



BL O/O56/05

4 March 2005

PATENTS ACT 1977

BETWEEN

Eugenie Sergeyevich Aleshin

Claimant

And

Sony United Kingdom Ltd.

Defendant

PROCEEDINGS

Determination of entitlement under section 37 (1) & Revocation of a patent under section 72 of the Patents Act 1977 in respect of patent number GB 2330747 B

P M Back

HEARING OFFICER

DECISION

Introduction

- 1 This action concerns GB patent number GB 2330747 B (“the patent”) granted on the 16th October 2002 to Sony UK Ltd. The claimant, Mr. Aleshin, alleges that the invention in the patent was stolen from him by Sony UK and that the patent should accordingly be revoked and/or assigned to him. After the usual pleadings and evidence rounds, Sony UK applied to the Hearing Officer, in a letter dated 24th December, to have the proceedings struck out on the grounds that “*it is plain that Mr Aleshin’s case has no reasonable prospect of success and it is also plain that the matter is an abuse of process*” and for the decision on whether this should occur to be taken on the basis of the papers already filed. Mr. Aleshin agreed to the matter being decided on the papers already filed in an E-mail dated 14th January 2005.

Background

- 2 Patent GB 2330747 B was filed as GB 9922526.3 on the 24th October 1997, published on the 28th April 1999 and, as stated above, granted, after amendment, on the 16th October 2002.
- 3 Mr. Aleshin has produced a document entitled “Method of Sound Channel Upgrading” which was sworn in front of a notary in Khabarovsk, Eastern Russia on the 16th January 1997. This document is what Mr. Aleshin alleges discloses the invention he claims was stolen from him by Sony UK and which formed the basis of a contract between him and a Dr. Gorodissky - then of the Soyuzpatent Agency - for the said agency to produce Russian and American patent applications. This contract was signed on the 18th February 1997.
- 4 Mr. Aleshin alleges that Dr. Gorodissky (now deceased) stopped the process of filing his patent applications and fraudulently passed his “invention” as set out in the notarized document to Sony UK whom Dr. Gorodissky was later to represent in Russia for intellectual property matters.
- 5 Mr. Aleshin also alleges that Sony UK had appropriated his invention by fraud and bribery of his Russian patent attorney, Dr. Gorodissky, that Sony UK tried, through their Russian contacts to have him placed in a mental asylum, tried to harm his wife and children and persuaded his UK address for service to no longer allow him to use them. He also claims he was “*pressed by some Russian criminal structures and all communications in my home were stopped to function, namely phone, fax and internet*”.
- 6 It has to be said that Mr. Aleshin’s correspondence with the Patent Office has been voluminous to say the least and has included a number of further allegations and statements which do not appear to me to be of much relevance to these proceedings. However these allegations do appear to have some bearing on Sony UK’s allegation of abuse of process so I will summarize them here.
- 7 In a letter dated April 5, 2004, Mr. Aleshin wrote to Sony UK’s agents stating that “*I would offer you and Sony companies a last possibility to settle our relationships by peace way. For that you should make wire transfer a sum, at least USD\$250,000 to my bank account in Russia. Further I would stop all my actions against you and Sony companies that use my invention, for a while.*” In addition, on a number of occasions Mr. Aleshin has alleged that the embodiment of the invention in the patent is a danger to mankind. In a letter to the comptroller dated November 13, 2004, Mr. Aleshin says:

“I accuse group of Sony companies in that they have created an exceptional dangerous psychological weapon granted the patent GB 2330747 directed against the mankind.

The problem is that the Sony companies have started to produce the Super Audio CDs on which were recorded music and also special signals at frequencies of 24kHz to 100kHz that a person cannot hear but their effect on the human brain and home animals is incredibly powerful.

Now this weapon introduces into every our home and nobody would know why a quiet and kind animal attacked its owner or why the owner of that animal died or became ill being in good health earlier. This weapon effects directly on the human brain like narcotic and it is impossible to prevent events after that, Besides, many millions of the SACD consumers will have to pay their deaths themselves.”

- 8 Sony UK denies all these allegations and rejected Mr Aleshin’s offer of a financial settlement.
- 9 As set out in the Patent Hearings Manual at paragraphs 2.69 to 2.72, in line with the principles set out in the Civil Procedure Rules, the summary procedure of striking out may be used to strike out something which discloses no reasonable grounds for bringing or defending the claim. It may also be used where there has been an abuse of process. Thus, the comptroller has the power to strike out a case and it is only right and proper that I should consider this motion to strike out. In doing so I will need to decide whether the Claimant has no reasonable chance of success and/or whether there has been an abuse of process. It seems to me that if I find either of these to be established I may order that the proceedings be struck out. I will start by considering whether or not the Claimant has any reasonable chance of success.

The Facts

- 10 In recording and reproduction of sounds such as music, it is common to only process sounds in a frequency range of from 20 Hertz (Hz) to 20,000 Hertz (20 kHz). This is taken to be the common audible hearing range for most people. Although, as we shall see later, it is known to extend this range down to 0 Hz at one end and above 20kHz at the other. Both Sony UK in GB 2330747 B and Mr. Aleshin in his notarized document are concerned with sound processing and reproduction.
- 11 The notarized document is two pages (four sides) of text. It is labelled “PATENT APPLICATION” and has sections titled “Abstract”, “Description” & “Claim” and was presumably what Mr. Aleshin expected the Soyuzpatent Agency to use to file patent applications. As already stated, the title of this document is “Method of sound channel upgrading”. This document mentions extending the frequencies down from 20 Hz to 0 Hz as well as from 20 Hertz to 20 kHz. It mentions the use of amplifiers, resistive dividers, negative feedback, filters and a comparator. Whilst it is referred to as being analogue, no circuits are shown and the exact system to be used is not clearly described nor shown.
- 12 Certainly, the English translation of this document is confusing and unclear. It refers to a “filter of high frequencies with a cut frequency of 0.05 Hz” (side 3, 4th paragraph) and also an “additional filter of high frequencies with a cut frequency, e.g. of 20 Hz to an input of a comparator”. Neither of these appears to be high frequencies and what type of “comparator” is meant is also unclear. A “comparator” is a device which compares two signals relative to a reference signal and can therefore be an amplifier. It would not be expected that Mr. Aleshin wanted to restrict the sound reproduction to less than 20 Hz which is the normally accepted lower end of what is consciously hearable. I think that all we can get out of this document is that Mr. Aleshin had some

analogue circuit using amplifiers with negative feedback to process an analogue input signal with the lower frequency range extended down to 0 Hz.

13 Besides the conventional frequency range, Sony UK's patent is concerned with extending this range above 24 kHz & up to 100 kHz. It was also concerned with digital systems and sampling at rates higher than conventional which is the Nyquist rate. Nyquist states that the sampling rate should be greater than twice the highest frequency of the input signal being converted from analogue to digital, to provide a true reproduction of the sound. The Nyquist rate is usually taken as being twice the highest frequency. Sony UK's sample rates are from 198 kHz to 2.8 MHz. Sony UK's patent is silent about any pre-treatment of the input signal.

14 Sony UK's granted claim 1, the only independent claim, reads as follows:

“A digital audio signal processing system comprising: a processor which modifies digital audio signal components corresponding not only to the conventional audio frequency band but also to a range of frequencies from about the upper limit of the conventional audio band to greater than 24 kHz; and an analogue to digital converter which samples an analogue signal at a rate greater than Nyquist and digitizes the samples to produce the said digital audio signal components corresponding not only to the conventional audio band but also the said range of frequencies.”

15 Claim 2 of Sony UK's application as filed referred to the **conventional audio** (emphasis added) band as being from about DC (i.e. 0 Hz) to about 20 kHz. This is the one thing that Sony UK accepts that their patent application and Mr. Aleshin's notarized document have in common. This subject matter does not form part of the granted claims and the wording used by Sony in the application implies that they saw nothing novel in that frequency range.

16 It is clear from this analysis that while Mr. Aleshin seems to be concerned with analogue signal input shaping of frequencies of 0 to 20 kHz, Sony UK are concerned with digital sampling of frequencies which may, in a preferred embodiment which is not claimed, extend down to 0 Hz but must extend above the usual upper limit of 20 kHz, which Mr. Aleshin's notarized document is silent about.

The Claimants's case

17 As already stated Mr. Aleshin alleges that his then patent agent, Dr Gorodisky stopped processing his patent application and passed the substance of his invention to Sony UK.

18 Mr. Aleshin provides a deposition by a Professor Rozhov who states that on the 18th February 1997, he met with Dr Gorodisky of the Soyuzpatent Agency and showed him Mr. Aleshin's notarized patent application and introduced Mr. Aleshin to Dr Gorodisky.

19 Mr. Aleshin also provides a copy of an agreement with the Soyuzpatent Agency, agreement no 1303 d/d 18th February 1997, to produce Russian and foreign patents which refers to a Russian patent application.

20 The only other evidence that Mr. Aleshin produces is a copy of a letter from Dr Gorodissky, now trading as Gorodissky & Partners d/d 14th December 1999 (referring to a letter from Mr. Aleshin d/d 28th November 1999 asking for their help in patenting his invention and preparing a lawsuit against Sony), in which Dr Gorodissky declined to assist Mr. Aleshin further in view of his company representing Sony and also on the grounds that Mr. Aleshin's invention was a scientific discovery and therefore not patentable. I can find no evidence that Dr Gorodissky or anyone else passed Mr Aleshin's notarized document or anything else obtained from Mr Aleshin to Sony UK.

Analysis and Conclusion

21 The only evidence of the nature of Mr Aleshin's invention which he alleges was stolen by Sony UK is the notarized document referred to above. The only thing this notarized document has in common with the patent would appear to be its reference to "extending the frequencies down from 20 Hz to 0 Hz". This range was claimed as a preferred embodiment in claim 2 of the patent application as filed but is not claimed in the granted patent where it is referred to as "*The conventional audio band is the range of frequencies from DC (ie. 0 Hz) or from about 20Hz to 20kHz*". Thus in their patent Sony UK presents this range as entirely conventional.

22 This view is supported by Sony UK's evidence filed with their counter-statement which provides a number of prior patents and an article dated prior to January 1997 showing that it was known to extend the audio frequency range from 20 Hz down to 0 Hz.

23 Of these, WO 92/10918 A1 published 25th June 1992, is concerned with analogue signals, refers to extending the frequency range down to 0 Hz at one end and up to 2 mHz at the other end (See eg lines 31-33, page 14 of this patent application). This document also shows in Fig 3 left and right stereo music channels with a string of operational amplifiers (eg 20, 36, 32 and 48) in which direct negative feedback is provided.

24 Thus there is evidence that the only aspect of Mr. Aleshin's notarized document, as far as it can be understood, which has anything in common with the patent was common general knowledge before he even communicated it to the Russian Notary. Certainly, all the elements of his notarized document seem to be present in this prior WO patent. Accordingly I can see no evidence to establish that the patent was derived in any way from Mr Aleshin's "invention".

25 Paragraphs 17 to 20 above set out the only evidence of any link between Mr. Aleshin, Dr. Gorodissky and Sony. There is no evidence that Dr. Gorodissky or anyone else passed Mr. Aleshin's document to Sony UK and indeed, Sony UK's patent seems to have virtually nothing in common with Mr. Aleshin's document.

26 Furthermore, in the second of two witness statements that Mr. Aleshin filed on the 13th October 2002, he writes in paragraph 3 thereof “*After reviewing a confidential information about the essence of my invention Mr Gorodissky declared that he did not see yet the essence of my invention in the description presented by me and having breached the Contract by unilateral action Mr Gorodissky stopped processing my patent application to be granted.*” I take this to mean that Dr. Gorodissky’s view was that there was insufficient information in the notarized document to form the basis of a successful patent application.

27 Accordingly, from every view point, Mr. Aleshin’s statement of case has no reasonable chance of success, and accordingly Sony UK would not appear to have any case to answer. This in itself is sufficient to justify striking out. However, for completeness I will briefly consider Sony UK’s submission that the claim is an abuse of process.

28 These proceedings are concerned with the validity of and entitlement to the patent based on Mr Aleshin’s allegation that the patent is derived from his invention as described in the notarized document referred to above. Accordingly, Mr Aleshin’s pleadings and evidence should be restricted to establishing that case. In fact only a relative small proportion of Mr Aleshin’s evidence and the considerable volume of correspondence have been directed to this issue. Rather, much of it concerns serious and unsubstantiated allegations against Sony and others. He accuses Sony of fraud and bribery. He alleges that Sony UK tried, through their Russian contacts to have him placed in a mental asylum, tried to harm his wife and children and persuaded his UK address for service to no longer allow him to use them. He claims that he was “*pressed by some Russian criminal structures and all communications in my home were stopped to function, namely phone, fax and internet*”, and he has alleged that the embodiment of the invention in the patent is a danger to mankind. He provides very little evidence to support these allegations which in any event are not relevant to the points at issue.

29 However, to find that this amounts to an abuse of process I think I would have to be satisfied that Mr Aleshin has deliberately launched these proceedings as a vehicle for the allegations set out above. I do not think that is the case. I am mindful of the fact that Mr Aleshin is unrepresented and that he clearly feels very passionate about this case. I think it is that rather than any deliberate abuse of process which has led to these allegations. However, as I have indicated above I do not need to make a finding on this issue having already found that Mr Aleshin’s case has no reasonable prospect of success. Accordingly I order that Mr Aleshin’s claim be struck out.

Costs

30 The Defendants have asked for costs. I hereby award them costs on the usual scale of against the Claimant, Mr. Aleshin, and award them a contribution of £1,000 to their costs. This sum should be paid within 7 days after the expiry of the period for appeal against this decision, except that if an appeal is lodged, payment is suspended pending the outcome of the appeal.

Appeal

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

Peter Back
Divisional Director acting for the Comptroller