IN THE COURT OF THE COMMISSIONER OF PATENTS
FOR THE REPUBLIC OF SOUTH AFRICA

CASE NO.: 87/2439

In the matter between:

PFIZER LIMITED	FIRST APPLICANT
PFIZER LASORA TORIES (PTY) LIMITED	SECOND APPLICANT

And

CIPLA MEDPRO (PTY) LIMITED CIPLA	FIRST RESPONDENT
LIFE SCIENCES (PTY) LIMITED	SECOND RESPONDENT
REGISTRAR OF PATENTS	THIRD RESPONDENT

JUDGMENT

BorHA. J:

In this matter the applicants, by way of urgency, ask for (a) an order correcting certain clerical errors in South African Patent no. 87/2439 (the patent), alternatively an order amending it and (b) an interim order interdicting the first and second respondents, pending the adjudication of a counter application by the applicants to an application for revocation brought by the first and second respondents in respect of the patent, from infringing the patent.

The first applicant is the proprietor of the patent and second applicant is a registered licensee under it. The applicants are related pharmaceutical companies in the Pfizer group. The priority date of the patent is 3 April 1987. The patent relates to the besylate salt of amlodipine, a drug used for hypertension and the reduction of blood pressure.

The patent has 26 claims, the first being for the besylate salt of amlodipine. The application for the correction of clerical errors relates to claims 8, 14, 16-12 and 24. The alleged errors consist of incorrect references to dependent claims. For instance it is alleged that the reference in claim 8 to claim 1 should have been a reference to claim 7.

The second applicant markets a product called NorvasC® which contains as its active ingredient the besylate salt of amlodipine.

The application for an interdict is a reaction to the fact that the respondents have started marketing a product called Nortwin which also contains the besylate salt of amlodipine.

On 23 December 2004 the first respondent launched an application for the revocation of the patent. The application is based on two grounds, that the patent is unclear and that it is not obvious. On or about the 20th January 2005 the respondents started marketing Nortwin.

The application for the correction of clerical errors in the patent, alternatively for its amendment, is intended to remove the cause for the respondents' allegation that the patent is unclear. The application to correct clerical errors aims to substitute the correct references to claims for the incorrect ones. The application for amendment aims to delete the claims containing incorrect references to other claims, and to re-number the remaining claims.

The application was brought as an urgent application with contracted periods for entering appearance to defend and to file answering affidavits. The first and second respondents' response was to refuse to enter appearance, but to file answering affidavits without prejudice to their procedural rights. The third respondent, the Registrar of Patents did not react to the application. I shall therefore refer to the first and second respondents as the respondents.

The ,issues that are in dispute on the papers are:

(a) Whether section 27 of the Supreme Court Act, 1959 (Act 59 of 1959) is a bar to the application. The respondents were given less than 21 days in which to enter appearance to defend. **It** is common cause that service on the respondents was effected in Cape Town;

(b) Urgency;

(c) Whether the applicants are entitled to a correction of clerical errors or an amendment;

(d) Whether the applicants are entitled to an interdict before the patent has been corrected or amended in view of the provisions of section 68 of the Patents Act, 1978 (Act 57 of 1978);

(e) Whether the applicants are otherwise entitled to an interdict.

There is a dispute as to whether the interdict asked by the applicants is of a temporary or a final nature.

In the context of the prayer for an interdict the issue of the obviousness of the patent was canvassed extensively.

According to the applicants' expert, dr. Chen, the patent relates to the invention of improved pharmaceutical salts of amlodipine. He referred to the so-called Campbell patent (US patent number 4, 572, 909) which discloses several pharmaceutically acceptable acid addition salts of amlodipine and mentions a number of them, including maleate, which is said to be preferred. It does not disclose the besylate salt as a pharmaceutically acceptable salt. Acc~rding to him the besylate salt has unexpected properties compared to the maleate salt which were not obvious. He referred to the four requirements for an acid addition salt, namely good solidity, good stability, non-hygroscopicity and processability for tablet formulation. He contended that the besylate salt met all these requirements in a combination that is in itself unexpected. He reviewed the state of the art as the time of the priority date of the patent with reference to the so-called Schmidt patent, the so-called Spiegel patent and an article by Berge *et al,* and came to the conclusion that the selection of the besylate salt represented an inventive step forward.

The respondent's attitude to obviousness is expressed by their expert Prof. van der Bijl. His conclusion is that there was as at the priority date nothing unexpected about the properties of besylate. According to him a reasonably skilled person at the time would have tried and tested all possible salts and would have discovered the properties of the besylate salt. According to him the Campbell patent, by referring to pharmaceutically accepted acid addition salts, anticipated the claim in the patent because the besylate salt was a pharmaceutically acceptable acid addition salt. It was merely a question of painstaking testing to find the desired acid addition salt.

That, in broad terms, summarizes the different stances of the parties on the issue of obviousness.

When the matter was called, ms Jansen SC who, with mr Walters, appeared for t~e respondents, argued the issue of urgency *in limine.* I ruled that the matter was urgent and to that effect granted prayer (a).

The reliance on section 27 of Act 59 of 1959 cannot be sustained for the simple reason that service was not effected outside the jurisdiction of the court. The court is the court of the Commissioner of Patents for the Republic of South Africa, which is a national court, covering the whole area of the Republic. See *Gentiruco* AG *v Firestone* SA *(Pty) Ltd* 1972 (1) SA 589 AD at 601 A - Band 603 A-B. Ms Jansen referred to section 19 (1) of Act 57 of 1978 which provides that "the proceedings before the commissioner shall, as far as practicable, be in accordance with the law governing procedure in civil

cases in the Transvaal Provincial Division ... ". It is obvious that section 27 of Act 59 of 1959 can not practicably be applied to a court with one area of jurisdiction. She also referred to section 19 (2) which provides that a decision of the Commissioner shall be deemed to be a decision of the Transvaal Provincial Division. That does not detract from the fact that the court of the Commissioner remains a national court, one and indivisible.

If section 27 were to be applicable, it would mean, effectively, that the scope of bringing applications by means of urgency against respondents domiciled in areas other than that of the Transvaal Provision Division, would be severely curtailed.

In any event, if section 27 of the Act 59 of 1959 was incorporated by reference, this court would still have a power of condonation in terms of section 89 of Act 57 of 1978.

The argument that section 27 of Act 59 of 1959 is applicable, is, however, rejected.

The applicants have explained how the errors in claims 8, 14, 16 - 22 and 24 arose. It appears from the affidavits of dr. Dadson and mr Vermaak.

Dr. Dadson explained the error in claim 8. It refers to capsule formulation as claimed in claim 1. Claim 1 does not contain a claim concerning capsule formulation. Claim 6 is the first claim that refers to capsule formulation. If one

looks at the sequence of claims dealing with capsule formulation, (claims 6, 7 and 8) it is clear that the reference in claim 8 to claim 1 must be erroneous, and that the appropriate reference should be to claim 7. That is what dr. Dadson says and he says that in all likelihood the mistake arose as the result of a typographical error in that a reference to claim 7, perhaps in a written document, was misread or mistyped as a reference to claim 7.

In respect of claims 14 and 16 - 22, mr Vermaak explained how two sets of 12 claims were amalgamated, but how, through an oversight, the references to dependant claims in the second set were not renumbered. Claim 2 of the second set became claim 14. The original reference in that claim to claim 1 accordingly had to be changed to a reference to claim 13 and so forth up to claim 22.

Clail')1 24 refers to a salt of amlodipine prepared by the method claimed in any of the claims 13 to 23. Here he explained that the reference was inadvertent and obviously wrong, because only claims 13, 14 and 23 relate to processes for the preparation of the salt.

The respondent did not, and obviously could not, dispute these explanations. Ms Jansen argued that at least the error occurring in claim 24 is not a clerical error. In my view all the errors in the claims are clearly clerical errors as envisaged by section 50 (1) (a) of Act 57 of 1978. See *McCauley Corporation Ltd v Brickor Precast (Pty) Ltd* 1989 **BP** 314 at 332 C - G. The error in claim

24 was a mindless error made through inadvertence and clearly falls within the *dictum* in *McCauley's* case cited above.

Ms Jansen, argued that the court should not order a correction of the errors without prior publication. It is clear that the court is not bound to order advertisement. See *Burrell's South African Patent and Design Law, 3rd edition* § 8.17 at p435. In this case I can see no benefit that can be derived from advertisement. Nobody could conceivably have a legitimate interest in the perpetuation of the errors.

The respondents are before the court and they have not demonstrated how they will be prejudiced by an order without advertisement. The fact that a correction of the errors may deprive them of a defence is in my view no prejudice. A party cannot acquire a right in a self-harming error of this kind mad,e by another party.

In my view the errors should be corrected without advertisement, just as it was done in the *McCauley* case *supra.*

This conclusion really makes it unnecessary to deal with Ms Jansen's argument relating to the alternative prayer for an amendment of the claims. With reliance on section 68, as interpreted in *Deton Engineering and Another v John Paul McKelvey and Others* 1995 BP 228, she argued that the court could not grant interim relief on a patent that is partly valid and partly invalid before the defect has been rectified by a proper amendment. Mr Cilliers SC

who, with Mr Plewman, and Mr de Villiers, appeared for the applicants, presented a persuasive argument that section 68 could not have been intended to deprive a patentee by implication of the right to obtain relief on the valid part of a patent. He pointed out that the forerunner of section 68, section 54 of Act 37 of 1952, allowed the Commissioner to grant relief in respect of the infringement of a valid claim regardless of the invalidity of any other claim in the specification. He also pointed out that section of Act 57 of 1968 was not prescriptive, but only permissive. He submitted that section 68 (1) was merely enacted to protect a patentee from the harsh effect of the all or nothing rule where a patent is partly valid and partly invalid. He referred to *Colt International Ltd v H H Robertson (Africa) (Pty) Ltd* 1983 BP 22 where it was found that an interim interdict restraining an infringement could be granted even if part of a patent was invalid.

Whatever the case may be, I am not confronted, as van Dijkhorst J was, with a situation where there is an application for an amendment that is not ripe for hearing. In this case there is an application for an amendment before me. To the extent that the application for a correction of the patent must be considered as an amendment, or on a par with an amendment, I have already indicated that it should be granted. Once that has been done, there can be no reason not to grant a temporary interdict, provided a case has been made out for it.

By simultaneously asking for a correction of clerical errors, alternatively an amendment, in the same application, the applicants have escaped the effect

of the judgment in the *Deton* case. Section 68 (1) (a) clearly does not apply to a situation where the validity of a patent and the amendment thereof can. be disposed of in the same proceedings.

Mr Cilliers argued that the relief claimed was of an interim nature and referred to *Radio Islam* v *Chairperson, Council of the Independent Broadcasting Authority* 1999 (3) SA 897 W at 910 C - 911 H. He urged the court to follow the approach adopted in *Beecham Group Ltd* v *B-M Group (Pty) Ltd* 1977 (1) SA 50 T at 54 E - 56 G. He contended that the court need not consider the merits as exhaustively as it would be done in revocation proceedings and relied, by analogy, on *Deton Engineering (Pty) Ltd* v *J P McKelvey* 1997 BP 113 at 116 - 119.

He contended that the patent is a selection patent and that the evidence shows that the selection could not have been made by routine testing, which would have been too laborious and expensive.

He submitted that the state of the art was summarized in the article of Berge *et ai,* according to which the selection of an appropriate salt was a very difficult task. As far as the Campbell patent was concerned, he pointed out that it did not disclose a selection of the besylate salt.

In respect of the article by Gould, he contended that it did not form part of the state of the art at the priority date, having been published on 30 May 1987.

He submitted that the besylate salt constituted a significant advance on the state of art in view of its satisfactory performance in respect of all four criteria.

In respect of the balance of convenience he pointed out that the respondents had entered the market before first obtaining a revocation order. Accordingly, he submitted, that any prejudice they may suffer would be of their own making. He submitted that it would be impossible for the applicants to retrieve their position in the highly regulated pharmaceutical market. In respect of the alternative of a claim for damages, he submitted that it was notoriously difficult to quantify damages in a competitive market. In this regard he referred to *Rizla International* B *V v L Suzman Distributors (Pty) Ud* 1996 (2) SA 527 C at 535 1- 536 C.

Ms Jansen argued that the relief asked by the applicants, in spite of the form in which it is couched, amounts to final relief. She referred, amongst to others, *to Cape Town Engineering Works (Pty) Ud v SAB Lines (Pty) Ud* 1968 (2) SA C at 529 H to 530 B and *Knox d' Arcy Ud and Others v Jamieson and Others* 1995 (2) SA 579 W at 602 O - F, and contended that the approach set out in the case of *Plascon-Evans Ud v Van Riebeeck Paints (Pty) Ud* 1984 (3) SA 623 A at 634 E to 635 C should be adopted.

She argued in any event that the applicants had not made out a *prima facie* case for the validity of the patent.

She referred to the affidavit of the respondent's deponent, Smith, who said that the making up of a salt was a simple process, and pointed out that this allegation was not denied.

Then she referred to the reference in the description of the patent to a European patent which disclosed several different pharmaceutically acceptable salt forms of amlodipine. She referred to the so-called Campbell patent which refers to pharmaceutically acceptable acid addition salts. The article of Berge *et al,* dated 1977, lists 53 FDA approved acid addition salts, the second of which is benzenesulfonate, which is another name for besylate. She also referred to the article of Gould, received on 24 March 1986 and accepted on 30 May 1986, which refers to besylate. See p380 and p393. She argued that the genus had been described. The four desired criteria were known. The goal was obvious, the means were obvious, in short the socalled invention was obvious to try.

She argued that the applicants shifted their stance to that of a selection patent but that they failed the test for a select patent. They failed to explain why the selection was made. She posed the question whether one could have a selection patent when one member was chosen.

In respect of the balance of convenience she referred the court to the IMS directory which contains detailed information, on a monthly basis, of pharmaceutical sales in the private sector. She contended that it would be possible to calculate damages with such information.

Then she referred to a supplementary affidavit in which it was stated th~t a 5 % royalty on the selling price would in fact amount to a 20 % royalty on the manufacturer's margin of the product.

She submitted that if the respondents were interdicted they would not be able to prove what their sales would have been if they had not been interdicted. She handed in a guarantee by the holding company of the respondents in which payment of damages up to an amount of R40 million is guaranteed.

It is of importance to decide whether the relief claimed is to be regarded as final relief. I agree with the observations of Goldstein J in the *Radio Islam* case *supra* at 910 1- J and 911 G - H to the effect that although a temporary interdict may have irreversible results, it does not detract from its character as a temporary interdict. The fact that an interlocutory order can have irreversible effects was acknowledged, in a slightly different context, in *Cranshaw and Another v Fidelity Guards Holdings (pty) Ltd* 1996 (3) SA 686 A at 690 H - J. The case of *Cape Town Engineering Works supra* is distinguishable because there the order was to operate for a stated period.

The fact that the patent may expire before the hearing of the revocation proceedings on which the relief claimed will be dependent, is irrelevant. Those proceedings could conceivably be completed before the expiry of the patent. The fact is that the relief is claimed pending the resolution of the revocation action and the counterclaim thereto. Even if the patent may have

expired before the resolution of those proceedings, the merits of the revocation action and the counterclaim thereto would still have to be decided for the purposes of damages and costs.

In my view the matter must therefore be approached on the basis that interim relief is claimed. The matter has to be dealt on the lines set out in *Reckitt & Colman* SA *(Pty) Ltd* v S C *Johnson and Son (SA) (Pty) Ltd* 1995 (1) SA 725 *Tat 730* B - *D.*

On that approach I am of the view that the applicants have proved a *prima facie* case, though open to some doubt.

The state of the art as at the priority date must be accepted as being summarized in the article of Berge *et al.* At page 186 the following passage appears:

> "The chemical, biological, physical, and economic characteristics of medicinal agents can be manipulated and, hence, often optimized by conversion to a salt form. Choosing the appropriate salt, however, can be a very difficult task, since each salt imparts unique properties to the parent compound.
>
> Salt-forming agents are often chosen empirically. Of the many salts synthesized, the preferred form is selected by pharmaceutical chemists primarily on a practical basis: costs of raw materials, ease of crystallization, and percent yield. Other basic considerations include

stability, hygroscopicity, and flowability of the resulting bulk drug. Unfortunately, there is no reliable way of predicting the influence of a particular salt species on the behaviour of the parent compound. Furthermore, even after many salts of the same basic agent have been prepared, no efficient screening techniques exist to facilitate selection of the salt most likely to exhibit the desired pharmacokinetic, solubility, and formulation profiles."

On p187 the following passage appears:

"The number of salt forms available to a chemist is large; surveys of patent literature show numerous new salts being synthesized annually. Various salts of the same compound often behave quite differently because of the physical, chemical, and thermodynamic properties they impart to the parent compound. For example, a salt's hydrophobicity and high crystal lattice energy can affect dissolution rate and, hence, bioavailability. Ideally, it would be desirable if one could predict how a pharmaceutical agent's properties would be affected by salt formation."

Lastly I quote the conclusions of the authors on p201:

"Salt formation is a means of altering the physical, chemical, and biological characteristics of a drug without modifying its chemical structure. Clearly, the salt form can have a dramatic influence on the overall properties of the parent compound. At present, selecting a salt form that exhibits the desired combination of properties is a difficult semiempirical choice. Pharmaceutical scientists now recognize these

> facts and are beginning to study the effects of different salt forms on the physicochemical properties, bioavailability, and toxicity of drug substances.
>
> Although now only a few generalizations are available to predict the effect of particular salt forms on the characteristics of a drug, perhaps in time it will be possible to evolve increasingly more powerful generalization regarding the effect of a salt on the properties of its parent compound. In addition, we predict that polymer-drug salts will have a revolutionary effect on future trends in drug therapy, particularly in the areas of reducing drug toxicity and in controlling the release profile of novel drug delivery systems."

All this, in my view points away from a situation where it can be said, that the development of new salts was obvious to try.

Mr Cilliers may be correct that Gould's article was published after the priority date of the patent. See Burrell *supra* paragraph 4.69.12, p219. What is said in the introduction to, and the conclusion of, that article, however, also points away from an obvious to try situation. I quote:

> "Salt formation provides a means of altering the physicochemical and resultant biological characteristics of a drug without modifying its chemical structure. The importance of choosing the "correct" salt form of a drug is well outlined in a published review (Berge *et al.,* 1977) but, although salt form can have a dramatic influence on the overall

properties of a drug, the selection of the salt form that exhibits the desired combination of properties remain a difficult semi-empirical choice.

In making the selection of a range of potential salts, a chemical process group considers issues on the basis of yield, rate and quality of the crystallisation as well as cost and availability of the conjugate acid. The formulation and analytical groups are, on the other hand, concerned with the hygroscopicity, stability, solubility and processability profile of the salt form, while the drug metabolism group is concerned with the pharmacokinetic aspects and the safety evaluation group on the toxicological effects of chronic and acute dosing of the drug *and* its conjugate acid. Thus, a clear compromise of properties for the salt form is required, but the difficulty remains of assessing which salt forms are best to screen for a particular drug candidate."

an
d

"The balance required in assessing the correct salt form to progress into drug development makes it a difficult semi-empirical exercise. Clearly, issues exist for rejecting certain salt forms, but generally a plethora of conjugate acids may still be available for exploitation. The pivots on salt properties discussed above, and the broad generalizations in trends outlined, enables the most suitable group of salt to be assessed. To assist this selection details of a wide series of

> conjugate acids including details on structure, melting point, pK_a, LD_{50} and examples of use are provided in the appendix. On occasions, there appears some rationale for investigating non-standard salts forms, as opportunities for correcting or addressing a specific problem of the drug substance in its target dosage form."

It is so that benzenesulfonate or besylate was known at the time of the priority date. The prior disclosure of a genus does not necessarily anticipate the species. See Burrell *supra,* paragraph 4.71.7 at p235 and the three cases quoted there. Besylate belonged to a wide variety of salts, 53 of whom had so-called FDA approval.

It was argued that the patentee only made a selection from 8 salts. This point is that it made the selection of the salts from which the winner eventually emerged. It would appear from the literature that there was no predictable pattern from which that selection could have been made.

In paragraph 7.2 at page 130 professor Chen says that there was no chemical reason why the four criteria should be correlated to each other in any uncomplicated way and that it was not generally predictable that any compound would. He says that in selecting a development candidate compromises had to be made and that a candidate that satisfies all the criteria would be unexpected. Dr. van der Bijl's answer to that is simply to deny that a salt which meets all criteria is unexpected. According to him there are many thousands of pharmaceutical products on the market and the active

compounds in each of them must meet all or at least some of the criteria. Otherwise they would not be incorporated into tablets and capsules. His answer seems to miss the point that the combination of performance in respect of all four criteria was not predictable.

The point was made that the four criteria were known. That is not the issue. What is important is that the patentee has identified a salt that meets all four criteria with varying degrees of success, but in a combination that constitutes an advance on the prior art.

The case for the patent, as stated by dr. Chen, does in my view meet the requirements of a selection patent, as laid down in *Helios Ltd v Letraset Ltd* 1970 BP 495 T at 506 E - 507 A.

I am of the view that the applicants have proved a sufficiently strong case in the sense that on their version they should be able to ward off the attack on the patent.

That assessment is reinforced by the fact that the patent has equivalents in other countries, like the United Kingdom and the United States, where there had been prior examination, and that those patents have remained on the register. Professor Chen seems to have some experience of the onslaughts on the equivalent patents. I will accept, however, that the respondents have raised some doubt about the obviousness of the patent. Not only are there the views of professor van der Bijl but there is the fact that the first examiner

In the United States rejected the American equivalent and the fact that equivalent patents have been declared invalid in Spain and Portugal. I do ·not think, however, that it can be said that serious doubt has been cast over the non-obviousness of the patent.

The next question to consider is whether an interim interdict should be granted. That involves a consideration of the availability of other remedies, the strength of the respective cases, and, in general, the balance of convenience.

The applicants have tendered to pay any damages the respondents may suffer should the revocation proceedings succeed.

I shall assume that either party is able to meet any claim for damages.

The proof of damages is notoriously difficult. The problem lies more in the proof of causation. In my view the proof of damages would be more difficult for the applicants. It would always be very difficult to prove what part of any reduced turnover was caused by the respondents' entry into the market. In an expanding market it may be even more difficult to prove what growth the sales of the applicant would have achieved but for the inroads of the respondents. It seems to me that the respondents would have less of a problem with the proof of damages. Their launching costs are known. What they will lose is a delay in the profits that they would in any event be able to make as from 2007.

It was argued that the respondents would never be able to prove what profits they would have made if an interdict is granted. That is true, but if they claim their damages after the expiry of the patent they would be able to prove actual sales and it would be difficult for the applicants to contend that those sales would not have been achieved if an interdict had not been granted.

The fact that a patentee may at his option claim a reasonable royalty may overcome the problems of causation, but as was pointed out, there are no precedents as to what a reasonable royalty is and that in itself may be difficult to prove. The statutory provision that a royalty may be imposed in lieu of damages is an option available to a plaintiff. It is not an invitation to infringers to become *de facto* licensees.

If an interdict is granted, it will preserve the status *quo* as it existed before the 20th January 2005.

I agree with the argument that the inconvenience the respondents may suffer will be of their own making. It is the result of their deliberate decision to enter the market before the adjudication of their revocation application. The fact that the patent contained clerical errors does not affect the balance of convenience. The errors were patently clerical and the respondents were, in the letter dated 7 February 2005, informed of the applicants' intention to have them corrected.

The respondents were at great pains to explain that there was nothing sinister in the timing of the launch of Nortwin: it all happened when a pharmaceutical registration ~as obtained sooner than might have been expected. If that is so one can assume that it was not part of respondents' planning to be in the market right now. In the normal run they were preparing to launch Nortwin as a generic product after the expiry of the patent.

The prejudice to the applicants if an interdict were not to be granted, is obvious. The applicants have had the benefit of patent protection for 17 years. They have an established product with sales of R64 million for the last year and which is the market leader in its field. If no interdict is granted all the forces and incentives that favour generic products will operate against Norvasc.

If on,e looks at the broad picture:

The respondents have hardly entered the market. The applicants have only two years of their patent left. In two years the respondents will be at liberty to sell Nortwin in any event. The applicant is a manufacturer that relies on patent protection to recoup the cost of research and development. The respondents is a manufacturer of generic products that are manufactured without the expense of original research. For that reason it is wrong to argue, as the respondents have done endlessly, that the applicants can retain their market share by reducing their prices. The regime of an open market is only something to which they have to submit on the expiry of the patent.

If I take into account all the circumstances, including what I consider to be the applicants' fairly favourable prospects in the revocation proceedings, I am of the view that an interim interdict should be granted.

It follows in my view that the applicants should be awarded their costs as prayed, that is including the costs of two counsel. Although costs in interim proceedings are often ordered to be costs in the main proceedings, the respondents were invited to withdraw Nortwin in the letter dated 7 February 2005, and the applicants had to come to court for interim relief.

In the result an order is granted in terms of prayer (b) for a correction of clerical errors, prayer (c), and prayer (e) which costs are to include the costs of two counsel.

C BOTHA COMMISSIONER JUDGE OF THE HIGH

COURT OF SOUTH AFRICA TRANSVAAL

PROVINCIAL DIVISION

DATUM AANGEHOOR:	15 MAART 200
REGTER:	C BOTHA
PROKUREUR VIR APPLIKANT:	D M KISHC INC Suite 3, Parkland Street Nieuw Mackleneuk Pretoria Tel. 011 3243000
ADVOKAAT VIR APPLIKANT:	SA CILLIERS SC P D DE VILLIERS
PROKUREUR VAN RESPONDENTE:	1ste en 2de respondent Brain Bacon & Associates c/o Weavind & Weavind 373 Fehrsen Street New Mackleneuk
ADVOKAAT VIR RESPONDENTE:	MABEL JANSEN SC GARY WALTERS
DATUM VAN UITSPRAAK:	*Vf /03/05*