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Simplicity is no Objection – The illuminating saga of Collingwood Lighting Limited v. Aurora Limited (10 February 2014)

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A recent judgment from Mr Justice Roth in the UK Patents Court found a patent for a fire resistant LED downlight valid and infringed. The gist of the invention was said to be a simple change from the state of the art but it was held that just because it was a simple change that did not preclude it from being inventive. On novelty, the one cited piece of prior art was held not to describe something which if performed would “necessarily lead to the making of the subject-matter of the patent” and thus not an anticipation according to the law as most recent stated by the House of Lords in the Synthon case back in 2005. Further, the prior art documents cited for obviousness were held to be not relevant or not a useful starting point to the skilled person trying to overcome the problem solved by the patent. As such the patent was upheld. It is interesting that the Judge also made reference to the observations of Floyd J (as he then was) in **Ratiopharm v Napp** [2008] that if matter alleged to be common general knowledge is not established to be such, then a pleading that the invention is obvious over the common general knowledge cannot get off the ground.

Other points of interest of this case are in relation to infringement. The defendant had an original product and a re-designed product and both were found to infringe the patent. In relation to infringement by the original product, it was held when considering the construction of the claims a preferred embodiment cannot be read to determine the scope of the claim (citing Floyd J in **Nokia GmbH v ICom GmbH & Co KG** [2009]). It was said that if this was to be the case any patent would need at least two embodiments to prevent the limitation of the claims.

Additionally, the defendant sought to advance a case that damage should not be awarded for any infringement. It sought to show that it was not aware nor were there reasonable grounds for supposing that the claimant’s patent existed (as set out in Section 62(1) of the Patents Act 1977). This issue also went against the defendant, the judge in part relying on trade press which would likely have been read by the defendant. The trade press contained advertisements for the claimant’s product which described it as being awarded “Innovative Product of the Year” and another advertisement referring to a “patented design”. In a field where manufacturers seek to obtain patents, while the patent application number itself was not advertisement, the judge held this was sufficient to put the defendant on notice that the product in question may have patent protection.

Finally, it is noteworthy that the Judge was critical of Aurora's fact witness whom, it was held, had presented a "misleading picture" to the court about whether one of the designs in issue had been designed without knowledge of the claimant's picture. Aurora's expert also came in for some criticism on the basis that, although she was completely honest, she had attributed more imagination to the skilled person than was appropriate and that she was "somewhat partisan" in favour of Aurora's case.

The take-home messages from this case are that (i) witnesses – particularly experts – play a crucial role in UK patent litigation and (ii) just because a patent describes a modest technical advance, does not mean that it is not worthy of patent protection. A similar conclusion to (ii) was reached in a judgment from Arnold J handed down on 28 February 2014. In this case the patent relating to a development in dry frying technology and, in finding certain of the claims valid and infringed, the Judge noted that "*the fact that, after the event, it is easy to see how the invention could be arrived at by starting from an item of prior art and taking a series of apparently simple steps does not necessarily show that it was obvious at the time*" relying in particular on the decision of the House of Lords in **Techcograph v Mills & Rockley** [1972].

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