the 400 Series is to remove the channel section and then apply an L-shaped MDF moulding, one would still not necessarily end up with the design shown in the patent specification.

28. I also observe that amongst the documents that Mr Tasker himself has filed is one actually suggesting another way of concealing all the aluminium. This is what purports to be a copy of a witness statement made for other proceedings by a Mr Hallett, in which, reporting a meeting with Mr Tasker in December 1994, he says:

“At this meeting Mr Tasker showed me samples of a wood grain covering 300 Series MK2 that he was considering introducing. I took samples away with me that had all external aluminium **totally concealed** by wood grain foil.”

I am aware that this document was never properly sworn as evidence in the present proceedings, but that does not mean I cannot take account of the reference to wood grain for purposes of recognising this as an alternative method of concealment, as I am not relying on the truth or otherwise of what Mr Hallett was saying. In any case, as this document was filed by Mr Tasker himself, *he* cannot now invite me to ignore it. Mr Hallett refers to the 300, rather than the 400, Series, but of course these two products use exactly the same aluminium extrusion. What this shows, therefore, is that there certainly are other ways of achieving complete concealment, though not, I accept, using (or solely using) MDF.

29. In short, then, even if Mr Tasker’s report of his meeting with Mr Colley is wholly true, Mr Tasker still cannot claim to be responsible for the idea of using two limbs of MDF at right angles to conceal a front and an edge of the aluminium respectively, and/or the specific style design shown in the detailed drawings. The most he could be responsible for is the idea that it would be good to conceal the aluminium fully. It follows that Mr Tasker’s claim to be the sole inventor, and hence solely entitled to the patent, must fail. At very best, he can only be a joint inventor, and hence jointly entitled.

30. It also follows that his application under section 13(3) to have Mr Colley’s name removed as an inventor also fails. On the basis of what I have just found, Mr Tasker certainly did not invent everything in the patent, and as he has not suggested that anyone other than Mr Colley invented the rest, Mr Colley must remain named as an inventor.

### **Can disclosure of “complete concealment” make Mr Tasker an inventor?**

31. Mr Tasker, then, is not arguing that he disclosed anything to Mr Colley other than the very idea of concealing all the aluminium with MDF. Assuming for the moment that he did make that disclosure, can that entitle him to be called an inventor? I have my doubts. Saying that it would be good if all the aluminium could be concealed is no more than expressing a desirable and perfectly obvious objective. I say perfectly obvious because the whole point of his 400 Series was to conceal the aluminium. It didn't conceal it all because Mr Tasker was using his existing 300 Series aluminium extrusions and they made complete concealment a little awkward, albeit not impossible. Where invention was needed was not in saying one could conceal it all but in working out how to achieve this, and I have found Mr Tasker did not contribute to this. The fact that Mr Tasker himself asserts two other people, Mr Glover and Mr Hallett, also recognised the desirability of concealing all the aluminium reinforces my view that this in itself is not inventive. Thus even if everything Mr Tasker says is right, I have doubts as to whether he can claim to be an inventor of anything in the patent in suit.

32. However, for the moment I will give him the benefit of doubt on this point and go on to consider whether the evidence establishes that Mr Tasker did indeed mention complete concealment to Mr Colley. What I said so far, of course, presupposes that Mr Tasker did do this.

### **Did Mr Tasker disclose complete concealment to Mr Colley?**

33. I start with Mr Tasker's own sworn evidence. I have to say at the outset that this is not very satisfactory. Instead of swearing a full statement setting out from scratch his version of events, he has relied on the large number of letters and other documents that he had already sent the Office, Mr Colley and a Mr Wilson and simply sworn an affidavit to the effect that every statement he has made in these documents (save for three errors) is true. Evidence in this form must, in my judgement, carry rather less weight than a full sworn statement. If he had prepared a full statement, he would have had to think about the truth of each sentence as he wrote it. In

contrast, with a 78 page bundle of documents it is all too easy to assert that everything in it is true without necessarily considering it sentence by sentence. Having said that, the fact that Mr Tasker spotted three errors in what he had said in these documents suggests that he did go through them with some care, and so I am prepared to attach some weight to this evidence.

34. Amongst this 78 page bundle, the only statement by Mr Tasker about what he said at his meeting with Mr Colley appears in the statement of case which he filed to initiate the present proceedings. In this he says that after showing Mr Colley and his wife some of his own products, including the 400 Series, and discussing the products of some competitors, he:

“ . . . tried very hard to win Mr Colley as a customer and had no reason to think he would be a future competitor, so I told him of my future plans of improving my 400 Series by covering all aluminium with MDF.”

This is not very specific about just what Mr Colley was told, and indeed, as discussed above, Mr Tasker himself acknowledges that he did not discuss in full detail how that improvement would be achieved.

35. Mr Tasker tries to support his statement by an affidavit from a Peter Glover. This does not go directly to the core issue of what was said at the meeting, nor could it because Mr Glover was not present. Rather, it tries to show that Mr Tasker had already contemplated full concealment of the aluminium before the date of the meeting, thus making it more plausible that he would have mentioned this to Mr Colley. What Mr Glover says is:

“I started selling Alvista Wardrobes 400 Series in early 1993. After my initial sales I requested - in about mid-1993 - that Alvista supply me with a product that concealed as much aluminium as possible with wood effect. The Alvista 400 Series stile that I sold in 1993 consisted of a 300 Series stile made of aluminium with the addition of a front moulding and a side moulding. The resultant 400 Series stile only showed two thin lines of aluminium being the handles on the 300 Series stile.

To comply with my request to conceal as much aluminium as possible, Alvista supplied me in 1993 with additional front mouldings to totally cover the bottom rail metal. The front moulding was 12mm wide so two front mouldings fully concealed the 24mm wide aluminium rail from the front view. Two examples of wardrobes where the metal rail was completely concealed by mouldings were fitted on 1<sup>st</sup> June 1993 . . . and on 10<sup>th</sup> January 1994 . . . Both of these examples of wardrobes also had the front metal of the top track completely concealed with MDF Cornices supplied by Alvista.

I was supplied by Alvista with MDF arches which I sold on 28<sup>th</sup> June 1993 . . . The arches had a recess at the back top edge in order to go over and completely conceal the aluminium top rail.”

36. I do not think Mr Glover’s affidavit helps Mr Tasker at all. In response to Mr Glover’s request that he conceal more aluminium, what Mr Tasker came up with was mouldings to cover the bottom rail. Without these mouldings, of course, even though the 400 Series concealed most of the aluminium in the style and even though arches and cornices may have been fitted to conceal the top rail and top track respectively, there would still have been a significant amount of aluminium showing in the bottom rail. There is nothing here to suggest Mr Tasker ever contemplated also concealing the remaining aluminium in the styles. Indeed, it almost suggests that if Mr Tasker did indeed mention “complete concealment” to Mr Colley, what he may have had in mind was what he could do to conceal the bottom rail, not any ideas for concealing the remaining visible aluminium in the styles. I say this because other evidence from Mr Tasker, namely two 1993 invoices for 400 Series doors, suggests that the 400 Series as sold at that time did not normally include mouldings to cover the bottom rail. Indeed, one of these invoices does not include arches to conceal the top rail either. Further, the solution he offered Mr Glover - putting two 12mm bits of moulding together to make up the required depth - hardly sounds like a standard production item.

37. Mr Tasker also tries to support his statement by an affidavit from his wife, who is also his business partner. She did not attend the meeting with Mr Colley but sat in the car outside. She says that when her husband returned to the car he recounted what had happened, saying:

“My partner told me he explained to Mr Colley how our competitors - Harpers and Britannia had copied our mistakes on our 400 Series, but to make sure that our flawed current 400 Series would not stop Mr Colley buying our 200 and 300 Series, my partner told Mr Colley of our planned improvements of the 400 Series to cover all aluminium with MDF.”

So far as what actually transpired in the meeting is concerned, this evidence is hearsay and of rather less probative value than more direct evidence. It is, of course, direct evidence of what Mr Tasker allegedly said to his wife immediately after the meeting, but it is also the sort of evidence whose truth is almost impossible to verify. I am prepared to accept that it lends some support to Mr Tasker’s case, but not much.

38. Mr Tasker filed affidavits from other people as well, but as these merely confirm when Mr Tasker was selling the 400 Series and what it looks like, they do not assist with the key question I have to resolve.

39. Mr Tasker also filed the witness statement by Mr Hallett to which I have already referred. This was never sworn in evidence and so I cannot take it into account when looking for evidence to support Mr Tasker’s case. Indeed, the fact that when Mr Hallett swore an affidavit for the present proceedings he chose not to include most of what is in the witness statement must raise a question mark over whether he still stands by the latter. Be that as it may, I merely observe in passing that if I could take the witness statement into account it would damage, rather than help, Mr Tasker’s case insofar as it suggests that (i) the idea of concealing all the aluminium in the styles came from Mr Hallett, not Mr Tasker, and (ii) Mr Tasker’s response to this idea was to use wood grain foil, which is going in a completely different direction from what is disclosed in the present patent.

40. There is one other comment I should make on Mr Tasker’s case. It may seem surprising, if Mr Tasker really thought of the idea of concealing all the aluminium in the styles, that he didn’t get on and do it. Mr Tasker’s justification for not doing so is that he had a large stock of the aluminium extrusions used in his 300 and 400 Series, and so he could not justify creating a new

extrusion along the lines of the one shown in the patent specification. I accept that this is plausible, although I suggest that as Mr Tasker continued to sell the 300 Series - which needed the existing extrusion - alongside the 400, it may have been more a question of not wanting to increase the range of stock he needed to hold. Either way, I do not make any adverse inference from the fact that Mr Tasker himself did not put a door on the market in which the aluminium was completely concealed.

41. To set against Mr Tasker's evidence, we have Mr Colley's own sworn evidence about the meeting. This is in proper form, but the relevant part is pretty short. All Mr Colley says is:

“I deny that Christopher Ronald Tasker disclosed to me the invention forming the basis of UK Patent 2304361 before I made the invention and filed the patent application which led to the grant of that patent.”

This is not a very helpful statement, because Mr Colley fails to tell us what he considers to be “the invention”. Is he merely saying that Mr Tasker did not disclose the detailed design shown in the patent specification, or is he saying that Mr Tasker did not disclose anything that contributed to the invention, not even the very idea of concealing all the aluminium?

42. Later in his sworn evidence Mr Colley says:

“The products he [ie Mr Tasker] disclosed did not include the invention which forms the basis of my patent. They did not include full concealment of the stiffening elements from the front of the door nor did they disclose door styles comprising two limbs at right angles to each other one concealing the front face of the stiffener and a second limb concealing an edge of the stiffener. He did not reveal to me that Mr Glover had asked him to make modifications to the Alvista 400 series as referred to in the Affidavit of Mr Glover”

This tends to suggest I am right to question what Mr Colley really means in his sworn evidence when he denies Mr Tasker disclosed “the invention” to him, because it implies he is using the

term in a fairly narrow sense. However, the position is confused by the counterstatement, in which Mr Colley was more specific. There he said:

“At no time before I filed my patent application had Mr Tasker suggested to me any proposal for a door for a storage unit in which the door styles concealed fully the stiffening elements from the front of the door.”

43. Of course the counterstatement is not evidence, even though it was signed by Mr Colley. However, since Mr Tasker has invited me to treat his own statement as evidence (albeit on the basis of a blanket sworn statement), I can hardly ignore completely what Mr Colley said in his counterstatement. The net result, though, is that I do not find Mr Colley’s evidence very conclusive or helpful on the question of what was actually said at his meeting with Mr Tasker.

44. At the end of the day, therefore, I am faced with one person’s word against another’s. Had the parties been legally represented, this is a classic situation in which cross examination might have been of great help in getting to the truth. In particular, it might have enabled me to form an opinion as to which was the more reliable witness. However, there was no cross examination, and in any case, cross examination by private litigants is most unlikely to have helped at all.

45. To make up for this deficiency, at the hearing Mr Tasker went to great lengths to show that he was an honest man and, conversely, that Mr Colley was not because he had made a number of statements knowing them to be untrue. He based his arguments on the papers on the patent application file and the papers filed in the present proceedings. He also tried to base his arguments on further documents that fall in neither of these categories, such as correspondence about the use of the word “patented”. Since the latter are neither sworn as evidence nor documents of public record, I can take no account of them and must therefore dismiss the submissions that were based on them.

46. I have considered Mr Tasker’s submissions on the relative honesty of himself and Mr



Colley carefully, but do not find them convincing. I will not go through all his submissions in detail, but I will mention one or two by way of example.

47. Mr Tasker submitted that Mr Colley had stated falsehoods during the pre-grant proceedings in that he had, through Mr Morcom QC who represented him at the pre-grant hearing, categorically denied seeing the 400 Series. I can find no such denial in the transcript. I believe Mr Tasker thinks there was such a denial only because he has misunderstood the two main arguments that Mr Morcom was pursuing. From the transcript it is clear that Mr Morcom was not arguing that the 400 Series had not been shown to Mr Colley. His first argument was essentially a question of burden of proof, viz that the allegation of prior use was not satisfactorily proven and that therefore the patent applicant, Mr Colley, could not be required to amend his patent application to avoid it. With this argument, it was not necessary for Mr Colley to either admit or deny seeing the 400 Series, and he did not do so. Legally, it was a perfectly legitimate argument to try and make, even though in the event it was one Mr Morcom lost. The second argument was that even if prior use of the 400 Series was proven, it did not anticipate the invention anyway. This too was a legitimate argument, although again it was one Mr Morcom lost. Thus I cannot draw from this any inference that Mr Colley was lying or being dishonest. I observe that some of Mr Tasker's other submissions about Mr Colley's alleged lack of honesty were also based on the fact that he had failed to deny matters that he was under no obligation to deny.

48. On the other side of the coin, to try and show that he himself was honest Mr Tasker went through the transcript of the pre-grant hearing to show that Mr Morcom had concluded Mr Tasker was "resourceful" and "full of arguments". Mr Tasker took this as an indication that Mr Morcom had concluded from the papers on file that Mr Tasker would take care to ensure his statements were accurate. I do not infer this from what Mr Morcom said. In any case, Mr Morcom had not met Mr Tasker (as he was not a party to those proceedings), so with the greatest of respect to Mr Morcom, his alleged assessment of Mr Tasker carries no weight whatsoever. Mr Tasker also tried to rely on a complimentary passage in Mr Hallett's witness statement, but as I have said before, I can take no account of this as it is unsworn.

49. In conclusion, Mr Tasker has not persuaded me that I should prefer his version of events

to Mr Colley's on the basis of their characters.

50. Thus at the end of the day, I find that the evidence as to whether Mr Tasker told Mr Colley about the idea of complete concealment is inconclusive. The burden of proof rests on Mr Tasker, who in this respect has to satisfy me that the evidence establishes, on the balance of probabilities, that he did indeed mention this to Mr Colley. Since he has not satisfied me of this, that means that even if contributing the very idea of complete concealment would have been sufficient to make him an inventor, he fails in his action.

### **Conclusion**

51. I have found that Mr Tasker was not an inventor of anything disclosed in Patent m GB 2304361 B. It follows that he is not the, or even a, true proprietor of the patent. His reference under section 37(1) and applications under section 13(1) and (3) fail.

### **Costs**

52. As Mr Tasker has lost his case, Mr Colley is entitled to costs. It is normal in Patent Office proceedings to make only a nominal award of costs, based on a published scale. However, in deciding the level of costs the comptroller can take account, *inter alia*, of the conduct of the parties.

53. In the present case, Mr Colley was not legally represented, although as I said at the outset, it would appear he has actually been getting some legal advice from the lawyers who are acting for him in related design right litigation. His own statement and evidence were pretty short, and he did not attend the hearing. To set against this, he has had to consider a large volume of correspondence from Mr Tasker, although even here there are two other factors to take into account. Firstly, some of the correspondence from Mr Tasker may well have been unnecessary if Mr Colley had been rather more explicit in his counterstatement about what he was admitting

and what he was denying. Secondly, much of this correspondence related jointly to both the present action and the design right litigation, and so I will have to be careful not to end up double counting this, once in each action.

54. Taking everything into account, I order Mr Tasker to pay Mr Colley £450 as a contribution towards his costs.

### **Appeal**

55. Under the relevant High Court Practice Direction, any appeal from this decision must be lodged within six weeks.

Dated this 19<sup>th</sup> day of October 1999

**P HAYWARD**

Divisional Director, acting for the comptroller

**THE PATENT OFFICE**