

Jacob J

Background

5 This is in form an application for rectification of the Register of Patents. But the
substance of the dispute is whether the applicants, (whom I will collectively call
“McDermotts”) have a significant defence to the financial part of the relief claimed in a
pending patent action. In that action the plaintiffs (whom I will call “Stena”) sue McDermotts
for infringement of 4 patents. One of these is shortly to expire. It is said to be the most
10 important. So, if there is a defence to all or most of the financial claim, McDermotts will
escape substantial liability at least on that important patent. Thus I think they have sufficient
standing to be “persons aggrieved” (see s.34(1)), even though this is not the normal type of
rectification dispute between rival claimants to a patent.

15 Stena acquired the patents from a company called Sante Fe. It is said that in an
attempt (now accepted to be bona fide) to comply with the formality provisions of the Patents
Act 1977 and the requirements of the Stamp Act 1891 they lost their way in the jungle. The
consequence is said to be that the entries in the Register of Patents for the 4 patents
concerned are incorrect. In particular it is said the current entries recording Stena as
20 proprietors are wrong, even though Stena are admittedly in fact proprietors. None of this
would matter but for the provisions of s.68 of the Patents Act, which is said to provide a
defence to the financial claim.

The Statutory Provisions

25 Before proceeding further it is convenient to set forth the provisions of the two Acts
so far as they are material. I am sorry that so much is necessary.

Patents Act 1977 as amended

30 30.-(1) Any patent or application for a patent is personal property (without being a
thing in action), and any patent or any such application and rights in or under it may be
transferred, created or granted in accordance with subsections (2) to (7) below.

35 (2) Subject to section 36(3) below, any patent or any such application, or any right in
it, may be assigned or mortgaged.

(5) Subsections (2) to (4) above shall have effect subject to the following provisions of
this Act.