



4th February 2010

PATENTS ACT 1977

BETWEEN

Asphalt Re-Lay Ltd

Claimant

And

Nu-Phalt Limited

Defendant

PROCEEDINGS

References under section 72 of the Patents Act 1977 in
respect of patents GB 2418444 and GB2392190

HEARING OFFICER

P THORPE

DECISION

- 1 On 23th November 2009 Asphalt Re-Lay Ltd filed revocation proceedings before the Comptroller under section 72 of the Patents Act 1977 against two patents, GB 2418444 and GB2392190, both in the name of Nu-Phalt Limited.
- 2 Shortly afterwards Nu-Phalt Limited commenced proceedings in the Patents Court against Asphalt Re-Lay Ltd for infringement of these patents.
- 3 In light of these proceedings in the court, both sides have now requested that the comptroller declines to deal with this reference under section 72.
- 4 It is clearly undesirable to have the same or largely similar issues litigated both before the comptroller and the court, and moreover the request is supported by both parties. I am also satisfied that the question of whether these patents should be revoked is one which would now more properly be determined by the court.
- 5 On these grounds therefore, I grant the request and I decline to deal with the reference.

Costs

- 6 The question of costs to date of these proceedings before the comptroller has not been raised, and accordingly I make no order in that respect.

Appeal

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

P THORPE

Deputy Director acting for the Comptroller