

Date: 20060815

Docket: T-1382-04

Citation: 2006 FC 976

Ottawa, Ontario, August 15, 2006

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**THE PROCTER & GAMBLE COMPANY and
PROCTER & GAMBLE PHARMACEUTICALS CANADA INC.**

Applicant(s)

and

THE COMMISSIONER OF PATENTS

Respondent(s)

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Procter & Gamble Company and Procter & Gamble Pharmaceuticals Canada Inc. (referred to collectively as P & G), are the owners of a patent covering a medicinal product sold under the trade names “Didrocal” and “Didronel” (referred to collectively as Didrocal).

[2] Didrocal is prescribed in the treatment of osteoporosis and it works by inhibiting the natural reabsorption of bone. A component of P & G's Didrocal patent is a treatment protocol which enhances its efficacy.

[3] Didrocal is an important product to P & G in Canada. Its particular formulation is the only one of its kind approved for use in Canada in the treatment of osteoporosis and it produces annual revenues here of thirty seven million dollars (\$37,000,000.00).

[4] This application for judicial review is related to a litigation history stretching back to 1999. Much of that earlier litigation involved attempts by a generic pharmaceutical competitor to P & G, Genpharm Inc. ("Genpharm"), to enter the market with a similar medicinal product for ostensible use in the treatment of illnesses other than osteoporosis. That litigation brought to light a potential problem concerning the date on which the Commissioner of Patents ("Commissioner") reissued the Didrocal Patent in favour of P & G. P & G contends that its Patent was legally reissued on June 18, 1996, but the Commissioner says that the issue date was June 11, 1996. P & G brought this application to compel the Commissioner to correct the Patent Office records to conform with a date of issuance for the Didrocal Patent of June 18, 1996.

Litigation History

[5] By a decision rendered on October 23, 2001, Justice William McKeown granted an order of prohibition preventing the Minister of Health from issuing a Notice of Compliance (NOC) to Genpharm which would have allowed it to market its competing medicine: see *Procter & Gamble Pharmaceuticals Canada, Inc. v. Canada (Minister of Health)*, [2001] F.C.J. No. 1583, 2001 FCT

1151. That decision was upheld by the Federal Court of Appeal in a decision rendered on July 8, 2002. Justice Marshall Rothstein held that the “evidence is overwhelming” that the proposed Genpharm product would be used in a manner that would infringe P & G’s patent for Didrocal: see *Procter & Gamble Pharmaceuticals Canada, Inc. v. Canada (Minister of Health)*, [2002] F.C.J. No. 1018, 2002 FCA 290 at paragraph 50.

[6] Genpharm then brought a fresh legal proceeding in this Court seeking to invalidate P & G’s Didrocal Patent. That proceeding was countered by P & G which brought an application for an order of prohibition seeking again to prohibit the Minister of Health from issuing a NOC to Genpharm for its competing product. Genpharm, in turn, brought a preliminary motion for dismissal of P & G’s application, arguing that P & G’s patent had not been submitted to the Minister of Health for registration within thirty days of its reissuance by the Commissioner as required by the NOC Regulations. Genpharm’s argument was based upon the recorded issue date for the Didrocal patent of June 11, 1996. P & G contended that the Department of Health registration was timely based upon an actual patent issue date of June 18, 1996.

[7] Genpharm’s motion to dismiss was heard by Justice Johanne Gauthier who held that, on the evidence before her, it was not “plain and obvious” that the P & G patent was not registered on a timely basis with the Minister of Health: see *Procter & Gamble Pharmaceuticals Canada, Inc. v. Canada (Minister of Health)*, [2003] 4 F.C. 445, [2003] F.C.J. No. 750, 2003 FCT 583 at paragraph 51. Justice Gauthier went on to observe that it was clear that the P & G patent was not issued by the Patent Commissioner on the date ascribed on the face of the Patent Certificate (June 11, 1996). That date, she said, was recorded through an admitted clerical error by someone at the Patent Office

(paragraph 48). In the result, she dismissed Genpharm's motion to dismiss P & G's NOC prohibition application.

[8] Genpharm appealed Justice Gauthier's decision. Although the majority of the Federal Court of Appeal maintained the dismissal of the Genpharm's motion, they did so for a different reason than the one given by Justice Gauthier. In writing for the majority (Justice John Evans dissenting), Justice Rothstein held that Genpharm's argument was precluded by the operation of the doctrine of issue estoppel. He ruled that Genpharm should have raised the alleged NOC registration irregularity in its previous litigation with P & G and, by failing to do so, it was precluded from litigating the issue in a subsequent proceeding. Notwithstanding this holding, Justice Rothstein went on to address the question of when the Patent Commissioner had issued the P & G patent. He held in *Procter & Gamble Pharmaceuticals Canada, Inc. v. Canada (Minister of Health)*, [2003] F.C.J. No. 1805, 2003 FCA 467 as follows at paragraphs 11 to 15:

[11] The learned motions judge was troubled by a concern that it was not clear when the patent certificates bearing the name of the new Patent Commissioner were delivered to the Patent Office or when the signature of the Commissioner and the seal of the Patent Office were affixed to the 376 patent. This concern arose out of a letter written by the Patent Office on June 27, 1996. The letter states:

Re: June 11 1996 Patent Issue

Mr. Anthony McDonough has recently been appointed Commissioner of Patents. Therefore new patent grant certificates had to be printed. Due to printing delays, June 11 1996 patents were mailed on June 18 1996. We are sorry for any inconvenience this delay may have caused.

It appears that the motions judge was of the view that because of printing delays, the signature of the Patent Commissioner and the seal of the Patent Office may not have been affixed to the 376 patent until June 18, 1996. On that basis, Genpharm failed to satisfy her that

the 376 patent was not submitted to the Minister for inclusion on the Patent Register within 30 days of its issue.

[12] As I have stated, as a matter of law, the date on which the 376 patent was issued was the date shown on the face of the patent. It was not open to the motions judge to go behind what is stated on the face of the patent.

[13] If, in fact, the patent was issued on a date other than June 11, 1996, then the date shown on the face of the patent was in error. However, if so, the proper remedy was for P&G to request the Patent Office to correct the error.

[14] Any other interpretation would create uncertainty with respect to the issue date, something section 43 was intended to avoid. Under the regime applicable to patents applied for before October 1, 1989, the issue date was of great significance because the duration of such patents was 17 years from the date of issue. That is no longer the case for patents applied for on or after October 1, 1989, in which case the duration of the patent is 20 years from the date of filing of the application. However, patents applied for before October 1, 1989 are still extant and, therefore, the issue date remains significant for those patents. As well, there are undoubtedly other reasons, including the provisions of subsection 4(5) (now 4(4)) of the Regulations, that the issue date of a patent remains significant.

[15] The point is that Parliament intended section 43 to create certainty regarding the issue date by providing that, as a matter of law, the issue date is the date shown on the face of the patent. In this case, that date was June 11, 1996.

[Emphasis added]

[9] In furtherance to Justice Rothstein's observation, P & G applied to the Commissioner to correct the recorded date of issuance of its Didrocal Patent from June 11, 1996 to June 18, 1996. P & G sought this relief pursuant to section 8 of the *Patent Act* (R.S., 1985, c. P-4) as amended which states:

8. Clerical errors in any instrument of record in the Patent Office do not invalidate

8. Un document en dépôt au Bureau des brevets n'est pas invalide en raison d'erreurs

the instrument, but they may be corrected under the authority of the Commissioner. d'écriture; elles peuvent être corrigées sous l'autorité du commissaire.

R.S., 1985, c. P-4, s. 8; 1993, c. 15, s. 27. L.R. (1985), ch. P-4, art. 8; 1993, ch. 15, art. 27.

By letter dated June 23, 2004, the Commissioner advised P & G that its request for a correction to the date of issuance of the Didrocal Patent was denied. Because the Commissioner's decision is the subject of this application for judicial review, I have reproduced it below in full:

June 23, 2004

Ms. Kimberley Lachaine
Kirby Eades Gale Baker
Box 3432 Stn D
Ottawa ON K1P 6N9

Dear Ms. Lachaine:

Thank you for your letter of February 13, 2004 regarding Canadian patent no. 1,338,376 ("the '376 patent"). You have requested that the reissue date on both the certificate of reissue and the cover page of this patent be changed from June 11, 1996 to June 18, 1996 and that this be done pursuant to section 8 of the Patent Act ("the Act").

Section 8 of the Act provides that "clerical errors in any instrument of record in the Patent Office ... may be corrected under the authority of the Commissioner." A clerical error was accepted by Mr. Justice Mahoney in *Bayer Aktiengesellschaft v. Commissioner of Patents* [(1980), 53 C.P.R. (2d) 70] as an error which results from a "mechanical process of writing or transcribing."

You state in your letter that the reissue certificate of the '376 patent is dated June 11, 1996 and that it should be dated June 18, 1996. If the date of June 11 is the result of a section 8 clerical error, then the error must have been made in the "mechanical process of writing or transcribing". However, there is no evidence that this was the case. Rather, the evidence would indicate that the date of June 11, 1996 was the date that was intended for the '376 patent's reissue certificate. Indeed, the June 11, 1996 issue of the Canadian Patent Office Record lists the '376 patent as issuing on that date.

Your letter states, in reference to the *Bayer* decision, that “the significance of the error in terms of consequences if corrected (or not corrected) was an irrelevant consideration.” While the consequences of correcting or not correcting an error are irrelevant in determining whether an error is a clerical error within the meaning of section 8, the consequences do have a bearing in the context of the Commissioner’s “discretion”. As Mr. Justice Mahoney stated in *Bayer*,

Section 8 provides that clerical errors ... may be corrected by certificate under the authority of the Commissioner. ‘May’ is permissive; it is not directory nor mandatory. There is nothing in the circumstances contemplated by s. 8 that would lead me to conclude that the respondent is obliged to issue a certificate of correction once he determines that what is sought to be corrected is a clerical error. It is his discretion to do so.

In *Bristol-Myer Squibb Co. v. Commissioner of Patents* [(1997) 77 C.P.R. (3d) 300], Mr. Justice Pinard affirmed the Commissioner’s discretion in making a correction under section 8. In this case, the Commissioner decided not to make a section 8 correction even though it was accepted that there was an error which was clerical in nature in an instrument of record in the Patent Office. The Commissioner reasoned that correcting the error might have prejudiced third parties.

You have stated that “correcting” the reissue date of the ‘376 patent “will have no impact on the term of the patent” and “there will be no extension of patent rights”. However, if the reissue date is changed, there may still be potential for third parties to be prejudiced for example as a result of a change in the time limit that would apply under subsection 4(4) of the Patented Medicines (Notice of Compliance) Regulation. Had I been convinced that your request constituted a section 8 correction, I would have needed to consider whether this is an appropriate case for me to exercise my discretion to make a correction under section 8 taking into account the potential for prejudice to third parties.

You have referred to a Patent Office letter dated June 27, 1996 which states that “[d]ue to printing delays, June 11, 1996 patents were mailed on June 18, 1996.” The letter does not say when the issue certificates were signed and sealed but only when they were mailed. You have also cited a Commissioner’s Decision dated October 14, 1996 which includes a number of steps which the Commissioner takes in respect of the issuance of a patent. The decision states that these include the signing and sealing of a patent and its delivery to a

patentee. Section 43 of the Patent Act as it read on June 11, 1996 states that “every patent granted under this Act shall be issued under the signature of the Commissioner and the seal of the Patent Office...”. The Act does not state that a patent is not issued until it has been delivered to a patentee, or placed in the mail for delivery. While making a patent available to a patentee may be an administrative step which the Commissioner performs, the actual issuance of a patent does not depend on this step.

If the ‘376 patent’s reissue certificate was not signed and sealed on June 11, 1996, it is impossible to say at this time, eight years after the fact, on what day between June 12 and June 18, 1996, it was signed and sealed. However, I am of the opinion that the point is moot since I have decided that the change you have requested cannot be made under section 8 of the Act and I have no other authority under the Act to make such a change.

Therefore, I cannot grant your request to change the date on the reissue certificate or cover page of the ‘376 patent.

Yours sincerely,

David Tobin
Commissioner of Patents, Registrar of
Trade-marks, and Chief Executive Officer

It is from the above decision that P & G seeks judicial relief in the form of an order quashing the Commissioner’s decision and directing him to correct the issue date for the Didrocal Patent to June 18, 1996. In the alternative, P & G asks that the matter be referred back to the Commissioner for a redetermination in accordance with the requirements of section 8 of the *Patent Act*.

Background Facts

[10] The material facts which bear on the question of when the Didrocal Patent was issued are not in dispute, albeit that some of inconsequential detail has been lost through the passage of time.

[11] The record discloses that P & G's request for a re-issuance of its Didrocal Patent was handled in accordance with the usual practices of the Patent Office up to the point where the Patent Certificate was to be completed. With very few exceptions (e.g. Christmas) patents are always delivered on Tuesdays. A patent may be ready for issuance or reissuance (in the sense that all of the required execution formalities have been completed), but the Patent Office considers the date of issuance to be the Tuesday on which the patent is made available to the patentee and publicly distributed. Thus, in the ordinary course, patent certificates are prepared in advance and are post-dated to the intended date of release.

[12] The process for issuing patents which the Patent Office follows is usually very efficient and regular. In 1996, the legal formalities described in section 43 of the *Patent Act* required that a patent certificate be prepared and executed by the Commissioner under the seal of the Patent Office. In the case of the Didrocal Patent, however, the usual practices were not followed. It is undisputed that this patent was intended to be issued on June 11, 1996, but because a new Commissioner had taken office no certificates were available that day bearing his signature. In the result, new patent certificates were obtained, executed and sealed on or around Monday, June 17, 1996. One of these was the Didrocal Patent Certificate. All of the patent certificates that were intended to be issued on Tuesday, June 11, 1996 were then actually ready for pickup or mailed out on Tuesday, June 18, 1996. Those certificates bore the date of the original intended day of issuance of June 11, 1996 and not the date of actual dissemination to the patentees, including P & G.

Issue

[13] The issue before me is whether the Commissioner erred in refusing to amend the recorded date of issuance of the Didrocal Patent from June 11, 1996 to June 18, 1996. To decide that question, it is first necessary to understand the basis for the Commissioner's decision and then to apply the functional and pragmatic test to identify the appropriate standard of review.

Analysis

[14] Although the Commissioner's letter of June 27, 2004 describes at some length the legal principles which he believed were applicable to the exercise of his discretion to correct clerical errors in accordance with to section 8 of the *Patent Act*, it is clear that he did not attempt to exercise that discretion. Instead, he decided that his section 8 authority was not engaged because no error had occurred in "the mechanical process of writing or transcribing" the issue date on the Patent Certificate. His letter indicated, as well, that because the Patent Certificate bore the intended date of issuance and was listed in the Patent Office records as issuing on that date, no clerical error could have occurred. Although the letter acknowledged that the Didrocal Patent was not delivered on June 11, 1996, the Commissioner concluded that its issuance in law did not require it being delivered or placed in the mail to P & G or to the public.

[15] The Commissioner's decision appears to adopt June 11, 1996, by default, as the date of issuance of the Didrocal Patent because he was not able to ascertain when the Certificate was actually signed and sealed. It is obvious from the record, however, that he knew that the formalities for completing the Patent Certificate were not in place on June 11, 1996. In the end, he simply

declined to apply section 8 and concluded that no other authority existed under the *Patent Act* to permit corrections of this type.

[16] The Commissioner's decision turned on a point of legal interpretation going to the root of his statutory authority. He did not exercise his statutory discretion or apply the facts to the law but determined, instead, that he had no authority to grant the relief requested of him.

[17] The pragmatic and functional approach requires that I consider four contextual factors:

1. the purposes of the legislation and the provision under consideration;
2. the expertise of the tribunal relative to that of the Court on the issuing question;
3. the presence or absence of a privative clause or statutory right of appeal; and
4. the nature of the question (law, fact or mixed fact and law).

[18] The Commissioner's decision declining to amend the issuance date for the Didrocal Patent concerned an administrative function of the sort considered in *Dutch Industries Ltd. v. Canada (Commissioner of Patents)*, [2001] F.C.J. No. 1250, [2002] 1 F.C. 325, 2001 FCT 879. In that decision, Justice Eleanor Dawson carried out a pragmatic and functional analysis of a decision made by the Commissioner and held that the standard of review was one of correctness. That aspect of her decision was later upheld on appeal: see *Dutch Industries Ltd. v. Canada (Commissioner of Patents)*, [2003] 4 F.C. 67, [2003] F.C.J. No. 396, 2003 FCA 121 (F.C.A.).

[19] I would add that in this case the question decided by the Commissioner involved a legal interpretation which was determinative of his authority under section 8 of the Act. It was also not a

question at the core of any special expertise or which raised a number of competing policy considerations. In such cases, correctness is inevitably the appropriate standard of review: see *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1, [2002] 1 S.C.R. 84, 2002 SCC 3 at paragraph 24.

[20] I would add that both parties accept that correctness is the appropriate standard of review for the issues raised on this application.

[21] Having regard to the authorities cited above, I will apply a standard of review of correctness.

[22] In 1996, the legislation which was applicable to the processing of the Didrocal Patent was the *Patent Act*, R.S.C. 1985, c. P-4. Section 43 did not define when a patent would legally issue, but it did establish the formalities of the issuing process. That provision stated:

43. Subject to section 46, every patent granted under this Act shall be issued under the signature of the Commissioner and the seal of the Patent Office, shall bear on its face the date of the filing of the application for the patent, the date on which the application became open to the inspection of the public under section 10 and the date on which the patent is granted and issued and it shall thereafter, in the absence of any evidence to the contrary, be valid and avail the grantee and the legal representatives of the grantee for the term

43. Sous réserve de l'article 46, le brevet accordé sous le régime de la présente loi est délivré sous la signature du commissaire et le sceau du Bureau des brevets. Il mentionne la date de la demande, celle à laquelle elle est devenue accessible sous le régime de l'article 10, ainsi que celle à laquelle il a été accordé et délivré. Il est par la suite, sauf preuve contraire, valide et acquis au breveté ou à ses représentants légaux pour la période mentionnée aux articles 44 ou 45.

mentioned in section 44 or 45, whichever is applicable. [R.S., 1985, c. 33 (3rd Supp.), s. 16.]

[23] When P & G asked the Commissioner to correct the issue date of the Didrocal Patent, it did so under his corrective authority created by section 8 of the Act. Although that provision is still advanced by P & G as a basis for relief, its primary argument before me was based upon the Commissioner's general duty to conduct the business of the Patent Office in conformity with the *Patent Act*. That overarching duty is established by subsection 4(2) which states:

4(2) The Commissioner shall receive all applications, fees, papers, documents and models for patents, shall perform and do all acts and things requisite for the granting and issuing of patents of invention, shall have the charge and custody of the books, records, papers, models, machines and other things belonging to the Patent Office and shall have, for the purposes of this Act, all the powers that are or may be given by the *Inquiries Act* to a commissioner appointed under Part II of that Act.

4(2) Le commissaire reçoit les demandes, taxes, pièces écrites, documents et modèles pour brevets, fait et exécute tous les actes et choses nécessaires pour la concession et la délivrance des brevets; il assure la direction et la garde des livres, archives, pièces écrites, modèles, machines et autres choses appartenant au Bureau des brevets, et, pour l'application de la présente loi, est revêtu de tous les pouvoirs conférés ou qui peuvent être conférés par la *Loi sur les enquêtes* à un commissaire nommé en vertu de la partie II de cette loi.

[24] P & G asserts that if the recorded issue date for the Didrocal Patent is demonstrably wrong, the Commissioner has a legal duty to correct that error and, if he declines to do so, he is subject to

mandamus. On the basis of this argument, resort to relief under section 8 of the *Patent Act* is unnecessary.

[25] On this point, P & G is correct. The Commissioner is subject to the obligations established by subsection 4(2) of the *Patent Act*, which include undertaking all “things requisite for the granting and issuing of patents”. That provision also places the Commissioner in “charge” of the books and records of the Patent Office. Both of these responsibilities, by implication at least, require that the Patent Office records be maintained accurately. This would include the accurate recording of the dates of issuance of patents. I also accept that a failure by the Commissioner to fulfill these obligations renders him subject to *mandamus*: see *Monsanto Company v. Canada (Commissioner of Patents)*, [1976] 2 F.C. 476 (F.C.A.) at paragraph 3.

[26] The evidence clearly establishes that the Didrocal Patent was not issued on June 11, 1996, and Respondent’s counsel conceded that point in argument before me. Although June 11th was the intended date of issuance of that patent, the required Certificate and its proper execution were not in place on that day and the section 43 requirements for issuance were, therefore, not met.

[27] The Commissioner’s decision on this point is not entirely clear. His letter seems to indicate that the intention to issue the Didrocal Patent on June 11th was a relevant consideration, notwithstanding a later implicit acknowledgement that signing and sealing (but not delivery) of the Didrocal Patent Certificate were prerequisites to its issuance.

[28] The Commissioner's decision does make it clear that, in his view, delivery of a patent certificate to the patentee or to the public were not prerequisites to its lawful issuance. On this point, the Commissioner erred in law. To issue a document or a decision requires a distribution, publication or promulgation. That is the common understanding of the term "issue", and it is an essential element in bringing notice of the patent grant to the patentee and to other interested parties. This point is at least implicitly acknowledged by the Patent Office practice of post-dating its patent certificates to the date that they are publicly distributed, that being every Tuesday. Obviously a patent is not "issued" only because a Certificate has been prepared, executed and post-dated. It is also not issued on a particular day simply because someone in the Patent Office entered an intended date of issuance into a computer. The final and required step to issue a patent is its publication or distribution to the public.

[29] This case is an obvious anomaly because ordinarily the intended date of issuance of a patent and the date of its delivery coincide and no problem arises. But the fact of a long and consistent practice of dating and delivering patent certificates every Tuesday also supports P & G's contention that delivery is an essential condition for issuing a patent. If the intention was otherwise, patent certificates would simply be dated for the date on which they were prepared and executed. By recording an issue date on the expected Tuesday of public delivery, the Patent Office is implicitly acknowledging the significance of delivery as an essential element of issuing a patent.

[30] In this case, it is indisputable that the Didrocal Patent Certificate was published or delivered on Tuesday, June 18, 1996. It is also clear that all of the section 43 formalities for issuing the Didrocal Patent were not completed until June 18, 1996. This point is acknowledged in the

Commissioner's written submissions to the Court where it was stated that "[t]he process of adding patent numbers and the issue/re-issue date to these certificates and then sealing the certificates and attaching them to the patent grants was not completed until early on June 18, 1996." The Commissioner's inability, therefore, to precisely determine the date of execution of the Didrocal Patent Certificate is irrelevant. The Didrocal Patent Certificate should have borne an issue date of June 18, 1996, that being its date of completion and delivery. The refusal of the Commissioner to correct that entry in the records of the Patent Office constitutes an error of law. In the result, I would order the Commissioner to amend the records of the Patent Office pertaining to the Didrocal Patent to reflect a date of issuance of June 18, 1996.

[31] Having regard to my conclusion that the Didrocal Patent was issued on June 18, 1996, it would be somewhat incongruous if the Commissioner did not have the discretionary authority under section 8 of the Act to amend the Patent Office records accordingly.

[32] In an age of computer technology, the suggestion that the entry of incorrect data is not a "clerical error" because it does not arise from the "mechanical process of writing or transcribing" is anachronistic and no longer sufficient. What occurred here was no less a clerical error than the slip of a pen or the mis-stroke of a typewriter key. Here the printing of the Didrocal Patent Certificate with an incorrect date of issuance was clearly a clerical error.

[33] The Commissioner must be particularly cautious in handling requests under section 8 for correction of documents filed by patentees and other outside parties. That was the situation reviewed by this Court in *Bayer Aktiengesellschaft v. Commissioner of Patents* (1980) 53 C.P.R.

(2d) 70 (F.C.T.D.) where a critical omission had been made by a patentee in its Canadian patent application, and which was found not to be a clerical error of the type that could be remedied under section 8 of the *Patent Act*. Although in that decision Justice Patrick Mahoney referred to this type of clerical error as one involving a transcription, copying or writing mistake made by a clerk or typist, there is no reason to think that the language of section 8 ought not to be read in light of current business and technological realities.

[34] The correction of obvious recording errors made within the Patent Office would not normally engage the kinds of concerns reflected in the *Bayer* decision, above, and, in such situations, section 8 relief should ordinarily be available to the Commissioner. That relief is, however, discretionary and the Commissioner cannot be required to do any more than to apply his section 8 authority to the facts before him.

[35] Having regard to my decision that the Commissioner has a legal duty under section 43 of the *Patent Act* to correct the re-issue date of the Didrocal Patent to June 18, 1996, it is obviously unnecessary for him to consider the matter under his section 8 authority.

[36] Having regard to section 25 of the *Patent Act*, no award of costs will be made.

JUDGMENT

THIS COURT ADJUDGES that the Respondent shall correct the records of the Patent Office pertaining to the Didrocal Patent to reflect a date of re-issuance of June 18, 1996.

"R. L. Barnes"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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