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PATENTS ACT 1977

IN THE MATTER OF an application
for the restoration of Patent No
2210436 in the name of Geoffrey
Belfield

01/08/95

DECISION

The renewal fee in respect of the sixth year of the patent was not paid by the due date of 1 October 1992 or in the following six months as allowed under section 25(4) upon payment of an additional fee. The application for restoration was filed on 29 April 1994 within the period prescribed under rule 41(1). There followed a period during which further evidence was filed and at the end of which the Office expressed the view that it was not satisfied that the requirement of section 28(3)(a) had been met. The matter came before me at a hearing held on 3 March 1995 at which Mr Belfield appeared in person.

The only evidence initially filed in support of the application was a statutory declaration by Mr T L Johnson a senior partner in the firm of Edward Evans & Co (EE), Chartered Patent Agents. Mr Johnson explains that his firm had been authorised to act for Mr Belfield with regard to the patent, had duly notified Computer Patent Annuities (CPA) for the patent application (as it then was) to be entered into the CPA records, and, upon grant of the patent had notified Mr Belfield that CPA had responsibility for sending reminders for the payment of renewal fees. CPA were instructed to send these reminders to Mr Belfield at Truflow Brassware Ltd (TBL) at Unit 1 on an industrial estate in Fazeley, Staffordshire. Mr Johnson also states that on 29 November 1993 Mr Belfield contacted EE for advice after having been told by a customer that the patent had apparently lapsed and after confirming with the Patent Office that this had indeed happened.

A first statutory declaration by Mr Belfield dated 6 May 1994 was then filed in which Mr Belfield states that it has always been his intention that the patent should remain in force and confirms the manner in which the lapse of the patent came to his notice. He then states that

after further enquiries it had become apparent that the reason for the patent having lapsed was because he had not received any reminders from CPA that the renewal fee was due. He surmises that the reason for this was because the Post Office did not carry out his instruction to redirect mail when his company TBL had moved from Unit 1 to Unit 16 of the same industrial estate on 1 February 1992.

In response to a request by the Office for further information on a number of matters contained in an official letter dated 13 June 1994, a second statutory declaration by Mr Belfield and statutory declarations by Mr Chinnery of CPA and Mr Cline of EE were filed on 15 September 1994. Mr Cline says that the official overdue reminder (issued by the Office on 30 October 1992) would have been forwarded to CPA on the day of receipt by EE. Mr Chinnery exhibits copies of reminders sent to TBL at the Unit 1 address on 25 June 1992, 26 August 1992, 28 October 1992 and 25 February 1993. He also exhibits a computer print-out dated 6 November 1992 indicating that the official overdue reminder would have been forwarded, to the same address as the CPA reminders. He says that no response was received to any of these reminders.

In his second declaration Mr Belfield states that he has been unable to obtain any evidence of the redirection of mail put into place when TBL moved from Unit 1 to Unit 16 and that as a result of a general review of his personal papers relating to TBL (now in liquidation) he has found a carbon copy of a CPA reminder dated 26 August 1992. From the discovery of this reminder Mr Belfield believes that the mail redirection arrangement referred to in his first declaration was in place. Mr Belfield then goes on to state that this second reminder was the only one he received and that he duly returned it with a cheque for £160 pounds to CPA and to avoid any possibility of further error he wrote his home address on the top copy. The photocopy exhibited has an undated manuscript note drawing attention to the home address. Mr Belfield then goes on to say that as he did not receive any more reminders he believed that renewal had been completed successfully. He has however been unable to find a reference to the cheque for £160 in the TBL company accounts and believes this to be due to the fact that TBL went into liquidation on 31 December 1992 and many of the relevant papers have been destroyed.

The Office wrote to Mr Belfield on 11 October saying that, in the absence of any evidence substantiating Mr Belfield's claim to have set up an effective mail redirection service and to have issued a cheque for £160 to pay the renewal fee, it was unable to admit a *prima facie* case for restoration and offered a hearing.

Shortly after that letter had been issued, Mr Belfield telephoned the Office to say that he now had in his possession additional evidence to further his case and was allowed time in which to file it, which he duly did on 12 December 1994 in the form of a third statutory declaration with a letter from the company secretary of a company called K.E.P. Visuals as an accompanying exhibit. The letter, which is headed with an address in Tamworth, reads:

"We can confirm that when we moved into Unit 1 after Truflow Brassware Limited had left, we arranged with Mr Bellfield (sic) that we would pass on any mail that arrived for the Company of Truflow, off (sic) which we did without fail."

Mr Belfield suggests that this piece of evidence shows that a mail redirection service was in place which covered the period from his move to Unit 16 (just 50 yards away from Unit 1) until at least the end of the six month extension period allowed for the renewal of the patent. He says that this arrangement is still in place, even now.

Another new aspect is then introduced by Mr Belfield saying:

"At the time of the renewal my company was having some cash-flow problems and occasionally I had received customer cheques which had bounced upon presentation. As a precaution, therefore, if I had to send an important cheque, I drew out the cash and arranged for a Building Society cheque to be sent. Having recorded that payment had been made, together with the change of address on the reminder I believe that I had taken sufficient steps to ensure that if any further problems arose, I would be notified by CPA. I knew that if CPA had not received payment a final reminder would have been sent, but as I did not receive one I naturally assumed that payment had been received, and renewal of my Patent had been accomplished."

Mr Belfield ends this declaration by stating that he feels that he took reasonable care to ensure renewal was made by engaging a reliable renewals firm and organising a redirection of mail, and it was not simply a case of "being too busy or not having enough money", but at the hearing he explained that at the time that the second CPA reminder was received the company was going through a difficult stage, the main problem for him being that, in a company employing twelve people in all, his co-director (who is on the production side of

things) had been off for nearly twelve months with ME (severe depression) and he (Mr Belfield that is) was having to run the production as well as the administration side of things and be all things to all men. He was having difficulty in coping with it all, and was working late hours. He confirmed that the cheque which he said he had sent was, to the best of his knowledge, drawn from the building society, and also explained that a building society was used because banks charge for the service and when you are in difficulty and money is tight, it was a matter of saving the pennies.

Other statements made by Mr Belfield during his address to me indicate that K.E.P. Visuals had been in the adjoining Unit to TBL for some time, that the same Post Office employee continued to deliver mail to TBL after it had moved to Unit 16, and that he was prepared to obtain proof that K.E.P. Visuals had occupied Unit 1 throughout the relevant period. When I asked Mr Belfield specifically if he had instructed the Post Office to redirect mail he emphatically replied that he had not - he did not feel it was necessary because the move was only a matter of yards - his statement in his first declaration was apparently referring to an earlier move which took place before the relevant renewal period.

If all this points to Mr Belfield having a properly working, albeit informal, arrangement for the redirection of mail to Unit 16, and, on the balance of probabilities, I find it does, then the mystery only deepens as to why Mr Belfield should receive just the one reminder out of the several which were apparently sent and why it was that, as Mr Belfield admitted, he was not aware of any other mail going astray. Indeed some really badly addressed mail was apparently getting through. According to Mr Belfield the situation did not even change after TBL went into liquidation because his present employer (a previous customer of TBL) took over the TBL premises. Mr Belfield at one point suggested that the root of the problem with the reminders lay in the fact that EE had given CPA the TBL address at Unit 1 instead of his own home address when the patent had been re-assigned to him (it had passed through a series of hands between 1989 and 1991), but as Mr Belfield worked at Unit 1 and then at Unit 16 and, so I was informed by Mr Belfield, incoming post would have been seen by him, I do not believe this to be material if, as I have found above, the informal redirection of mail was operating properly.

I come then to the matter of the response to the second reminder from CPA. Mr Belfield in evidence has stated that he sent off a cheque for £160 and, by inference, that this cheque would have been drawn by a building society to guarantee that it would be honoured. At the hearing he retracted from this somewhat in saying that he could not guarantee that he posted the cheque because at the time he had an awful lot on his plate. He did however say that he was almost certain that he was in possession of a cheque stub for £160 or had seen an entry for that amount in a statement and explained that it would have been a company cheque which he would have encashed and taken to a building society. He submitted that £160 is not the sort of amount that you draw if you are drawing petty cash or something like that, it is always round figures. £160 is an unusual amount and could only have been for that purpose.

I allowed Mr Belfield an opportunity to produce further evidence to substantiate his claim that he had attempted to make a payment of £160 to CPA in response to the reminder dated 26 August 1992. Mr Belfield wrote back on 5 April 1995 as follows:

"I have made a diligent search of all documentation held by me for the period in question.

I have been unable to obtain the specific information you require because I am unable to trace the transaction through the Bank as it has never been cashed.

The Building Society and the bank are reluctant to help me without this information, and require a fee for their searches and a wait of some weeks to obtain the details from micro-fiche records. I have, however, found the transaction when the original cash was drawn to meet the payment which originally led me to feel that the renewal fees were paid. I enclose a copy of the relevant Building Society statement, highlighted at the transaction.

In the circumstances I feel, having put so much time and money into attempting to prove that I took reasonable care, that I have gone as far as I am able and hope that this latest information will suffice.

Your booklet recommends setting up a reminder system by using a diary or Patent Agent and I do feel that I went to a lot more trouble than that, nevertheless, a series of circumstances failed to warn me of any impending lapsing of my patent.

I would, therefore, respectfully request that you exercise your discretion in the matter"

There is more to the letter, but nothing which is material to this application.

As I explained to Mr Belfield at the hearing, setting up a reminder system is only a part of what is required to satisfy the reasonable care requirement, the proprietor has to play his part in seeing that the renewal fee is paid. In this particular case that meant that Mr Belfield had to respond to a CPA reminder by sending off the money to pay the fee, and that is why I gave Mr Belfield a final chance to establish that he had done this.

The copy of the statement now supplied by Mr Belfield is, as he says, from a Building Society rather than a bank, and it is for an account in his name, there being no entry on the single page provided which indicates to me that the account is anything other than his own personal account. The entry which Mr Belfield has highlighted is indeed for £160. It is for a withdrawal from a cash dispensing machine. The date of the transaction in question is 30 October 1992, two months after the reminder which Mr Belfield says he was responding to.

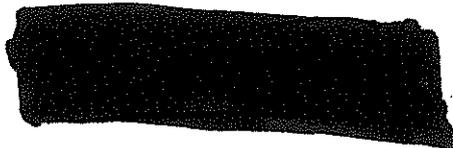
Another feature of this page of the statement is that it shows a cheque which was drawn for £160 pounds on 4 November 1992. Mr Belfield says nothing about this particular cheque so I can only assume that it has nothing to do with any attempt to pay the renewal fee. It is however curious that there should be two transactions for £160 within a few days of each other bearing in mind Mr Belfield's submission to me about that sum being virtually unique to the payment of the renewal fee. It also seems strange to me that Mr Belfield should go to the trouble of withdrawing cash from a machine and then to hand it over the counter of presumably the same building society to get them to write a guaranteed cheque when he could have simply asked the building society to debit his account. But putting these curiosities to one side, there is still nothing to link the highlighted entry with CPA, and nothing which provides a clear link between the August reminder and the date of the transaction.

Mr Belfield has said that because he did not hear anything further from CPA he assumed that the renewal fee had been paid successfully. The reminder to which Mr Belfield says he responded carries a clear statement that fines will be due if payment is not made by the due date. In this case the due date was 1 October so any payment consequent upon a cash withdrawal made on 30 October would be subject to a late payment fee and Mr Belfield should have expected further communication from CPA in respect of that additional payment.

He received no such communication and this should have alerted him, just as the arrival of further reminders should have done had they been received, that something had gone wrong.

Section 28(3) requires the comptroller to be satisfied that reasonable care was taken to see that the renewal fee was paid before ordering restoration. I have done my best to take into account the difficulties in providing evidence some time after the event, the circumstances which are peculiar to this case, and the fact that in the latter stages of the case Mr Belfield has been acting without expert advice. The Office and I have tried to give Mr Belfield every opportunity to provide coherent and convincing evidence, but to my mind he has been unable to do so. Despite his efforts, such a tangled web of confusion and doubt weaves through this case that on the evidence and submissions before me I have been unable to reach any firm conviction as to whether or not Mr Belfield really did attempt to send off payment for the renewal fee in question. It follows that I must refuse the application for restoration.

Dated this 3 day of May 1995



K E PANCHEN
Superintending Examiner, acting for the Comptroller

THE PATENT OFFICE