

Registered Assignment immediately assigning the patent back to the current claimants.

The language of the documents is as follows. I begin with the Technology Transfer Contract. I am reading from a translation from the German: “HOECHST shall transfer any and all TECHNOLOGIES and INDUSTRIAL PROPERTY RIGHTS worldwide which can be exclusively applied within the CONTRACT AREA to the unrestricted ownership of NUTRINOVA.”

Then there is a list to be transferred, which are listed in annex 1, and annex 1 includes this patent.

The document uses the language “shall transfer for the industrial property rights” to be transferred. The document, as I understand, is governed by German law. It is said there is a doubt as to whether that operates as an assignment as such, or merely as an agreement to assign.

FALSE What happened was the patentees, when they were considering suining another party in 1998, looked at their title. They were not quite sure which of the two effects the document had, so they decided to enter into an Assignment Back and then a formal assignment which could be registered at the Patent Office.

The Assignment Back says in its recitals: “By an agreement (“the Assignment”) dated 28th August 1997 HOECHST assigned to NUTRINOVA certain industrial property rights, including the patents for the United Kingdom, Great Britain, Northern Ireland, and the Isle of Man listed in the Schedule. • (B) To avoid recording the Assignment, it has been agreed that NUTRINOVA should make the following re-assignment without payment.”

Then the operative part reads: “NUTRINOVA assigns to HOECHST the patents listed in the Schedule. • (2) HOECHST shall the property hereby assigned as trustee for NUTRINOVA.”

Finally, on the same day, an agreement was entered into which became that registered at the Patent Office. Its introduction says: • “(A) HOECHST is register proprietor of the patents.
• (B) The parties have agreed upon the following assignments without payment.”

The operative part reads: “WITNESSES that HOECHST assigns to NUTRINOVA absolutely the patents listed in the Schedule together with all rights, powers and benefits belonging to or accrued to the same.”

This document was then taken to the Stamp Duty Office. It received a 50p stamp, which is the appropriate stamp for an assignment without payment or consideration. Having been stamped, it was taken to the Patent Office where Nutrinova were entered as the patentees on the register of patents.

The defendants take a point which ultimately cannot avail them of a defence. The patentees have made it quite plain that if there is anything in this technical point, then the appropriate steps will be taken to get the documents appropriate stamped. When they are (assuming there is not any problem) then the documents will be admissible in evidence, and such admissibility will operate both for the past and the future.

All that section 14 of the Stamp Duty Act does is to render a document, which has not been properly stamped, inadmissible in evidence. Once it is, it becomes admissible. Section 14(4) provides: “Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was first executed.”

At present this is an interlocutory application to have the pleading of title struck out. It is not a case in which, at this stage, Nutrinova are actually seeking to adduce a document in evidence. That will be a matter for trial. What is being said is at trial they will not be able to prove their title because the document is not duly stamped.

Nutrinova take two points which were called in argument Route 1 and Route 2. Route 1 runs as follows. Section 32(9) of the Patents Act 1977 says: “Subject to subsection (12)