



**COPYRIGHT DESIGNS AND PATENTS
ACT 1988**

BETWEEN

Penny Hydraulics Limited

Applicant

and

Reid Lifting Limited

Licensor

PROCEEDINGS

Application under section 247 to settle the terms of a licence of right available under section 237 in respect of certain design rights

HEARING OFFICER

Phil Thorpe

DECISION

Introduction

- 1 This application arises from the provisions of section 237 of the Copyright, Designs and Patents Act 1988, under which:
 - (1) Any person is entitled as of right to a licence to do in the last five years of the design right term anything which would otherwise infringe design right.
 - (2) The terms of the licence shall, in default of agreement, be settled by the comptroller.

- 2 Reid Lifting Limited (“Reid”) claim ownership of certain design rights which, it is agreed, entered the licence of right period on 1 January 2006. Penny Hydraulics limited (“Penny”) would like a licence but have been unable to agree the terms with Reid. Accordingly, on 11 January 2010 they applied to the comptroller to settle the licence terms. The specific provisions for such applications are in section 247, the relevant parts of which read:

(1) A person requiring a licence which is available as of right by virtue of section 237 . . . may apply to the comptroller to settle the terms of the licence.

(2) The terms of the licence settled by the comptroller shall authorise the licensee to do . . . everything which would be an infringement of the design right in the absence of a licence . . .”

3 Section 247 also allows the Secretary of State to prescribe by statutory instrument factors which should be taken into account in settling licence terms, but to date no such factors have been prescribed.

4 I convened a case management conference on 22 September 2010 to clarify the issues still in dispute and to hopefully assist the parties in focussing their evidence so that it would be more helpful to me. It was agreed that the only outstanding matter was the question of royalties. Both sides subsequently filed written evidence and the matter came before me at a hearing on 11 January 2011. Mr Michael Lindsay appeared for Reid. Penny chose not to attend the hearing.

The evidence

5 Reid has filed two witness statements from its Managing Director Mr Nicholas Paul Battersby. These set out the background to the development of the davit in issue together with his views on what the royalty rate should be. Attached to these statements are a number of exhibits which show drawings and photographs of the Reid davit as well as one from a competitor, Didsbury.

6 Penny has filed a witness statement from its Finance Director Mr David Victor Battrum providing his version of the background to the dispute together with his views on royalty rates. Mr Battrum also provides financial details on 14 davits that were sold by Penny prior to 31 December 2009 and a similar number in 2010.

7 I have not considered any arguments in these witness statements that are unrelated to the issue before me here.

8 Neither of the witnesses who filed evidence was cross examined.

The design

9 The design relates to a davit which is a portable lifting device used to raise and lower heavy equipment in and out of access shafts. As explained by Mr Battersby, Water Authorities regularly need to lower and raise pumps to maintain the water and sewerage networks. Historically a tripod lifting device was used by placing it over the access hole. This had the problem of leaving the raised object over the hole making it difficult to move away. As shown in the figure below, a davit which is secured to a socket fixed in the ground allows an object to be lifted and swung away from the hole by rotation.



- 10 Sockets can be fixed to the ground at various remote locations allowing the portable davit, which is light and easily assembled in three parts, to be transported from site to site. The davit can optionally be used with an electric winch. As previously mentioned, the socket and electric winch are ancillary products not covered by the design right but which may be sold together with a davit.
- 11 The first version of the davit was created in 1999 however it was significantly redesigned by Mr Battersby in 2001. It is the redesigned davit that is the subject of this application. Drawings and photographs showing the redesigned davit have been provided by Reid to accompany a draft licence filed on 29 September 2010. These are annexed to the licence at the end of this decision.
- 12 It is common ground that the design rights that are the subject of this licence application expire on the 31st December 2011

The royalty rates offered

- 13 Penny argues for a royalty rate of 5% on the list price of £895 for their version of the davit. This equates to £49.75 per davit. Reid initially proposed a royalty rate of 60% of Penny's net profits on sales of its davit as well as any motorised winches sold in combination with the davit. By the time of the hearing Reid had amended its claimed royalty to ■■■ per davit, ■■■ per winch and ■■■ per socket, these figures representing 60% of Reid's net profit for each of these items.

The basis for assessing royalty rate

- 14 Before looking at the arguments and evidence in detail, I need to establish the basis on which I should assess the royalty rate. Both sides accepted that this is what a willing licensee and a willing licensor would agree.
- 15 Mr Lindsey contends that the leading case on willing licensee/licensor is *General Tyre & Rubber Co v Firestone Tire & Rubber Co Ltd*¹. This is a judgment of the House of Lords in a case relating to infringement of a patent. Mr Lindsay directed me specifically to the following passage from Lord Wilberforce:

“The “willing licensor” and “willing licensee” to which reference is often made (and I do not object to it so long as we do not import analogies from other fields) is always the actual licensor and the actual licensee who, one assumes, are each willing to negotiate with the other — they bargain as they are, with their strengths and weaknesses, in the market as it exists.”

- 16 This according to Mr Lindsey supports his assertion that the actual market conditions must be taken into account when applying the willing licensor and willing licensee test. I accept this. A willing licensee would for example certainly take into account the value of the design when considering what royalty it was willing to pay for use of that design.
- 17 I turn now to discussing what the market conditions are in this case and how that would impact on what willing parties would agree to.

Reid as the leader in an established market

- 18 Mr Lindsey in his submissions, and Mr Battersby in his evidence, were both keen to emphasise that Reid currently has an effective monopoly on this type of davit. The evidence does suggest that Reid has a very strong position in the market with an established customer base especially of Water Authorities. This is exemplified by the copy of a Thames Water Authority included in Mr Battersby's evidence which states that Thames Water have standardised on the Reid ADV500 davit. Many water companies have also according to Mr

¹ *General Tyre & Rubber Co v Firestone Tire & Rubber Co Ltd* No2 [1975] FSR 273

Battersby installed sockets specifically to accommodate Reid's davits. There is little or no evidence to suggest that others such as Didsbury have much presence in the market. The evidence from Penny suggests they are producing around just 1 davit a month.

- 19 Hence from the evidence I am satisfied that Reid has a strong and established market position. I am happy to accept that this has been achieved at least in part by a strong design and good marketing. One consequence of this is that Reid is likely to be able to charge a higher price for its davits.
- 20 The strength of Reid in the market means that there will be an advantage to a licensee in being able to say that their davits are in effect and design the same as Reid's davits. Such a claim would also reassure potential customers that the davits will be compatible with any sockets they might have already installed. This benefit would in my view be taken into account by willing licensees and licensors and would in practice be reflected in a higher royalty payment than would be the case if the market was more fragmented.

Loss of Profits to Reid

- 21 In his evidence Mr Battersby suggests that if Reid were to agree to a licence then it would seek a royalty that "properly reflected the loss to its bottom line profits". In other words the licence should reflect that a sale by Penny would be a sale lost by Reid.
- 22 It is however well established that the position of the licensor as a manufacturer or trader is not something that is to be taken into account when considering what a willing licensee and licensor would agree. This is for example reflected in the following comments of the Hearing Officer in *NIC Instruments Ltd's Licence of Right (Design Right) Application*²:

"17 Mr Mitcheson also submitted that the licence should reflect the adverse effect on Allen's business arising from the sale of kits by NIC. As he put it, if the parties were negotiating as a willing licensee and licensor, Allen would say to NIC "look, for every kit you sell, we are not going to sell a kit", and NIC would then agree to compensate Allen for their lost profit. He conceded that the patent case law, which I explored in some detail in *E-UK Controls Ltd's Licence of Right (Copyright) Application [1998] R.P.C. 833* at pp.838–9 and which includes *Allen & Hanburys*, established that the position of the patentee as manufacturers should not be taken into account in fixing the royalty under a licence of right, but argued that the case law was only concerned with the position of the patentee strictly as a manufacturer, *i.e.* with the possibility he would have a manufacturing plant standing idle as a result of sales going to the licensee. In the present case, Allen are not manufacturers because they buy in the kit components.

² *NIC Instruments Ltd's Licence of Right (Design Right) Application Patent Office 29 January 2004 [2005] R.P.C. 1*

18 I have looked again at the case law, but come to the conclusion that Mr Mitcheson's interpretation of it is too narrow. It is true that in *Allen & Hanburys*³ Dillon L.J., in delivering the majority judgment on this particular point, was considering whether there should be some compensation for the contribution which the lost sales would have made to the patentee's manufacturing overheads. However, if, as the majority judgment concluded, it was inappropriate to compensate the patentee for this, it must be even less appropriate to compensate the patentee for mere loss of potential profit. Indeed, this comes out more clearly in the Crown use case on which the judgment in *Allen & Hanburys* was based, *Patchett's Patent* [1967] R.P.C. 237, where the grounds on which all three judges (Willmer L.J. at p.246, Diplock L.J. at p.251–2 and Winn L.J. at p.257) rejected the notion that the patentee should be compensated for the loss of the profit he would otherwise have made did not have anything to do with the question of whether the patentee would have plant standing idle because of the licensee's activity. This is particularly clear in Diplock L.J.'s judgment as he then went on to look at the patentee's position as manufacturer. The key point that comes out in both *Patchett's* and *Allen & Hanburys* is that the rights owner is only entitled to compensation as rights owner, not as potential supplier.”

23 In the aforementioned *E-UK Controls Ltd's Licence of Right (Copyright) Application*⁴ the same hearing officer had noted that:

“I have considered Mr Purvis' submission that the considerations in copyright and design right licences of right are different, but - to borrow the words of Dillon L.J. - I find the analogies with *Patchett* and *Salbutamol* compelling. If, in real negotiations, *Schneider* were giving up a monopoly right to enable *E-UK* to put control buttons on the market which would detract from *Schneider's* own sales, I have no doubt, as Mr Purvis argued, that the parties would take this loss of sales into account. However, just as in *Patchett* and *Salbutamol*, the licensor here is not giving up a monopoly right: *Schneider* does not have a monopoly right in law because anyone is now free to make its control buttons. Its entitlement to a royalty or some other remuneration stems solely from its rights as copyright owner, not from its position as manufacturer (or, more strictly in the present context, its position as a trader in the goods in question).”

24 Hence in considering what a willing licensee or licensor would agree I must ignore Reid's position as a trader or manufacturer of davits. In other words I need to consider what Reid would willingly accept if it were not a trader or manufacturer of davits but was rather just the owner of the rights.

Spin-off sales

25 Mr Lindsay argues that in being able to sell the davits, Penny will also be able to sell more electric winches and sockets. And notwithstanding that these

³ *Allen & Hanburys Ltd's (Salbutamol) Patent* Court of Appeal (Civil Division) [1987] R.P.C. 327

⁴ *E-UK Controls Ltd's Licence of Right (Copyright) Application* [1998] RPC 833

items are not protected by the design rights in issue here, the likely increased sales of these items would still be taken into account by willing parties. He refers me in support of this to *NIC Instruments Application*.

26 The designs in *NIC Instruments Application* related to a six components in a kit used by bomb disposal teams (the kit is referred to as the Mark 4 kit). In addition to the protected components, the Mark 4 kit also contained a number of other unprotected components. The question arose of whether whether the royalty should be based just on the six components or on the whole Mark 4 kit.

27 Paragraphs 20-22 of the decision set out the respective arguments and also the Hearing Officer's conclusion. These read:

“20 ...Mr Reed gave a number of reasons for basing the royalty just on the six components. He pointed out that the components only made up a small part of the total kit and that much of the kit consisted of off-the-shelf items like rope and karibiners. Expecting royalty to be paid on everything when only a small proportion was subject to design right would not be not fair and is not what willing parties would agree. He also referred to evidence that the components had sometimes been sold separately by Allen, and whilst NIC had not yet sold any of the components on their own, they had sold three kits that included only one of the six components (the sledge). Finally, he drew my attention to evidence that users would sometimes mix and-match components from different types of kit to create a set of components that best suited their specific needs.

21 Mr Mitcheson took a different line. These components were, he said, what gave the Mark 4 kit its specific functionality. Someone who wanted a Mark 4 kit wanted this functionality and would therefore only buy a kit that had these components. The customers who bought the NIC kits would not have bought a different NIC kit had the components not been available, and accordingly NIC would not have been able to secure these sales without the components. In these circumstances, he argued, willingly-negotiating parties would have recognised that it was the components that allowed the kit sales to be secured, and they would therefore have based the royalty on the whole kit.

22 Having considered the evidence, I have come to the conclusion that Mr Mitcheson is rather nearer the truth. Whilst I cannot be 100% sure from the evidence that NIC would not have made any of its sales (by supplying an alternative kit) had it not been able to include the six components, I am quite satisfied that the vast majority of those sales would not have been made. Further, the evidence suggests that sales of components, by either NIC or Allen, other than as part of a full Mark 4 kit are minuscule. In short, whilst there may be a few minor exceptions, by and large the components allow kits to be sold that would not otherwise be sold, and parties negotiating willingly would take that into account.

28 The likely increased sales of unprotected items (leather cases) was also a

factor pushing up the royalty in *P J International Leathercrafts Limited and Peter Jones (ILG) Limited*⁵. Hence it is clear that willing parties would take into account possible sales of items not covered by the design right that would be sold as a result of sales of the protected design.

Sockets

29 Reid did not in its statement of grounds identify possible increased sales of sockets as a factor that would be considered by willing licensees and licensors. It only became an issue at the case management conference though in the event Mr Long for the applicant did not object to it being considered. It therefore featured in Reid's evidence in chief. Penny had an opportunity to respond to this but chose not to do so.

30 The evidence on this point comes from the first witness statement of Mr Battersby where he notes that:

“Our client has collected data between May 2008 and April 2009, which show that for each davit sold, on average it also sells sockets to the value of 80% of the sales value of the davits. This reflects one of the key benefits of the product to the user, namely its ability to be moved to and from different locations, meaning that multiple sockets are sold with each davit. Therefore in addition to the [REDACTED] net profit figure for davit sale at the list price, Reid would on average expect to achieve net profits from socket sales of [REDACTED] for each davit sold. The potential loss to Reid/profit for Penny, also needs to be factored in to the licence fee.

So far as the net profit on individual sockets is concerned, the average selling price of a socket is [REDACTED], yielding a net profit margin of [REDACTED]%, namely a net profit of [REDACTED] per socket”

31 I have taken the reference to “Our client” to be a drafting error, possibly highlighting the origins of the some of the text used in the statement. I think what Mr Battersby meant to say was that Reid has collected the data.

32 Penny has not put forward any evidence to cast doubt on these figures or the premise that sales of davits leads to increase sales of sockets. Hence on the basis of the information available to me I am prepared to accept that being able to sell davits will enable Penny to also sell sockets that it would not have otherwise sold and that this is something that would be taken into account by parties negotiating willingly.

Electric Winches

33 The position regarding electric winches is less clear. The davits at issue here can be operated with either a manual hoist or winch or a motorised winch. According to Mr Battersby, Reid sells motorised winches to those of its davit customers who require them, which is a further sales opportunity that arises

⁵ *P J International Leathercrafts Limited and Peter Jones (ILG) Limited* [1996] BL 0/239/06

directly as a consequence of selling the davits themselves. This he claims is an opportunity which will be eroded by Penny's entry into the market.

34 Penny however contend that there is already an open market for electric winches with purchasers of davits free to source any required motorised winch from a variety of distributors. Mr Battrum for example highlights Yale Hoists as a possible supplier. Mr Battrum goes on to suggest that:

“If Reid is correct in saying that a spin-off payment is due from Penny to Reid for sale of an electric hoist, then presumably a similar spin-off payment would also be due from Yale Hoists to Reid for sale of an electric hoist to Severn Trent, which is clearly nonsense”

35 If that was the case then I agree it would be nonsense. However it is not because any hoist sold by Yale Hoists could not be said to have been sold because it had also sold a davit according to the design; it does not as far as I am aware sell davits. Severn Trent for example would have bought the hoist from Yale Hoists not because Yale Hoists had sold them the davit, but for other reasons for example price. So the question I need to consider is whether Penny is more likely to sell motorised winches if it also sold the davit. If so then this would be taken into account in any agreed royalty.

36 The position of electric hoists is however in my mind different to that of the sockets. With the latter it is most unlikely that anyone would buy a socket from Penny if it was not also providing the davit since the inter-relationship between the two products is so close. Indeed this is much like the situation in *NIC Instruments Application* where what was being sold was a kit of components that incorporated both protected and unprotected components. There was no real market for either set of components sold separately.

37 In contrast it is clear that there is a separate market for electric hoists. Even if a motorised hoist is required then it is not necessarily the seller of the davit that will provide the motorised hoist. Also not all davits will be sold with a motorised hoist. According to figures provided by Penny, only about half of the davits they currently sell, which admittedly is a small number, are sold with electric winches.

38 There is also a further factor here. Mr Battersby notes in his first witness that Reid sources the electric winches it provides from suppliers including Penny. In other words Penny already makes a profit from sales by Reid of its davits although obviously as the middleman Reid also makes a profit when it sells on the hoists to the end user. How many of the electric hoists sold by Reid are supplied by Penny is not clear. It is possible that Penny will in fact sell no more electric hoists if it also sells davits though since it would not necessarily be selling them through Reid it is likely to be making a slightly larger profit on any hoist it does sell.

39 What I needed was some evidence to show what this extra profit for Penny will be from either being able to sell more hoists or to sell them direct. In other words something to show the value of this to Penny. The onus is essentially

on Reid to provide this evidence and, in contrast to what it has done on sockets, it hasn't really given me what I need. All it has provided is the likely net profit that Penny will make on each hoist and what it believes its share of that profit should be. But that on its own does not enable me to deduce what the likely benefit will be for Penny in respect of possible increased sales of electric hoists. Consequently I have decided that I should make no allowance for any possible sales by Penny of electric winches.

Calculating the Royalty Rate

- 40 I explained at the case management conference that traditionally royalty has been assessed by looking at comparable licences or by splitting between the parties the profit available to the licensee. Of course I am not bound to follow either of these approaches but they can be useful if nothing else is proposed.
- 41 Here neither side has provided any comparable licences. The extent of the applicant's submissions and evidence is basically to say that they consider 5% of its list price to be a reasonable royalty on a simple piece of machinery. In fairness to Mr Battrum he has sought to attribute values to the 2001 modifications however it is unclear to me how, if at all, these support the 5% figure that Penny is proposing.
- 42 In contrast Reid has sought to engage more fully on this point. It has accepted the principle of sharing Penny's net profit. It has also helpfully sought to identify what it considers this profit to be based on its knowledge of Penny and its own profits.

Penny's likely profit

- 43 There is in fact some agreement between the parties that the likely selling price of davits incorporating the protected designs that are made by Penny will be between £800-£900 and that their cost to manufacture will be approximately [REDACTED]. Reid is slightly more specific claiming that Mr Battersby knows in fact that the Penny list selling price is £895 and that the direct manufacturing costs are [REDACTED]. I am happy to accept those figures in the absence of anything from Penny. This results in a gross profit of [REDACTED] to Penny for the sale of each davit.
- 44 That is however gross profit rather than net profit and a willing licensee would certainly want to account for its overheads before looking to split the profit. I have had nothing from Penny on what its overheads might be. Reid has in contrast again tried to help me. In his first witness statement Mr Battersby notes that Reid's overheads account for roughly [REDACTED]% of gross profits. In his second statement he suggests that as Penny will not have to bear the same marketing and development costs as incurred by Reid this figure of [REDACTED]% may be too high. I have already accepted that Penny will have the advantage of entering a mature market where the Reid davit, through the marketing and design efforts of Reid, is well established. I indicated that this would be a factor that would be taken into account. There are a couple of ways that this can be done. With sufficient information I might have been able to reflect it in

Penny's overheads which without this development cost and as much marketing cost, would have been lower. Alternatively I can assume that Penny's overheads are similar to Reid's but then increase the percentage share of the net profit received by Reid. In either case there is going to be a great deal of assuming on my part, as there often is in cases of this type, since I do not really have any quantitative information of the marketing and design effort or anything to indicate how advantageous that effort will subsequently be to Penny.

- 45 In the event I have decided simply for transparency to make any adjustments when I share out the profits. Hence at this stage I will assume Penny's overheads are comparable to those of Reid. This then results in a net profit for Penny of £438 per davit.

Splitting the profit

- 46 Reid suggests that Penny's net profit be split 60:40 in favour of Reid. This is at first sight a very favourable distribution for Reid and is significantly higher than has typically been awarded in Design Right Cases. For example the licensor received only 25% of the net profit in *NIC Instruments Application* and in *P J International Leathercrafts Limited and Peter Jones (ILG) Limited*. A 25:75 split has also been applied in other cases (see for example *Pioneer Oil Tools Ltds Application*⁶) whilst in *E-UK Controls* a 33:66 split was adopted.

- 47 In *NIC Instruments Application* for example the Hearing Officer noted in paragraph 40 that:

"I now have to decide how to split that profit between the two sides. Mr Mitcheson urged me to adopt the 50:50 split which, he said, had been used in many patent licence of right cases and, for example, in *Cabot*. Mr Reed argued for 25:75, with the 75 per cent going to the licensee. This is an issue I have had to consider in previous cases such as *E-UK Controls* (at p.848) and *Sterling Fluid System Ltd's Licence of Right (Copyright) Application* [1999] R.P.C. 775 (at p.789), and nothing Mr Mitcheson or Mr Reed have said on this occasion has persuaded me that the line I adopted in the previous cases is unsound. As I said in *Sterling*, whilst a 50:50 split may be appropriate in the very specialised field of pharmaceuticals, where manufacturing costs are very low compared to the massive research and development costs, I do not believe it is the sort of ratio that willing parties would agree in other fields. True it was also used in *Cabot*, but as Mr Reed observed, the point doesn't seem to have been argued in that case. In the present case, which is concerned with relatively routine mechanical components whose development costs are unlikely to have been very great, I am satisfied willing parties would have gone for Mr Reed's 25:75 split or something pretty close to it."

- 48 It would be wrong for me to simply take from these earlier cases that there is a "norm" or "going rate" of around 25% and apply it here. I believe however

⁶ *Pioneer Oil Tools Ltd.'s Licence of Right (Copyright) Application* [1997] RPC 573

that what these cases, and especially the preference for a 25:75 split, provide in the absence of anything better is a basic benchmark against which to consider the particular circumstances of this case.

- 49 Mr Lindsey argues that the added value of Mr Battersby's design is such that a willing licensor would not settle for less than 50% of the licensee's profit. But as I have already noted, the quality of the design will be reflected in the sale price and the sale price for Penny that I am working on is not significantly lower than the sale price currently being achieved by Reid.
- 50 I have already indicated that Penny will gain from being able to provide its own copy of Reid's established design. I will reflect this by uplifting Reid's share to 30% but for the reasons given above that is all the uplift I will consider. Given that the licence only has a short time to run I propose to apply this percentage as a fixed amount based on Penny's selling price of £895 and net profit of £438. This results in a royalty per davit of £132 per davit.
- 51 This is clearly somewhere short of the 60% that Reid is asking for. However having regard to the range of prior cases referred to above and the particular circumstances here, I believe it represents a fair assessment of what willing parties will agree.
- 52 I turn now to the sale of sockets with the davits. I indicated earlier that this is something that would be considered by willing parties. I could seek to reflect this by increasing the royalty on each davit alternatively I could apply a royalty to each socket. The latter option runs the slight risk of being more complicated to administer and possibly more open to dispute. However it benefits from being much fairer to Penny in that it will only need to pay for sockets it actually sells. I will apply the same % shares as for the davits hence based on a net profit of [REDACTED], the royalty payable by Penny is £12 per socket sold in combination with a davit.
- 53 I have decided not to impose any royalty on electric hoists or to adjust in any way the royalty on davits in respect of possible sales by Penny of electric hoists.

Conclusion

- 54 Having considered the submissions from both sides, I order that the terms of the licence be as appended to this decision.

Costs

- 55 At the hearing it was agreed that I should defer consideration of the issue of costs until the parties had had the opportunity to consider this decision and to make submissions if they so wished in the light of it. I did however indicate there, and at the earlier case management conference that each side typically bears its own cost in Licence of Right cases unless there are clear reasons to depart from that approach. At present I am struggling to see any such reasons here though of course I have yet to have the benefit of specific submissions

on this.

- 56 If either side wishes to make submissions on costs then they should do so within 4 weeks of the date of this decision. If no submissions are filed then I will make no order for costs.

Appeal

- 57 Under section 249 of the Act, any appeal lies to the High Court. Any appeal must be lodged within 28 days.

Phil Thorpe
Deputy Director acting for the Comptroller

LICENCE OF RIGHT

THIS LICENCE OF RIGHT is ordered between:

- (1) Reid Lifting Limited whose registered office is at Unit 1, Severnlink, Newhouse Farm Industrial Estate, Chepstow, NP16 6UN ("the Licensor"); and
- (2) Penny Hydraulics Limited whose registered office is at Station Road, Clowne, Chesterfield, S43 4AB ("the Licensee")

WHEREAS

- A. The Licensor owns design rights in the design of its portable davit crane, drawings and photographs of which are attached at Appendix 1 ("the Design");
- B. The Licensor's design rights in the Design are subject to Licences as of Right under section 237 of the Copyright, Designs and Patents Act 1988 ("the Act");
- C. The Licensee wishes to take a licence in respect of the Design ("the Licence");
- D. The Licensor and the Licensee have failed to agree the terms of the Licence and the Licensee has applied to the Comptroller-General of Patents, Designs and Trade Marks ("the Comptroller) under Section 247 of the Act to settle the terms by an application on Design Right Form 3 dated 6 January 2010 ("the Application")

The Comptroller orders that a Licence be granted on the following terms:

1. **Licence**

- 1.1 The Licensor hereby licences the Licensee to do anything which would otherwise infringe the design rights in the Design.
- 1.2 Subject to notifying the Licensor of the name of any sub-licensee and the grant of any sub-licence, the Licensee shall have the right to grant sub-licenses under the foregoing Licence to third parties, provided all such articles as are manufactured and/or imported and/or possessed for commercial purposes and/or sold and/or offered for sale by such sub-licensee are recorded in the records which the Licensee shall cause to be kept pursuant to clause 3.1 below.
- 1.3 All products made under this Licence by the Licensee or by any sub-licensee shall, in so far as is reasonably practical, be marked to indicate that the products originate from (as appropriate) the Licensee and/or any such sub-licensee, and shall not in any way be marked so as to indicate

that the Licensee is licensed by the Licensor.

- 1.4 This Licence shall take effect from the 6 January 2010 ("the Commencement Date") and shall continue until the last day of December 2011.
- 1.5 Nothing in this Licence shall be construed as a licence to the Licensee under any other rights of the Licensor.

2 Royalty

- 2.1 The Licensee shall pay to the Licensor royalties at the rate of:
 - 2.1.1 £132 for each portable davit crane the manufacture and/or importation and/or possession for commercial purposes and/or sale and/or offer for sale of which by the Licensee or its sub-licensee would (save for this Licence) infringe any of the design rights in the Design (" a Royalty Bearing Crane"); and
 - 2.1.2 £12 for each socket that is;
 - i) sold together with any Royalty Bearing Crane ; or
 - ii) sold separately for use with any Royalty Bearing Crane
- 2.2 All the above royalty payments are exclusive of VAT which shall be payable in addition by the Licensee, together with any other taxes, duties or governmental duties levied on the Licence.
- 2.3 Payments due under clause 2.1 above shall be made:
 - 2.3.1 within thirty (30) days of [last day of the month following date of decision] in respect of royalties accruing in the period from the Commencement Date up until [last day of the month following decision]; and thereafter
 - 2.3.2 quarterly by the following method: within 30 days of each of the [last day of relevant month], [last day of relevant month], [last day of relevant month] and [last day of relevant month] ("Quarterly Dates"), payment shall be made in respect of royalties due for the quarter terminating on the said Quarterly Date; and finally
 - 2.3.3 a payment shall be made within 30 days of the 31st December 2011 in respect of royalties due (if any) from the period [first day of relevant month] to 31st December 2011.
- 2.4 In the event of any delay in effecting payment due under this Licence by the due date specified, and without prejudice to the provisions of clause 4(a) below, the Licensee shall pay to the Licensor interest (calculated on a daily basis) on the overdue payment from the date such payment was due to the date of actual payment at a rate of three (3) per cent over the base

lending rate of HSBC Bank from time to time.

- 2.5 Each payment under clause 2.1 above shall be accompanied by a statement setting out the amount of royalties due.

3 Accounts

- 3.1 The Licensee shall cause to be kept full and accurate records pertaining to its operation under this Licence from which the accuracy of the statements in clause 2.5 may be independently verified.
- 3.2 The Licensee shall permit an auditor appointed by the Licensor to inspect and audit such records at all reasonable times at the Licensor's expense, except that the Licensor's auditing expenses shall be paid by the Licensee if the actual payments made to the Licensor are more than 5% less than the correct figure.
- 3.3 The Licensee may remove from such records any information which enables any person inspecting the records to identify any of the Licensee's customers except where the auditor can demonstrate that such information is necessary to verify the accuracy of the figures and the auditor also agrees by way of a signed confidentiality agreement not to disclose to any other person, firm or company, including the Licensor, the identity of the Licensee's customers.
- 3.4 The Licensor shall give 28 written days notice of such inspection.
- 3.5 The right of inspection under this clause shall continue for a period of two months after termination of this Licence.

4 Termination

- 4.1 The Licensor shall have the right to terminate this Licence with immediate effect by written notice to the Licensee if:
- (a) the Licensee is in breach of any term of this Licence and fails to remedy that breach within twenty eight (28) days of a notice from the Licensor calling upon the Licensee to remedy the breach;
 - (b) the Licensee's inspection under clause 3.2 above reveals that actual payments in any quarter are more than 10% less than the correct figure; or
 - (c) the Licensee shall enter into liquidation (other than for the purposes of reconstruction or amalgamation).

5 Indemnity

- 5.1 The Licensee shall indemnify the Licensor against any costs, claims, losses, damages or expenses which the Licensor may incur as a

consequence of the Licensee's exercise of its rights under the Licence

6 Service

- 6.1 Service may be by registered first class post from within the United Kingdom in which case it shall be deemed for the purposes of the Licence to have been received on the third working day after posting or by acknowledgement facsimile transmission in which case it shall be deemed to have been received on the date of the acknowledgement.
- 6.2 Service upon the Licensee shall be to the Licensee's address at the address provided at the beginning of this Licence or to such other address in the United Kingdom as the Licensee shall give by notice in writing to the Licensor.
- 6.3 Service upon the Licensor shall be to the Licensor's address at the address provided at the beginning of this Licence or to such other address in the United Kingdom as the Licensor shall give by notice in writing to the Licensee.

7. Governing Law

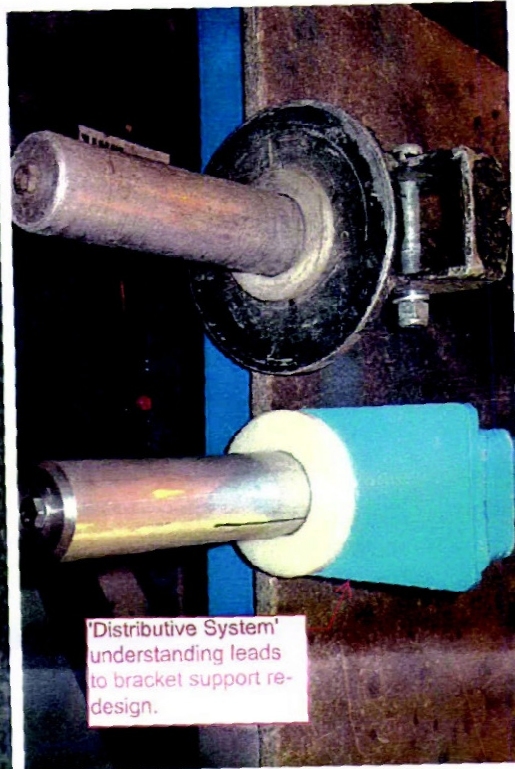
This Licence is governed by and shall be construed in accordance with English Law, and all disputes relating to or arising in respect of it shall be subject to the exclusive jurisdiction of the English and Welsh Courts.

APPENDIX 1 TO THE LICENCE

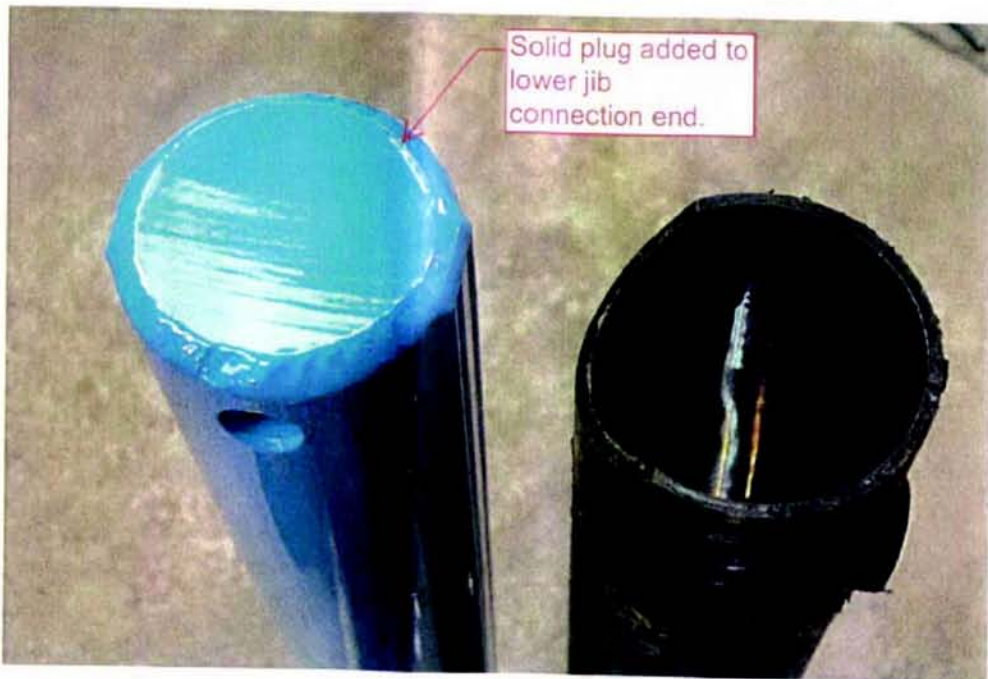




Bearing pad diameter and thickness increased significantly.



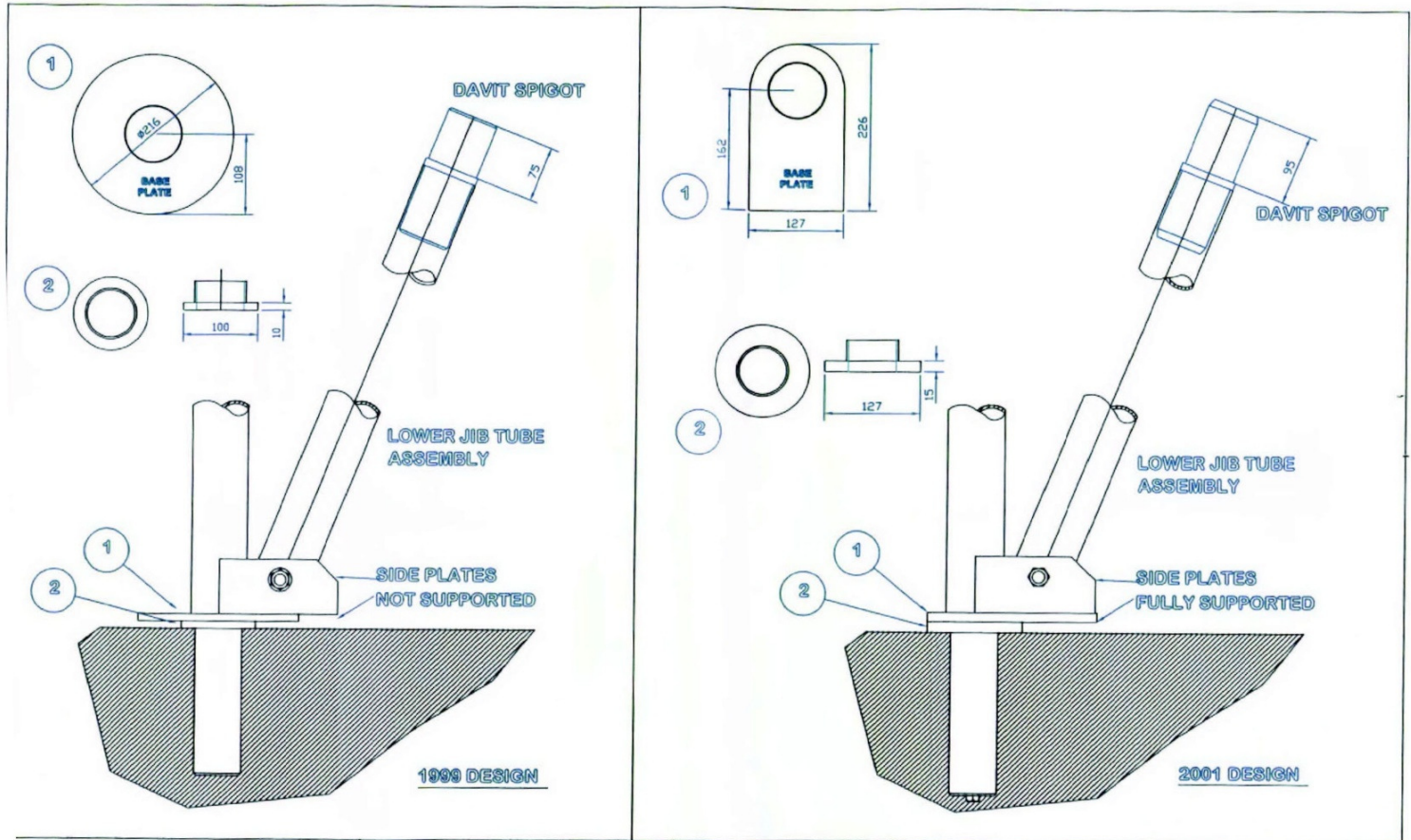
'Distributive System' understanding leads to bracket support re-design.



Solid plug added to lower jib connection end.



Spigot - extended,
chamfer angle.
Significant
increase in
Buckling strength



ALL COPYRIGHT AND DESIGN RIGHT SUBJECTS IN THIS DOCUMENT IS THE PROPERTY OF REID LIFTING LIMITED AND NOT BE REPRODUCED WITHOUT REID LIFTING'S CONSENT. THIS DOCUMENT AND THE INFORMATION CONTAINED HEREIN IS CONFIDENTIAL TO REID LIFTING LIMITED AND MUST NOT BE DISCLOSED TO ANY THIRD PARTY NOR USED FOR ANY UNAUTHORIZED PURPOSES WITHOUT REID LIFTING'S CONSENT.

CLIENT / PRODUCT:
PROJECT:

REID LIFTING
Reid Lifting Limited, Unit 1 Beverstok
Newhouse Farm Industrial Estate
Chapelton, Monmouthshire, NP16 6JH U.K.
Tel: +44(0)1291 620796 Fax: +44(0)1291 626490
www.reidlifting.com enquiries@reidlifting.com

Title: **PORTA-DAVIT 600**
1999 & 2001 DESIGNS

SCALE: A4 1:15
DATE: 21/08/10
DES. No.: 1999 & 2001 DESIGNS
REV: 0

①