

13th April 2007

PATENTS ACT 1977

BETWEEN

Aqueous Filter Solutions Ltd

Claimant

and

James Peter Hosford

Defendant

PROCEEDINGS

Application under section 72 for revocation of patent number GB 2293333

HEARING OFFICER

D J Barford

DECISION

Introduction

- 1 Patent application number GB9518497.4 was filed on 11 September 1995 claiming a priority date of 9 September 1994. The application was made in the name of James Peter Hosford, who was named as sole inventor. The application was published on 27 March 1996 and granted on 22 January 1998 as GB 2293333 (“the patent”) under the title “Self cleaning filter or screening system for a pump”.
- 2 An application for revocation was filed by the claimant, Aqueous Filter Solutions Limited (“AFS”), on 7 July 2005. The claimant has applied under section 72(1)(a), on the grounds that the invention is not patentable since it does not involve an inventive step; and under 72(1)(c), on the grounds that the specification does not disclose the invention of certain claims clearly enough and completely enough for it to be performed by a person skilled in the art.
- 3 In response the defendant, Mr Hosford, filed a counterstatement on 8 November 2005 disputing the claim. Evidence was filed on behalf of the claimant in the form of a witness statement dated 2 March 2006 by Keith James Loven of patent attorneys Loven & Co and a witness statement dated 1 July 2006 by Lee Moore, managing director of AFS; and on behalf of the defendant in the form of a witness

statement dated 26 June 2006 by Mr Hosford.

- 4 The matter came before me at a hearing on 7 December 2006, at which AFS was represented by Mr Nicholas Saunders, instructed by patent attorneys Loven & Co, and Mr Hosford was represented by Mr Mark Vanhegan, instructed by patent attorneys Urquhart-Dykes & Lord LLP.

The law

- 5 This claim was brought under section 72, the relevant parts of which read:

72.-(1) Subject to the following provisions of this Act, the court or the comptroller may by order revoke a patent for an invention on the application of any person (including the proprietor of the patent) on (but only on) any of the following grounds, that is to say –

(a) the invention is not a patentable invention;

(b) ..

(c) the specification of the patent does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art;

(d) ..

(e) ..

- 6 Also relevant are sections 1(1)(b), 2(2) and 2(3) and 3 which read:

1.-(1) A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say –

(a) ...

(b) it involves an inventive step;

...

and references in this Act to a patentable invention shall be construed accordingly.

2.-(1) ..

(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.

(3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied, that is to say –

(a) that matter was contained in the application for that other patent both as filed and as published; and

(b) the priority date of that matter is earlier than that of the invention.

3. An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).

The patent

- 7 The patent relates to a filter for a pump – for instance for pumping mixtures of liquid and solid residues in dairy farming – and is concerned with the problem of preventing the filter mesh from becoming clogged. To that end, as described, the pressure side of the pump is connected to a backwashing nozzle assembly to rotate the nozzle assembly and spray the filter mesh to keep it clear. The patent has 17 claims of which claim 1 is the only independent claim. The text of the claims is set out below at appropriate points in this decision.

The claimant's case

- 8 In its statement the claimant argues that claims 1 to 17 do not involve an inventive step having regard to the following documents:

US 5192429 (Bader) published 9 March 1993 (hereafter “D1”)

Ross, David S, ‘Water Treatment for Microirrigation, Filtration and Chemical Treatment’, Biological Resources Engineering FACTS 171, published by the Department of Biological Resources Engineering, College Park, Maryland USA in September 1989 and revised April 1990 (“D2”)

US 3933114 (Horn) published 20 January 1976 (“D3”)

GB 832418 (Bahnon) published 13 May 1960 (“D4”)

US 3214102 (Meyer) published 20 March 1960 (“D5”)

US 4892651 (Hill) published 9 January 1990 (“D6”)

- 9 The claimant also argues that, in respect of claims 12 and 13, the specification does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art.
- 10 Three further documents are referred to in the witness statement of Mr Moore filed as evidence in reply, namely:

US 4210530 (Shiban) published 1 July 1980 (“LM1”)

US 4822486 (Wilkins and Stoneburner) published 18 April 1989 (“LM2”)

US 5215656 (Stoneburner) published 1 June 1993 (“LM3”)

Preliminary issues

- 11 Two outstanding preliminary issues were settled at the hearing.
- 12 The defendant had challenged the publication date of document D2. However at the hearing Mr Vanhegan accepted that D2 had been published before the

priority date of the patent. It therefore forms part of the state of the art by virtue of section 2(2) and so falls within the ambit of section 3. There is no dispute over the publication of the other documents, all of which were published before the priority date of the patent.

- 13 The defendant had also requested that a passage in Mr Moore's witness statement, in which documents LM1, LM2 and LM3 are introduced, should be struck out on the grounds that it did not constitute evidence in reply, but rather introduces points not pleaded in the original statement. Mr Saunders pointed out that LM2 is referred to in the patent itself and argued that it is relevant to the determination of inventive concept.
- 14 In the event, both sides accepted that paragraph 2 of Mr Moore's witness statement be struck out but LM2 remain in. Mr Vanhegan maintained that the belated introduction of arguments based on LM2 should be taken into account when considering any costs award; Mr Saunders argues that there is very little prejudice here to the defendant as he has known since July 2006 (the date of Mr Moore's witness statement) that the claimant was relying on LM2. For completeness I note that Mr Vanhegan himself referred to LM3 when cross-examining Mr Moore, though in the event I do not think this is of significance.

Cross-examination of witnesses

- 15 Messrs Loven, Moore and Hosford were cross-examined on their evidence. I found all three witnesses to be clear and straightforward in their responses, answering counsel's questions to the full, but without pretending knowledge where they didn't possess it. However, I am not sure that a great deal material to the matters at issue in these proceedings emerged from that cross-examination, other than that none of the three witnesses regards himself as an expert in the area of technology in question. That is a matter which is relevant to what constitutes common general knowledge and to which I shall return below. Something that did emerge from the cross-examination of Mr Loven was a clarification as to what document D2 actually teaches, and this will also be picked up below.

Inventive step

- 16 It is common ground that the approach to be adopted in assessing inventive step is that set out in the well known case of *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd* [1985] RPC 59, in which the Court of Appeal formulated a four-step approach, namely:
- (i) identify the inventive concept embodied in the patent;
 - (ii) impute to a normally skilled but unimaginative addressee what was common general knowledge in the art at the priority date;
 - (iii) identify the differences if any between the matter cited and the alleged invention;

(iv) decide whether those differences, viewed without any knowledge of the alleged invention, constituted steps which would have been obvious to the skilled man or whether they required any degree of invention.

Step (i) – the inventive concept

- 17 To determine the inventive concept I need to construe the claims in accordance with the principles set out by Hoffmann LJ in *Kirin-Amgen and others v Hoescht Marion Roussel Limited and others* [2005] RPC 9, namely to adopt a purposive construction, and to interpret the claims in the light of the description and drawings.
- 18 Claim 1 reads:
- A self-cleaning filter or screening system for a pump comprising:-
- a) a screen or filter;
 - b) backwashing means for said screen or filter;
 - c) means for effecting relative movement between said backwashing means and said screen or filter;
 - d) said means for effecting relative movement between said screen or filter and said backwashing means comprising means for moving said backwashing means with respect to said screen or filter, the latter being stationary; and
 - e) said means for effecting relative movement being adapted to be connected to the pressure side of a pump, and an outlet from said filter or screen being adapted to be connected to the suction side of such pump; and
 - f) said backwashing means and said means for effecting relative movement comprising a jet mounted to rotate with respect to said filter or screen at a fixed axial location on its axis of rotation; and
 - g) said jet being disposed so that it provides said means for effecting relative movement by virtue of the rotary action of said jet; and
 - h) the outermost portion of said screen or filter having a transverse dimension measured transversely of the axis of rotation of said jet, which is greater than the width dimension thereof which is backwashed.
- 19 There is no dispute as to the meaning of the words and expressions used in the claim. There is a dispute however as to the relevance of certain other factors.
- 20 Mr Saunders pointed out that the patent at page 7 line 7 refers to US 4822486 (Wilkins and Stoneburner) – document LM2 - and states that it relates to “a rotary self-cleaning strainer in which fixed backwashing jets fed from the pressure side of the pump not only backwash the strainer itself but also cause it to rotate”. He argued that, although in contrast to claim 1, in LM2 the jets are fixed and the screen rotates, the feature set out at (e) in claim 1 – namely connection of the jets to the pressure side of the pump - is known and cannot therefore constitute the inventive concept.
- 21 Mr Saunders also submitted that there can be no inventive concept in feature (h), which he submitted was added merely to bypass a piece of prior art. Mr Vanhegan responded that, on the contrary, the use of a screen having the relative dimensions set out at paragraph (h) has the advantage that a relatively small area of screen needs to be cleaned and this reduces the amount of fluid required. I note however that this advantage is not described in the patent; and it follows that it cannot be taken into account. That said, the feature itself is in the

claim, materially restricts its scope and therefore has to be taken at face value.

- 22 Counsel also debated the relevance of claim 1 as filed relative to claim 1 at grant. I am with Mr Vanhegan that it is not right to construe the meaning of a claim by reference to an earlier draft of it. However I agree with Mr Saunders that the fact that claim 1 as filed was heavily anticipated in the section 17 search is indicative of its lacking inventive merit. That said, claim 1 as filed is characterised by no more than the inclusion of a stationary filter and moving backwashing means, which in any case appears to be acknowledged as known on page 7 of the patent itself.
- 23 Mr Vanhegan identified the invention as being “that which is claimed” and in this case described it as a “cohesive totality”. Mr Saunders too concluded that, although in his submission there is very little in the claim that is inventive, the inventive concept is “presumably the combination of all those features together”.
- 24 Accordingly, I take the inventive concept of claim 1 to be the association of features (a)-(h), a number of which features were known individually at the priority date of the claim.

Step (ii) – the skilled addressee and common general knowledge

- 25 Counsel addressed me at some length on this matter. Mr Vanhegan laid particular emphasis on the fact that the claimant had provided no expert evidence and was relying on document D2 as being indicative of common general knowledge. He strongly objected to D2’s being mosaiced with any other documents on that basis.
- 26 On the general issue of expert evidence Mr Vanhegan drew attention to the judgement of the Court of Appeal in *Molnlycke AB v Proctor & Gamble Ltd* [1994] RPC 49 where Sir Donald Nicholls V.-C is quoted on page 113 as follows:

‘The Act requires the court to make a finding of fact as to what was, at the priority date, included in the state of the art, and then to find again as a fact whether, having regard to that state of the art, the alleged invention would be obvious to a person skilled in the art. In applying the statutory criterion and making these findings the court will almost invariably require the assistance of expert evidence. The primary evidence will be that of properly qualified expert witnesses who will say whether or not in their opinions the relevant step would have been obvious to a skilled man having regard to the state of the art. All other evidence is secondary to that primary evidence’

- 27 Mr Saunders countered this, arguing that it is not essential to provide expert witnesses in proceedings before the comptroller, given that one of the main reasons for the Office’s acting as a tribunal is that it provides a cheaper, more accessible forum than the court. He submitted that I should adopt a pragmatic approach to assessing the evidence and determining the knowledge of the notional skilled addressee, as has commonly been the case in proceedings before the comptroller.

- 28 I agree with Mr Saunders. It is common for the comptroller to assess inventive step issues without the benefit of expert evidence, and I have been given no reason why this case should be an exception. That said however, it is essential to approach with care the questions of who the skilled addressee is and what can properly be regarded as common general knowledge; and – to pick up what I take to be Mr Vanhegan’s prime concern – to approach any mosaicing of documents accordingly.
- 29 Mr Saunders referred to document D2 as being the best evidence before me as to what was common general knowledge at the priority date. As noted above, at the hearing Mr Vanhegan accepted that D2 had been published before the priority date of the patent. D2 is a five page document which is described by its author, Dr David Ross, as a factsheet. It describes and illustrates six types of filter, namely screen filters, disc filters, media (sand) filters, centrifugal separators, suction line filters and gravity filters. Only those parts of D2 which relate to screen filters are relevant to these proceedings, and in this context the claimant has drawn particular attention to a drawing in the factsheet entitled “Suction line screen filter with self-cleaning spray”.
- 30 There is no text to make it clear exactly how this arrangement works. The drawing appears to show a drum filter located in a pool of liquid and connected to a pump, with a backwashing arrangement located within the drum. That the backwashing arrangement cannot rotate as required by claim 1 of the patent was accepted by Mr Loven under cross-examination by Mr Vanhegan. However Mr Saunders argues that, even if that is the case, what the figure does show is a pipe from the output of the pump feeding pressurised water to the backwashing arrangement, and that this is therefore to be regarded as common general knowledge. He held that D2 describes what was in the market place at the time and has what he termed, “a survey characteristic”.
- 31 Whilst the document does appear to provide a general illustration of available types of filters, its disclosure lacks any detail, particularly in relation to the figure on which Mr Saunders relied. As pointed out by Mr Vanhegan, D2 is not a good starting point on which to assess the common general knowledge even if there had been independent evidence in support; it is a comparatively obscure document of limited disclosure. I do not therefore accept D2 as indicative of the common general knowledge, and as such I accept Mr Vanhegan’s submission that it cannot be automatically mosaiced with any other document.
- 32 Who is the skilled addressee then? Mr Saunders argued that he would not be someone who is farming specific (referring to Mr Hosford’s background as a dairy farmer) rather he would be someone who works regularly designing filters and equipment for pumps and with either an engineering background or at least one in product design; he will also know about the properties of various common materials used in making such equipment such as rubber and plastics. Mr Vanhegan argued that he may be a user but is unlikely to be a designer or someone with any particular engineering skill, qualifications or knowledge.
- 33 It is worth quoting the well known statement by Lord Reid in *Technograph v Mills*

& *Rockley* [1972] RPC 346 at page 355 that:

'... the hypothetical addressee is a skilled technician who is well acquainted with workshop technique and who has carefully read the relevant literature. He is supposed to have an unlimited capacity to assimilate the contents of, it may be, scores of specifications but to be incapable of scintilla of invention. When dealing with obviousness, unlike novelty, it is permissible to make a "mosaic" out of the relevant documents, but it must be a mosaic which can be put together by an unimaginative man with no inventive capacity.'

- 34 This passage was quoted with approval by Jacob LJ in *Technip France SA's Patent* [2004] RPC 46 at paragraph 7.
- 35 Although the knowledge and skill of the skilled addressee will vary according to the subject matter, there is technical content to the invention and the mechanical engineering of pumps and filters goes back a long way. Mr Vanhegan seems to me to be describing more the man in the street than the skilled addressee. Following the above quoted authorities, it seems to me reasonable to take the skilled addressee – the person to whom the patent specification is addressed - to be someone with knowledge going beyond that of the farming industry; who is a skilled technician with a very good background knowledge, and a working knowledge of pumps and filters in particular.
- 36 How far will his background knowledge – the common general knowledge – extend? Some help might be gleaned – with due caution – from what the documents before me describe as the state of the art, and having regard to this it seems to me that I can reasonably conclude that the skilled addressee here would be aware of self-cleaning pump filters in which a cylindrical filter screen is backwashed by moving the screen relative to jets or nozzles.
- 37 I note that, although the patent itself refers to LM2, in which document feature (e) is described as being known in "rotary self-cleaning strainers of this general type", there is no admission in the patent that this feature is conventional and forms part of the common general knowledge of the skilled addressee, and no evidence – other than document D2 which I have already rejected - to support that view. I conclude that although there can be no dispute that this feature was public knowledge at the priority date of the patent, it would not be safe to regard it as forming part of the common general knowledge.

Step (iii) – the differences between the matter cited and the alleged invention

- 38 Mr Saunders identified document D1 as the basis for an obviousness attack on claim 1. This was published on 9 March 1993 before the priority date of 9 September 1994 of the patent. Mr Vanhegan also discussed the case based on document LM2 as the starting point, but that is not an argument I understood Mr Saunders to be running.
- 39 D1 describes a self-cleaning filter or screening system for a pump, the system

having a cylindrical filter screen which is mounted so as to remain stationary. A cleaning system comprising a plurality of jets is mounted within the filter screen to rotate with respect to the screen at a fixed axial location on its axis of rotation. Pressurised water is expelled through the jets to rotate the cleaning system and clean the filter screen. Although the outlet from the filter is in use connected to the suction side of the pump, the source of the pressurised water is not specified.

40 D1 does not explicitly state that the filter screen can be short and fat as required by feature (h) of claim 1. Indeed Mr Vanhegan argues that this document expressly teaches away from feature (h) in the passage at column 4 at lines 45-52. However I note that this passage in fact states that “the dimensions of the enclosed screen assembly can vary greatly “ and gives a wide range of dimensions which would allow for both short and fat and tall and thin arrangements, but with no preference for either being indicated. There is certainly no indication that short and fat screens are to be excluded; on the contrary, I note that in the arrangement shown in figures 3 and 3A of document D1, the transverse dimension of the screen is clearly greater than the maximum possible width dimension that is backwashed. It would be dangerous I think to regard the drawing taken in isolation as conclusive, but taken in conjunction with the passage quoted above it seems to me to be persuasive. I conclude that short and fat filter screens are implicit in the teaching of document D1. Moreover, whether or not this difference in dimensions is the consequence of accident or design, is not material for the reason I have already given above, namely that no advantage for the difference is given in the patent.

41 Accordingly I take the difference between the disclosure of this document and the inventive concept of claim 1 to be that set out in the first clause of feature (e), namely that fluid is supplied to the jets from the pressure side of the pump.

Step (iv) – are the differences obvious to the skilled addressee?

42 Here counsel considered two main lines of approach. Under the first line of approach, the question to be addressed is whether it would be obvious to the skilled addressee to move from D1 to the inventive concept without the need to mosaic it with any other document - given that the patent itself acknowledges that feature (e) is known - or given the limited number of options open to the skilled man as to where to obtain a pressurised fluid supply.

43 Under the second line of approach the question to be addressed is that of mosaicing, namely if D1 is to be mosaiced with any other document or documents, to what extent is such mosaicing legitimate – and in particular can D1 be mosaiced with D2 or with LM2, which is listed on D1 as a citation? Also in this context, does D1 in any case teach away from the inventive concept?

The first line of approach

44 Mr Saunders argued that the skilled addressee would move from document D1 (“Bader”) to the inventive concept “in a non-inventive way .. without the need to mosaic Bader with any other disclosure”. Given that I have concluded the inventive concept to be the association of features (a)-(h), for this argument to

hold, feature (e) would have to form part of the common general knowledge of the skilled addressee, and I have already concluded that the claimant has not made its case on this.

- 45 Alternatively, Mr Saunders argued that the skilled addressee would understand from D1 that he needed to connect the jet system to a supply of pressurised water and that there would be a limited number of options available to him, namely mains water, the water which he is attempting to filter or the filtered water supplied by the pump system. Whilst this argument has its attractions and appears to be logical, I agree with Mr Vanhegan that this requires the use of hindsight. Mr Saunders has looked at the claimed invention, identified the ways in which this may have been achieved and concluded that Mr Hosford used the obvious route available. Accordingly I am not persuaded by this argument.

The second line of approach

- 46 I turn then to the issue of mosaicing. Mr Vanhegan submitted that, in the absence of expert evidence, it was not permissible to consider mosaicing of documents. He asserted that each piece of evidence provided must be considered a discrete piece of prior art. He referred me to a passage in *Terrell on the Law of Patents* [2006] ("Terrell") at page 250 which refers to the judgement of Pumfrey J in *Glaxo Group Ltd's Patent* [2004] RPC 43 at paragraph 35, the relevant part of which reads:

'These provisions [of sections 2 and 3] do not permit what is sometimes called the mosaicing of individual documents or prior uses said to form part of the state of the art, unless it can be shown that the skilled person, confronted with a particular citation, would turn to some other citation to supplement the information provided by the first..'

- 47 Applying these principles to the present case, Mr Vanhegan argued that there can be no assumption that the skilled worker in this case would have read in conjunction both D1 and LM2, this must be shown to be a matter of fact.

- 48 Mr Saunders argued that it is certainly not the case that mosaicing is not permitted in an obviousness attack. Page 250 of Terrell goes on to quote Lord Reid in *Technograph* at page 355 who said:

'When dealing with obviousness, unlike novelty , it is permissible to make a 'mosaic' out of the relevant documents, but it must be a mosaic which can be put together by an unimaginative man with no inventive capacity.'

- 49 Terrell goes on to quote from the judgement of Laddie J in *Pfizer Ltd's Patent* [2001] FSR 16 at paragraph 66 , the relevant part of which is also quoted in paragraph 35 of *Glaxo* referred to above. This reads:

'When any piece of prior art is considered for the purposes of an obviousness attack, the question asked is "what would the skilled addressee think and do on the basis of the disclosure?" He will consider the disclosure in the light of the common general knowledge and it may be that

in some cases he will also think it obvious to supplement the disclosure by consulting other readily accessible publicly available information. This will be particularly likely where the pleaded prior art encourages him to do so because it expressly cross-refers to other material. However, I do not think it is limited to cases where there is an express cross-reference. .’

- 50 Can then D1 be mosaiced with D2? If the claimant had been successful in establishing that D2 represented common general knowledge, then in my view the answer would have been ‘yes’. However I have concluded that D2 cannot be taken to be indicative of common general knowledge, and in the absence of any other reason in support of the contention that the skilled addressee would view these two documents together, I find that it is not legitimate to mosaic them.
- 51 Can D1 be mosaiced with LM2? LM2 describes a pump filter system in which the screen rotates around a system of cleaning nozzles or jets. Mr Saunders directed me to the description relating to figure 7, starting at line 61 of column 6. This describes supplying water to the nozzles by including a tap into the discharge side of the pump – feature (e) of claim 1. Mr Vanhegan pointed out that the system described in D1 requires a separate source of water to feed the jet system, and argued that such a set up is something completely contrary to that of the patent which simply uses a take-off from the same pump to drive the jets. He said that it is not legitimate to mosaic D1 with any other document which describes using a take-off from the same pump; such documents are discrete citations. He went on to argue that the fact that LM2 is listed on D1 (Bader) as a citation in fact works against the claimant, since it means that Mr Bader knew of the take-off used in LM2 and decided that is something he should not have in his system – perhaps because he did not want to expose his jets to dirty fluid.
- 52 It is clear from the above quoted authorities, that mosaicing is justified in certain circumstances, notably where the mosaic can be put together by an unimaginative man with no inventive capacity, and in particular where the pleaded prior art has a reference to the other material to create the mosaic.
- 53 On reading D1 the skilled person would be led to a pump filter system which had a fixed, cylindrical filter screen having a backwashing jet system enclosed with the screen. He would know that he needs to provide a supply of pressurised water to the nozzles of the jets to make the jet system rotate and to backwash the screen. D1 itself has a reference to LM2, it is one of the documents listed on the front page as a ‘cited reference’. The skilled person would therefore be aware of the teachings of both D1 and LM2 and would appreciate the teachings of both documents and their application. This would clearly teach him that the water to the jet system could be provided effectively by using water under pressure from the outlet of the pump system. Thus it seems to me he would arrive, uninventively, at claim 1 of the patent.
- 54 The argument that Mr Bader knew of the take-off used in LM2 and chose not to adopt it seems to me to be without substance. As far as we know Mr Bader was only made aware of LM2 after he had applied for his patent in the United States. It is not from Mr Bader’s perspective that the possible association of D1 and LM2 is to be viewed; it is from that of the skilled addressee at the priority date of the

patent.

55 For completeness I would add that, if I am wrong in deciding that that short and fat filter screens are implicit in the teaching of document D1, then the difference between the disclosure of this document and the inventive concept of claim 1 would include this short and fat feature as well as feature (e). However, it seems to me that, if not implicit in the light of the passage at column 4 lines 45-52 of document D1 and what is shown in Figures 3 and 3A, this feature cannot be regarded as inventive in the light of that disclosure.

56 Counsel also considered the issue of the commercial success of the invention, and there is evidence to support the case that Mr Hosford has had both commercial success and recognition in the press. Whether this is due to the invention itself or to other factors such as the design of the product was questioned by Mr Saunders. However, having concluded that the invention lacks an inventive step having regard to the primary evidence, I do not think that this conclusion can be reversed even if the case for what is essentially the secondary evidence of commercial success of the invention is made.

57 I therefore find claim 1 invalid for lack of inventive step over documents D1 and LM2.

The appendant claims

Claims 2 to 5

58 In a letter dated 21 November 2006, the defendant indicates that it considers claim 1 and claims 6 to 16 to be independently valid, ie not claims 2 to 5. I do not therefore need to consider these claims which fall with claim 1.

Claims 6 to 9

59 These read :

6 A self-cleaning filter or screening system for a pump according to any one of the preceding claims characterized comprising by said backwashing jet having an orifice which can open to allow particles to pass through rather than to block the jet.

7 A self-cleaning filter or screening system for a pump according to claim 6 characterised by said jet comprising flexible material.

8 A self-cleaning filter or screening system for a pump according to claim 7 characterised by said jet comprising a resilient material.

9 A self-cleaning filter or screening system for a pump according to claim 8 characterised by said jet being adapted to open progressively as the pressure supply thereto increases.

60 Mr Saunders argued that claim 6 is essentially a collocation, the jet of claim 6 being a different invention from the filter system of claim 1. The claimant's case is that documents D3, D4 and D5 are examples of documents that show that nozzles (or jets) of the type claimed are well known in a number of arts, and that in the patent they and the other elements claimed are doing no more than their

standard function with no synergy between them. Mr Saunders argued that taking D3 for instance, which describes a self-purging nozzle for use in the tell-tale line of a water cooled outboard motor, the skilled addressee, seeing this, would clearly see that this is an option when faced with the problem of lumps blocking the nozzles.

61 In support of this approach, Mr Saunders referred me to *Sabaf SpA v MFI Furniture Centres Ltd* [2005] RPC 10 and in particular to paragraph 24 where Lord Hoffmann said:

'I quite agree that there is no law of collocation in the sense of a qualification of, or gloss upon, or exception to, the test for obviousness stated in s.3 of the Act. But before you can apply s.3 and ask whether the invention involves an inventive step, you first have to decide what the invention is. In particular, you have to decide whether you are dealing with one invention or two or more inventions. Two inventions do not become one invention because they are included in the same hardware. A compact motor car may contain many inventions, each operating independently of each other but all designed to contribute to the overall goal of having a compact car. That does not make the car a single invention.'

62 Mr Vanhegan argued the facts of this case were considerably different. In *Sabaf*, the two integers under consideration were both parts of a hob unit but - quoting the words of Laddie J from paragraph 16 of *Sabaf* - "neither made the other function any differently or produced any combined effect except that each contributed separately to produce a slim hob which was suitable for a work surface over a cupboard". By contrast, Mr Vanhegan argued, in the patent the features do combine.

63 Mr Vanhegan also argued that the nozzles in documents D3, D4 and D5 are from very distant technologies and used in different ways from how they are used in the patent; in contrast to *Sabaf* where all of the prior art related to cooking hobs, in the present case, documents D3, D4 and D5 relate respectively to self-purging nozzles for use in a tell-tale line for an outboard motor, an air washer and a bottle washing system.

64 It seems to me firstly that in the patent the various integers do work together - in particular, since the backwashing liquid is taken from the pressure side of the pump, rather than from a fresh water supply, there may be problems with particles left in the liquid which self-purging jets would solve; and secondly - and arguably more significantly - it is far from clear that the skilled addressee, as defined above, would be aware of the technology of self-purging nozzles as part of his or her common general knowledge. I therefore find claim 6 to be valid. It follows that claims 7 to 9 which are appendant to claim 6 are also valid.

Claims 10 to 15

65 These read :

10 A self-cleaning filter or screening system for a pump according to any one of the

preceding claims characterized by a container to catch and retain foreign matter removed by said backwashing means from said screen or filter.

11 A self-cleaning filter or screening system for a pump according to claim 10 characterised by said container comprising a pre-screening device at least partially enclosing said screen or filter.

12 A self-cleaning filter or screening system for a pump according to claim 10 or 11 characterized by said container being adapted to be located within the main body of liquid to be filtered.

13 A self-cleaning filter or screening system for a pump according to claim 10 or 11 characterised by said container being adapted to be located in a pipeline from the main body of said liquid to said pump.

14 A self-cleaning filter or screening system for a pump according to any of claims 10 to 13 characterized by means for removing said foreign matter from said container.

15 A self-cleaning filter or screening system for a pump according to claim 14 characterised by said means for removing said foreign matter comprising drain means.

66 At the hearing, no case was offered regarding these claims over that made in the statement of case, namely that claim 10 is obvious over D1, in view of figure 4, and the disclosure of D6.

67 Reading the claim in conjunction with the description it is clear that a secondary or pre-screening container is being envisaged here – what was described at the hearing as a “gunge trap”. The only container shown in Figure 4 of D1 is that containing the primary body of water being filtered. To my mind it would be perverse to construe the “container” of claim 10 to include that.

68 Document D6 relates to an entirely different type of filter in which water is pumped from a pond through a vortex unit and/or a settling basin and then through a series of chambers for treatment by micro-organisms; and where each chamber may be isolated for cleaning without interrupting the flow of water. Its relevance to claim 10 is not clear to me.

69 I therefore find claim 10 to be valid on the basis of the minimal evidence and argument before me. It follows that claims 11 to 15 which are appendant to claim 10 are also valid.

Claims 16 and 17

70 These read :

16 A self-cleaning filter or screening system for a pump substantially as described herein with reference to the accompanying drawings.

17 A self-cleaning filter or screening system for a pump according to any of the preceding claims in combination with a pump therefore.

71 Claim 16 is a conventional omnibus claim. Since I have found at least some of the preceding claims valid, it follows that claim 16, which is inevitably narrower in scope, is also valid.

72 Claim 17, which adds no more than a pump to the claims to which it is appendant, I find to be invalid insofar as it is appendant to claims 1 to 5.

Sufficiency

73 The claimant also argues in its statement that the specification does not disclose the invention of claims 12 and 13 clearly enough and completely enough for it to be performed by a person skilled in the art – although if I understood Mr Saunders correctly he was not pursuing the point at the hearing. The description relating to the subject matter of these claims is undoubtedly limited; verging on the skeletal. However, the question which needs to be considered is whether the specification teaches the skilled person sufficient enough him or her to put into practice what is claimed. These claims relate to simple, basic technology, and to my mind self-evidently require minimal effort and expertise by a skilled addressee to put them into effect. I therefore find against the claimant here.

Conclusions and next steps

74 Having regard to my findings above I conclude that the invention as claimed in claims 1 to 5 and claim 17 is not patentable since it does not involve an inventive step; that the attack on the remaining claims for lack of inventive step fails; and that the attack on the grounds of lack of sufficiency – namely that the specification does not disclose the invention of claims 12 and 13 clearly enough and completely enough for it to be performed by a person skilled in the art - also fails.

75 I allow the defendant two months in which to file amendments under section 75 should he so wish, failing which I shall revoke the patent. If amendments are filed they will need to be advertised for opposition.

Costs

76 The claimant has won on its main attack, and so is in principle entitled to costs. The parties are content for costs to be awarded in accordance with the published Office scale, although as noted above, Mr Vanhegan has argued that the late introduction of arguments based on document LM2 should be taken into account. I agree with him, particularly since it is this argument which, in the event, has been successful, although I also take note of Mr Saunders' submission that the defendant has known since July 2006 that the claimant was relying on LM2. On balance, I conclude that the costs award should be towards the lower end of the scale.

77 Accordingly, I award AFS the sum of £1000 to be paid by Mr Hosford not later than 7 days after the expiry of the appeal period. If an appeal is lodged, payment will be automatically suspended pending the outcome of the appeal.

Appeal

78 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal

must be lodged within 28 days.

DAVID BARFORD

Deputy Director acting for the Comptroller