

## **PATENTS ACT 1977**

IN THE MATTER of an application  
under Section 28 by Mr William Lister  
for the restoration of GB patent 2240569.

## **DECISION**

### Background

The renewal fee due on 14 September 1996 in respect of the 8th year of this patent was not paid by that date, nor was it paid during the further six months allowed by Section 25(4) the Patents Act 1977. The application for restoration was filed on 12 May 1997, within the period permitted under Rule 41(1) the Patents Rules 1995.

The application came before me at a hearing on Friday 13 March 1998. The proprietor was represented by Mr B Dempster of Withers & Rogers. Mr Twyman attended on behalf of the Patent Office. The hearing was adjourned to allow Mr Dempster to provide medical evidence supporting the application. The hearing was reconvened for Friday 24 April 1998 but, owing to transport difficulties which delayed Mr Dempster, was further deferred and concluded on Wednesday 27 May 1998.

### The Facts

Mr Lister placed the renewal of his patents, including GB 2240569, in the hands of Australian agents. He received several letters from them which stated that advance payment was required before they would make the GB renewal. Mr Lister, despite making clear that he wished the UK patent and others to be renewed, did not forward any advance payment, and hence his agents did not effect the renewal of the GB patent. The requirement for advance payment relating to overseas patents was a change of practice following a business reorganisation by the agents. It

differed from previous practice under which the agents had followed Mr Lister's instructions to renew automatically unless notified otherwise. Unfortunately this change was not drawn explicitly to Mr Lister's attention, and the agents accept that this should have been done.

### Decision

In the circumstances, I will exercise my judgement in Mr Lister's favour. He took reasonable care in setting up a system and followed it. His failure to recognise that it had been changed by others does not alter this given that he was not told so clearly. He could not reasonably be expected to fully understand the request in the reminder letters given his frail state of memory and the fact that the change in practice had not prevented his Australian patent from being renewed.

Restoration will not, however, take place unless and until the requirements of Rule 41(4) have been met. Namely, that patents form 53, together with patents form 12 and the appropriate fees, including unpaid renewal fees, be filed within two months of the date of this decision.

Dated this 12<sup>th</sup> day of June 1998.

RON MARCHANT

*RMER08*