

PATENTS ACT 1977

IN THE MATTER OF an application
under section 72 by Camfil AB for
revocation of UK patent no. 2329854
in the name of Interfilta (UK) Ltd

ORDER

- 1 The patent in suit, GB2329854, was granted to Interfilta (UK) Ltd in 1999. It is concerned with a filter bag for the filtration of gases, eg to remove dust from air. On 30 June 2000 Camfil AB applied under section 72 of the Act for revocation of the patent on the grounds that the claimed invention or inventions were not new and/or lacked inventive step and thus did not comply with section 1(1)(a) and (b) of the Act. For present purposes I do not need to go into the details of the case Camfil put forward. Interfilta have opposed the application.
- 2 The evidence rounds progressed in the usual way save at two points. First, when Camfil filed their evidence in chief they also filed a supplementary statement of case. Interfilta took no objection to this, so I need say no more about it. Second, when they filed their evidence in reply on 7 June 2001, they also filed a further supplementary statement of case bringing in a completely new point - that there had been a novelty-destroying public demonstration of a filtration bag making machine on 30 January 1997, prior to the claimed priority date of the patent in suit. Again, Interfilta did not object to this supplementary statement but wanted the opportunity to file extra evidence to deal with it.
- 3 By this time the date of 25 July 2001 had already been set for the substantive hearing. After some exchanges of correspondence between the Office and both parties, Interfilta were given until 19 July to file their extra evidence, so the hearing date could be preserved. In the event other factors intervened. First, on 20 June Camfil requested disclosure in respect of an experiment that Interfilta had described in their evidence. I observe in passing that this was 4 months after Camfil had received that evidence, and at no stage have they even attempted to explain why they left this request for disclosure so late. Second, on the same day they requested cross examination of one of the defendant's witnesses, Mr Holt. They had foreshadowed the possibility that they might make this request in April, but the request was not actually made until 20 June, and by this time that witness was said to be unavailable. The net result of all this is that the substantive hearing date was put back to 4 October.
- 4 Interfilta's extra evidence eventually came in on 20 September. It consisted of a second statutory declaration by Mr Holt and a witness statement from a completely new witness, Mr Ridgeway. Amongst other things, Mr Holt's evidence included more information about the Interfilta experiment. Camfil, however, pressed their request for disclosure in respect of this experiment and also objected to Interfilta's extra evidence on the grounds of lateness (to which they later added an objection to its contents too).

Once again another factor intervened: it transpired that Mr Holt had only just come out of hospital after surgery and was unlikely to be fit enough to attend the hearing on 4 October for cross examination. Accordingly, the holding of the substantive hearing on that date was abandoned, but instead there was a preliminary hearing before me to resolve Camfil's request for disclosure and objections to the extra evidence. Dr Heather Lawrence, instructed by Boulton Wade Tennant, appeared for Camfil and Mr Keith Leaman, for Lawrence Shaw and Associates, appeared for Interfilta.

- 5 At this stage I need to say just a little more about the experiments and about Interfilta's extra evidence. Interfilta's original experiment had been a fairly simple test which allegedly demonstrated that filters made in accordance with the invention exhibited superior performance. Camfil had responded in their evidence in reply with some more extensive experiments of their own to challenge this, and part of Interfilta's extra evidence related to Camfil's experiments. Other parts were concerned with showing that the company who published one of the prior art documents relied on by Camfil did not at that time have the expertise to successfully make what was depicted in the document and with issues that really related to the question of who was entitled to the invention. I should say in passing that entitlement to this patent is the subject of a separate dispute that is currently stayed.
- 6 Having read the papers in advance, I was troubled by the fact that the whole preliminary hearing seemed to be about evidence which had no apparent bearing on the question of whether the invention or inventions in the patent in suit were novel and non-obvious, and I made this clear to the parties at the outset of the hearing. I do not need to go through all the exchanges that took place at the hearing. It is sufficient to record that by the end of the hearing both sides accepted that most of the evidence in dispute was indeed irrelevant and that the best thing to do with it was to get rid of it. I am grateful to both sides for adopting this sensible and pragmatic approach. It not only solves the issues immediately under consideration, but should shorten the substantive hearing. Indeed, because getting rid of this evidence may well mean Mr Holt does not need to be cross examined, it also likely to overcome the difficulties Mr Holt's state of health may have created in setting a date for the substantive hearing.
- 7 At the hearing the parties agreed in outline how the evidence in question ought to be dealt with, but asked me to implement that outline agreement by means of a formal order, and that is what I will now do.
- 8 Accordingly I order that:
 1. Details of both Camfil's and Interfilta's experiments be struck out of the evidence. The two sides were optimistic that they would be able to agree between them which parts of the evidence from both sides needed to go in order to achieve this, and I therefore give them three weeks from yesterday to do this. I do not mind whether they supply a schedule of paragraphs and exhibits that may not be relied on at the substantive hearing or whether they supply redacted versions of the evidence, so long as the position is clear to everyone. In the hopefully-unlikely event that they cannot agree, they should within the same time limit write to the Office explaining what they cannot agree and why, and I will then consider how to proceed.

2. The second statutory declaration of Mr Holt and the witness statement of Mr Ridgeway be struck out of the evidence. However, Interfilta are at liberty to file a replacement, shorter declaration and/or statement in their stead directed solely at the matter raised in the further supplementary statement of case, and I give them three weeks from yesterday to do this. I am aware that they may have problems contacting Mr Holt and/or Mr Ridgeway, and in this event, so long as I am satisfied they have been making genuine efforts to meet the three week deadline I shall be prepared to look sympathetically on any reasonable request to extend it.
3. Camfil will have the right to raise objections to any new evidence from Interfilta, but I am grateful to Dr Lawrence for indicating that they were unlikely to do so if the evidence is limited in the expected manner. Camfil will not have an automatic right to file evidence in reply - they will need to seek leave should they wish to do this.
4. Within two weeks of receiving the anticipated new evidence from Interfilta (or within two weeks of the three week deadline if Interfilta elect not to file new evidence), Camfil should confirm whether or not they still wish to cross examine any of Interfilta's witnesses. Interfilta should likewise confirm within the same period whether they wish to cross examine any of Camfil's witnesses. I will then give further directions regarding the timing of the substantive hearing.

Costs

- 9 Dr Lawrence argued that Camfil were entitled to costs in respect of the preliminary hearing as they had won on both their points. That is not my view of the position. First, Camfil did not win on disclosure; rather, the request for disclosure became otiose. Second, I did not dismiss Interfilta's extra evidence on the grounds of lateness. Whilst I criticised Interfilta's apparent inaction up to 19 July, I accepted that they had acted reasonably thereafter and that the overall delay was no worse than some of the delays Camfil have themselves introduced into these proceedings. Indeed, I think Camfil's own conduct has contributed to the problems that had to be resolved at the hearing, because they responded to the simple but, as is now agreed, irrelevant experiment of Interfilta by conducting their own rather more extensive experiments, and much - though admittedly not all - of the extra evidence was dealing with Camfil's experiments. It must also be remembered that it was Camfil, not Interfilta, that triggered the extra evidence round by introducing a new ground at a very late stage. Further, they pursued their request for disclosure in an unhelpful way, making it very late and maintaining a wide request without paying any regard to the information Interfilta had already supplied and Interfilta's assertions that some of the material they requested simply did not exist. They might have merited more sympathy had they requested disclosure earlier and adjusted their demands in the light of the information coming from Interfilta.
- 10 In my view, the end result is a win for neither side. Both sides have had parts of their evidence struck out, and whilst Interfilta's extra evidence has not been admitted, they have been given leave to file new evidence to replace it in part. Taking all the

circumstances into account, I have decided that each party should bear its own costs in respect of the preliminary hearing.

Appeal

- 11 Although the point is probably of academic significance in view of the parties' mutual agreement to this order, as this order relates to matters of procedure, under the relevant High Court Practice Direction the appeal period is 14 days from today.

Dated this 5th day of October 2001

P HAYWARD

Divisional Director acting for the Comptroller

THE PATENT OFFICE