



PATENTS ACT 1977

BETWEEN

Mr Robert Wilson

Pursuer

and

Enviromax Ltd.

Defender

PROCEEDINGS

Reference under section 37 of the Patents Act 1977 in respect of patent number GB 2494073 B

HEARING OFFICER

J Elbro

Ms Jane Lambert instructed by Hutchinson IP appeared for the pursuer

Mr Tariq Usman instructed by Cameron IP appeared for the defender

Hearing date: 27 April 2015

DECISION

Background

- 1 Mr Robert Wilson ("Mr Wilson") and Mr Gerry Deeney (now deceased) were named as co inventors on UK patent number GB 2494073 ("the patent").
- 2 The patent, entitled Method and Additive for Improving the Efficiency of a Central Heating System, was filed in the name of Enviromax Ltd. on 1 December 2011. After the usual rounds of search and examination the patent was granted on 24 July 2013.
- 3 On 23 April 2014 the pursuer, Mr Wilson, filed a request seeking a determination pursuant to s.37(1)(a) of the Patents Act 1977 ("the Act") that Mr Wilson is the sole proprietor of the Patent; a determination pursuant to s.37(1)(b) of the Act that the Patent should not have been granted to Enviromax Ltd.; a determination pursuant to s.37(1)(c) of the Act that the entire right in or under the patent should be transferred to him. Further the pursuer sought an order pursuant to s.37(2)(a), (b) and (d) of the Act or alternatively an order pursuant to sections 37(4), 72(1)(b) and 76 of the Act revoking the patent entitling the pursuer to make a new application for the invention.
- 4 Some preliminary issues relating to submission of late evidence were dealt with at a preliminary hearing on 20 April 2015. The substantive matter then came before me

at a hearing on 27 April 2015 in Glasgow. Ms Jane Lambert instructed by Hutchinson IP appeared for the pursuer and Mr Tariq Usman instructed by Cameron IP appeared for the defender

The law

5 In the earlier stages of proceedings there appeared to be some disagreement as to whether it was the law of Scotland, or the law of England and Wales, which applies in this case. However, by the time of the hearing, both parties accepted that as both parties were located in Scotland and all the relevant acts had taken place in Scotland, it is the Scottish law which applies.

6 The IPO Tribunal is a UK tribunal, and the hearing and the process leading up to it were conducted in accordance with the usual Tribunal procedures.

7 This is an application under s37 of the Act, under which the Comptroller has power to determine questions of entitlement and provide appropriate remedies:

37.-(1) After a patent has been granted for an invention any person having or claiming a proprietary interest in or under the patent may refer to the comptroller the question -

- (a) who is or are the true proprietor or proprietors of the patent,
- (b) whether the patent should have been granted to the person or persons to whom it was granted, or
- (c) whether any right in or under the patent should be transferred or granted to any other person or persons;

and the comptroller shall determine the question and make such order as he thinks fit to give effect to the determination.

(2) Without prejudice to the generality of subsection (1) above, an order under that subsection may contain provision -

- (a) directing that the person by whom the reference is made under that subsection shall be included (whether or not to the exclusion of any other person) among the persons registered as proprietors of the patent;
- (b) directing the registration of a transaction, instrument or event by virtue of which that person has acquired any right in or under the patent;
- (c) granting any licence or other right in or under the patent;
- (d) directing the proprietor of the patent or any person having any right in or under the patent to do anything specified in the order as necessary to carry out the other provisions of the order.

8 The parts of the Act relevant to this entitlement action are s7 and (under Scottish law) s.31.

7.-(1) Any person may make an application for a patent either alone or jointly with another.

(2) A patent for an invention may be granted -

(a) primarily to the inventor or joint inventors;

(b) in preference to the foregoing, to any person or persons who, by virtue of any enactment or rule of law, or any foreign law or treaty or international convention, or by virtue of an enforceable term of any agreement entered into with the inventor before the making of the invention, was or were at the time of the making of the invention entitled to the whole of the property in it (other than equitable interests) in the United Kingdom;

(c) in any event, to the successor or successors in title of any person or persons mentioned in paragraph (a) or (b) above or any person so mentioned and the successor or successors in title of another person so mentioned; and to no other person.

(3) In this Act “inventor” in relation to an invention means the actual deviser of the invention and “joint inventor” shall be construed accordingly.

(4) Except so far as the contrary is established, a person who makes an application for a patent shall be taken to be the person who is entitled under subsection (2) above to be granted a patent and two or more persons who make such an application jointly shall be taken to be the persons so entitled.

Nature of, and transactions in, patents and applications for patents in Scotland

31.-(1) Section 30 above shall not extend to Scotland, but instead the following provisions of this section shall apply there.

(2) Any patent or application for a patent, and any right in or under any patent or any such application, is incorporeal moveable property, and the provisions of the following sub-sections and of section 36(3) below shall apply to any grant of licences, assignments and securities in relation to such property.

(3) Any patent or any such application, or any right in it, may be assigned and security may be granted over a patent or any such application or right.

(4) A licence may be granted, under any patent or any application for a patent, for working the invention which is the subject of the patent or the application.

(5) To the extent that any licence granted under subsection (4) above so provides, a sub-licence may be granted under any such licence and any such licence or sub-licence may be assigned and security may be granted over it.

(6) Any assignment or grant of security under this section may be carried out only by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995.

(7) An assignment of a patent or application for a patent or a share in it, and an exclusive licence granted under any patent or any such application, may confer on the assignee or licensee the right of the assignor or licensor to bring proceedings by virtue of section 61 or 69 below for a previous infringement or to bring proceedings under section 58 below for a previous act.

- 9 s7 makes it clear that the right to be granted a patent lies primarily with the inventor, i.e. the deviser of the invention. This may be changed in certain circumstances, including granting a patent to the inventor’s successor in title. s31 (which corresponds to s30 applying in England and Wales) sets out requirements for an assignment (corresponding to an assignment in English law) of rights in a patent or patent application.
- 10 In addition to these legal rights, the defender argued that Comptroller can also take account of equitable rights. Specifically, the defender asserted that the Comptroller may decide questions of entitlement based on equitable assignment if satisfied, on the balance of probabilities, that such has taken place, even if orally or by conduct¹. Earlier in the proceedings this was disputed by the pursuer, but by the time of the hearing this was accepted by both sides.
- 11 One further issue raised by the defender was the question of personal bar – a close cousin of the English concept of estoppel by representation. As characterised by the defender (a characterisation not contested by the pursuer), for the general principles

¹ *Polar Bay’s Patent* BL O/233/99 at paragraphs 10-12 and *Hartington Conway Ltd’s Patent Application* [2004] RPC 6 at paragraph 64.

the defenders relied on passages from *Hartington Conway*², especially paragraph 20 which gives three essential requirements:

“In a nutshell, a party who makes a clear unambiguous representation of fact to another party, which is relied upon by the other party to its detriment, cannot then allege that the fact is otherwise than it represented. Three key elements must therefore be present: representation, reliance and acting to one’s detriment.”

- 12 In this instance, the defender sought to use the doctrine to bar Mr Wilson from arguing that he should be entitled to the patent, on the basis that (the defender alleged) he agreed that the patent should be filed in the name of Enviromax.

The facts

History of the Invention

- 13 The invention is an additive for central heating systems. The parties agreed that the invention is embodied in a specific product, originally called Nucleate B and later UMAX, invented by the pursuer, Mr Wilson, in 2008/9.
- 14 In around May 2011 Mr Wilson and Mr Gerry Deeney met with a view to commercialising Nucleate B. It was agreed that a new company Enviromax Ltd. would be established. Enviromax was incorporated on 17 May 2011. The company relied on funds provided by a third individual, Mr John Wilson (no relation to the pursuer), who had backed some of Mr Gerry Deeney’s previous ventures.
- 15 On 18 November 2011 Cameron IP were instructed to draft a patent application on behalf of Enviromax, and on 1 December 2011 Mr Wilson and Mr Gerry Deeney were co-named as inventors on patent application GB1221442.5 which was subsequently granted on 25 June 2013 as GB2494073.
- 16 On 24 August 2012 Mr Wilson ceased to be a director of Enviromax.
- 17 Mr Gerry Deeney died in January 2014. He was succeeded in charge of Enviromax by his son, Mr Ian Deeney (“Mr Deeney”).
- 18 Finally on 23 April 2014 Mr Wilson filed this action with the Office.

The Witnesses and their evidence

- 19 In the original evidence rounds, the pursuer submitted a witness statement from Mr Wilson himself and supporting documents. The defender submitted a witness statement by Mr Deeney and supporting documents.
- 20 Both sides also submitted “reasoned statements”, signed by their attorneys – one filed by the pursuer in response to the counterstatement, one filed by the defender in response to that, and one filed by the pursuer in response to that. These mainly either rehearse arguments pursued at the hearing, or rehearse arguments dropped before the hearing (for example, the pursuer originally contended that the comptroller had no power to recognise in any way an agreement transferring rights which did not comply with Sections 30 or 31 of the Act).

² *Hartington Conway Ltd’s Patent Application* [2004] RPC 6

- 21 However, all the statements suffered from a tendency to assert facts not in evidence, in particular making assertions about what occurred between the parties which the (somewhat sparse) witness statements did not cover. This was highly problematic because the attorneys who signed the statements of course had no direct knowledge of the events in question. I find this approach, adopted by both parties, to have been unhelpful. There was no reason why Mr Wilson or Mr Deeney could not have testified to relevant facts within their witness statements.
- 22 As I explain in more detail below, the pursuer's statements were even more problematic than it first appeared as it emerged in Mr Wilson's cross-examination that the "facts" asserted in them were in several respects untrue. Mr Wilson attempted to explain this away as inattention on his part. I would hope that had they been included in a statement he had directly attested to and had to affirm under oath, as was the case with his actual witness statements, he would not have been so inattentive. I believe this shows that the approach of filing these reasoned statements, mixing assertions of fact not backed by proper evidence with argument, was an inappropriate one.
- 23 Very late in the day, just two weeks before the hearing, the defender submitted further evidence statements from a Mr Caldwell and a Mr McDougall. Following a preliminary hearing I allowed these statements to be admitted, but also allowed Mr Wilson to submit a second witness statement in response. The defender's witnesses were thus Mr Deeney, Mr Caldwell, and Mr McDougall.
- 24 Mr Deeney is the son of Gerry Deeney, and has been operations manager of Enviromax since July 2011. He gave evidence on the overall context of the dealings between Mr Wilson and Enviromax from his perspective.
- 25 Francis (Frankie) Caldwell MBE was the "business manager" of Senit Solutions, another company owned by Mr Gerry Deeney, from June 2010 to March 2013. He gave evidence about discussions he claimed to have been closely involved with between Mr Gerry Deeney, Mr John Wilson, and Mr Wilson about Enviromax taking forward the UMAX product.
- 26 Ian McDougall is a Director of McDougall Johnstone, accountants, who provided accountancy and consultation services to Enviromax for just under 4 years. He gave evidence on the business relationship between Mr Wilson and Enviromax.
- 27 All three of the defender's witnesses gave their evidence clearly and apparently honestly. It was, however, generally of little assistance as they lacked direct knowledge of the key events in question. I do not hold this against the defender – the key person involved from their side was Mr Gerry Deeney, who obviously could not testify.
- 28 Ultimately, Mr Caldwell's and Mr McDougall's statements appeared primarily directed towards matters which were either
- following the examination of Mr Wilson no longer in dispute: that Mr Wilson was aware of and involved in the original patent application (Mr Caldwell) and that Mr Wilson engineered his own exit as a Director of UMAX (Mr McDougall), or

- irrelevant: Mr McDougall spends much time on Mr Wilson's employment status, which as it is common ground that the invention was made before Mr Wilson's involvement with Enviromax has no bearing on entitlement (although the parties in their reasoned statements spilled much ink on the relationship and who had behaved badly to whom), and Mr Caldwell emphasizes the hard work and effort Mr Gerry Deeney put in to commercialising UMAX.

29 Mr Deeney's evidence likewise to the extent that it was relevant did not appear to be challenged by the pursuer (the pursuer understandably differed from the defender as to the rights and wrongs of the business relationship, but that does not appear to affect any of the material points). In particular, he gave evidence on current Enviromax deals involving UMAX he asserted were threatened by these proceedings.

30 I should note that although the evidence of the defender's witnesses in the event was mainly either undisputed or not relevant, it was produced in response to the pursuer's evidence, and as I explain below the picture painted by the pursuer's original evidence differed markedly from what came out later. My comments should not, therefore, be taken as a criticism of the defender's decision to submit the evidence.

31 The pursuer's only witness was the pursuer Mr Wilson himself, who submitted two witness statements (the second in response to the defender's late evidence) and was cross-examined at the hearing. However, as I noted above, in addition to his witness statements, the pursuer also submitted two statements which rehearsed a number of alleged facts and argument, and were signed by his patent attorney, Mr Thomas Hutchinson, as being true to the best of Mr Hutchinson's knowledge and belief.

32 As I mentioned above, the statements are notable in that they allege various facts which were plainly not in Mr Hutchinson's direct knowledge (he was presumably relying on what the pursuer told him), such as allegations as to what happened when the pursuer ceased being a director of Enviromax. During Mr Wilson's cross-examination, it became apparent that a number of these allegations, and allegations in the original statement of case, were known by the pursuer to be untrue or misleading.

33 Firstly, the statement of case indicates that the pursuer was "removed" as Director of Enviromax, and invites the inference that this was done to enable the filing of the patent application behind the pursuer's back. The relevant passage is as follows:

"Moreover, it is a matter of public record that Mr Wilson was appointed as a Director of Enviromax Ltd prior to the filing of the patent in suit, but that his position was terminated after the filing of the patent application. This belies an underlying intention of Enviromax Ltd to unlawfully misappropriate Mr Wilson's invention and to secure a monopoly right for an invention to which it was not entitled."

34 The inference I am expected to draw from this is clear: Enviromax appointed Mr Wilson as Director just long enough to get their hands on Mr Wilson's invention and then ditched him as soon as they had it. Under cross-examination, Mr Wilson admitted that this was not an accurate picture of events. Instead, after consulting his accountant he had become concerned about the way Enviromax was run and had

engineered his own exit from directorship of the company by means of appointing his wife as a director and then having her remove him (and, it appears, he her).

35 Even more baldly, the statement of case asserted “Mr Wilson’s position is that Enviromax Ltd has applied for a patent for his invention without his licence.” This is reinforced in the second reasoned statement with the words “At no point in these proceedings has the Pursuer acknowledged that he *agreed* to the patent being filed in the name of the Defender. The Pursuer’s failure to object to the filing is not tantamount to the pursuer *agreeing*...” (emphasis in original).

36 In his second witness statement (made after the defender had produced witness statements and copies of emails evidencing Mr Wilson’s knowledge of the filing of the patent application) and under cross-examination, as I discuss below, Mr Wilson instead asserted that he had been fully on-side with the initial filing of the patent application in Enviromax’s name.

37 Finally, the first reasoned statement asserts:

“The Pursuer and Defender merely discussed the terms of an agreement by which the Pursuer might transfer his IP to the Defender, which agreement was conditional on a number of things happening:

- 1 That the Pursuer would invoice the Defender £500 per month and that those invoices would be paid;
- 2 That the Pursuer would become a 35% shareholder in the Defender company;
- 3 That the Pursuer would be a Director of the Defender company; and
- 4 That John Wilson would invest £50,000 in the Defender Company to launch the product.”

38 The statement then alleged these had never been fulfilled and so there was no concluded agreement to transfer ownership of the invention.

39 Under cross-examination, Mr Wilson admitted that these “conditions” were part of the overall deal of going into business with Enviromax, and unrelated to an agreement to transfer the invention. He also conceded that some conditions he had alleged unfulfilled were in fact carried out.

40 Particularly noteworthy in this respect is condition 2 that Mr Wilson receive a 35% share in the company. Mr Wilson submitted evidence supporting the allegation in the statement that he had never received this, consisting of a report from Company’s House showing his *current* shareholding to be 10%. This unravelled when in response the defenders submitted evidence showing that his shareholding had previously been 35% but he had agreed to reduce his holding subsequently. In the face of this evidence, Mr Wilson admitted under cross-examination that the statement that he had not received a 35% share was incorrect.

41 Mr Wilson had no convincing explanation of why he permitted his attorney to attest to the truth of things he (Mr Wilson) knew to be untrue. And these are not minor details – they go to the heart of the pursuer’s case. The whole picture painted in the pursuer’s written evidence, and in particular in that statement, is of the defenders operating behind the pursuer’s back to make the patent application. The defender’s

evidence undermined this story, but more to the point Mr Wilson admitted under cross-examination that he was fully behind the patent application being made in the name of Enviromax originally.

- 42 The result of this is that I am hesitant to accept much of Mr Wilson's narrative of events when it is unsupported by other evidence.

The Filing of the Patent Application

- 43 The key factual questions in this case revolve around what understandings there were between the parties at the time of filing the patent application.

- 44 As I allude to above, the differences between the parties turned out to be narrower than they originally appeared to be. This much appeared to be common ground between them:

a. There was a joint intention between Mr Wilson and Enviromax to file the patent application in Enviromax's name

b. At the initial meeting with their patent attorney, Stewart Cameron, Mr Wislon and Mr Gerry Deeney asserted the patent had been invented by them jointly, and that they were both employees of Enviromax. Mr Cameron filed the patent on this basis, stating Enviromax derived the right to apply for a patent as a result of the inventors' employment.

c. Mr Wilson was actively involved in the early stages of filing and prosecuting the patent application.

- 45 Where the parties differed was over

d. The basis under which Mr Wilson was content for the patent application to be filed in the name of Enviromax.

e. What the parties knew or believed about the validity of the patent.

- 45 Taking these points in turn, the defender's witnesses were unable to shed much light on point d, none of them having been involved in the early filing of the patent application. Mr Gerry Deeney was, of course, unable to give evidence. There was an absence of documentary evidence on this specific point (although the defenders did provide several emails which helped establish Mr Wilson's involvement in the common ground a-c above). As a result, all the direct evidence on this came from Mr Wilson.

- 46 Mr Wilson, in his second witness statement and under cross-examination asserted that the intention was to impress a particular potential buyer (called Wolseley, who did in fact purchase several units of the product but did not continue the relationship) and discourage them from simply "stealing" the invention instead of buying the product from Enviromax. Ms Lambert argued that once that fell through, Mr Wilson expected the patent application to be abandoned, particularly as he considered the patent clearly invalid as a result of his prior selling of the product.

- 47 Ms Lambert also argued, based on Mr Wilson's evidence, that Enviromax's role was that of a distributor, rather than a manufacturer. There was some discussion during cross-examination with the witnesses about this distinction – essentially, it appears Enviromax was assembling the product from raw materials provided elsewhere – but it does not appear to me the distinction is of great significance. The important part of Ms Lambert's argument was that this showed (under her theory) that it would never have been the intention of Enviromax to own the intellectual property – adding to the argument that the agreement to file the patent was just a convenience to support the Wolseley sale.
- 48 I do not find Mr Wilson's account wholly convincing. It is notable it is not his original story – as I mention above, his initial approach was to state the defender could not prove any agreement at all existed. The impression I am left with is that he thought the defender would not be able to show that he had made any agreement at all, and so he omitted mention of his original enthusiasm for filing the patent application. Faced with the defenders unearthing such evidence, in the form of contemporaneous emails, he fell back to this story. That does not automatically make it untrue, of course, but his willingness to conceal part of the story initially does not make me wholly confident that he was completely frank later.
- 49 But in any event, even were I to accept that Mr Wilson's account is completely accurate in terms of how he viewed the application, there is absolutely no evidence that he ever communicated this to Enviromax or Mr Gerry Deeney. Cross-examined on this, the defender's witnesses seemed unaware of it, although as their direct knowledge was limited, this shows little. Far more telling is that in his own evidence, Mr Wilson never testifies that he communicated this to anyone. Ms Lambert essentially asks me to draw that inference, but I have nothing to base this on, especially as were it true, it would have been a natural thing for Mr Wilson to have stated directly. And as I note above, Mr Wilson has form in terms of his representatives putting forward assertions and inferences he himself has known to be untrue.
- 50 Furthermore, I do not consider that the mistake over filing the patent application claiming that Enviromax derived a right to file a patent from employing Mr Wilson, as opposed to from him having assigned his rights, to be of significance. It is not the case that Mr Wilson mistakenly thought he had to go along with the patent being filed in Enviromax's name because he was an employee – instead, as he explicitly said, he wanted it filed in Enviromax's name. In other words, what he represented to Enviromax was not that he was willing for the patent to be filed in Enviromax's name because he thought they had a right to it, but was rather that he wanted the patent filed in Enviromax's name.
- 51 The evidence as to whether Mr Gerry Deeney and Enviromax thought the patent application would not be granted, or the resulting patent invalid if it were, is similarly lacking. The pursuer asserted that the patent is clearly invalid as he had been selling the invention publically before the application was filed, and his argument is that Enviromax and Mr Gerry Deeney knew this.
- 52 This not being a trial on validity, I do not have the evidence to form a view on this, and Ms Lambert quite properly did not invite me to come to one. The defenders' witnesses denied believing the patent invalid under cross-examination, but again

were not first-hand involved with the patent application, so once again the evidence on this point rests with Mr Wilson. And again, Mr Wilson never actually testifies that Mr Gerry Deeney and others actually believed the patent to be invalid – only that he believes they should have known that. I am therefore not willing to find this established.

Applying the law to the facts

Inventorship

- 53 The defender conceded that Mr Wilson was the sole inventor and a right to the invention was not derived through Mr Wilson's employment at Enviromax. As such Mr Deeney should be removed as a co-inventor (under s13(3) of the Act).
- 54 As a consequence, the first owner of the right to apply for a patent was the pursuer; the question is whether that right passed by some means to the defender.
- 55 It is worth noting that the defender did not concede that Mr Gerry Deeney was wrongly named as an inventor on the original application; they contended that as filed the patent also contained claims to a syringe for deploying the additive, and that this was invented by Mr Gerry Deeney. These claims did not survive in the granted patent, however.

The Purported Assignment

- 56 The defender argued that Mr Wilson under cross examination had clearly admitted that he consented to Enviromax being named as the applicant on the patent.
- 57 The document put forward by the defender as a written assignment by the pursuer to the defender was a document originally drafted by the pursuer and signed by the pursuer, Mr Gerry Deeney, and Mr John Wilson, dated 11 July 2011.
- 58 The pursuer accepted that the document meets the formal requirements of Section 31; the dispute between the parties related to whether in substance the document was an assignment at all.
- 59 The document appears to have originated as a result of an Enviromax board meeting on 6 July 2011. The minutes of this meeting were in evidence and state "Gerry and Bob to put together confidential storage of formulas and also Enviromax ownership of all copy write." Subsequently, Mr Wilson sent a draft product description by email of 9 July 2011 which was then formalised and signed, creating the document in question.
- 60 The vast bulk of the document (itself only two pages) is taken up with a product description of the UMAX product. The dispute as to the meaning of the document revolved around a single line towards the end, after this product description. It is found in a section headed "other products" and reads

"Any product which will be based around UMAX will also be the property of Enviromax... Enviromax will have the rights to any future formulation based around the penetrant capability of UMAX"

- 61 Mr Tariq argued that these words were in substance an assignation, albeit one drafted by legally unsophisticated people - in support of the argument that the drafters were unsophisticated he highlighted the talk of “copy write” in the minutes. His argument relied on the word “also” above meaning “in addition to UMAX” – thus, although the section is titled “other products” and clearly talks about other formulations, it is also referencing ownership of UMAX itself.
- 62 Against this, Ms Lambert argued that there are no words of assignment or assigning within the document, no suggestion of transfer or conveyance. If there had been intention to this effect it would go further. Ms Lambert highlighted a subsequent assignment of the UMAX trade mark (in evidence), which was a properly professionally drafted agreement. The pursuer’s position was that this was a document all about the product and an agreement for Enviromax to have distribution rights, not an assignment of intellectual property rights.
- 63 In my view, the defender is seeking to make the words of this document bear more than they can. I accept that it implies to an extent the existence of a previous agreement to some rights over UMAX (which is wholly consistent with my findings above) – hence the word “also” in assigning rights to future products – but in terms, this document does not assign any intellectual property rights regarding UMAX.
- 64 I therefore find that the defender has failed to show any assignation of the right to apply for a patent for the invention compliant with Section 31 of the Act.

Personal Bar

- 65 The lack of a written assignation does not necessarily doom the defender’s case, however, as noted above, because the defender also claims an equitable right to the patent. It is convenient to first consider the defender’s claim that personal bar operates to prevent the pursuer from resisting this.
- 66 As noted above, there are three components to personal bar: misrepresentation, reliance and detriment. The defender needs to establish all three.
- 67 The defender argued that the pursuer had misrepresented to the defender that he was content for the patent application to be filed in the name of Enviromax. As I found above, he clearly represented to the defenders that he was content for the application to be filed in Enviromax’s name and this point is made out.
- 68 Ms. Lambert argued that there could be no reliance on any misrepresentation by Mr Wilson because Enviromax must have known that the patent was invalid, and thus spending money on it would be a waste of money regardless of whether Mr Wilson was willing for the patent to be in Enviromax’s name. Having rejected above the argument that Enviromax must have known the patent to be invalid, I reject this argument also.
- 69 Ms Lambert did not contest detriment – rightly so in my opinion as it is plain that Enviromax proceeded with the patent application in the belief that it was entitled to it, and at the very least suffered detriment to the amount of around £14,000 it paid to Cameron IP for the prosecution before the Office. In addition, Mr Deeney testified to

current business Enviromax is conducting that he considered would be harmed by loss of the patent.

- 70 I therefore find that the necessary elements to bring the doctrine of personal bar into play are made out, and the pursuer is personally barred from arguing that he did not agree to the patent application being filed in the name of Enviromax.
- 71 This in turn gives equitable rights in the patent to the defenders. Section 37 gives me the power to make findings on the ownership of the patent and then to make what order I see fit, always bearing in mind the overriding objective to deal with cases justly. The defender relied on the case of *Bakhir*³, where inventors who had walked away got nothing, and they had only themselves to blame for doing so. The pursuer tried to raise a distinction in this case, as he has not fully walked away, still owning 10% of Enviromax shares, but I think this point actually tells against the pursuer – he does not lose everything by Enviromax retaining the patent, as he shares in Enviromax’s success (albeit to a lesser extent than he would gain by obtaining the patent himself).
- 72 In this case, it seems apparent to me that the defenders have endeavoured to operate in good faith at all times (albeit possibly sometimes under misapprehensions). It is less clear, particularly given his conduct of the litigation and his carelessness with the truth in some of the statements he allowed to be submitted, that the same can be said of the pursuer.
- 73 The patent is currently in the name of the defender. Given the above, I see no reason to make any order beyond the removal of Mr Gerry Deeney as an inventor.

Conclusion and Order

- 74 The pursuer’s claim to entitlement to the patent fails. The pursuer’s claim to sole inventorship succeeds. I order that Mr Gerry Deeney be removed as inventor from the patent.

Expenses

- 75 Both parties sought their expenses. The defenders have won and are in principle entitled to a contribution to their costs in accordance with the Comptroller’s standard scale. I will allow both parties an opportunity to make submissions on this point.

Appeal

- 76 Any appeal must be lodged within 28 days

J ELBRO

Divisional Director acting for the Comptroller

³ *Drs Vitold Milhailovitch Bakhir and Yuri Georgievitch Zadorozhny v Solenzara International Limited*, BL O/006/00