



BL O/378/04

4 January 2005

## PATENTS ACT 1977

BETWEEN

Look C Limited Claimant

and

Richard Parviz Navabi Defendant

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PROCEEDINGS

Application under section 72(1) of the Patents Act 1977 in  
respect of patent number GB 2325548

HEARING OFFICER R C Kennell

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### SECOND PRELIMINARY DECISION

- 1 This decision relates to a disputed request by the claimant to extend the period for filing evidence in reply to the defendant's evidence. The parties are agreed that I should decide the matter on the basis of the papers on file.
- 2 This is not the first preliminary dispute in these proceedings: at each stage of the evidence rounds an extension of time to file evidence has been requested and contested. Thus in a preliminary decision on 5 August 2004 I allowed the claimant a three-week extension to file its evidence, the parties having been unable to reach a compromise. At the next stage, the filing of the defendant's evidence was complicated by a number of factors, including whether a supplementary statement could be accepted. However, the parties eventually agreed an extension amounting to eight weeks from the original deadline, which the Patent Office accepted. Accordingly, the Office wrote to the parties on 8 November 2004 requiring the defendant to file its evidence by 6 December 2004.
- 3 On that date, the defendant sent a copy of its evidence and a supplementary counter-statement to the claimant. In a letter dated 15 December 2004 the Office confirmed that the claimant's evidence in reply should therefore be filed by 17 January 2005 in accordance with rule 75(5) of the patents Rules 1995. The claimant wrote on 20 December 2004 to request an extension of four weeks to 14 February 2005. The defendant was not prepared to go beyond a one week extension, to 24 January 2005,

and has filed a copy of the e-mail exchanges between Mr Martin Hedges of A A Thornton & Co for the claimant and Mr David Knight of Field Fisher Waterhouse for the defendant which preceded the formal request to the Patent Office.

- 4 Mr Hedges seeks an extension because the extension granted to the defendant to file his evidence has shifted the period for evidence in reply into the Christmas and New Year holiday period. He says that as a result of this the only person at Look C Limited who was empowered to give instructions and to authorise him to incur expenditure was on holiday in South Africa and not expected back in the UK until 6 January 2005, and could not therefore be contacted. In response to Mr Knight's query as to why arrangements could not have been made beforehand to obtain instructions, Mr Hedges thought it was not possible to have judged what action might be needed until the defendant had filed his evidence and supplementary counter-statement, and that having seen these there were various issues on which he needed to consult with his client, including the defendant's evidence regarding the meaning of computer networks.
- 5 I do not think that all of the claimant's difficulties can be laid at the door of the holiday period. Mr Hedges says in an e-mail of 14 December 2004 that "I have been away from the office for the last two weeks in any event and the empowered person for the claimant is now away in South Africa until the New Year". It therefore appears that by the time that person returns, there will have been a period of over one month when Mr Hedges and his client have not contemplated getting in touch with one another. However, the Office's letter of 8 November 2004 gave both parties four weeks' notice that the defendant's evidence was due by 6 December. This should have alerted the claimant to the fact that (provided the deadline was met) the period to file evidence in reply would coincide with the Christmas and New Year holiday.
- 6 Mr Hedges makes the points in his letter of 20 December 2004 that although the applicant is a company it is a sole individual who is responsible, and that a proper consultation cannot be reasonably conducted whilst that person is away on holiday. Up to a point, I agree. However, I do not think that of itself absolves the claimant from the need, following the Office's letter of 8 November 2004, to have made contingency plans to deal with at least some of the defendant's evidence while the responsible person was away, even if some matters had to wait his return. There is nothing to suggest that any such plans were made - why, for instance, was it not possible for the responsible person to provide a telephone, fax or e-mail contact if he really was the only person that could deal with the matter? I do not think that it is acceptable for the claimant, without very compelling reasons, simply to put everything on hold until that person returns from a long holiday and then to expect almost the full six week period to file evidence in reply - which would be the effect of allowing Mr Hedges' request.
- 7 Mr Hedges also suggests that the defendant is no longer in a position to object to an extension (as it has done in previous instances) on the grounds that it wants the matter drawn to a conclusion as quickly as possible, in view of the length of time taken to file its own evidence. However, I do not think that this argument carries very much weight, since the defendant does not appear now to making that specific objection, and the extension for the defendant's evidence was a matter of agreement between the parties.

- 8 Nevertheless, I am prepared to make some allowance for difficulties over the holiday period. Mr Knight has suggested that an extension of one week should suffice, bearing in mind that the holiday only accounts for three working days. However, considering all the circumstances of the case, I am prepared to allow the claimant a period of four weeks from the expected date of return of the responsible person. I therefore extend the period for the claimant to file its evidence in reply to **3 February 2005**. Any further extension will be allowed only for compelling reasons and will require full explanation of why it has not been possible to meet this extended deadline.

### **Costs**

- 9 Neither side has specifically requested costs for this preliminary issue. I therefore direct that each party should bear its own costs in the matter.

### **Appeal**

- 10 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

**R C KENNEL**

Deputy Director acting for the Comptroller