

PATENTS ACT 1977

IN THE MATTER OF

Application No. GB 0131122.4

in the name of Andrew Tobias Ward

DECISION

Introduction

Patent application number GB 0131122.4 entitled "PECS", was filed by the applicant Andrew Tobias Ward on 20 December 2001. At the same time, Mr Ward also filed Forms 9/77 and 10/77 requesting combined search and examination under the provisions of Section 17 and 18 of the Patents Act 1977.

This application is, for all practical purposes, identical to an earlier application filed by Mr Ward on 14 December 1998. The earlier application was refused following a hearing before the Comptroller's Hearing Officer – a decision that was upheld on appeal to the Patents Court on 20 December 1999. Neither application has been published.

Substantive Examination

In an examination report issued on 11 January 2002, the examiner dealing with the present application reported that it only differs from an earlier application, (GB9827460.8) in that it includes a page entitled "A Lesson in the Law of Conservation of Energy". The examiner stated that in his opinion the present application is open to the same objections as those raised against the earlier application, e.g. lack of novelty, clarity and industrial application.

The examiner also reported that because the earlier application had been refused by the Comptroller's Hearing Officer, and that decision was upheld on appeal to the Patents Court, in his opinion the present application should also be refused.

On 17 January 2002, Mr Ward sent the Office a letter enclosing an article which he said he was proposing to publish. The article contains a number of accusations against the Patents Court Judge who decided the appeal in the matter of Mr Ward's earlier application. Neither the article nor the letter which accompanied it, address the objections raised by the examiner in his examination report.

The examiner then spoke to Mr Ward on the telephone on 5 February 2002 to discuss how this application should proceed. Mr Ward confirmed that he did not wish to present any arguments at a hearing, and that he was content for the Comptroller's Hearing Officer to issue a decision, in respect of the patentability of this application, on the basis of the papers on the official file. Indeed I note that on 20 December 2001, the same day that he filed this application, Mr Ward wrote:

"I hereby forego the right to senior review; I therefor expect the relevant documentation to be presented to me within 21 working days. So I may proceed with this case though the Courts"

Acting on the Comptroller's behalf and after a careful study of the papers, I now give this decision.

The Invention

The Issue

In his judgement in respect of Mr Ward's earlier application, Mr Justice Pumfrey described the invention as a perpetual motion machine. He was satisfied that it would not work as described in the application, and he concluded that the Hearing Officer was right to refuse the application. The only issue I need to decide in relation to the present application is whether it relates to the same invention as Mr Ward's earlier application. If it does, then I must refuse this application on the grounds of estoppel by record – otherwise known as the rule of res judicata – because it is for the same invention as the earlier application which the Patent Court has already held to be unpatentable.

I have carefully compared this application with Mr Ward's earlier application (GB9827460.8), and I am satisfied that the invention described in the two applications is exactly the same. In fact, the two applications correspond to each other word-for-word. The present application is accompanied by an additional sheet headed "A Lesson in the Law of Conservation of Energy". It is unclear whether or not this additional material is intended to form part of the patent application; in any event it does not affect my decision.

I therefore refuse this application on the grounds of estoppel by record, because it is for the same invention as an earlier application which has previously been refused by the Patents Court.

Appeal

This being a substantive matter, any appeal from this decision must be lodged within six weeks of the date of this decision.

Dated this 19th day of February 2002

S Probert
Deputy Director, acting for the Comptroller
PATENT OFFICE