

TRADE MARKS ACT 1938 (AS AMENDED)
AND TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No 1537002
BY PAUL HARTMANN AG
TO REGISTER A TRADE MARK
PIN-SITE
IN CLASS 5

AND IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 40267
BY T.J. SMITH & NEPHEW LIMITED

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15 BACKGROUND

On 26 May 1993, NDM Acquisition Corp. of 3040 East River Road, Dayton, Ohio, 45439, USA applied under the Trade Marks Act 1938 for registration of a trade mark PIN-SITE in respect of:

20 “Wound dressings; all included in Class 5.”

On 11 April 1996 this mark was assigned to Paul Hartmann AG, of Paul-Hartmann-Strasse, 89522 Heidenheim, Germany.

25 On 21 July 1994, T.J. Smith & Nephew Limited, filed notice of opposition to the application. The grounds of opposition are, in summary:

30 1) The trade mark PIN-SITE, applied for in respect of “wound dressings; all included in Class 5” is neither adapted to distinguish, nor is it capable of distinguishing, in relation to the goods for which it is to be registered. It therefore offends against Sections 9 and 10 of the Trade Marks Act 1938.

35 2) The opponents are the registered proprietors of twelve trade marks, detailed at annex A. The trade mark in suit so nearly resembles the opponents’ marks that registration would offend against Section 12(1) of the Trade Marks Act 1938.

40 3) The opponents believe that they are the sole proprietors to have used and registered trade marks in the UK containing the suffix SITE in relation to wound dressings. The trade mark in suit is in respect of such goods and because of the similarity of the marks the trade mark is liable to deceive or cause confusion and so offends against Section 11 of the Trade Marks Act 1938.

45 4) The applicants cannot claim to be using or to have had a bona fide intention to use the mark applied for at the date of registration. Registration would therefore offend against Section 17(1) of the Trade Marks Act 1938.

5) Registration of the trade mark in suit would interfere with the opponents’ legitimate business activities and would be damaging to their trading position in general. The

application should therefore be refused in accordance with the Registrar's discretion under Section 17(2) of the Trade Marks Act 1938.

5 The applicants filed a counterstatement denying all the grounds of opposition. The applicants also ask the Registrar to exercise his discretion in their favour and both sides seek an award of costs in their favour. Both sides filed evidence in these proceedings and the matter came to be heard on 16 June 1999, when the applicants were represented by Mr Ashmead of Kilburn & Strode, Trade Mark Attorneys. The opponents were represented by Mr Buchan of Eric Potter Clarkson, Trade Mark Attorneys.

10 By the time this matter came to be decided the Trade Marks Act 1938 had been repealed in accordance with Section 106(2) and Schedule 5 of the Trade Marks Act 1994. In accordance with the transitional provisions set out in Schedule 3 to that Act, however, I must continue to apply the relevant provisions of the old law to these proceedings. Accordingly, all references in 15 this decision are references to the provisions of the Trade Marks Act 1938 (as amended) unless otherwise indicated.

OPPONENTS' EVIDENCE

20 The opponents filed two statutory declarations. The first, dated 22 May 1995, is by Mr David John Ollis, the Financial Director and Company Secretary of the opponents. Mr Ollis states that:

25 "The opponents, trading as Smith & Nephew Medical Limited, sell a wide range of woundcare products throughout the UK and worldwide. These products are sold generally to hospitals and/or community care clinics. These products include, inter alia, the following: OPSITE, OPSITE IV, OPSITE FLEXIGRID, OPSITE Spray, INTRASITE Hydrocolloid, and INTRASITE Gel."

30 "The trade mark OPSITE has been used continuously in the UK and elsewhere since 1972 up to the present day. In 1972 an incise drape was launched into the UK market under the trade mark OPSITE. Subsequent products were launched under the trade mark OPSITE, into the UK, and other markets, in particular OPSITE Wound Dressing was launched, in 1979; OPSITE IV was launched in 1980, and OPSITE FLEXIGRID was launched in 1989"

35 "The trade mark INTRASITE has been used continuously in the UK and elsewhere since 1987 up to the present day. In 1987 INTRASITE Hydrocolloid was launched in the UK. Also in 1987, the applicants [sic] sold a hydrogel woundcare product under the trade mark SCHERISORB. In 1988, outside the UK, the trade mark SCHERISORB was dropped and the trade mark INTRASITE was used on the hydrogel product. In 1992, the 40 SCHERISORB mark was dropped in the UK and INTRASITE was introduced".

45 "The total hospital sales worldwide of products bearing SITE suffixed marks for the sum of the previous five years in monetary terms was £10,586,850".

"The total hospital sales worldwide of products bearing SITE suffixed marks for the sum of the previous five years in unit terms was 8,076,942".

5 “In January 1992 the applicants were in negotiations with the opponents to ascertain whether the opponents would act as their distributors. The applicants have no UK sales force. Thus at the time of filing the present application, the applicants had no intention of selling the product themselves in the UK and at least in January 1992 had not appointed a distributor or registered user in the UK”.

10 Mr Ollis then provides a number of exhibits, DJ01 - DJ09, which show the use of the marks OPSITE, OPSITE FLEXIGRID, INTRASITE Gel, and OPSITE IV. These show the various trade marks being used on the relevant products and also promotional literature. Opsite is shown as a film for use as a wound dressing whilst Intrasite is shown as a gel for use as a wound dressing. In all the exhibits the marks are shown either in capital letters or with only the first letter and the S of Site in capitals eg IntraSite, OpSite.

15 The second statutory declaration is by Mr Stephen Philip Gilholm, dated 25 April 1995. Mr Gilholm is the trade mark agent at Smith & Nephew Group Research Centre at York. He states that “I am acting on behalf of T J Smith & Nephew Ltd (hereinafter referred to as the opponent) trading as Smith & Nephew Medical Ltd”. He states:

20 “The opponent considers that they have a monopoly in trade marks which are entered on the UK Trade Marks Registry for goods covering woundcare products wherein the trade marks possess the suffix SITE”.

25 Mr Gilholm then exhibits at SPG1 a search which he carried out on the Marquesa Trade Marks Database on 4 October 1993. This shows that the opponents are the only registered proprietors of trade marks with the suffix SITE, in relation to woundcare products. Mr Gilholm also provides a copy of the British Formulary of Woundcare Management at exhibit SPG2 which lists woundcare products sold in the UK. This booklet is dated November 1990 and shows the opponents as the only company trading in woundcare products which have the suffix SITE.

30 Finally at SPG 3&4, Mr Gilholm exhibits a survey undertaken sent out to 26 nurses specialising in woundcare, throughout the UK. He states that “The questionnaire was sent out under a covering letter and accompanied by a stamped addressed envelope for the return of the questionnaire. The questionnaire, the covering letter, the stamped addressed envelope and the envelope in which they were sent did not bear any indication of the name T J Smith & Nephew or any other company.” Copies of the letters etc. are exhibited and back up this statement.

35 The questionnaire regarding CLEARSITE was sent out in June 1993, whilst the PIN-SITE questionnaire was posted in January 1995. The questionnaires were the same except for the substitution of PIN-SITE for CLEARSITE, with one exception. In the case of PIN-SITE the questionnaire began by asking respondents whether from their experience as a medical practitioner they were aware of the term “pin site”. A similar question was not asked in the CLEARSITE questionnaire. The questions asked if the respondent was aware of the wound care products OPSITE and INTRASITE and who they originated from. They also asked if the respondent would expect the wound care product CLEARSITE / PIN-SITE to originate from the same company as OPSITE and INTRASITE.

Mr Gilholm states that of the 26 questionnaires sent out 16 were returned. Of these sixteen replies twelve confirmed that the term “pin site” had a meaning to them, seven mentioned orthopaedic pins/ surgery, three others mentioned pins inserted into bones / fractures. In the same survey “seven (43.75%) of all respondents expected that if they encountered a woundcare product named PIN-SITE they would consider it to originate from the same company as the woundcare products OPSITE and INTRASITE”. Of these seven, five had responded to the question as to the meaning of pin site.

APPLICANTS’ EVIDENCE

This consists of a statutory declaration, dated 17 May 1996, by Mr James Cartmell. He states:

“I was formerly Vice President of NDM Acquisition Corp. and of its successors in business. I am currently an employee of Conmed Corporation of which NDM Inc. is a wholly owned subsidiary. NDM Inc. is in turn the successor in interest to New Dimensions in Medicine Inc. New Dimensions in Medicine Inc. was the surviving corporation when NDM Acquisition Inc. merged with and into MEI Diversified INC. I am familiar with the company’s marketing of products, the trade marks PIN-SITE and CLEARSITE ADVANCED GEL TECHNOLOGY & device. I have detailed knowledge of the commercial affairs of this business and I am authorised to make this declaration on behalf of the company. I will refer hereafter to both NDM Acquisition Corp. and its successors in business as NDM save where the context requires differentiation between them. The information and statements made in this declaration are either from my own knowledge and recollection of the circumstances concerning use of the marks the subject of these oppositions, or taken from files of NDM, to which files I have had access as a consequence of my position”.

Mr Cartmell refers to discussions between the applicants and the opponents which took place in 1992. The objective was to get the opponents to act as distributors for the applicants’ CLEARSITE products in the UK. According to Mr Cartmell, these negotiations broke down because the two parties were unable to agree on financial and economic terms for a business relationship. He also states that the two representatives from the opponents who took part in the discussion (Mr Dick & Mr Croxford) raised no objections to the mark in suit. Another party to the discussions, Metron Instruments, later became the applicants’ UK distributors.

Mr Cartmell states that these discussion and the sales of products under the CLEARSITE mark in the USA show that the applicants had a bona fide intention of using the mark. He also states that NDM has sold its CLEARSITE woundcare products to a “number of countries around the world”. The applicants have, he claims, obtained registrations for PIN-SITE in South Africa, USA, Australia, Canada and New Zealand. Copies of the registration certificates are provided at exhibit JC3. Applications for the mark are pending in a number of other countries according to Mr Cartmell.

Mr Cartmell claims that the opponents have their OPSITE and INTRASITE marks registered in the USA, S Africa, Australia & Canada. At JC4 he exhibits copies of the opponents registration certificates for these countries. He points out that no objection has been raised by the opponents, other than in the UK, with the exception of Spain where the opposition was rejected and is now

under appeal.

Mr Cartmell questions the statement made by Mr Gilholm for the opponents when it was claimed that “the opponent is the only company in the UK trading in wound care products under trade marks which bear the suffix SITE”. Mr Cartmell states that the applicants having been trading in the UK since 1994 under the CLEARSITE mark, and that the opponents were aware of the applicants interest in the UK for their mark as a result of the earlier discussions.

Mr Cartmell states that “The position as I have explained it in relation to the trade mark CLEARSITE applies to a considerable degree in relation to PIN-SITE save in that PIN-SITE has not yet come into widespread use despite our attempts and our continuing wish for it to do so”.

That completes my review of the evidence.

DECISION

I first consider the grounds of opposition under Sections 9 & 10 which state:

9. -(1) In order for a trade mark (other than a certification trade mark) to be registrable in Part A of the Register, it must contain or consist of at least one of the following essential particulars:

(a) the name of a company, individual, or firm, represented in a special or particular manner;

(b) the signature of the applicant for registration or some predecessor in his business;

(c) an invented word or invented words;

(d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the foregoing paragraphs (a), (b), (c), and (d), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.

(2) For the purposes of this section “distinctive” means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection exists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid the tribunal may have regard to the extent which -

(a) *the trade mark is inherently adapted to distinguish as aforesaid; and*

(b) *by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.*

5

10. - (1) *In order for a trade mark to be registrable in Part B of the register it must be capable, in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.*

10

(2) *In determining whether a trade mark is capable of distinguishing as aforesaid the tribunal may have regard to the extent to which -*

15

(a) *the trade mark is inherently capable of distinguishing as aforesaid; and*

(b) *by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact capable of distinguishing as aforesaid.*

20

(3) *A trade mark may be registered in Part B notwithstanding any registration in Part A in the name of the same proprietor of the same trade mark or any part or parts thereof.*

25

Mr Buchan's submission at the hearing was based on the contention that the mark in suit is descriptive. He referred to the survey where twelve out of sixteen respondents (75%) thought that the words had a meaning, identifying the position where an orthopaedic pin would emerge from the skin.

30

Clearly the mark is not registrable under Sections 9(1)(a) or 9(1)(b).

In considering Section 9(1)(c) and (d) I take into account the comments of Lord Herschell in the SOLIO case[1898] A.C 571; 15 RPC 476, where he stated:

35

"I do not think the combination of two English words is an invented word, even although the combination may not have been in use before."

40

In addition in the case of *Philippart v Whiteley* (1908) 25 RPC 565 Parker J stated that before a word qualified as an invented word, it must not only be newly coined in the sense of not being already current in the English language, but it must be such as not to convey any obvious meaning to the ordinary Englishman.

45

The mark in suit, PIN-SITE consists of two normal English words joined by a hyphen, which clearly conveyed a meaning to the survey respondents. Of the wound care nurses who responded to the survey, twelve (75%) stated that the term pin-site had a meaning for them as medical practitioners. Seven of whom referred to external fixators or pins protruding through the skin. The opponents have filed evidence (at DJO8 & 9) that wound dressings can be for particular applications. It seems plausible that a wound caused by a protruding metal pin attached to bones

could require a specific type of dressing. The survey at SPG4 would appear to support this contention, and the applicants have not filed any evidence of the actual product they intend to market under the PIN-SITE mark. Consequently the applicants have done nothing to refute the applicants' case. In my view the mark in suit is not an invented word and there is evidence that it would appear to have a descriptive significance to the relevant public for the goods at issue. The applicants have not discharged the onus upon them to show that the mark applied for is distinctive and will be seen as a trade mark by the relevant public. The mark is therefore not registrable under Sections 9(1)(c) and (d).

5

10

The opposition under Section 9 therefore succeeds.

15

At the hearing, Mr Buchan asserted that if a mark is deemed not acceptable in Part A then the Registrar does not have discretion to accept the mark under Part B of the Register. In support of this he referred to a recent decision by Mr Knight in the M&S case. A similar decision was reached by the Registrar in the Parison Fabrics case [1949] 66 RPC 217. As far as I am aware this matter has not been referred to the courts, and the attorney for the applicants did not address this issue at the hearing. However, in view of my finding under Section 9 the mark would not be acceptable even if I were to consider it under Section 10 of the Act.

20

Although my decision under Section 9 determines the case, I have decided for completeness to give my views on the other grounds of opposition.

The next ground of opposition is under Section 12(1) of the 1938 Act. This reads as follows:

25

12. - (1) "Subject to the provisions of subsection (2) of this section, no trade mark shall be registered in respect of any goods or description of goods that is identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of:

30

(a) the same goods,

(b) the same description of goods, or

35

(c) services or a description of services which are associated with those goods or goods of that description."

40

The reference in Section 12 to a near resemblance is clarified by Section 68(2B) of the Act which states that references in the Act to a near resemblance of marks are references to a resemblance so near as to be likely to deceive or cause confusion.

45

In addition to INTRASITE the opponent also has the marks' OPSITE, OPSITE ONE STEP, OPSITE FLEXIGRID, OPSITE FLEXIGRID & DEVICE, OPSITE I.V.1-STEP and OPSITE I.V.3000 registered. In my view the marks OPSITE solus and INTRASITE provide the opponents with their strongest case, and I will refer only to these two marks in my judgement.

The established test for objections under Section 12(1) is set down in Smith Hayden & Co. Ltd's application [Volume 1946 63 RPC 101]. Adapted to the matter in hand the test may be expressed

as follows:

5 Assuming user by the opponents of their trade marks OPSITE and INTRASITE, in a normal and fair manner for any of the goods covered by the registrations of those trade marks, is the tribunal satisfied that there will be no reasonable likelihood of deception amongst a substantial number of persons if the applicants use their trade mark PIN-SITE normally and fairly in respect of any goods covered by the proposed registration?

10 It is accepted by both sides that the goods are similar if not identical.

I therefore move onto consider the marks themselves. For this purpose I take into account the guidance set down by Parker J in Pianotist Co.’s application (1906 23 RPC 774 at page 777):

15 *“You must take the two words. You must judge of them both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances: and you must further consider what is likely to happen if each of these trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering, all those circumstances,*
20 *you come to the conclusion that there will be a confusion - that is to say- not necessarily that one will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public, which will lead to confusion in the goods - then you may refuse the registration, or rather you must refuse the registration in that case.”*

25 It is apparent that the marks differ visually, the only similarity being the use of the word “SITE” as an ending to the first word of each mark.

30 Each of the three marks, PIN-SITE, OPSITE & INTRASITE, has an identical last syllable, SITE. The beginnings are clearly very different. It is accepted that the first syllable of a word is important for the purpose of distinction (see TRIPCASTROID [1925]RPC 264), and even allowing for the notion of imperfect recollection I do not consider there is a real likelihood of aural confusion.

35 None of the marks has a dictionary meaning, although they all allude to medical applications.

40 Mr Buchan also placed great emphasis on the results of the survey. He stated that this showed that fifteen out of sixteen respondents when asked “Would you expect the wound care product PIN-SITE to originate from the same company as OPSITE AND INTRASITE” responded “yes”. However, in my view the survey is flawed in a number of areas. The questionnaire was sent to twenty-six nurses who it was said “specialised in woundcare”. There is no indication of how these individuals were selected. Mr Buchan conceded at the hearing that there are “many thousands, if not tens of thousands” of wound or theatre nurses in the UK. Aside from these aspects of the survey the nature and positioning of the questions are such that it invited the respondents to speculate and elicited a response favourable to the opponents. The inclusion of the opponents’
45 marks into the questionnaire may have influenced the respondents who instead of answering each question in turn, may have read the whole questionnaire prior to writing their responses. This would have affected their replies. With such a small statistical sample any inconsistency is

magnified in its effect on the overall outcome.

5 I also note that the “relevant public” for these products would appear to be theatre or wound care nurses. These are highly trained professionals, used to dealing with products which have similar names. They are less likely to confuse products than the general public, or to be misled as to the trade origin, especially in a specialist field.

10 Taking into account all of the factors and comparing the marks as wholes, I consider that the degree of similarity between the trade mark PIN-SITE and the trade marks OPSITE and INTRASITE is insufficient to cause deception and confusion amongst a substantial number of persons. The opposition under Section 12 fails.

The next ground of opposition is under Sections 11 of the 1938 Act. This reads as follows:

15 *“11. - It shall not be lawful to register as a service mark or part of a service mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.”*

20 The established test for this section is set down in Smith Hayden and Company Ltd’s application (Volume 63 1946 RPC 101) later adapted by Lord Upjohn in the BALI trade mark case (1969 RPC 496). Adapted to the matter in hand the test may be expressed as follows:

25 Having regard to the user of the opponents’ marks OPSITE / INTRASITE, is the tribunal satisfied that the mark applied for, PIN-SITE, if used in a normal and fair manner in connection with any goods covered by the registration proposed will not be reasonably likely to cause deception and confusion amongst a substantial number of persons?

30 Under this heading I must consider the actual user of the opponents’ mark. It is stated that the opponents had used their OPSITE mark for approx. twenty years, and their INTRASITE mark for approx. five years at the relevant date, 10 February 1992. However, the sales figures provided refer to the world wide sales of products with the suffix SITE. It is difficult to gauge from this the user in the UK. The opponents also claim that they have a “family” of SITE marks. However,
35 the only relevant use is OPSITE and INTRASITE. The additions to these words do not affect the issue.

40 Further, the opponents claim to have used INTRASITE as a mark for a hydrocolloid since 1987, and at exhibit SPG2 a booklet dated November 1990 shows the product listed. However, it has only been used on the gel product illustrated in the exhibits to Mr Ollis’s declaration “since 1992”. The relevant date for this application is 10 February 1992. Accordingly, given the vagueness of the use figures it is not clear to what extent INTRASITE had been used before the relevant date, but it appears that the use has been extended since 1992. The survey was undertaken in June 1993 and, even if it were considered reliable, would not have reflected the position at the relevant date.

45 The applicants do not accept the opponents’ argument that they have reputation in the word SITE. The opponents provided impressive sales figures for products sold world wide with the

SITE suffix. It was not clear how much related to sales in the UK and whether the figures included sales of products other than those referred to in the statement of grounds of opposition. The word SITE is a highly descriptive term and is clearly one which other traders would seek to use as part of trade marks or in advertising. It should therefore be given less weight than distinctive elements when comparing marks, always bearing in mind the requirement in *Erectiko v Erector* vol 52 [1935] RPC 136 to compare marks as wholes.

The evidence filed by the opponents shows use of two marks ending in SITE on an uncertain scale, and there is insufficient evidence to support the assertion to have an existing “family” of marks. The opponents’ contention that there would be confusion through association is based on the premise of the existence of such a family of marks. The use of a capital S in each mark was commented upon by Mr Buchan. However, as the applicants’ mark consists of two words the use of capital letters is not surprising. Prima facie the marks are clearly not confusingly similar and the opposition under Section 11 therefore fails.

The opponents have also claimed that the registration should be refused under Section 17(1) as “the applicants cannot claim to be using or to have had a bona fide intention to use the mark applied for at the date of registration”. Section 17(1) reads as follows:

17. - (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it must apply in writing to the Registrar in the prescribed manner for registration either in Part A or in part B of the register.

The opponents have stated that the applicants at the time of filing had no sales force in the UK and had not appointed a distributor or registered user. In the evidence of the applicants, Mr Cartmell states :

“...save in that PIN-SITE has not yet come into widespread use despite our attempts and our continuing wish for it to do so.”

The opponents have not challenged the applicants’ evidence in this respect and there is no reason to believe that the applicants applied to register a trade mark they did not intend to use. The opposition under this Section therefore fails.

I do not intend to invoke the Registrar’s discretion in favour of the opponents.

As the opposition has succeeded, the opponents are entitled to a contribution towards their costs. I order the applicants to pay the opponents the sum of £385.

Dated this 17 Day of September 1999

George W Salthouse
For the Registrar
The Comptroller General

5

ANNEX A

10

Trade Mark	Registration number	Registration Date	Class
OPSITE	B1100940	1/9/78	5
OPSITE	B1100941	1/9/78	10
INTRASITE	1227717	5/10/84	5
OPSITE	1254567	16/11/85	5
OPSITE	1254568	16/11/85	10
OPSITE	B1267583	21/5/86	24
OPSITE	1327601	21/11/87	10
OPSITE ONE STEP	1369802	31/1/89	5
OPSITE FLEXIGRID	1369854	14/1/89	5
OPSITE FLEXIGRID (DEVICE)	1370641	20/1/89	5
OPSITE I.V. 1-STEP	1419306	30/3/90	5
OPSITE I.V.3000	1435652	10/8/90	5

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15 SUPPLEMENTARY DECISION

It has been brought to my attention that my written decision in these proceedings, dated 17 September 1999, contained three clerical errors. The necessary power to correct these errors is provided, I believe, by Order 20 Rule 11 of the Rules of the Supreme Court which states:

20 Clerical mistakes in judgements or orders, or errors arising from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.”

25 I therefore correct the following:

i) At line thirty-seven, page eight, I referred to “fifteen out of sixteen respondents”, the sentence should have read “seven out of sixteen respondents”.

30 ii) The paragraph at lines 38 - 44, page nine, appears in this decision erroneously.

iii) The costs awarded to the opponents at line 37 - 38, page 10 were given as £385. This should have read £835.

35 Dated this 6 Day of October 1999

40 George W Salthouse
For the Registrar
the Comptroller General