Oxford International Intellectual Property Moot 2024

Corrections & clarifications

1. The following corrections have been made to the Problem:

    a. The second paragraph numbered [41] should be paragraph [42] and the subsequent paragraphs re-numbered accordingly.

    b. The reference at paragraph [14] to section 3 (1) (a) of the Patents Act 1980 should be a reference to paragraph 3(a) of that Act.

    c. In paragraph [34], add the following sub-paragraph: '(v) The shoelaces, lacing and hooks are neon pink.'

    A new version of the Problem, with these changes indicated, has been posted on the Moot Website.

2. Erewhon has never been a member of the European Union. It complies with its international treaty obligations. The reference to the Paris Convention in Instruction paragraph (f) is to the Paris Convention for the Protection of Industrial Property 1883. Erewhon has a registered designs regime in the Designs Act 1968: see para [9]. The test for infringement in that statute does <u>not</u> require copying. In contrast, for copyright, independent creation is a defence.

3. The defendant has leave to appeal the trial judge's decision that 'copying is not required to establish infringement of the unregistered design right; and even if it is, an inference of copying can be drawn from the circumstances of the case, and this was not rebutted by NL'. That is, NL is able (and is expected) to seek to rebut the inference of copying on this appeal.

4. Teams are reminded that, as stated in Instructions paragraph (c), they should not seek to introduce entirely new causes of action, press arguments that have been conceded or that were never ventilated in the original proceedings, or raise matters outside the appeal. To illustrate, teams may not argue issues relating to confidence, which is not appealed, or trespass, which has not been ventilated. Nor may teams seek to rely on a patent claim not set out in the Problem, or argue that a grace period was applicable.

5. The NL repair service involves the following steps. For the 'full' service, a needle is introduced into the sole of the shoe through one of the pre-existing channels. The needle enters the chamber through the valve and any fluid is drained. (As noted at paragraph [6] of the judgment, the closed channels are not visible to the naked eye. However, NL has mapped their location, and they can be located with the assistance of a magnifying device.) Once all fluid is removed, fluid is injected into that chamber in accordance with the requested profile. For the

'part' service, the needle is inserted using the same procedure, however, no fluid is drained; rather, a small amount of fluid is added.

6. There are no further facts about the case available to the Supreme Court of Erewhon beyond those contained in the judgment of the trial judge.

7. Teams are reminded that in paragraph [18] of the trial judgment, it is accepted by Velocitas that a person passing by the open window of the Velocitas research laboratory would have seen Dr Padley's image, which disclosed all the features of the claim in the 787 Patent. Teams should presume that what Paul saw also disclosed all those features. Velocitas does not have leave to argue that the disclosures were not enabling.

8. Teams are further reminded that NL accepts at paragraph [38] that there is a high degree of visual similarity between the lacing system on the OrthoShoe trainer and that on the Rave Sneaker, and further that this would create the same overall impression on the informed user.