Intellectual Property Office

BL O/553/18

6th September 2018

PATENTS ACT 1977

PROCEEDINGS

Reference under Section 8 of the Patents Act 1977
in respect of patent application GB 2 545 414 A

BETWEEN

Mr Anthony Waithe — Claimant

and

Dyson Technology Limited — Defendant

HEARING OFFICER Stephen Probert

For the claimant: Mr Majed Iqbal (Lay representative)
For the defendant: Mr Simon Forrester of Dyson

Hearing date: 5th September 2018

DECISION - SUMMARY JUDGMENT

1. This is a decision giving summary judgment against the claimant (Mr Anthony Waithe) following a hearing that was held yesterday. At a Case Management Conference (CMC) on 6th July 2018, it appeared to me that Mr Waithe has no real prospect of succeeding on his case, as it is established beyond any doubt that the contribution that he claims to have made to an invention was in the public domain over thirty three (33) years before the priority date of the patent application which is the subject of these proceedings.

2. I allowed Mr Waithe a period of four weeks[1] in which to provide written submissions or request another hearing, before I decide whether it would be appropriate to give summary judgment. Following the CMC, Mr Waithe asked to be heard on the matter of summary judgment. Before the hearing could be arranged, Mr Waithe sought leave to amend his statement of case to introduce another of the defendant's patents (GB 2515809B - granted on 19th Aug 2015) which he believes should belong to him. I agreed to deal with this request at the summary judgment hearing. That is the hearing which was held by telephone conference yesterday, and these are my reasons for giving summary judgment against Mr Waithe.

Background

3. In a request received on 8th March 2018, Mr Waithe asked the comptroller to determine whether he is entitled to sole or joint ownership of patent application GB 2545414A ("the application").

[1] As indicated at paragraph 2.70 of the IPO's Patents Hearing Manual.

4. The application was filed by Dyson Technology Limited ("Dyson" - the defendant) on 11th December 2016, and relates to a handheld product — such as eg. a hairdryer — in which the frame that supports the motor is formed of zinc. Zinc is said to be an acoustically dull material that is able to absorb some of the frequencies generated by the motor. As filed, the claims also specify that the impeller (or fan) is formed of aluminium; this is to said to counteract the additional weight due to the use of zinc to form the frame of the motor. Claim 1, below, is the only independent claim in the application:—

> 1. A handheld product comprising a motor for generating an airflow through the product, the motor comprising:
>
> a frame for supporting a rotor assembly and a stator assembly, the frame comprising an inner wall and an outer wall and a plurality of diffuser vanes extending between the inner wall and the outer wall;
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> a rotor assembly comprising a shaft, a magnet, a bearing assembly and an impeller; and
>
> a stator assembly comprising a bobbin, a stator core and a winding wound round the bobbin;
>
> the frame being formed of zinc and the impeller being formed of aluminium.

5. The application has been searched and published, and is currently going through the examination process in the office; it has not been granted yet.

6. Mr Waithe's claim to entitlement of the application is based on a letter that he sent to Sir James Dyson in May 1999 and a telephone conversation with a Chief Engineer at Dyson in 2011. In the letter, and the telephone conversation, Mr Waithe says that he gave Dyson the idea of using aluminium to form the impeller blades. He says that his idea of using light weight (aluminium) impeller blades in a hairdryer was inspired by the titanium turbine blades used in the engines of Harrier jump jets.

7. Mr Waithe has requested leave to amend his statement of case in these proceedings on several occasions, both in terms of the contribution that he claims to have made to the invention, and also in relation to the relief being sought. For example, in an email sent to the IPO on 26th August 2018, Mr Waithe advised us that he has decided that he should be claiming entitlement in respect of the "stator frame". However, in an earlier email to the IPO (dated 17th May 2018), Mr Waithe wrote:

> *"I have no interest in claiming for a zinc material frame, as I accept that Dyson's created this to reduce noise levels & it was never my intention or desire to reduce noise levels for my hair dryer invention."*

8. At the CMC on 6th July 2018, Mr Waithe confirmed to me that his contribution to the invention claimed in the application is confined to the idea of using aluminium impeller blades. He again accepted that the idea of using a zinc frame to support the motor (in order to reduce noise) was entirely Dyson's contribution. However, at the hearing this morning, Mr Iqbal stated that his client was now seeking sole ownership of the patent application on the grounds that he also contributed the idea of using a stator.

9. I had assumed from the earlier correspondence that Mr Waithe was using the term 'stator' as a convenient way of referring to the zinc material from which the motor

frame is constructed. But Mr Iqbal (and subsequently Mr Waithe) confirmed at the hearing today that this is not the case; Mr Waithe maintains that his invention is the idea of using a stator in a hair dryer, and that the material from which it is constructed is irrelevant. Mr Iqbal told me that the 'stator frame is only found in the Harrier jet aircraft engine'.[2]

10. The defendant submits [3] that alloy impellers, motors having alloy impellers, and hair dryers with such motors, were all clearly conventional at the filing date of the application. In any event, a US patent published in January 1982 (US 4308670) clearly and unambiguously describes a hairdryer with an aluminium impeller.

11. On the stator point, as Mr Forrester said at the hearing, a 'stator' is simply the name for the stationary part of a rotating electrical machine such as eg. a motor. Every hair dryer that includes a motor, must necessarily have a stator. Notwithstanding this, Mr Forrester argued that Mr Waithe should not be allowed to amend his statement of case to include this new ground in respect of using a stator (or stator frame) in a hair dryer.

Summary Judgment

12. The comptroller's powers to give summary judgment are set out at rule 83(3) of the Patents Rules 2007 (as amended):—

> **Striking out a statement of case and summary judgment**
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> 83.—(3) The comptroller may give summary judgment against a claimant or defendant on the whole of a case or on a particular issue if—
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> (a) he considers that—
>
> (i) that claimant has no real prospect of succeeding on the case or issue, or
>
> (ii) that defendant has no real prospect of successfully defending the case or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a hearing.

13. This provision is almost identical to the corresponding provision in the Civil Procedure Rules (CPR 24.2) and I am satisfied that I should interpret and apply rule 83 in much the same way that the courts interpret and apply CPR 24.2. I have read several court judgments in this field as part of my preparation for this hearing. *Celador Productions v Melville* [4] was particularly helpful, largely because the judge in that case had reviewed a number of relevant authorities and extracted (among others) the following 'elementary propositions':—

- A "real" prospect of success is one which is more than fanciful or merely arguable;
- If it is clear beyond question that a party will not be able at trial to establish the facts on which he relies then his prospects of success are not real; but

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[2] The terms 'stator' and 'stator frame' were used interchangeably by the claimant.

[3] Both at the hearing, and in an email dated 31st May 2018.

[4] Celador Productions Ltd v Melville [2004] EWHC 2362 (Ch)

- The court is not entitled on an application for summary judgment to conduct a trial on documents without disclosure or cross-examination.

14. I also bear in mind the following statement made by Lord Justice Moore-Bick in *ICI Chemicals v TTE Training* [5] :—

> 12. …. It is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, **if the applicant's case is bad in law, the sooner that is determined, the better**." (My emphasis)

15. In the circumstances of this case, and having regard to the above principles, I am satisfied that Mr Waithe's case has no real prospect of success — even if I were to allow him to make all the amendments to his statement of claim that he has requested. The two concepts that Mr Waithe now claims to have contributed to the invention that is the subject of the application (and which form the basis of his claim to entitlement) — ie. the aluminium impeller and the stator — had both been in the public domain for at least fifteen (15) years before Mr Waithe says that he shared them with Dyson.

16. I have no reason to doubt that if these proceedings had been permitted to continue to a full trial of the facts, Mr Waithe would have been able to prove that he discussed his idea of using an aluminium impeller in a hair dryer with Dyson in 1999 and again in 2011 [6]. In the event, he may not have needed to prove it because the defendant has not specifically denied it. But the point is that it still would not be enough to challenge the ownership of this application, because Mr Waithe's idea was already demonstrably in the public domain at that time, and had been for many years.

17. Moreover, the only novel and potentially non-obvious concept that has been identified in the application — ie. a motor frame formed of zinc — has been clearly and unambiguously disowned by Mr Waithe on several occasions in these proceedings.

18. For these reasons this claim must fail, and summary judgment is awarded to the defendant.

The '809 Patent

19. These proceedings having now concluded due to the summary judgment, Mr Iqbal submitted that his client's request to amend his statement of case to include patent GB 2515809B (the '809 patent) falls away. I agree. As Mr Iqbal observed, his client has the option of commencing a new set of entitlement proceedings in respect of the '809 patent. That is also true, but in the hope that it may save Mr Waithe from further unnecessary expense, I make the following observations:

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[5] ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725

[6] The same cannot be said of the stator, but in the event there was no need for me to consider whether to allow Mr Waithe to amend his statement of case in this regard.

20. As I understand the position, Mr Waithe's claim to entitlement of the '809 patent relates to the use of so-called 'fluid flow paths' in a hair dryer, and is supported by a specific suggestion that he made in his 1999 letter to Sir James Dyson regarding the use of *"… fluid pipes to keep the motor cool quite like a jet engine needs to pump fuel & water to spin its engine"*. The description part of the '809 patent specification does indeed refer to "fluid flow paths", but as Mr Forrester explained, every hair dryer has a "fluid flow path" because that is how the specification describes the movement of air through the appliance. Crudely stated, the invention **claimed** [7] in the '809 patent is the provision of a control switch on the side wall of a hand held appliance (eg. a hair dryer) with a very specific configuration of outer wall, duct and side wall. I cannot see any reference in the '809 patent to the use of fluid pipes to keep the motor cool.

Costs

21. The defendant has succeeded, and is entitled to an award of costs. Mr Forrester accepted that the award would be limited to the published scale, as set out in Tribunal Practice Notice (TPN) 2/2016. Despite the frequency of email correspondence from Mr Waithe during the course of these proceedings, I have gone to the lower end of the range in each category as I do not regard this as a complex case. For the purposes of calculating costs, I have treated the preliminary hearing (CMC) on 6th July as though it was not an oral hearing, because I did not need to call upon Mr Forrester to say very much. I assess the various categories as follows:-

Preparing a statement and considering the other side's statement	£200
Preparing evidence and considering and commenting on the other side's evidence	£500
Preparing for and attending a hearing - 6th July 2018	£300
Preparing for and attending a hearing - 5th Sept 2018	£500
Expenses (ie. official fees)	—
Total	**£1,500**

22. I order Mr Anthony Waithe to pay Dyson Technology Ltd the sum of £1,500 within 28 days of the date of this decision.

Appeal

23. Any appeal must be lodged within 28 days after the date of this decision.

Stephen Probert
Deputy Director, acting for the Comptroller

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[7] Claim 29 (the broadest claim) reads: "A hand held appliance comprising: a body having a duct, an outer wall extending about the duct and a side wall extending between the duct and the outer wall, wherein a control switch is provided on the side wall and wherein the outer wall, side wall and the duct are all external walls of the appliance."