

PATENTS ACT 1977

IN THE MATTER OF applications
under section 28 for restoration of
European patent (UK) 0322268 in the name of
Serge Jean-Marie Rebeillard and Cecile Denise Kreweras

DECISION

Background

1. The renewal fee in respect of the 14th year of the patent fell due on 2 December 2001. The fee was not paid by that date or during the six months allowed under section 25(4) upon payment of the prescribed additional fees. The patent therefore lapsed on 2 December 2001. The application for restoration of the patent was filed on 7 January 2003, within the 19 months prescribed under rule 41(1)(a) for applying for restoration. After considering the evidence filed in support of the application for restoration an official letter was sent to the proprietors' address for service explaining that it was the preliminary view of the Patent Office that the requirements for restoration, as laid down in section 28(3), had not been met. The proprietor declined the Office's offer of a hearing but instead asked that a decision be taken on the basis of the written evidence and arguments.
2. The evidence filed in support of the application consists of a witness statement by Mr Serge Jean-Marie Rebeillard dated 28 January 2003 and a witness statement by Cecile Denise Kreweras dated 28 January 2003. Copies and translations of renewal reminder letters sent to the proprietors by the Cabinet Lavoix have also been supplied in evidence.

The Facts

3. The joint proprietors of the patent, Mr Rebeillard and Mrs Kreweras, are husband and wife who run a business in France. To remind them when to pay renewal fees on the patent and corresponding patents in other European countries the French patent attorney, Cabinet Lavoix, would send them reminders when the fees were due. An initial reminder would be sent three months before the due date. If no instructions were received to pay the renewal fee following that first reminder, a maximum of three further reminders would be sent during the six months following the due date when the fee could be paid with extension fees. Up to and including the 13th year renewal fee Mr Rebeillard was responsible for payment of the fees. For several years it had been his practice to delay payment until later in the six-month grace period knowing that he would receive further reminders.
4. In the case of the 14th year renewal fee, Mr Rebeillard received the first reminder from Cabinet Lavoix three months before the due date but, as was his custom, he did not issue instructions at that time to pay the fee. He also deferred issuing such instructions after receiving a second reminder dated 5 February 2002, i.e. in the second month of the grace period.

5. Unfortunately, from 5 March 2002 Mr Rebeillard suffered a serious stroke and was forced to take sick leave from that date. Exhibited with his witness statement is a medical certificate from his doctor in which the doctor says that “the state of health of Mr Serge Rebeillard necessitated a complete cessation of activity from 5 March 2002 to 10 July 2002 inclusive”. As a consequence, Mrs Kreweras had to take over responsibility for all administrative matters normally dealt with by her husband while at the same time as caring for her him.
6. Mrs Kreweras received the third renewal reminder from Cabinet Lavoix in April 2002 and a final reminder dated 24 May 2002. Both reminders related to the renewal fees due in June 2002 on the subject patent and corresponding patents in other European countries. Mrs Kreweras says in her witness statement that she did not notice the distinction in the reminders between the renewal deadline of 2 June 2002 for the UK patent and the deadline of 30 June 2002 for the corresponding patents. Consequently, when she issued instructions later in June 2002 to Cabinet Lavoix to pay the renewal fees it was too late to pay the fee for the UK patent.

Assessment

7. Section 28(3) provides:

“If the comptroller is satisfied that the proprietor of the patent took reasonable care to see that any renewal fee was paid within the prescribed period or that that fee and any prescribed additional fee were paid within the six months immediately following the end of that period, the comptroller shall by order restore the patent on payment of any unpaid renewal fee and any prescribed additional fee.”
8. In assessing such cases it is helpful to bear in mind the following statement by Aldous J in *Continental Manufacturing & Sales Inc.'s Patent* [1994] RPC pages 535 to 545:

“The words ‘reasonable care’ do not need explanation. The standard is that required of the particular patentee acting reasonably in ensuring that the fee is paid.”
9. Therefore, in reaching my decision, it is important that I take into account all the surrounding circumstances and decide in light of those circumstances whether reasonable care has been taken.
10. It is clear from the evidence that the proprietors took care to establish a system whereby a patent attorney would send them reminders when the renewal fee was due to be paid and would pay the fee on their instruction. The question is, did the proprietors take reasonable care in playing their part in that system in the case of the 14th year renewal fee?
11. When Mr Rebeillard received the first two reminders, it was quite acceptable for him to continue with his practice and refrain from issuing instructions to Cabinet Lavoix until later in the grace period. Of course he was not to know that he would be taken ill during that period. Responsibility therefore fell on Mrs Kreweras, as co-proprietor, to

deal with the two subsequent reminders and ensure Cabinet Lavoix was issued with instructions in good time. She therefore had to take care in reading the reminders to ensure that she understood when she had to issue the necessary instructions.

12. What I need to decide is whether Mrs Kreweras failure to “notice” the deadline for paying the renewal fee, which caused her to issue instructions too late, was due to a lack of reasonable care on her part. I should add that I do not think it would be right to dismiss the possibility of allowing restoration simply because of an isolated error by a proprietor. However, I believe it has to be shown that the error arose despite the proprietor having taken reasonable care.
13. I think it is worth mentioning here that unlike other European countries, where patent renewal fees have to be paid at the end of the month in which anniversary of the filing date falls, renewal fees in the UK fall due on the actual anniversary date. Consequently, the six-month grace period in other European countries ends at the end of the sixth month of the six-month grace period whereas in the UK the grace period ends on the same day of that month as the anniversary of the filing date.
14. The final reminders Mrs Kreweras received from Cabinet Lavoix’s is a key document in this case and it would be appropriate to look at what it actually says. It reads as follows:

“We refer to our previous correspondence dated February 5 and April 3, 2002 reminding you of the renewals due on the above-quoted patents.

We recall that the final deadline to pay these fees expires on June 2, 2002 for the U.K. and June 30, 2002 for the other countries.

In the absence of instructions from your part along with corresponding settlement we shall not attend to the payment of these fees so that the patents will lapse.

Since the contents of this letter is of utmost importance, we send it to you through registered mail with advice of delivery, because we would like to be sure that you get it.

Please note that no further reminder will be sent.”

15. The reminder is clear and unambiguous and it is difficult to see how Mrs Kreweras could not have noticed the specific reference to the 2 June 2002 deadline for renewing the UK patent unless she failed to read the reminder letter with due care and attention. It should have been evident that the reminder demanded careful attention given the clear statement that the contents were of “utmost importance” and the fact that the letter had been sent by registered post.
16. Mrs Kreweras does not give any explanation as to what might have caused her not notice that the deadline for renewing the UK patent was different from the other patents. However, in their letter of 9 July 2003, the proprietors’ UK patent agents, A.A. Thornton & Co., ask that due consideration be given to the effect of the

difference in the renewal due dates between the UK and other patents in Europe. I am aware that there have been cases where proprietors did not realise that the UK was unique compared to other European countries in requiring renewal fees to be paid by the anniversary of the filing date rather than at the end of the month in which that date falls. However, Mrs Kreweras does not say or imply in her witness statement that the reason she did not notice that the deadline for renewing the UK patent was because she was under some predetermined notion that all renewal fees were due at the end of the month.

17. Mrs Kreweras mentions that she had many more business matters to attend to while her husband was ill and convalescing and also had to spend time caring for him. However, she does not put that forward as a reason for her misreading the reminders. The Patent Office referred to this point and the absence of any supporting medical evidence in its letter of 9 June 2003 in which it outlined the reasons for its preliminary decision. In their subsequent letter of 9 July 2003, A.A. Thornton & Co. makes no reference to these added pressures as a factor for Mrs Kreweras misreading of the reminders. This said, I have little doubt that these added pressures would have had some affect on Mrs Kreweras and I have considerable sympathy with the difficulties and worries she must have faced. However, I have no evidence that the pressure was such as to impair her ability to act in a reasonable manner such as to excuse her failure to issue payment instructions before the deadline specified in the reminder letter.

Conclusion

18. On the basis of the papers I have before me, and on which I have been asked to make my decision, I am not convinced that Mrs Kreweras took sufficient care in reading the important and unequivocal reminders she received from Cabinet Lavoix. I am not, therefore, persuaded that Mrs Kreweras, in her capacity as the co-proprietor with final responsibility for seeing that the 14th year renewal fee was paid, exercised reasonable care in carrying out that function. It follows that I am not satisfied that the requirements in section 28(3) have been met. Accordingly, I must refuse the application for restoration.
19. It is with some regret that I have come to this decision which I appreciate may sound harsh given the unfortunate circumstances that befell the proprietors when the 14th year renewal fee was due. However, on the basis of the evidence and arguments before me I simply cannot reach any other conclusion.

Appeal

20. Any appeal against this decision must be filed within 28 days.

Dated this 10th day of September 2003

M C Wright
Assistant Director, acting for the Comptroller
THE PATENT OFFICE

