



06 January 2015

PATENTS ACT 1977

BETWEEN

Kayfoam Woolfson	Claimant
and	
Recticel SA & Recticel Ltd	Defendant

PROCEEDINGS

Application for revocation under section 72 of the Patents Act 1977 of patent number EP(UK) 2 336 223 B1

HEARING OFFICER

Phil Thorpe

DECISION ON COSTS

- 1 In a decision dated 17th July 2014¹ I decided that the comptroller did have the jurisdiction to determine a revocation action brought by Kayfoam Woolfson (Kayfoam) against EP (UK) 2 336 223 B1 (“the patent”) in the name of Recticel SA & Recticel Ltd (“Recticel”). In that decision I also declined Recticel’s application that I certify that the question of whether the patent should be revoked would more properly be determined by the court. I also declined Recticel’s request to stay the proceedings.
- 2 Recticel made a further request to stay the proceedings on 20th August 2014. This was resisted by Kayfoam and the matter subsequently came before me at a telephone hearing on 3rd September 2014. Having carefully listened to the submissions of the parties I concluded at the hearing that there was no reason to stay the proceedings. I did allow a short extension of time for the defendant to file its counterstatement. I also indicated that I would hold a further case management conference shortly after a directions hearing scheduled in the related proceeding in Northern Ireland.
- 3 In a letter dated 30th October 2014 Recticel asked for a costs award in its favour in respect of the telephone hearing. It accepted that any award should be in

¹ BL O/315/14

accordance with the comptroller's published scale² . This was resisted by Kayfoam who also confirmed that it was not seeking any cost award in its favour. Both sides are content for me to decide the matter on the basis of submissions already made.

4 Section 107(1) of the Act says:

The comptroller may, in proceedings before him under this Act, by order award to any party such costs or, in Scotland, such expenses as he may consider reasonable and direct how and by what parties they are to be paid.

5 Costs awarded in proceedings before the comptroller are as noted above guided by a standard published scale and are not intended to compensate parties for the expense to which they may have been put, but merely represent a contribution to that expense. It is also usual for any award to be made to the successful party.

6 In this instance Recticel was unsuccessful in its application for a stay. It follows that it would not normally be entitled to any award. Indeed if there is to be a cost award then it would typically be against it. In its submission it has not identified why I should depart from this principle. It does note that subsequent to the hearing on the 3rd September 2015, both sides agreed to stay these proceedings. But that does not in my view alter anything and certainly does not justify any cost award to Recticel.

7 I therefore make no order as to costs.

Appeal

8 Any appeal must be lodged within 28 days

P THORPE

Deputy Director Acting for the Comptroller

² <http://webarchive.nationalarchives.gov.uk/20140603093549/http://www.ipo.gov.uk/p-tpn-42007.htm>