

**PATENTS ACT 1977**

IN THE MATTER OF an application under  
Section 72(1) by GEC Avery Service Limited  
for the revocation of Patent No 2027542  
in the name of Derwent Measurement and  
Control Limited

27/2/95

**DECISION**

Patent Application No 7832672, filed on 8 August 1978 and published on 20 February 1980, was granted 23 March 1983 as Patent No 2027542, entitled "Weight measuring method and apparatus". No earlier priority date was claimed.

On 1 March 1993 GEC Avery Service Limited ("the applicants") filed an application for revocation of the patent in suit, alleging in their statement lack of novelty or inventive step having regard to the state of the art which had been made available to the public before the priority date by a specified prior use. In their counterstatement filed on 11 May 1993 Derwent Measurement and Control Limited ("the proprietors") denied the allegation but made an offer to amend the patent, subsequently clarified as an unconditional offer. Evidence in support of the allegations was filed by the applicants on 3 September 1993.

However, on 29 September 1993 the applicants sought to introduce a supplementary statement alleging, once again, lack of novelty or inventive step having regard to the state of the art which had been made available to the public before the priority date, this time by a further specified prior use and by a specified publication. The proprietors objected on the grounds that such introduction was likely to delay the outcome of these proceedings and to lead to the waste of costs.

In a preliminary decision dated 21 April 1994, based by agreement of the parties on the papers on file, I ordered that the supplementary statement be admitted and, consequentially,

that the proprietors' pleadings should also include their supplementary counterstatement of 4 February 1994.

The applicants filed further evidence-in-chief in support of the matters raised in the supplementary statement, comprising statutory declarations by J.W.Evans and N.Cosby, respectively current and former employees of British Steel. The proprietors then stated in a letter dated 10 November 1994 that after due consideration of the additional evidence-in-chief, and on the basis of a proposal by the applicants that each side should meet its own costs in the matter, they had decided to agree to the revocation of their patent, and to meet their own costs, provided that the applicants met their own costs.

I infer from this letter that the proprietors do not contend that the evidence fails to prove the allegations of prior use made in the supplementary statement. It remains necessary, however, for me to satisfy myself as to whether the uncontested facts presented in evidence are such as to require me to revoke the patent.

I note that the patent ceased to have effect on 8 February 1995 by reason of a failure to pay the renewal fee due on 8 August 1994. However, unlike revocation, which is effective *ex tunc*, the lapsing of the patent is not retrospective, and in such circumstances it is the practice of the Patent Office to pursue the revocation action in the public interest.

The main claims of the patent in suit are as follows:

"1. A method of checking and/or calibrating a weighing device including a load carrier comprising applying a force to the carrier by pushing or pulling it against the restraint thereon provided by said weighing device, incorporating at least one force measuring transducer in the means for applying the force and measuring the applied force from electrical output signals emitted by said force measuring transducer.

6. A weighing means including a load carrier, means for applying a restraint to the load carrier to restrain it against movement resulting from an applied load and checking and/or calibrating apparatus comprising a hydraulic ram for applying a force

to the carrier to push it or pull it against the restraint, said hydraulic ram being connected between the load carrier and an immovable point with a load cell for measuring the applied force connected in series with the hydraulic ram."

Claims 2 to 5 and 7 to 14 are appendant to claims 1 and 6 respectively, and there are two omnibus claims, 15 and 16.

The allegations made in the applicants' supplementary statement are that the invention the subject of the patent in suit was on the priority date of the invention not new in that it formed part of the state of the art which had been made available to the public both by use and by publication prior to the priority date. In the alternative lack of inventive step is alleged having regard to the same prior art.

The alleged use in question was by an installation of weighing means by Setpoint Limited in 1969 at the Basic Oxygen Steel Plant North of British Steel Corporation at Port Talbot and by subsequent use of those weighing means.

The allegedly anticipating publication was in an article in the March 1978 issue of the periodical "Process Engineering" entitled "Taking the load off mechanical weighing", which referred to the use of "NPL certified calibration links in place of dead weights", for calibration of hopper weighing systems at British Steel's Ravenscraig works.

In their supplementary counterstatement, the proprietors denied knowledge of the alleged prior use and put the applicants to proof of precisely what was installed at the British Steel plant at Port Talbot and of what, if anything, was made available to the public. I have, however, already noted that the patentees have not contested the facts as subsequently substantiated in the proprietors' additional evidence.

The proprietors admitted publication of the article, but denied that the invention both as claimed and as proposed to be amended was itself thereby published. In particular, they denied that the article contains such clear and unmistakeable directions as could amount to prior publication of the invention.

Mr Evans's evidence establishes that he was employed prior to 1972 by British Steel Corporation, for part of that time as Chief Instrumentation Engineer, and was employed from 1972 to 1979 by Setpoint Limited. He states that a number of "Hopper Hydraulic/Loadcell Check Calibration Systems" as shown in his exhibit JE1 were manufactured and installed at the Basic Oxygen Steel Plant North of British Steel Corporation at Port Talbot in 1969/70 by Setpoint Limited. Further systems similar to those in exhibit JE1 were manufactured and installed at Port Talbot in 1969 by Setpoint Limited. These differed in specified respects from the JE1 systems. Similar installations were made before 1978 at British Steel's Scunthorpe and Ravenscraig plants, and at Iron and Steel Corporation of South Africa, Newcastle, South Africa. Setpoint Limited also supplied in 1969/70 "Hydraulic/Loadcell Check Calibration Systems" for use with weighbridges used for weighing crucibles of molten steel. These systems comprised either one or two hydraulic jack/loadcell assemblies similar to those shown in exhibit JE1 connected below a weighbridge platform, and were also installed in British Steel's Basic Oxygen Steel Plant North at Port Talbot.

Mr Cosby has been employed in various posts by British Steel at Port Talbot since 1967. He confirms Mr Evans's testimony as to the installations at Port Talbot.

Both declarations state that the systems referred to would have been seen by, and would have been shown to, official visitors to the Basic Oxygen Steel Plant North, and that there was no restriction placed on disclosure by British Steel Corporation or Setpoint Limited.

In the absence of any contest of these alleged facts by the proprietors, I accept the facts as stated by Mr Evans and Mr Cosby. I note that the prior use described in the evidence commenced before, and in some cases several years before, the filing date of the application for the patent in suit.

Whilst there are no prescribed requirements as to the particular facts which need to be pleaded in revocation proceedings before the Comptroller, the Rules of the Supreme Court give guidance in the form of what is required to support an allegation of prior user before the Court. However, the purpose of such requirements is to provide the proprietors with sufficient information to identify the alleged prior user, whereas in the present case it is clear

that the proprietors are not challenging the facts as presented. I therefore do not regard it as necessary for me to consider the extent to which the evidence meets these formal requirements relating to proceedings before the Court.

I am satisfied on the evidence, including the drawings exhibited by Mr Evans and Mr Cosby, that the applicants have established that the invention claimed in claims 1 and 6 of the granted patent was not new at the date of application in that it formed part of the prior art at that date by virtue of having been made available to the public prior to 1978 by installation, or by installation and subsequent use, in the United Kingdom, of "Hopper Hydraulic/Loadcell Check Calibration Systems" as shown in exhibit JE1, and of "Mobile Calibration Check Rigs" as shown in exhibit JE2. I am satisfied also that the subject matter of appendant claims 2, 3, 7 and 11 is not new in relation to the established prior user.

As regards the allegation of prior publication in the "Process Engineering" article, it is sufficient to note that I do not consider that the cited article contains a sufficient description of the matter claimed in itself to constitute prior publication.

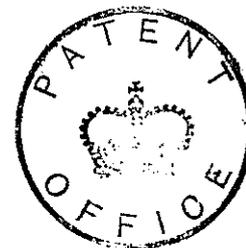
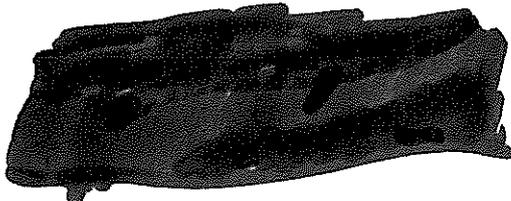
Having found that the main claims of the patent in suit fail for lack of novelty, and in view of the fact that the finding is not resisted by the proprietors, I do not regard it as necessary for me to consider the alternative allegation of lack of inventive step included in the supplementary statement, or the allegations of lack of novelty or inventive step set out in the applicants' original statement. Neither, in view of the proprietors' statement that they agree to revocation of the patent, do I consider it necessary to decide either whether any of the claims which I have not found to fail for lack of novelty might provide a basis for a valid patent, or whether the amendments offered in the original counterstatement evade the charge of lack of novelty which has succeeded in respect of the claims as granted. I regard those amendments as having been abandoned by the proprietors.

I therefore order that Patent No 2027542 be revoked.

At an early stage in the proceedings the proprietors sought a Certificate of Contested Validity. In all the circumstances I make no such Certificate.

The parties having agreed between themselves the matter of costs in the action, I need make no order in this respect.

Dated this 27 day of March 1995



**Dr P FERDINANDO**

Superintending Examiner, acting for the Comptroller

**THE PATENT OFFICE**