



4 July 2011

PATENTS ACT 1977

PARTIES Kyushu Kyohan Company Limited, Ho
Jinyama, Toshio Toyota, Luo Zhigao and
Wu Yi

ISSUE Reference under section 37 and
applications under section 13(3) and rule
10(2) in respect of patent number
GB2358253

HEARING OFFICER A R BUSHELL

DECISION

- 1 Patent number GB 2358253 was granted pursuant to the international phase of international patent application number PCT/JP2000/003006 filed in the names of Kyushu Kyohan Co., Ltd, Ho Jinyama and Toshio Toyota. In the original PCT application Ho Jinyama, Toshio Toyota and Takashi Nishimura were named as inventors.
- 2 Kyushu Kyohan Co., Ltd, Ho Jinyama, Toshio Toyota, Luo Zhigao and Wu Yi have now filed a reference under section 37 of the Patents Act 1977 along with an application under section 13(3) and an application under rule 10(2) of the Patents Rules 2007. Luo Zhigao and Wu Yi are seeking to be named as co inventors and co proprietors, whereas Takashi Nishimura has asked to be removed as an inventor from patent number GB 2358253.
- 3 In a statement signed by all the parties concerned it is agreed that Luo Zhigao and Wu Yi were erroneously not included on the list of inventors at the time of filing. It is also agreed that given the inventive contribution to the invention by Luo Zhigao and Wu Yi they should have been named as co-applicants on the patent.
- 4 Attached to the statement are sworn declarations from Luo Zhigao and Wu Yi giving consent for their names to be added to the list of inventors and proprietors for patent number GB 2358253. Takashi Nishimura has also signed a declaration to confirm that he is happy for his name to be deleted from the list of inventors in respect of this patent.

The law

- 5 The proceedings have been brought under sections 37 and 13(3) of the Patents Act 1977 and rule 10(2) of the Patents Rules 2007, the relevant parts of which read:

Section 37

37.(1) After a patent has been granted for an invention any person having or claiming a proprietary interest in or under the patent may refer to the comptroller the question-

(a) who is or are the true proprietor or proprietors of the patent

(b)..

(c)..

and the comptroller shall determine the question and may make such order as he thinks fit to give effect to the determination.

Section 13

13.(3) Where a person has been mentioned as sole or joint inventor in pursuance of this section, any other person who alleges that the former ought not to have been so mentioned may at any time apply to the comptroller for a certificate to that effect, and the comptroller may issue such a certificate; and if he does so, he shall accordingly rectify any undistributed copies of the patent and of any documents prescribed for the purposes of subsection (1) above.

Rule 10

10.(1) An inventor or joint inventor of an invention, if not mentioned in any published application for a patent, or in any patent granted, for the invention, must be mentioned in an addendum or an erratum to the application of patent.

(2) A person who alleges that any person ought to have been mentioned as the inventor or joint inventor of an invention may apply to the comptroller for that person to be so mentioned-

(a) In any patent granted for the invention; and

(b) If possible in any published application for a patent for the invention

and if not so mentioned, in the manner prescribed by paragraph (1).

(3)..

(4)..

- 6 Also relevant is section 7, which reads:

Section 7

7.(1) Any person may make an application for a patent either alone or jointly with another.

(2) A patent for an invention may be granted –

(a) Primarily to the inventor or joint inventors;

(b) In preference to the foregoing, to any person or persons who, by virtue of any enactment or rule of law, or any foreign law or treaty or international convention, or by virtue of an enforceable term of any agreement entered into with the inventor before the making of the invention, was or were at the time of the making of the invention entitled to the whole of the property in it (other than

equitable interests) in the United Kingdom;

(c)..

(3) In this Act “inventor” in relation to an invention means the actual deviser of the invention and “joint inventor” shall be construed accordingly.

(4) Except so far as the contrary is established, a person who makes an application for a patent shall be taken to be the person who is entitled under subsection (2) above to be granted a patent and two or more persons who make such an application jointly shall be taken to be the persons so entitled.

Conclusion

- 7 On the basis of the information provided, I accept the facts of the case as set out in the statement signed by all parties, that is, that due to an error the patent application was filed incorrectly in the names of Kyushu Kyohan Company Limited, Ho Jinyama and Toshio Toyota. Luo Zhigao and Wu Yi had made inventive contributions in respect of the invention and as such were entitled to be named as co inventors and co proprietors at the time of filing. In view of the signed statement and consent filed by those involved, I conclude that all parties agree that Luo Zhigao and Wu Yi should be named as co inventors and therefore under Section 7 they are also entitled to be named as co proprietors. I also conclude that all parties agree that Takashi Nishimura should be removed as an inventor.

Findings and order

- 8 Accordingly I find that Luo Zhigao and Wu Yi are entitled to be named as co inventors and co proprietors in respect of patent number GB 2358253. I also find that Takashi Nishimura should not have been named as a co inventor on this patent. I direct that the patents register be updated and an addendum slip prepared to reflect this finding.
- 9 This decision also serves as a certificate, issued in accordance with section 13(3), to the effect that Takashi Nishimura should not have been mentioned as an inventor in the published patent application and granted patent for the invention.

A R BUSHELL

B3 Head of Litigation Section, acting for Comptroller