

17th March 2008

PATENTS ACT 1977

BETWEEN

Joseph Toland

Claimant

and

Peter John Coates-Smith

Defendant

PROCEEDINGS

Reference under section 8 of the Patents Act 1977 in
respect of patent applications N^o GB0228229.1 & GB0600429.5

HEARING OFFICER Stephen Probert

DECISION - STRIKING OUT

- 1 This is an entitlement dispute that was commenced on 6th September 2006, concerning two patent applications — GB0228229.1 & GB0600429.5. Neither application has ever been published.
- 2 When I first read the claimant's statement, it was not clear to me that the claimant knew or understood what invention was disclosed in either of the applications — not least because, as I have said, the applications have never been published. It is possible to bring a reference under section 8 even before an application has been filed, but in such a case there must be a duty on the claimant to specify clearly in his statement what he believes the invention is in which he is seeking rights. In the present case, the statement contains only the vaguest suggestion of several ideas that might underlie the invention(s).
- 3 Having read the specification of both patent applications, there did not appear to be enough in common with the 'ideas' mentioned in the statement to enable these proceedings to continue.
- 4 Furthermore, the first of the applications was terminated in April 2004, and as far as I can see, the second application must be treated as abandoned because the period for requesting a search, and the period for filing claims, expired in January 2007.
- 5 In other words, it is far from clear what this dispute is about. The only thing that is clear to me, to borrow the words of Jacob LJ (in *Markem v Zipher* [2005] RPC 31), is that there is no bone at the bottom of it. Accordingly, the parties

were informed by letter on 17 October 2007 that I was minded to strike out the reference. They were given one month in which to comment. Neither party has commented on the issue of striking out. In a further official letter dated 23 January 2008, the parties were given until 6 February 2008 to request an oral hearing. Neither party has requested an oral hearing.

- 6 I therefore strike out this reference for want of prosecution, as well as on the grounds that a) it is not clear what the dispute is about, and b) the reference was made in respect of patent applications in which all rights have been lost.

Appeal

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

S PROBERT

Deputy Director acting for the Comptroller