



PATENTS ACT 1977

BETWEEN

Rosie Vernon

Claimant

and

Christopher Ebejer and Paul Wickens

Defendants

PROCEEDINGS

Reference under Section 37 of the Patents Act 1977
in respect of patent number GB 2466902

HEARING OFFICER

Phil Thorpe

Christopher Ebejer and Jane Ebejer represented the defendants.
The claimant chose not to participate

Hearing date: 05 March 2018

PRELIMINARY DECISION

Introduction

- 1 This decision relates to a request by Mr Christopher Ebejer and Mr Paul Wickens that I strike out a reference made by Ms Rosie Vernon under section 37.
- 2 That reference was filed on 10th May 2017 and relates to who is entitled to patent GB2466902. It is not in dispute that the inventor of the invention in the patent was Christopher Ebejer and that he was also the proprietor of the patent at the time of grant. Subsequent to the grant of the patent, the IPO has registered three changes in ownership. These are as follows:
 - a. The first is an assignment from Christopher Ebejer to Baby Glow UK Ltd. The application to register this assignment was made on Form 21 filed on 16th August 2016. Filed in support of this application was a Bill of Sale dated 3rd July 2016.
 - b. The second is an assignment from Baby Glow UK Ltd to Rosie Vernon. The application to register this assignment was made on Form 21 filed on 9th December 2016. Filed in support of this was a Bill of Sale dated 20th November 2016.

c. The third is an assignment from Rosie Vernon to Christopher Ebejer and Paul Wickens. The application to register this assignment was made on Form 21 filed on 28th March 2017. Filed in support of this was a Purchase of Business Agreement dated 15th December 2016.

- 3 The claimant claims that she is entitled to the patent by virtue of the first two assignments. She claims the third assignment is not a valid assignment as the signature alleged to be hers on the agreement was a forgery.
- 4 The defendants claim they are entitled to the patent by virtue of the first assignment being void as Baby Glow UK Ltd had not been incorporated at the date of the alleged sale. Further they claim that the sale is void because of the terms of the purchase of business and patent agreement entered into between Christopher Ebejer and Baby Glow UK Ltd dated 4th July 2016. In the alternative they claim that they are entitled by virtue of the third assignment.
- 5 Both sides have filed evidence principally in the form of witness statements. The claimant has also provided a forensic handwriting report in support of her claim that the signature on the third assignment is a forgery.
- 6 The case is due for a substantive hearing shortly.
- 7 The defendants have also filed their own reference under section 37. This has been stayed pending the outcome of these proceedings.
- 8 In a communication dated 28th December 2017, the defendants requested that the reference filed by Rosie Vernon be struck out in its entirety. The Hearing Officer dealing with the case at the time, Mr Steve Probert, gave a preliminary view that the strike-out claim was unlikely to succeed as the grounds relied upon were more relevant to the defendants' own reference rather than to the weakness of the claimant's case here.
- 9 A telephone hearing on the issue of strike-out was subsequently held before me on 5th March 2018. Mr Ebejer, supported by his wife Jane Ebejer, presented arguments on behalf of the defendants. The claimant did not participate in the hearing preferring instead to rely on the evidence that she had already submitted.

The Law

- 10 Rule 83 of the Patent Rules 2007 as amended provides that:
- (1) A party may apply to the comptroller for him to strike out a statement of case or to give summary judgment.
 - (2) If it appears to the comptroller that—
 - (a) the statement of case discloses no reasonable grounds for bringing or defending the claim;
 - (b) the statement of case is an abuse of process or is otherwise likely to obstruct the just disposal of the proceedings; or
 - (c) there has been a failure to comply with a section, a rule or a previous direction given by the comptroller,he may strike out the statement of case.

Arguments and decision

- 11 Mr Ebejer arguments at the hearing were effectively those that the defendants have already advanced in their counterstatement and subsequent submissions and which I broadly set out in paragraph 4 above. They all go to what they see as the weakness of the claimant's case. They include, inter alia the following:
- i) The sale of the patent from Christopher Ebejer to Baby Grow UK Ltd is void because at the time of the sale Baby Grow UK Ltd had not been incorporated as a company.
 - ii) Rosie Vernon claims that entitlement passed to her as a result of the closure of Baby Glow UK Ltd however that company never closed.
 - iii) Rosie Vernon had no right to sell the patent to herself when it was owned by Baby Glow UK Ltd due to the non-completion of other terms of the July agreement.
- 12 As I explained to Mr Ebejer, it is not the purpose of the preliminary hearing to decide the substantive matter. I will not therefore comment on the strengths of the various arguments made by Mr Ebejer other than to say that, after having carefully considered them, I do not believe that they demonstrate that the claimant's statement of case discloses no reasonable grounds for bringing the claim. Rather I believe that it gives rise to questions that should be properly tested at a substantive hearing.
- 13 I therefore decline to strike out the reference. I would note that the parties have been asked to provide further details on the issue of cross examination and that the responses to this may have a bearing on the overall strength of the cases advanced by the parties. If that is the case then either side is at liberty to raise again the question of strike-out.

Costs

- 14 The claimant did not participate in the hearing nor did she provide any substantial submissions on the question of strike-out. Hence in relation to this preliminary matter I make no order for costs.

Appeal

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

Phil Thorpe
Deputy Director acting for the Comptroller.