

## **PATENTS ACT 1977**

IN THE MATTER OF an application  
under section 13(3) by Bruce Alan Milner  
in respect of patent no. GB 2212505

### **DECISION**

#### **Background and history**

UK Patent No. 2212505 in the name of Dixon International Limited (now Dixon International Group Limited) was applied for on 17 September 1987 under application no. GB 8826879.0 (based on International application no. PCT/GB87/00650) and claiming a priority date of 17 September 1986. The inventors named were Tessa Malcolm-Brown, Bruce Alan Milner and Eric Southern. The patent was granted on 31 May 1990 and relates to an intumescent material comprising a polymeric or elastomeric binder containing expandable graphite. The material is for use, inter alia, as sealing strips for doors and windows, in pipe closures as a pressure and gap sealant, and in glazing panels.

On 7 November 1996, Mr Milner (hereafter referred to as the "applicant") filed an application under section 13(3) and a Statement of Case claiming that he had sole rights in the invention of the patent and seeking to have the names of the other two inventors removed from the Register. This action was opposed by Dixon International Limited, Sealmaster Limited (a wholly owned subsidiary of Dixon), and the named inventors Tessa Reeve (formerly Tessa Malcolm-Brown) and Eric Southern (hereafter referred to as the "opponents"). Counterstatements were filed by the opponents' agent on 10 February 1997 with a request for costs.

At a preliminary hearing (*see* SRIS 0/209/97) held on 23 October 1997 it was decided that the section 13 action should be stayed pending a substantive hearing on section 40 proceedings initiated by the applicant on 4 July 1996. Following the substantive hearing (*see* SRIS 0/164/98) the parties were invited to file submissions as to their positions with regard to the stayed section 13 proceedings.

On 7 September 1998 the Patent Office received written confirmation from the applicant that he was withdrawing the section 13 application. Unfortunately, the opponents were unaware of the proposed withdrawal until they were sent a copy of the applicant's letter by the Patent Office on 29 October 1998. Subsequently, the agents for Dixon wrote to the Patent Office on 12 November 1998 advising that the opponents would be content with a conclusion of the section 13 application on the basis that no order was made, including no order for costs. No further submissions were received from either party by the 4 December 1998, the extended deadline for receipt of submissions.

### **Summary of decision**

In view of the withdrawal of the section 13 application by the applicant, and the acceptance by the opponents of the withdrawal, I confirm that the section 13 proceedings are now withdrawn and accordingly I make no order. As to the costs of the section 13 proceedings, since the opponents are content for no costs to be ordered, I make no order for costs.

Dated this 16<sup>th</sup> Day of December 1998

**D L WOOD**

Superintending Examiner, acting for the Comptroller