

O-352-09

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2456185C

BY OMEGA ENGINEERING, INC

TO REGISTER THE TRADE MARK:

OMEGA

IN CLASS 14

AND

THE OPPOSITION THERETO

UNDER NO 96725C

BY OMEGA SA (OMEGA AG) (OMEGA LTD)

Trade Marks Act 1994

**In the matter of application no 2456185C
by Omega Engineering, Inc
to register the trade mark:
OMEGA
in class 14
and the opposition thereto
under no 96725C
by Omega SA (Omega AG) (Omega Ltd)**

1) This opposition concerns Omega Engineering, Inc's, hereinafter Engineering, application to register the trade mark OMEGA for the following goods in class 14 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended:

instruments and apparatus intended for a scientific or industrial application in measuring, signalling, checking, displaying or recording heat or temperature and having provision to display the time of day.

The date of application is 21 May 2007 and the application was published for opposition purposes on 28 December 2007. Omega SA (Omega AG) (Omega Ltd), hereinafter Swiss, has opposed the registration on the basis of sections 5(1), 5(2)(a), 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994. The trade marks and signs upon which Swiss relies consist of the word OMEGA simpliciter, OMEGA with other words or with the Greek letter omega, or the Greek letter omega simpliciter. In its counterstatement Engineering requires proof of use of the trade marks upon which Swiss relies which had been registered for more than five years as at the date of the publication of the application. Engineering's sole defence is as follows:

“The opposition is in breach of the 1983/1984 agreement between the parties which gives consent to the applicant to use and register OMEGA trade marks for the goods listed in the application.”

2) A hearing was held on 28 October 2009. Engineering was represented by Mr David Crouch of Bromhead Johnson. Swiss was represented by Mr Michael Edenborough of counsel, instructed by Mewburn Ellis LLP.

3) Since the filing of the opposition Swiss's Community trade mark application no 7320229, a scion born of the division of application no 226027, has been registered. Registration no 7320229 is for the trade mark OMEGA and is registered, inter alia, for:

precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones, horological instruments, among other watches, parts of watches, watch movements; chronometric instruments, cases for watches (presentation).

The registration was filed on 15 April 1996 and the registration process was completed on 16 December 2008. Consequently, this trade mark is an earlier right and is not subject to the proof of use requirements. As Engineering has not denied the grounds of opposition based on this registration, which include section 5(1) of Act, I must find for Swiss unless I consider that the agreement upon which Engineering relies precludes me from so doing. Consequently, the outcome of this opposition rests solely upon the interpretation of the agreement.

4) The application is also the scion of a division, application no 2456185. Two scions of the parent application have been registered in class 9:

2456185B for *apparatus industrially and/or scientifically employed for measuring or controlling variable parameters such as temperature, pressure, force, load, vibration, electrical conductivity, liquid level, acidity, humidity, strain and flow.*

2456185D for ***instruments and apparatus intended for a scientific or industrial application in measuring, signalling, checking, displaying or recording heat or temperature (including such having provision to record heat or temperature over a period of time and/or to display the time of day).***

It will be noted that the D registration includes identical wording to the application the subject of this opposition, which I have highlighted.

5) On 13 October 2009 I wrote to the representatives of Engineering in the following terms:

“I have been previewing the above case prior to the hearing scheduled for 28 October 2009.

At the hearing I will require submissions on behalf of the applicant as to how and why the goods of the specification are appropriate to class 14.”

6) The agreement reads as follows:

THIS AGREEMENT is made BETWEEN OMEGA ENGINEERING INCORPORATED, a Corporation organised and existing under the laws of the State of Delaware, United States of America, of P.O. Box 4047, Springdale Station, Stamford, Connecticut 06907, United States of America, (hereinafter known as “Omega Engineering”) of the one part and OMEGA S.A. (OMEGA A.G.) (OMEGA LIMITED), a Societe Anonyme organised under the laws of Switzerland, of the other part.

WHEREAS both parties desire to avoid confusion between their respective goods throughout the world, and particularly in the United Kingdom, and have agreed to take measures to avoid such confusion, such as applying in the first instance to the United Kingdom alone, IT IS HEREBY AGREED, as follows :-

OMEGA ENGINEERING agrees to withdraw its applications to rectify United Kingdom Registration Nos. 699057, 723199 and 891865 in the name of OMEGA S.A.

OMEGA ENGINEERING undertakes not to use, register, or apply to register any trade mark consisting of or containing the word OMEGA or the Greek Letter OMEGA, or any marks containing elements colourably resembling either of the aforesaid elements in respect of "Temperature measuring instruments or apparatus, incorporating a time of day display function, unless intended for science or industry".

OMEGA S.A. agrees to cancel from its United Kingdom Registration No.699057 the following goods (hereinafter known as "the excluded goods"); "Instruments and apparatus intended for a scientific or industrial application in measuring, signalling, checking, displaying or recording heat or temperature (including such having provision to record heat or temperature over a period of time and/or to display the time of day)" or a form of wording acceptable to the British Registrar of Trade Marks and stated by him to have the same meaning as the above wording.

OMEGA S.A. undertakes not to use, register, or attempt to register any trade mark consisting of or containing the word OMEGA or the Greek Letter OMEGA, or any element colourably resembling either of the above elements, in respect of the excluded goods.

OMEGA S.A. agrees not to object to the use or registration by OMEGA ENGINEERING of trade marks consisting of or comprising the word OMEGA or the Greek Letter OMEGA, or elements colourably resembling the above elements, in respect of the excluded goods.

OMEGA S.A. undertakes either to cancel United Kingdom Registrations Nos. 723199 and 891965, or to part cancel them by excluding from the excluded goods.

Both parties agree that for the time being the above provisions will apply solely to the United Kingdom and not elsewhere.

Both parties agree that this agreement shall bind their assigns and licensees and be communicated to their registered or permitted users, and

shall enure to the benefit of the other party's assigns, licensees and registered or permitted users.”

The agreement was signed for and on behalf of Engineering on 11 April 1984 and signed for and on behalf of Swiss on 9 February 1983.

7) At the hearing reference was made to the judgment of the Court of First Instance (CFI) in relation to other proceedings between the parties, Case T-90/05. Engineering submitted that that judgment was irrelevant to the current proceedings. At paragraph 49 of the judgment the CFI stated:

“With regard, thirdly, to the agreement between the parties, it must be noted that by that agreement the applicant undertook, inter alia, not to seek registration of the trade mark OMEGA in respect of apparatus industrially or scientifically employed for measuring or controlling variable parameters such as temperature, pressure, force, load, vibration, electrical conductivity, liquid level, acidity, humidity, strain and flow. However, it is not apparent from the provisions of that agreement that the intervener undertook not to oppose registration of the trade mark OMEGA by the applicant. In any event, without its being necessary to consider the consequences of the agreement for the parties, the fact remains that the agreement is irrelevant to the assessment of the likelihood of confusion in the present case.”

The CFI does not give a considered view of the agreement, from paragraphs 9 and 29 of the judgment it appears that a different agreement was under consideration (one in relation to which there have been other proceedings in this jurisdiction). The CFI simply states that the agreement is irrelevant to whether there is a likelihood of confusion, that is clearly a statement of fact that cannot be denied. It is a different question as to whether in this jurisdiction, taking into account that the proceedings are governed by the Act and Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 (the Directive), as opposed to Council Regulation (EC) No 40/94 of 20 December 1993 (the Regulation), whether the agreement has effect.

8) Mr Edenborough pointed out that the Regulation did not have a provision for consent. Article 4(5) of The Directive allows for specific provision for consent:

“The Member States may permit that in appropriate circumstances registration need not be refused or the trade mark need not be declared invalid where the proprietor of the earlier trade mark or other earlier right consents to the registration of the later trade mark.”

This has been enacted in domestic legislation in section 5(5) of the Act which states:

“Nothing in this section prevents the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration.”

There is no need for the Regulation, which is anyway not governed by the Directive, to have a provision for consent as the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) has never had the power to raise relative grounds objections of its own motion and opponents/applicants for invalidation on relative grounds have always had to have a locus standi and so there would be no need for consent; an opponent is hardly going to furnish consent in relation to proceedings that it has brought itself. (Of course, a similar position now pertains before the Intellectual Property Office in relation to relative grounds objections but the consent provision has not been rescinded.) The consent provision is a fact, it is born of the Directive and enacted in the Act so I cannot see a valid basis for challenging the provision. I am most certainly bound by it.

9) Mr Edenborough did not submit that the agreement was not a form of consent, his submissions turned upon the view that the current opposition was not caught by it and on the issue as to whether the consent provision can apply, with which I have dealt above.

10) The law in relation to the interpretation of agreements is well established. In *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 Lord Hoffman stated:

“My Lords, I will say at once that I prefer the approach of the learned judge. But I think I should preface my explanation of my reasons with some general remarks about the principles by which contractual documents are nowadays construed. I do not think that the fundamental change which has overtaken this branch of the law, particularly as a result of the speeches of Lord Wilberforce in *Prenn v. Simmonds* [1971] 1 W.L.R. 1381, 1384-1386 and *Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen* [1976] 1 W.L.R. 989, is always sufficiently appreciated. The result has been, subject to one important exception, to assimilate the way in which such documents are interpreted by judges to the common sense principles by which any serious utterance would be interpreted in ordinary life. Almost all the old intellectual baggage of "legal" interpretation has been discarded. The principles may be summarised as follows:

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] 2 W.L.R. 945)

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *The Antaios Compania Neviera S.A. v. Salen Rederierna A.B.* 1985 1 A.C. 191, 201:

". . . if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts

business commonsense, it must be made to yield to business commonsense.””

In *Bank of Credit and Commerce International SA (in liquidation) v Ali* [2001] UKHL/8, [2001] 1 All ER 961 Lord Bingham of Cornhill stated (at paragraph 8):

“In construing this provision, as any other contractual provision, the object of the court is to give effect to what the parties intended. To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the parties’ relationship and all the relevant facts surrounding the transaction so far as known to the parties. To ascertain the parties’ intentions the court does not of course inquire into the parties’ subjective states of mind but makes an objective judgment based on the materials supplied.”

Lord Hoffmann stated (at paragraph 37):

“What would a reasonable person have understood the parties to mean by using the language of the document against all the background which would reasonably have been available to them at the time?”

In *Roche Products Limited, Roche Diagnostics GmbH v Kent Pharmaceuticals Limited* [2006] EWCA Civ 1775 Neuberger LJ stated

“At least in English law, it is well established that, in the context of commercial contracts, although an expression will normally be given its ordinary English meaning, it has to be construed in its verbal and commercial context. Further, where it is demonstrated by satisfactory evidence that an expression is understood to have a special meaning by virtue of what has been called the "custom of the trade", then effect will be given to the custom of the trade, unless it is inconsistent with the express terms of the contract - see for instance *Smith Hogg Co. -v- Louis Bamberger & Sons* [1929] 1 KB 150 and the cases cited therein. In *Yangtze Insurance Association -v- Indemnity Mutual Marine Assurance Co* [1908] 2 KB 504 at 509, Farwell LJ said this:

"The general rule of construction is that words used in documents must receive their primary signification, unless the context of the instrument read as a whole, or surrounding contemporaneous circumstances, shew that the secondary meaning expresses the real intention of the parties, or unless the words are used in connection with some place, trade or the like, in which they have acquired the secondary meaning as their customary meaning *quoad hoc*".

28. Thus, when interpreting a contract, an English court is prepared to recognise that a particular expression, which may have a different or more limited meaning to an ordinary speaker of English, can nonetheless come to have a different or wider meaning in a particular trade. By parallel reasoning, it seems to me that the court should, in principle, be prepared to recognise that a mark may have a different or wider meaning, in a particular trade, from that which would be derived from the reason (whether in law or otherwise) for the affixing of the mark. Despite the strict approach to the meaning of "consent" in the context of Article 7, I doubt that what the ECJ said in the *Zino Davidoff* case would rule out the possibility of such an argument on the part of Kent succeeding, at least in principle, in the present case."

In *Anglo Continental Educational Group (GB) Limited v Capital Homes (Southern) Limited* [2009] EWCA Civ 218 at para 13 Arden LJ stated:

"The court will also prefer an interpretation which produces a result which the parties are likely to have agreed over an improbable result."

11) Mr Edenborough argued that the agreement had to be considered objectively rather than subjectively, interpreted as an objective bystander would. He submitted that as the agreement identifies class 9 registrations only, it would have been redundant for the class of goods to have been specifically identified. That the excluded goods are in class 9 is something that was and is understood, the agreement can only relate to Swiss not objecting to the excluded goods that are in class 9 as these are the only goods covered by the agreement, in Mr Edenborough's view. Mr Edenborough stated that class 14 goods are the territory of Swiss and class 9 goods are the territory of Engineering.

12) Mr Crouch submitted that there was no reference to class in the agreement, the delineation of the goods was by reference to the words that describe them and not by class. He submitted that the allocation by class was simply to aid searching. Mr Crouch stated that the wording of the specification came directly from the agreement, Swiss was opposing the very goods that it had agreed not to oppose and to which it had given consent. He submitted that the goods of the application were proper to class 14 by virtue of their hybrid nature in displaying the time.

13) Mr Crouch did not dispute that the registrations of Swiss referred to in the agreement were in class 9.

14) When I wrote to the representatives of Engineering I was seeking clarification as to exactly what the goods in class 14 were, were they any different to the goods described in exactly the same terms in class 9? The registrar had accepted the goods in this class and under section 34 the decision of the registrar in this matter is final. Mr Crouch emphasised the rôle of the class in

searching, he saw this as the primary function of allocation by class. It is reasonable to say that without division by class, searching, whether by a trade marks office or as part of a clearance search, would become an extremely onerous and expensive task. The manufacturer of confectionery is unlikely to be concerned with the activities of the producer of nuts and bolts.

15) In considering the issue before me it is useful to go to the horse's mouth: the International Classification of Goods and Services for the Purposes of the Registration of Marks (ninth edition). It identifies class 14 goods in the following manner:

"Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes;

jewellery, precious stones;

horological and chronometric instruments.

Explanatory Note

Class 14 includes mainly precious metals, goods in precious metals not included in other classes and, in general jewellery, clocks and watches.

This Class includes, in particular:

- jewellery (i.e., imitation jewellery and jewellery of precious metal and stones);
- cuff links, tie pins.
-

This Class does not include, in particular:

- goods in precious metals classified according to their function or purpose, for example, metals in foil and powder form for painters, decorators, printers and artists (Cl. 2), amalgam of gold for dentists (Cl. 5), cutlery (Cl. 8), electric contacts (Cl. 9), pen nibs of gold (Cl. 16), teapots (Cl. 21), gold and silver embroidery (Cl. 26), cigar boxes (Cl. 34);
- objects of art not of precious metals (classified according to the material of which they consist)."

16) In the general remarks to the International Classification of Goods and Services for the Purposes of the Registration of Marks (ninth edition) the following is written:

"If a product cannot be classified with the aid of the List of Classes, the Explanatory Notes and the Alphabetical List, the following remarks set forth the criteria to be applied:

- (a) A finished product is in principle classified according to its function or purpose. If the function or purpose of a finished product is not mentioned in any class heading, the finished product is classified by analogy with other comparable finished products, indicated in the Alphabetical List. If none is found, other subsidiary criteria, such as that of the material of which the product is made or its mode of operation, are applied.
- (b) A finished product which is a multipurpose composite object (e.g., clocks incorporating radios) may be classified in all classes that correspond to any of its functions or intended purposes. If those functions or purposes are not mentioned in any class heading, other criteria, indicated under (a), above, are to be applied.**
- (c) Raw materials, unworked or semi-worked, are in principle classified according to the material of which they consist.
- (d) Goods intended to form part of another product are in principle classified in the same class as that product only in cases where the same type of goods cannot normally be used for another purpose. In all other cases, the criterion indicated under (a), above, applies.
- (e) When a product, whether finished or not, is classified according to the material of which it is made, and it is made of different materials, the product is in principle classified according to the material which predominates.
- (f) Cases adapted to the product they are intended to contain are in principle classified in the same class as the product.”

I have emboldened point (b) as this is key to the issues before me.

17) The class 9 specification of registration no 2456185D includes exactly the same wording as the class 14 specification. According to the general remarks of The International Classification of Goods and Services for the Purposes of the Registration of Marks (ninth edition), a finished product which is a multipurpose composite object may be classified in all classes that correspond to any of its functions or intended purposes. The effect of this is that the same goods can be in more than one class. In *Altecnic Ltd's Trade Mark Application* [2002] RPC 34 Mummery LJ stated:

“41(c) Class number 7 rightly remained in the column for Class numbers even on deletion of the words "all other goods/services in this Class", because there was no request at that stage to substitute a different Class number or to add another Class number. Class number 7 was still part of Altecnic's application in the context of the "Specification of goods". The fact that the system of classes of goods is for the purposes of

administrative convenience or that the identification of a Class number serves such purposes does not prevent the statement of the Class number from being part of the application, which can only be amended in accordance with the provisions of the 1994 Act and the Rules.

42 This result is not inconsistent with the approach in the current general practice of the Registry nor, as I understand it, with the general practice of OHIM in dealing with amendments to an application by treating the Class number in the application for registration as part of the application. In my judgment, the registrar is entitled to treat the Class number in the application as relevant to the interpretation of the scope of the application, for example, in the case of an ambiguity in the list of the specification of goods. The application is a considered statement of the applicant which, on ordinary principles of the construction of documents, has to be read as a whole to determine its meaning and effect. The fact that the internationally agreed Nice Classification System has been devised to "serve exclusively administrative purposes" (see, for example, rule 2(4) of the Commission Regulation 2868/95 E.C.) does not mean that the selection by the applicant of one or more Class numbers in his application for registration has to be totally ignored in deciding, as a matter of the construction of the application, what the application is for and whether it can properly be amended. I would reject the submission of Mr Purvis that it is only permissible to take account of the Class number when it is expressly (or implicitly) referred to in the description of the "Specification of goods" column of Form TM3, as in the examples helpfully discussed by Jacob J. in *British Sugar Plc v. James Robertson & Sons Limited* [1996] R.P.C. 281 at page 289 (e.g. consideration of the relevance of the practice of the registrar at the date of registration of adding to the list "All included in this class" and "All included in class X"). That kind of case is no doubt a stronger one for interpretation of the application by reference to the Class number, but I fail to see why it should be the only kind of case in which the Class number can be taken into account by the registrar or why the registrar should have to ignore the Class number which the applicant (or his advisers on his behalf) have inserted in the Form TM3 as part of the required expression of the applicant's case in relation to the registration of the trade mark."

So the statement of the class number does form part of the application. However, the system of classification is such that a multipurpose composite object can be in both classes correctly and be the same product if it is described in appropriate terms. Such a product is not on a par with a term that could be in a multitude of classes and dependent on the class would be different, so valves in classes 7, 10, 11 and 15 are all very different creatures, a valve for a pump, a valve for a heart, a valve for a radiator, a valve for a trumpet. In such a case the lack of specificity of the description means that the class into which the goods has been placed defines the nature of the goods and, as in *Altecnic*, to change

the class would be to change the very nature of the goods and so be contrary to section 39(2) of the Act. If an application was made in class 7 for a more specific term, eg heart valves, the applicant would be advised that they should be transferred to class 10 as they cannot be in class 7. What is key to the issue is the degree of specificity of the terminology used. In this case there is a great deal of specificity in the terminology, there is no doubt as to the specific nature of the goods for which protection is sought; the same goods for which cover has already been granted in class 9. The goods in question are finished objects and they are multipurpose composite objects.

18) Mr Edenborough argues that clearly Swiss were giving consent in relation to class 9 goods, that class 9 is Engineering's area and class 14 that of Swiss. There is no such clear demarcation in the agreement, Swiss is left with goods in class 9 by the agreement. He argues that it was a given that the excluded goods were in class 9. I can see no such basis for this submission; it would have been easy enough to limit the excluded goods by class, they were not. It seems to me that Mr Edenborough's argument is based on retrospective subjective intent. In passing I note that goods and services do in fact change classes. Swiss is arguing that there is no consent for the very goods which are specifically identified in the agreement because, effectively, it is obvious that it has ring fenced class 14. So Engineering has been given consent to register the goods in one class but not the exact same goods in another class even though there is no reference to class and the protection that Engineering would have is the same. In trade mark matters there has been a "custom of the trade" to make reference to goods and services by class where appropriate; in this case there is no reference to the class of goods in the agreement. The parties have not defined the goods by reference to class. I consider that a reasonable person would have understood that consent was being given to particular types of goods, goods which Engineering produces. The goods of particular interest to Engineering, and with which Swiss can live, have been defined in the agreement. I do not consider that a reasonable person would consider that consent was being given to goods in one particular class and not the exact same goods in a different class. There is no logic nor reason for such an assumption and certainly no evidence. The effect of a registration of the excluded goods in class 14 is not an expansion of the terms of the agreement, it simply, as indicated by Mr Crouch, allows for those searching registers to be aware of the nature of Engineering's goods within the two classes that they fall into. The interpretation that Mr Edenborough proffers would give an improbable result.

19) I find that the agreement does bite and that Swiss has given consent to the registration of the goods of the application and so the opposition must be dismissed.

20) In this case there has been no specific pleading of estoppel by Engineering. A case based on estoppel might lead to the same result but it would get there by a different route and different considerations would apply. Estoppel would also

circumvent Mr Edenborough's arguments re the general notion of consent in the Act and the Directive. I have, therefore, considered the case solely on the basis of the claim of consent; which was the basis of the arguments run before me at the hearing and the basis of the pleaded defence.

21) Owing to its various claims and the requirement for proof of use Swiss filed evidence. I doubt that this was a particularly onerous task as most of the material has appeared in other proceedings before the registrar. However, this case and another case between the parties with which I have dealt, BL O/077/09, have turned upon the interpretation of an agreement. In order to avoid filing unnecessary evidence and to limit delay, it would be sensible if there are any other cases between the parties which hinge upon the interpretation of an agreement that they request, once proceedings are joined, a decision on the interpretation of the agreement.

Costs

22) Engineering having been successful is entitled to a contribution towards its costs. I order Swiss to pay costs on the following basis:

Preparing a statement and considering the other side's statement:	£300
Preparing for and attending the hearing:	£300
Total:	£600

Owing to the fact the Engineering would have been aware of the nature of Swiss's evidence from previous proceedings and that Engineering's defence rested solely on the agreement, I have not awarded any costs in relation to the evidence of Swiss.

I order Omega SA (Omega AG) (Omega Ltd) to pay Omega Engineering, Inc the sum of £600. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 12th day of November 2009

**David Landau
For the Registrar
the Comptroller-General**