

## **PATENTS ACT 1977**

IN THE MATTER OF an application under Section 72(1) by Flomat Bagfilla International Limited for the revocation of Patent No. GB2302932 in the name of Spiroflow Limited and an application under Section 27 by Spiroflow Limited to amend Patent No. GB2302932

### **DECISION**

#### **Background**

1. The patentees, Spiroflow Limited (“Spiroflow”) applied on 2 October 2001 to amend their patent GB2302932 under Section 27 of the Patents Act 1977 (“the Act”) and this application was opposed by Flomat Bagfilla International Limited (“Flomat”) on 14 January 2002. On 14 February 2002 Flomat applied for revocation of Spiroflow’s patent under Section 72 of the Act. On 8 March 2002, the Office wrote to both parties proposing to stay the Section 27 proceedings in compliance with Section 27(2) and in the absence of any comments from the parties, the Section 27 action was stayed, the parties being notified by letters dated 12 June 2002. The usual rounds of evidence proceeded in the Section 72 action, but following discussions between the parties, Flomat wrote to the Office on 10 February 2003 withdrawing their opposition to the amendment under Section 27 and their application for revocation under Section 72(1).
2. Thus the situation is now that the request to amend under Section 27 stands unopposed, and the revocation action is terminated. With regard to the Section 27 action I have to satisfy myself that the proposed amendments are allowable in the sense that they remove the defect they were intended to cure and do not add matter contrary to Section 76. In the case of the Section 72 action, I need to consider whether the withdrawal should be accepted or whether any further action needs to be taken in the public interest.

#### **Section 27 request**

3. Given that the Section 27 action was stayed pending the resolution of the Section 72 action, it would appear that I should consider what action if any is necessary under Section 72 before considering the proposed amendment under Section 27. However, since the amendment proposed under Section 27 may well affect any conclusion I might reach under Section 72, it seems sensible to me to deal with that first.

4. The invention relates to an apparatus for constricting the neck of a bag which is being discharged by inversion. Two opposed members are moved relatively towards or away from each other around the neck of the bag to regulate the rate of discharge. In the only embodiment described, the members are in the form of bars each shaped as half a hexagon, so that in their 'open' position they define an aperture in the form of a regular hexagon. One of the members comprises two closely spaced bars and as the bar members move towards each other the single bar of the other member slides between the two bars. The aperture becomes lozenge-shaped as it diminishes in size so as to constrict the neck of a bag in a direction perpendicular to, as well as in, the direction of relative movement of the bar members. In the claims as granted these bar members are referred to as "control members" or simply "members"
5. The proposed amendment is that the word "member(s)" be replaced by "bar(s)" throughout the claims. The reason for the amendment is to distinguish the invention from the disclosures in GB2250016. In that document, the constricting elements are in the form of flexible wires. I am satisfied that the proposed amendments distinguish the claims from the prior disclosure, and also that the invention of claim 1 as amended is not obvious having regard to what is disclosed in GB2250016. Thus the request to amend under Section 27 is allowed.

### **Section 72 action**

6. I will now consider the position of the patent as amended with regard to the matters raised by Spiroflo under Section 72. The first ground raised by Spiroflo is that the claims are invalid for insufficiency, in that the reference to the neck of the bag being moved in a direction transverse to the direction of relative movement of the opposed members is wholly unclear. I disagree with this contention. I am satisfied that a skilled person reading the claims and description would have no doubt as to the meaning of this passage. It indicates that as the neck of the bag is closed, the neck is constricted both in the direction of relative movement of the closure members and in a direction transverse to this direction.
7. Spiroflo also opposed the patent on the grounds that claims 1-7, 13, 15, 16 and 18, as unamended, lacked novelty having regard to GB2250016 and the remaining claims lacked an inventive step having regard to the above document and US3550353, US3699745, and Russian Patent 546518. I am satisfied that the amendments to the claims remove these grounds.
8. Finally, Spiroflo argue that all the claims as amended lack an inventive step with regard to the documents listed in the previous paragraph. Having considered the disclosures in these documents I am satisfied that the amended claims are inventive over the cited documents, I determine that the case for revocation has not been made out, and so no action in the public interest is necessary under Section 72.

## **Decision and Order**

9. To summarise, I have found that the request to amend under Section 27 is allowable. Accordingly, I order that the requested amendment under Section 27 be effected. I have found that the case for revocation has not been made out, and so no action in the public interest is necessary under Section 72. Finally, as both parties have agreed not to seek costs, I make no order for costs.

Dated this 30th day of September 2003

**GM ROGERS**

Deputy Director, acting for the Comptroller

**THE PATENT OFFICE**