

O-235-06

TRADE MARKS ACT 1994

**IN THE MATTER OF AN INTERLOCUTORY HEARING
IN RELATION TO APPLICATION NO. 2323320
IN THE NAME OF CALOR GAS LTD**

AND

**OPPOSITION NO. 92698 THERETO
BY FLOGAS UK LTD**

TRADE MARKS ACT 1994

**IN THE MATTER OF an interlocutory hearing
in relation to application No. 2323320
in the name of Calor Gas Ltd
and opposition No. 92698 thereto
by Flogas UK Ltd**

Background

1. Application No. 2323320 is for the trade mark PATIO GAS and was applied for on 11 February 2003. It stands in the name of Calor Gas Ltd. Following publication of the application in the Trade Marks Journal, two notices of opposition were filed against the application by separate opponents. This decision is in relation to opposition proceedings filed on 5 August 2004 by Flogas UK Ltd. The proceedings followed the usual course with the filing of a Form TM8 and counter-statement and then evidence. Following the filing of evidence by the applicant, the opponent was allowed until 21 February 2006 to file any evidence on which it wished to rely, which was strictly in reply to the applicant's evidence, under the provisions of rule 13C(5).

2. On 17 February 2006 the opponent filed a Form TM9 (with the requisite fee) seeking an extension of the time of one month (i.e. to 21 March 2006). The opponent gave the following as reasons to support its request:

“The opponent is waiting for some further evidence and has very nearly completed its searches. The evidence as to use of the mark “Patio Gas” prior to the applicant's application is central to this matter”.

3. Regrettably there was some delay in dealing with the request but on 29 March 2006 a letter was issued advising the parties of the registrar's preliminary view. The letter stated:

“The Registry would expect any request for an extension of time to include full and detailed reasons in support. It should include information to show what progress has been made in evidence collation, why the evidence could not be filed in the initial period and what needs to be done in the extended period. In addition, the reasons you have provided do not appear to relate to the filing of evidence in reply but to that of additional evidence. In considering all of the above, the preliminary view of the registry is to refuse the request.

A period of 14 days from the date of this letter i.e. on or before 12 April 2006 has been allowed for either party to the proceedings to provide full written arguments against the decision and to request a hearing under Rule 54(1).”

4. Referring to material which had been filed in the period between the filing and consideration of the request for an extension of time, the letter went on to say:

“It is noted that evidence has been filed under cover of your letters dated 20 and 23 March 2006. This has been retained on file until such time as the

extension of time issue is resolved. You may wish to note that in the event of the preliminary view being overturned the evidence is considered as being filed out of time, the signed version of the evidence not being received until 23 March 2006.”

5. The opponent replied by way of a letter dated 3 April 2006. It disagreed with the preliminary view, suggested that full written argument should be dispensed with and requested a hearing. But the letter also went on to set out reasons why the opponent hoped a hearing would be unnecessary. It stated:

“In relation to the evidence that has been filed, this evidence relates to filing evidence in reply and also additional evidence. We took the view that it was more efficacious to file both the additional and the reply evidence together rather than piecemeal. Would you have preferred us to have divided the evidence?

We would have thought that the approach taken by you is not in accordance with the overriding objective. If the evidence is not allowed then we will have to consider advising our client to withdraw their opposition and commence cancellation proceedings.

We do not believe any prejudice has been suffered by the Applicant in this matter and therefore the extension of time should be allowed. You should also note that in our view it is unacceptable that your decision as to whether an extension of time should be granted is decided after so much delay. It is our understanding that such a decision should be taken promptly so as to allow the adversely affected party the opportunity to appeal in time.

We would be grateful if you could reconsider your decision failing which we request a hearing as suggested. This however leads to more litigation and further costs for each part which we do not believe is necessary. The representatives of the Applicant have not complained about the request for an extension of time and neither have they complained about the evidence that has been filed, In addition, as we have already pointed out, they have also not suffered any prejudice whatsoever. This matter has now been running on for some years and the delay of just over one month is surely not going to harm any of the parties concerned.”

6. By way of a letter dated 12 April 2006 the applicant made the following comments:

“The Opponent’s agents request a hearing, but also present what appear to be arguments in the hope that the hearing will not need to take place. The general theme of these arguments seem to be that the procedural rules should simply be ignored in favour of the overriding objective of these proceedings. However, the Registry’s practice regarding the grant of extensions of time is clear, and the professional advisors of the Opponent must be aware of that practice. Therefore the Opponent’s advisors must be aware that these arguments are not in themselves sufficient.

We do not seek to obstruct the admission of this evidence unreasonably, but it is incumbent on the applicant for the extension to show that the facts do merit it. To date no reason for the extension of time have been advanced, so we cannot take a view on the merits of the request anymore than the Registrar can.

The Opponent's advisors state that it is unnecessary to provide written arguments **and** skeleton arguments. We disagree. If the Opponent's advisors would simply inform us and the Registrar of the reason why the extension of time was required we could take a view on whether to object to the request. If the Opponent's advisors choose to continue to withhold these reasons until just before a hearing takes place, and the hearing proves to be unnecessary in light of the submissions that are made, then the Opponent's advisors will understand why we expect to be compensated beyond the standard scale of costs of the Registry in connection with the preparation for and attendance at the hearing.

The Opponent believes our failure to object to the extension of time is significant, but this is the first opportunity we have had to make submissions since we became aware that the Opponent was attempting to submit late evidence.

The Opponent also states that we have not complained about the evidence itself, but to date we have not had any procedural opportunity to make submissions, If the extension of time is granted, we will be objecting to the evidence on the basis that it is not strictly in reply to our client's evidence.

We do not understand the Opponent's comments about the delay on the part of the Registry. The rights of their client to challenge the refusal to grant the extension of time, or appeal that decision if need be, are unaffected by this "delay".

In view of the foregoing we agree with the preliminary decision of the UK Trade Marks Registry that the extension of time should not be granted because no proper reasons have been submitted that would justify the grant of the extension. We would welcome input on this point from the Opponent's advisors immediately so we and the Registrar can consider whether they are sufficient and, if so, avoid an entirely unnecessary hearing."

7. Following consideration of all the submissions made to it, the Trade Marks Registry issued a letter dated 27 April 2006 maintaining the preliminary view to refuse the request for an extension of time for lack of sufficient information. It also reminded the opponent that any application to file further evidence (as opposed to evidence in reply) should be made under the provision of the appropriate rule.

8. Arrangements were put in hand for the appointment of a hearing. The opponent at this point instructed new representatives and the hearing took place before me on 22 June 2006. Immediately before the hearing, I was handed correspondence which had just been received by the registry from the opponent's legal representatives and which was accompanied by a Form TM9 seeking a further extension of time until 24 March

2006. At the hearing which took place by videoconference the applicant was represented by Ian Gill of A A Thornton & Co. The opponent was represented by Michael Edenborough of Counsel, instructed by HBJ Gateley Wareing LLP whose Ms Thomasin attended by telephone.

9. Having considered all the written and oral submissions made, I gave my decision which was to uphold the preliminary view and refuse the request for an extension of time. I confirmed my decision in a letter later that same day, as follows:

“The issue before me was the registrar’s preliminary view to refuse the opponent’s request for an extension of time until 21 March 2006 for filing evidence in reply. I received skeleton arguments from both parties.

Immediately before the hearing I received a faxed letter from HBJ Gateley Wareing dated 21 June 2006 which was accompanied by a Form TM9 seeking a further extension of time until 24 March 2006. The letter stated that it was intended to set out reasons for both the extension request which was the subject of the hearing and the additional extension until 24 March. Strictly speaking this later extension request has not been considered by the registrar and was not therefore an issue before me, however Mr Gill confirmed that he had seen the late filed letter and request and made no objection to its being considered. Whilst I take the letter into account where appropriate, the request for further extension of time will fall to be considered only if the preliminary view to refuse the earlier disputed request is overturned.

Having considered all the material filed and submissions made my decision is to uphold the registrar’s preliminary view and refuse the extension of time. The reasons provided with the original request did not meet the criteria set out in *Siddiqui O/481/00*. Of itself of course, that is not fatal, however the further reasons provided in the opponent’s late-filed letter of 21 June do not persuade me that the extension should be granted. I am not persuaded that the opponent acted diligently and nor, on the basis of the information before me, do I consider any special circumstances exist. In view of my decision, I do not go on to consider the additional extension request. The effect of my decision is that subject to any appeal against it, the proceedings are ready for a substantive decision to be taken. A further letter will issue shortly in this regard. I will arrange for the fee, paid in respect of the additional extension request, to be refunded.”

10. The opponent filed a Form TM5 requesting a statement of reasons for the decision. This I now give.

Skeleton arguments

11. As indicated above both parties filed skeleton arguments. Somewhat unusually, and with the exception of the preamble, I intend to set them out in full.

Opponent's skeleton argument.

“ 3. The overriding objective seeks justice to be done. That requires that the proper issues are advanced and supported by the best available evidence. In very nearly all cases, the innocent party can be compensated in costs by any amendments or late applications to adduce further evidence. Yet, without those amendments or further evidence, there is a material risk that a decision will be reached on a fundamentally flawed basis, either the wrong issues are before the court, or the proper evidence is lacking and so it becomes more difficult to reach a sound finding of fact.

4. The registry is taking an overly proscriptive stance when faced with applications for an extension of time in which to adduce evidence. This stance is fundamentally wrong in principle, because it operates against justice being done and being seen to be done.

5. In this particular case, there is no suggestion that Calor has suffered any prejudice. Moreover, it does not even object to the extension, as can be deduced from its silence on the matter. Thus, it is submitted that the registry is acting in an overly zealous manner, seeking to protect the position of a party that is capable of protecting itself, and yet has not raised any objective to this application for an extension.

6. Furthermore, in a similar situation in the court, it is submitted that much more likely than not, a party would be allowed to adduce further evidence, in particular when no trial date had yet been fixed. This is because the court would place an emphasis upon having the full facts before it, order to be able to reach a sound decision.

7. It is important to note that this case concerns absolute objections. Calor clearly had initial difficulties, as this Application is proceedings upon the basis of acquired distinctiveness. In order to overcome that objection, it would have had to file evidence. However, obviously, the evidence filed by Calor would be that which supported its case. This evidence would have been all within its control. Yet, in contrast, the evidence that Flogas needs to file is evidence of third party's usage, which is clearly not within Flogas's control, and so is that much more difficult to collate. The registry should be understanding of that problem.

8. Finally, there is the public interest in ensuring that bad Applications do not mature into flawed registrations. As such, the balance to be struck favours the extension of time in which to adduce potentially probative evidence.

Summary and Conclusion

9. There is no prejudice to Calor. In a similar situation, a court would allow this evidence to be adduced. Preventing flawed marks being registered favours allowing the extension. As a matter of principle, a tribunal should decide upon the whole case in order that justice is not only done, but seen to be done.

10. Therefore the extension of time should be allowed.

11. Costs should be costs in the matter, as Calor has not expended any costs on this application, but if Flogas were to win eventually, then it would be right that it could seek a contribution towards its costs of the whole matter.”

Applicant’s skeleton argument

“3. We agree with the preliminary decision of the Registry that this extension of time request should not be granted.

The UK Trade Marks Registry very clearly sets out its position in relation to extensions of time in interpartes proceedings in its Law Practice Direction entitled, “Extensions of time in Interpartes Proceedings” and the matters to be considered are set out in the case of Dr Ghayuasuddin Siddiqui v Dr M H A Kahn as a nominee of the Muslim Parliament of Great Britain SRIS No. 0/481/00.

4. The Opponent has not provided adequate reasons for the request for an extension of time and so it should be refused. The Opponent has had ample opportunity before the date of this hearing to put forward its reasons why the extension of time was required but has failed to do so. It has instead sought to argue that a hearing in this matter is not necessary and that it would be inequitable not allow the extension of time request. To date as adequate reasons for the extension of time have not been put forward by the Opponent neither we or the Registry have been able to comment on the merits of the request and the hearing has become necessary.

5. Looking at the test in the Siddiqui case the Opponent has failed to show what he has done, what he intends to do and why he had not done it.

What he has done

The original request states, “The Opponent is waiting for some further evidence and has very nearly completed its searches. The evidence as to use of the mark PATIO GAS prior to the Applicant’s application is central to this matter.”

There is no detail provided in terms of when the collection of evidence started or the length of time it would take. There is no information given on the nature of the searches they are conducting.

Why it is they have not been able to do it

The Opponent has not provided any explanation as to why they were not able to collect their evidence prior to the due date. No information in relation to the obstacles that occasioned the need for the extension such that the statutory period was insufficient have been given.

The Opponent is arguing that the overriding objective of fairness to both parties should be followed and states that if the extension of time is not

granted and therefore their further evidence is not admitted into the proceedings then their client will be withdrawing the opposition and will immediately proceed to file a cancellation action when the application proceeds to registration. This cannot be a reason for granting an extension of time. If this were an acceptable reason then the Law Practice Direction referred to in paragraph 3 would be circumvented and the Registry would be obliged to grant any request for an extension of time. If the Opponent had followed the procedures and used its opportunities to file its reasons for the request for the extension then this hearing may have been avoided. Procedural rules are there to be followed and the Opponent is professionally represented so that under the overriding principle of fairness to both parties the extension of time should not be granted.

6. We appreciate that the Registrar has a broad discretion in this matter. However the procedural rules are clear and there is nothing about this case which is out of the ordinary such that special circumstances could be relied upon to justify the extension.

7. The reasons put forward in support of the extension do not clearly address the criteria laid down in Siddiqui. The hearing is not a forum for the Opponent to introduce further or better reasons for the extension request. The hearing must be confined to the reasons already put forward in writing by the Opponent which do not justify an extension of time. (See *Style Holding PLC v Wilson Sporting Goods Co* (unreported) 18 September 2001.) We cannot trace a full copy of this decision but it is referred to in the Practice Direction.

8. We submit that the extension of time should not be granted. However, in the event that the Hearing Officer is inclined to allow the extension of time and the evidence to be entered into the proceedings we request a period of time to respond to this evidence and to argue that the evidence is not strictly in reply.

9. We request an award of costs in our favour.

Decision

12. Alteration of time limits are provided for by rule 68 of the Trade Marks Rules 2000 (as amended). This states:

“68. –(1) The time or periods-

(a) prescribed by these Rules, other than the times or periods prescribed by the rules mentioned in paragraph (3) below, or

(b) specified by the registrar for doing any act or taking any proceedings,

subject to paragraph (2) below, may, at the written request of the person or party concerned, or on the initiative of the registrar, be extended by the registrar as she thinks fit and upon such terms as she may direct.

(2) Where a request for the extension of a time or periods prescribed by these Rules-

(a) is sought in respect of a time or periods prescribed by rules 13 to 13C, 18, 23, 25, 31, 31A, 32, 32A, 33, 33A or 34, the party seeking the extension shall send a copy of the request to each person party to the proceedings;

(b) is filed after the application has been published under rule 12 above the request shall be on Form TM9 and shall in any other case be on that form if the registrar so directs.

(3) The rules excepted from paragraph (1) above are rule 10(6) (failure to file address for service), rule 11 (deficiencies in application), rule 13(1)(time for filing opposition), rule 13A(1) (time for filing counter-statement), rule 23(4) (time for filing opposition), rule 25(3) (time for filing opposition), rule 29 (delayed renewal), rule 30 (restoration of registration), rule 31(3) (time for filing counter-statement and evidence of use or reasons for non-use), rule 32(3) (time for filing counter-statement), rule 33(6) (time for filing counter-statement), and rule 47 (time for filing opposition).

(4) Subject to paragraph (5) below, a request for extension under paragraph (1) above shall be made before the time or period in question has expired.

(5).....

(6).....

(7).....”

13. The applicant’s request for an extension was in respect of an extension to the period for filing evidence and thus was not excepted by rule 68(3). The request was made on Form TM9, was made before the statutory period for filing evidence had expired, was copied to the other party and was accompanied by the requisite fee. The request therefore was properly made.

14. The registrar has issued a number of practice direction on extensions of time in inter partes proceedings. The first is entitled:

“Inter partes actions before the Registrar: Extensions of time practice”.

The practice direction came into force on 1 January 1999 and includes the following paragraph:

“Full reasons in support of the request must be provided and, in the case of requests filed after the time or period has expired, full reasons also to explain the delay in making the request must be provided. It is likely that the reasons for the request will need to be filed on a separate sheet attached to the Form TM9. The extension will not be granted if the request has not been copied to the other party(ies) to the proceedings or in the absence of detailed reasons.”

15. A further practice direction was issued in August 2005 entitled:

“Extensions of Time in Inter Partes Proceedings”

and provides some further detail of the registrar’s practice. Quoting from Geoffrey Hobbs QC sitting as the Appointed Person in the case of *Liquid Force* [1999] RPC 429 it states:

“In the interests of legal certainty it is plainly desirable that valid applications for registration should succeed and valid objections to registration should be upheld without undue delay. The time limits applicable to opposition proceedings under the 1994 Act and the 1994 Rules were formulated with that consideration in mind. The Registrar endeavours to ensure that prescribed time limits are observed, subject to his power to grant fair and reasonable extensions of time in appropriate cases.”

16. Although the relevant rules in these proceedings are the Trade Marks Rules 2000 (as amended), I believe Mr Hobbs’ comments remain equally relevant. The practice direction goes on to quote from the case of *Dr Ghayuasuddin Siddiqui v Dr M H A Khan as a nominee of the Muslim Parliament of Great Britain* SRIS O/481/00 where Simon Thorley QC, again acting as the Appointed Person said:

“1. It must always be borne in mind that any application for an extension of time is seeking an indulgence from the Tribunal. The Act and the Rules lay down a comprehensive code for the conduct of prosecution of applications and for the conduct of opposition. The code presumes a normal case and provides for it.

2. There is a public interest which clearly underlies the rules that oppositions and applications should not be allowed unreasonable to drag on.

3. In all cases the Registry must have regard to the overriding objective which is to ensure fairness to both parties. Thus, it can grant an extension when the facts of the case merit it.”

And,

“4. Accordingly, it must be incumbent on the application for the extension to show that the facts do merit it. In a normal case this will require the applicant to show clearly what he has done, what he wants to do and why it is that he has not been able to do it. This does not mean that in an appropriate case where he fails to show that he has acted diligently but that special circumstances exist an extension cannot be granted. However, in the normal case it is by showing what he has done and what he wants to do and why he has not done it that the Registrar can be satisfied that granting an indulgence is in accordance with the overriding objective and that the delay is not being used so as to allow the system to be abused.

Jacob J made it clear in the SAW case that any perception that the Registrar would grant extensions liberally was wrong and I take this opportunity to repeat that. In principle matters should be disposed of within the time limits set out in the rules and it is an exceptional case rather than the normal case where extensions will be granted.”

17. Following the filing of evidence by the applicant, the opponent was allowed a period of three months, until 21 February 2006, to file evidence strictly in reply to the applicant’s evidence in accordance with rule 13C(5). The opponent filed no such evidence by that date but instead filed a request for further time. As indicated above, in making its request for an extension of time, the following was entered on the Form TM9 as reasons to support its request:

“The opponent is waiting for some further evidence and has very nearly completed its searches. The evidence as to use of the mark “Patio Gas” prior to the applicant’s application is central to this matter”.

18. The registrar having reached the preliminary view that the reasons provided were insufficient, the opponent was given the opportunity to provide further information. In its letter of 3 April 2006, the opponent’s former representatives declined to provide more detailed reasons although they commented further on why the request should be allowed (see paragraph 5 above). The trade marks registry maintained the preliminary view. In my opinion it was right to do so.

19. The “reasons” given on the Form TM9 are brief in the extreme and cannot in any way be considered “full and detailed”. Whilst the first sentence may, on a generous reading, indicate the opponent has started some searches and still needed to complete them, it gives no details of what these searches are or what relevance they may have. It gives no information about what has actually been done and what still needs to be done. Certainly it gives no indication of why it is that the opponent hasn’t been able to complete its actions in the time already allowed to it. The second sentence tells me nothing in relation to the preparation of evidence in reply. In any event, even accepting that relevant searches had been started and needed to be completed, these appear to relate to obtaining “further evidence” rather than evidence in reply. Any extension of the period for filing evidence in reply is just that - an extension of the period to file evidence in reply - it cannot be an extension of a period to file further evidence, or even, as indicated in the opponent’s former representative’s letter of 3 April 2006, evidence in reply and further evidence together. In order to extend a period, the period first has to be granted. No period for the filing of further evidence had been granted.

20. The request for an extension of time sought to extend the period for filing evidence in reply to 21 March 2006. On 24 March 2006 signed evidence was filed. It was not admitted into the proceedings because it was filed out of time, the evidence having been due on 21 February 2006. The opponent had made a request to extend the time beyond this date and this had been refused but even if it had been granted, the extended period requested would also have expired before the evidence was received. This was an issue addressed by the new representatives who filed a second Form TM9, received on the day of the hearing, in which they sought further to extend the period for filing evidence in reply until 24 March 2006. As I indicated to the parties,

that request was not strictly an issue before me as it had not been the subject of the registrar's preliminary view however Mr Gill indicated that he had seen the request and made no objection to its being considered. I made it clear that this latter request would only be considered if and when I overturned the preliminary view and granted the first request.

21. The latter request was filed under cover of a letter dated 21 June 2006 which explained that it set out "the reasons for the addition extension of time, together with reasons for the former extension of time requested by Harvey Ingram on 17 February 2006." The letter continued:

"As you know we have only just taken over conduct of this matter from Harvey Ingram and therefore we were not conducting the case when the extension of time requested on 17 February was made and the further extension of time for which we have requested consent was required.

However, from the files in our possession, we can say as follows.

The extensions of time requested cover the period from 21 February to 24 March 2006. By 31 January 2006 certain searches had been commissioned and certain discussions had been held with BP plc regarding evidence they had filed in opposition to the above application. Those discussions had failed to adduce copies of the evidence BP had filed and therefore Harvey Ingram had to seek that evidence from the Registry. By the time they received that evidence, the 21 February deadline was looming and they therefore applied for an extension of time.

The Opponent's evidence as filed on 24 March 2006 was completed by 13 March 2006 (within the first requested extension) and was sent to the Opponent for signature. Whilst the Opponent was informed that an extension of time had been requested, they were not aware of the precise timings and Mr Kilmartin did not sign the statement until 22 March 2006.

It was filed unsigned on 20 March 2006 by Harvey Ingram and then filed in its signed version by a letter dated 23 March and received by yourselves on 24 March 2006.

The evidence filed was substantially evidence in reply and was also evidence that the Applicant has seen before from BP. It therefore does not appear to have prejudiced them that it was produced approximately one month later than the time limit set down by yourselves."

22. The letter, and some four months after the initial request, set out for the first time in any detail, the reasons to support the request to extend the period for filing evidence in reply. Whilst it is true that there had been a change of representative, I do not agree that this change had "only just" taken place. Whilst the change was made some time after the first request for an extension of time was made, this was still at least some 8 weeks before the hearing took place.

23. As I read the letter, the former representatives of the opponent in the current proceedings were aware of the separate opposition proceedings against the application and had been in discussions with that opponent. The former representatives had not received a copy of the evidence sought to be filed in those proceedings as a result of those discussions (there is no indication given that it asked for a copy) and so it requested a copy from the registrar. I mention for completeness that the admittance of that evidence in those proceedings was also the subject of a interlocutory hearing which took place before me on 22 June. The evidence was not admitted into the proceedings and the decision has not been appealed. That said, the two proceedings are entirely separate and my decision in that case has no influence on my decision regarding the extension of time in these proceedings.

24. The opponent eventually obtained a copy from the registrar of the evidence filed in October 2005 in the separate proceedings, then prepared its own evidence. It was said to have been completed by 13 March but not signed until 22 March. No explanation is given of why there was the delay in seeking the evidence from the registrar nor why there was a delay in signing this evidence.

25. The opponent's evidence which it seeks to file under the provision of rule 13C(5) is not particularly extensive. It was said by the opponent's former representatives to be a combination of "evidence in reply" and "further evidence" and by the opponent's current representatives to be "substantially evidence in reply". This is an unsatisfactory position. Rule 13C(5) provides for the filing of evidence which shall be confined to matters "strictly in reply" to the applicant's evidence. No explanation is given of which parts of the evidence are intended to be "in reply" and which "further evidence". If a party wishes to file additional evidence which is not strictly in reply, it should seek leave to do so under the provision of rule 13C(6). No such request has been made.

26. I was not satisfied that the extension of time was justified. Until the day of the hearing, no information had been provided to explain what the opponent had done to collate its evidence, what it still needed to do and why it had not been able to do it. Even with the information which was provided immediately before the hearing, I was still not satisfied that the extension was justified. Whilst it is clear that the opponent had been in discussions with a party involved in a separate opposition against the same application, this did not explain why that opposition nor the evidence sought to be filed in those proceedings, were relevant. Even if it had been of relevance, no explanation has been given as to why this material could not have been obtained and reviewed earlier given the date it was filed in those proceedings. Searches were said to have been commissioned but no detail of what form these searches took, what was being searched (for) nor who was commissioned to undertake them was provided. On the basis of the above, I considered the opponent had failed to establish that the extension was justified. I therefore went on to consider whether special circumstances exist which would allow me to grant the request.

27. The opponent makes no claim that special circumstances exist. There is nothing in any of the material before me to suggest that these proceedings are in any way unusual. The opposition was filed in August 2004 and the proceedings have followed the usual course since that time. For whatever reason, the opponent did decide to change its representative but this is not an uncommon occurrence. It is not clear

exactly when that change took place. Whilst the formal request to record the change was filed on 1 June 2006, correspondence on file shows that the current representatives were appointed at least as early as 5 May 2006.

28. I could not be certain which parts of the evidence was intended to be evidence “strictly in reply”. I took into account the overriding objective and the public interest however it seemed to me that neither of these principles would be served by allowing the extension of time. In the light of the information before me, I was not persuaded that special circumstances exist to justify the grant of the extension of time.

29. In all the circumstances, I therefore upheld the registrar’s preliminary view to refuse the extension of time. That being the case, I did not go on to consider the late filed request to further extend the period for filing evidence. For completeness however, I would point out that even if I had done so, the request contained no explanation of why it had been filed retrospectively as is required by rule 68(5).

30. I made no award of costs in respect of the interlocutory hearing.

Dated this 16th day of August 2006

Ann Corbett
For the Registrar
The Comptroller-General