



**PATENTS ACT 1977**

BETWEEN

McLaughlin & Harvey Limited	Claimant
and	
OpenHydro Group Limited	Defendant

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PROCEEDINGS

Reference under section 37 of the Patents Act 1977 in respect of patent number  
EP (UK) 1980746

HEARING OFFICER

Julyan Elbro

Ansons LLP for the claimant  
Field Fisher Waterhouse LLP for the defendant  
Hearing date: Decision on the papers

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**DECISION ON CONFIDENTIALITY**

**Introduction**

- 1 In a Decision dated 11 February 2014<sup>1</sup> I concluded that the claimant's claim for entitlement to EP (UK) 1980746 ("the patent") was not made out. I made a further Decision<sup>2</sup> on costs relating to the case on 30 May 2014. This Decision addresses requests for confidentiality made in the proceedings. Pending this Decision, the file on this case (with the exception of the Decisions themselves) has been not open to public inspection.
- 2 The parties each made submissions by email on 27 June 2014. Following further correspondence, the claimant clarified their submissions by email of 29 July 2014, and does not now seek any confidentiality order.

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<sup>1</sup> BL O/073/14 [http://www.ipo.gov.uk/pro-types/pro-patent/pro-p-os/p-challenge-decision-results-bl?BL\\_Number=O/073/14](http://www.ipo.gov.uk/pro-types/pro-patent/pro-p-os/p-challenge-decision-results-bl?BL_Number=O/073/14)

<sup>2</sup> BL O/236/14 [http://www.ipo.gov.uk/pro-types/pro-patent/pro-p-os/p-challenge-decision-results-bl?BL\\_Number=O/236/14](http://www.ipo.gov.uk/pro-types/pro-patent/pro-p-os/p-challenge-decision-results-bl?BL_Number=O/236/14)

## The law

- 3 Section 118(1) of the Act governs matters of confidentiality in patents matters and reads

### Information about patent applications and patents, and inspection of documents

118.-(1) After publication of an application for a patent in accordance with section 16 above the comptroller shall on a request being made to him in the prescribed manner and on payment of the prescribed fee (if any) give the person making the request such information, and permit him to inspect such documents, relating to the application or to any patent granted in pursuance of the application as may be specified in the request, subject, however, to any prescribed restrictions.

- 4 The prescribed restrictions are set out in rule 53 of the rules which reads:

- 53** (1) Where a person files a document at the Patent Office or sends it to an examiner or the comptroller, any person may request that the document be treated as a confidential document.
- (2) The comptroller must refuse any request where it relates to—
- (a) a Patents Form; or
  - (b) any document filed in connection with a request under section 74A.
- (3) A request to treat a document as confidential must—
- (a) be made before the end of the period of 14 days beginning immediately after the date on which the document was—
    - (i) filed at the Patent Office, or
    - (ii) received by the comptroller, an examiner or the Patent Office; and
  - (b) include reasons for the request.
- (4) Where a request has been made under paragraph (1), the document must be treated as confidential until the comptroller refuses that request or gives a direction under paragraph (5).
- (5) If it appears to the comptroller that there is good reason for the document to remain confidential, he may direct that the document shall be treated as a confidential document; otherwise he must refuse the request made under paragraph (1).
- (6) But where the comptroller believes there is no longer a good reason for the direction under paragraph (5) to continue in force, he must revoke it.
- (7) In this rule references to a document include part of a document.

- 5 Thus far in the proceedings, the documents filed by the parties have been covered by a temporary order under this rule, pending final resolution after the end of the proceedings. That final resolution is the purpose of this Decision.

### Request by the Defendant

- 6 The defendant now seeks only to maintain confidentiality in respect of a certain section of one of the exhibits to one of its witnesses' witness statements. The defendant states that this section contains a commercially sensitive analysis of a competitor's offerings. The claimant does not oppose this.
- 7 I find the very small redaction proposed by the defendant to be justified in view of its potential commercial sensitivity, and agree to make an order to keep the relevant part of the document confidential.

### **Conclusion and Order**

- 8 I make an order under rule 53 for the relevant portion of Exhibit JI16 to be redacted from the public file. The rest of the file is to be laid open to public inspection 28 days from the date of this Decision.

### **Appeal**

- 9 Any appeal must be lodged within 28 days

**JULYAN ELBRO**

Divisional Director acting for the Comptroller