

PATENTS ACT 1977

IN THE MATTER OF an application
under Section 72 by David Brookman
for the revocation of Patent No GB 2128706 B
standing in the name of Thames UK Limited

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DECISION

David Brookman has applied under Section 72 for revocation of Patent No GB 2128706 on the ground of prior use. The patent is dated 26 April 1983, and was applied for by JR Commercial Enterprises Limited (JR), subsequently known as JR Group PLC, and assigned in 1991 to the current proprietor, Thames UK Limited.

Mr Brookman alleges that the invention was made available to the public before the priority date in that an embodiment of it was:-

sold to Fashion Movements Limited by Quodeck;

sold to British Home Stores (BHS) by JR, and/or Jade Interiors Limited (Jade) - a subsidiary of JR, and/or Quodeck Limited which later became a subsidiary of JR; and

shown at the "Air Freight in Action" exhibition.

All these allegations are denied in the proprietors' Counterstatement.

Evidence in support of the application for revocation is given in the form of Statutory Declarations with Exhibits, in the names of:-

David Brookman, a former director of Quodeck;

John Paul Deacon, a consultant engineer;

Paul Austin Deacon, a former technical and managing director of Jade and director of Tube Rack Limited;
Neville Jarvis, managing director of Buckhorn Limited;
Raymond Thatcher, a professional photographer; and
Kenneth Stanley Targett, a chartered patent agent.

Statutory Declarations with Exhibits, as evidence in support of the proprietor's case, have been submitted by:-

John Frank Atack, currently a director of Thames UK and formerly employed by companies in J R Group PLC including Quodeck; and
John William Thomas Kemping Thornborrow, formerly a director of Thames UK Limited, and chairman and managing director of JR and JR Group PLC.

The invention relates to a tubular structure which can form an assembly for hanging clothes or supporting shelves. The structure can also be used as scaffolding. Claim 1 of the patent in suit reads:-

"A tubular structure comprising a first tubular member having a plurality of aligned longitudinally-extending slots at spaced intervals along the length thereof and a second tubular member having spaced hook portions adapted to engage two longitudinally spaced slots in the first member, said hook portions being formed in a flattened end portion of the second member and being a force or friction fit with the wall of the first member".

In one embodiment of the invention, a plurality of first and second tubular members are interconnected to form an assembly, the first tubular members being arranged as uprights and the second tubular members as cross-pieces with hook portions at both ends.

After the usual evidence rounds had been completed the parties informed the Office by letter that a settlement had been reached in which the patentees had consented to revocation and

costs had been agreed. Accordingly it remains for me to decide on the papers on file whether the patent is invalid within the terms of section 72, and should accordingly be revoked.

In his first statutory declaration Mr Brookman explains how the invention evolved. He says that in 1979 and 1980, companies within the JR Group were producing a racking system, which he calls "Tube Rack 1", in which tubular uprights were connected to tubular cross-beams by double clamps. By 1981 "Tube Rack 2" had been developed. This had slotted uprights and hooked connector plates welded to the cross-beam ends. "Tube Rack 3", the invention of the patent in suit, was developed later to avoid the need to weld on separate connector plates by flattening the ends of the cross-beams and forming the hooks therein.

In support of the allegation that Tube Rack 3 was sold to Fashion Movements, Mr Brookman refers in his evidence to Exhibit DB 2 which shows entries from his diary for 10 and 14 September 1982. These relate to meetings with Fashion Movements which he says resulted in an order for the Tube Rack 3 system. There is also an entry for 30 September 1982 relating to an appointment with Raymond Thatcher to photograph the erected system at Fashion Movements. Mr Thatcher confirms in his statutory declaration that he took a photograph at the premises of Fashion Movements on or just before 1 October 1982 and submits it as Exhibit RT 1.

Mr Atack, in his testimony, refers to Exhibit JA 2 which purports to be a copy of the relevant Fashion Movements order. The order, dated 14 September 1982, is for the supply, delivery and erection of a "Tube Rack System". Mr Atack points out that this could mean Tube Rack 2 or 3. He also suggests that Mr Thatcher may have been mistaken about the date he took the photograph.

In reply, Mr Brookman says he remembers showing a sample of Tube Rack 3 at the Fashion Movements meetings prior to the order being placed and Mr Thatcher submits Exhibit RT 2 showing relevant entries from his diary and negatives catalogue at about the right time.

Close examination of the photograph reveals that the cross-beams have flattened rather than welded-on ends and I am satisfied, in the absence of any evidence to the contrary, that it shows a Tube Rack 3 tubular structure according to the invention. I am also persuaded that the photograph was taken at Fashion Movements, on or just before 1 October 1982.

Accordingly I find that the invention was in public use before the claimed priority date of 13 October 1982 by virtue of being sold to Fashion Movements Limited. I therefore do not need to consider the remaining allegations concerning BHS and the Air Freight in Action exhibition.

It should be noted in any case that the the proprietor's case is that the invention was made available to the public shortly after the claimed priority date of 13 October 1982, rather than shortly before, as the applicant for revocation claims. However, it is also alleged that the invention is not in fact entitled to the claimed priority date, but only to the priority of the actual application date, which was 26 April 1983.

When the patent application was filed, priority was claimed from two earlier applications, GB 8212150 (dated 27 April 1982) and GB 8229251 (dated 13 October 1982). However, the claim to the first priority application was withdrawn.

Mr Targett argues in his statutory declaration that the invention defined in Claim 1 of the patent in suit is disclosed in the first priority application and points out that this was unconditionally withdrawn by letter dated 15 August 1983, after the date of filing the second priority application. In his contention, under the provisions of Section 5(3) the second priority application should accordingly be disregarded for the purposes of determining the priority date of Claim 1.

Having studied all the documents concerning the claim to priority I am satisfied that the invention in Claim 1 is indeed disclosed in the first priority application and accept that the provisions of Section 5(3) do apply. I therefore find that the priority date to be accorded to the invention is 26 April 1983, the date of filing the patent in suit. Accordingly, even on the

proprietor's account of the facts, the invention was in my judgment made available to the public before the priority date.

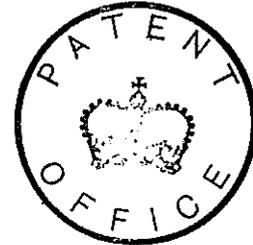
In consequence, I hereby revoke Patent No GB 2128706.

Dated this 9 day of December 1993

[REDACTED]

W J LYON

Superintending Examiner, acting for the Comptroller



THE PATENT OFFICE