

PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Proprietary Interest Documents
CONVEYING PARTY DATA	
Name	Execution Date
Michael Hawkes	04/10/2007
RECEIVING PARTY DATA	
Name:	Tradesafely.com Limited
Street Address:	Manchester House
Internal Address:	86 Princess Street
City:	Manchester
State/Country:	UNITED KINGDOM
Postal Code:	M1 6MG
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	10204806
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ATTORNEY DOCKET NUMBER:	14254-0002US1
NAME OF SUBMITTER:	Jennifer H. Canarelli
Total Attachments: 19 source=14254-0002US1_Assignment#page1.tif source=14254-0002US1_Assignment#page2.tif	

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Legal Memorandum in relation to US Patent No. US 10/204,806

I am a Solicitor of the Supreme Court, admitted on 15 June 2000. I confirm that I presently hold a current practicing certificate under the Solicitors Act 1997 and that my Roll Number or Law Society Reference Number is 201848.

I am instructed by Tradesafely.com Limited (the "Company") and have prepared this memorandum on their behalf at the request of the Company's U.S. Attorneys Fish & Richardson, further your correspondence dated 23 June 2006 in relation to the Company's petition under 37 CFR 1.47(b).

The following Exhibits are annexed to this memorandum:

- Exhibit 1 Elliott Lister's letter dated 17 August 2005
- Exhibit 2 Extracts from the Patents Act 1977 (as amended)
- Exhibit 3 Court Order dated 5 November 2001
- Exhibit 4 Patrick Lloyd's letter dated 30 October 2006.

I have reviewed my firm's files relating to this matter and the dispute between the applicant, Tradesafely.com Limited, and the inventor (and its employee at the time) Michael Hawkes. I have also reviewed a letter dated 17 August 2005 (**Exhibit 1**) to the Company's UK Patent Agent, Reddie & Grose, prepared by Elliot Lister, formerly an Associate with this firm, who had actual knowledge of this matter.

My firm had conduct of the litigation between the Company and Michael Hawkes (and others). The background to this dispute is that Michael Hawkes had entered into an agreement with Joshua Rowe (a director and shareholder of the Company) whereby Michael Hawkes would receive financial and commercial assistance to develop a new technological concept. The terms of this agreement provided that Michael Hawkes would be allotted shares in the newly formed Tradesafely.com Limited and be appointed as its Managing Director. Therefore, by virtue of his position and the terms of this agreement, the rights in any IP created or developed by Michael Hawkes would belong to the Company.

In addition to this such rights would also vest in the Company under English statute even in the absence of an agreement to that effect as section 39 of the Patents Act 1977 (the "Patents Act") (**Exhibit 2**) provides that an invention (whether or not patentable) belongs to an employer if:

- It was made in the course of the employee's normal or specifically assigned duties and in either case an invention might be reasonably expected to result (*section 39(1)(a)*); or
- It was made in the course of the employee's duties and the employee has, because of the nature of the duties and the particular responsibilities

arising from them, a special obligation to further the employer's interests (section 39(1)(b)).

This section of the Patents Act was in force at the relevant time and for the purposes of the Patents Act an employee is defined by section 130(1) as a person working under a contract of employment (Exhibit 2).

In this case it is clear that the invention was made in the course of Michael Hawkes normal and specifically assigned duties and that the invention was reasonably expected to result from such activities, in fact it was the purpose of the agreement between Michael Hawkes and Joshua Rowe.

Furthermore, as Michael Hawkes was intended to be the Managing Director of Tradesafely.com Limited he would have owed a "special duty" to the company and as such satisfies the alternative test under section 39(1)(b) of the Patents Act (Exhibit 2) as well

To protect the intellectual property rights of the Company in the invention, a patent application was filed at the UK Patent Office, naming Michael Hawkes as the inventor in February 2000 (UK application number 0004304.2) (the "UK Application").

Under English law the inventor and the owner (or applicant) are not necessarily the same. The inventor is the deviser of the invention (Patents Act section 7(3)) and has a statutory right to be referred to in the patent (Patents Act section 13(1)). However, the inventor's right takes second place to whoever owns the property in the invention (Patents Act section 7(2)) and in most cases this will usually be the inventor's employer.

Shortly after the filing of the UK Application, a dispute arose between the Company and Michael Hawkes, as to the ownership of the intellectual property rights of the new concepts that Michael Hawkes had created and developed during the course of his employment with the Company.

As a result of this dispute the Company commenced court proceedings and eventually reached a favourable settlement with Michael Hawkes. The court sealed this settlement on dated 5 November 2001 (the "Order"). Under the terms of the Order, Michael Hawkes and the other co-defendants acknowledged that the rights in dispute did in fact belong to the Company.

Although the Order doesn't state that future IP rights resulting from or claiming priority from those in dispute also belonged to the Company this would be the obvious and logical conclusion and also, in my opinion, the correct conclusion under the law. However, it is not necessary for such future rights to have been included in the Order as the dispute concerned the rights identified in Joshua Rowe's witness statement dated 18 July 2001 [sic] and not any subsequent rights.

The Order is binding on the parties and clearly confers title in the subject matter of both the UK application and, by extension, any subsequent applications which claim priority from it. The Order is in effect an agreement between the parties which has been endorsed and sealed by the Court and the Company can rely on this before the UK courts should their ownership of any resulting patents be challenged by Michael Hawkes or any of the other parties to the Order.

Whilst the above dispute had still not been resolved, an application was also filed within the priority period under the Patent Convention Treaty designating the USA (PCT/GB01/00754) (the "**PCT Application**"). This application corresponds to US Patent No. US 10/204,806.

As the PCT Application claims priority from the earlier UK Application it, quite correctly named Michael Hawkes as the inventor and the Company as the applicant. However, as a result of the dispute which had arisen between him and the Company, Mr Hawkes was no longer an employee of the Company at the time the PCT Application was made.

I am informed by Patrick Lloyd of Reddie & Grose that he met with Joshua Rowe and Steve Bolan of Tradesafely.com Limited at their offices on 20 November 2001 and that his notes of the meeting refer to the Order having been made.

During the meeting the content of the UK Application was discussed and it was agreed that the present claims did not bring out the invention clearly enough. Moreover, since the UK Application was originally filed the Company had moved away from the idea of downloading an applet onto the user's system and preferred downloading an image including a cookie to the user's web browser. It was agreed that the specification should be amended to reflect these two changes and that there was no change in inventorship.

Patrick Lloyd has also provided me with a technical comparison of the PCT Application (published as WO 01/68878) and the priority UK Application which can be summarised as follows:

1. There are no differences between the drawings of the PCT Application and the drawings of the UK Application.
2. In the description, starting first at the description of drawings and the specific description between pages 4 and 16 of the published PCT Application the brief description of drawings is identical to the UK application. The paragraph commencing at page 5 line 5 is identical except that of each occurrence of the term "applet" the words "or cookie" have been added for the reasons mentioned above. At the end of this paragraph, a four-line paragraph was deleted from the original application. This paragraph read as follows:

"The unique serial number provided by the corporate server is a combination of a pre-allocated corporate registration number and a value which is unique and generated each time a page request is received."

The paragraph beginning at page 5 line 20 is identical except that a typographical error has been corrected in the word "made" at line 34.

The paragraph beginning at page 6 line 1 is newly added to the PCT application and accentuates the use of a challenge phrase. This material was in the priority UK Application but the applicant sought to draw out its relevance in the International application.

The paragraph beginning at page 6 line 5 is identical to its counterpart in the UK Application except that the final sentence is a new sentence. This sentence is very closely based on the paragraph deleted from the UK Application shown in italics above.

The paragraphs commencing at lines 12 and 19 on page 6 are identical to their counterparts in the UK Application.

The next paragraph, commencing at page 6 line 29 is identical except for the addition of the word "preferred" at the end of line 33.

The paragraph beginning at page 7 line 8 is identical to its counterpart in the UK Application. The next paragraph has been slightly amended. At page 7 line 11 the words "may also incorporate a system for the have been inserted and the words "is based on" have been deleted. The remainder of the paragraph is identical.

The definition of unique serial number appearing at page 7 lines 27-29 was slightly changed in that the reference to "CGI process ID" was changed from process_ID. The UK Application included a four paragraph definition of each of the terms in this statement of the unique serial number. This definition was removed from the International application. In the original, the definition of unique serial number appeared before the sentence commencing "once established..." at page 7 line 25.

The example given at page 7 line 30 down to page 8 line 5 is unchanged.

The next paragraph, beginning at page 8, line 6 differs in that the word "optional" has been inserted at line 6 and the final sentence "the time is expressed as a Universal Time Code" added.

The next paragraph re-introduces some of the deleted material from the explanation of the unique serial number referred to above. The first sentence is identical to one of the deleted paragraphs. The second sentence is a rewritten version of the fourth deleted paragraph. The original referred only to Unix based systems whereas the rewritten version makes it clear that Unix is only one example of a system that cannot support an iteration count.

The next text, commencing at page 8 lines 23 through to page 9 line 2 is identical.

The paragraph commencing at page 9 line 3 is identical except that the words "or cookie" have been added after "applet" and the second sentence, referring to the inter-changeability of applets and cookies, and the first sentence are new.

The only further change on page 9 is the introduction in the PCT Application of the words "or similar" at line 30.

Between pages 10 and 11 line 9, the only change is insertion of "or similar mechanisms" after "Java" at page 10 line 1.

Between page 11 line 10 and page 13 line 20 the only difference between the UK Application and the PCT Application is the insertion of the word "optional" before "serial number" at page 11 line 13.

The pseudo code appearing at page 13 line 22 – page 14 line 35 is identical to that in the priority application although, for clarity, some underscores were omitted between words in the case of the PCT Application.

The remainder of the description from the beginning of page 15 until the end was added to the PCT Application. The first paragraph introduces the possibility of using cookies and link mechanisms instead of applets. The second paragraph brings out the importance of the challenge phase. The challenge phase was in the UK Application as originally filed (see for example figure 4 blocks 504, 506 and 512) but it was considered that its importance needed to be highlighted. This is not new material merely a change in emphasis of existing material. The remaining paragraphs are further explanation of how the embodiment described previously works were cookies used instead of applets.

3. Reverting to the beginning of the description, page 1 – page 2 line 20 are identical in both applications.

Page 2 line 21 – page 4 line 27 is a summary of the invention which reflects the language used in the claims.

Rather than identify all the differences here it is easier to explain how the claims were amended.

Please note:

- These amendments were carried through to the statement of invention.
- In the claims, the original UK Application had 38 claims. There were only 21 claims in the PCT Application.

In claim 1 of the PCT Application, the words "the indication including sending a predetermined user originated identifier back to the user" were added to claim 1 of the UK Application to form claim 1 of the PCT application.

Claims 2-8 of the PCT Application are identical to claims 2-8 of the UK Application.

Claims 9 and 10 of the PCT are new claims. These two claims are based on the use of cookies and links which were added to the PCT Application.

Claims 11, 12 and 14 of the PCT Application are new claims which drew out features of the verification process that had been described but not claimed in the UK Application.

Claim 13 is equivalent to original claim 23 in the UK Application.

Claims 9-22 and 24-27 of the UK Application were not taken into the PCT Application as they related to the applet and the Company preferred using cookies to applets. The Company chose not to pursue applet claims, particularly in countries which charged excess claim fees.

Claim 15 of the PCT Application is a system claim equivalent to claim 28 of the UK Application. It has been amended in a similar way to claim 1 in that the words "and, if authentic, returning a pre-determined user originator identifier to the user" were added to UK Application claim 1 to form PCT Application claim 1.

Claim 16 is equivalent to UK Application claim 29 except that the penultimate feature – "displaying at the remote location an identifier originating from the remote location if the sign is authentic;" was added to the UK Application claim to form the PCT Application claim. The reasoning was the same as the method and system claims 1 and 15.

Claim 17 is equivalent to UK Application claim 30 amended in exactly the same manner as claim 16 above.

PCT Application claims 18-21 are identical to UK Application claims 31-34.

UK Application claims 35-37 were deleted as being no longer of importance.

UK Application claim 38 is an omnibus claim which refers back to the drawings and is not permitted in most jurisdictions outside the UK. It was therefore deleted.

In summary, the PCT Application differed from the UK Application in two main respects:

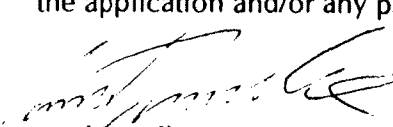
- Firstly, the importance of the challenge phase was accentuated in the PCT Application and the display of the challenge phase ("the predetermined user originated identifier") was added as a limitation to the independent claims. This feature was in the original UK Application and is described with respect to figure 4.
- Secondly, the disclosure was updated to discuss the use of cookies as an alternative to applets and some dependent claims were added to these features.

From the information provided by Patrick Lloyd, it is clear that the differences between the PCT Application and the earlier UK Application cannot be attributable to Michael Hawkes, as he was no longer employed by the Company. Furthermore, such changes were in any event made after the Order had been sealed.

In addition to this any rights in and to these revisions and alternations will also have be owned by Company as all of these changes were either refinements of Michael Hawkes initial invention which was owned by the Company as a result his employment and subsequently confirmed by the Order or were made by other employees who would also be subject to section 39 of the Patents Act 1977.

In conclusion, the Company can rely on the Order and English law to demonstrate that it has good title in law and equity to the UK Application and the PCT Application claiming priority from it and that the courts would find that it owned all legal and beneficial title to any granted patents. Given the dispute between Michael Hawkes and the Company, it is unlikely that Michael Hawkes will execute any confirmatory assignments in favour of the Company and the Company will continue to rely on the terms of the settlement under the Order and its rights at law.

I hereby declare that all statements made of my own knowledge are true, and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that wilful false statements and the like are punishable by fine or imprisonment or both under 18 USC 1001, and that such wilful false statements may jeopardise the validity of the application and/or any patent that issues therefrom.



Paul Tomlinson
Solicitor
Berg Legal

10 April 2007

Table of Exhibits

- | | |
|-----------|--|
| Exhibit 1 | Copy Letter from Elliott Lister (Berg Legal) to Patrick Lloyd (Reddie & Grose) dated 17 August 2005 |
| Exhibit 2 | Extracts from the Patents Act 1977 (as amended) including sections 7(2), 7(3), 13(1), 39 and 130(1) taken from the Patents Act 1997 as published by the UK Intellectual Property Office (formerly the UK Patent Office). |
| Exhibit 3 | Copy Tomlin Order dated 5 November 2001 |
| Exhibit 4 | Copy Letter sent by email only from Patrick Lloyd (Reddie & Grose) to Paul Tomlinson (Berg Legal) dated 30 October 2006. |

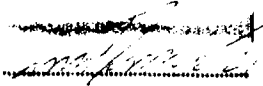
P/41600.US01 & P/41640.US01/PADL/jch
EL SF PP
17 August 2005

Mr Patrick Lloyd
Reddie & Grose
16 Theobald Road
London WC1X 8PL

COPY

Certified to be a true and
accurate copy of the original

BY FAX AND POST
FAX NO. 0207 242 3290/0286

Signed 

Dated 10 April 2007

Dear Mr Lloyd

U.S. Patent Applications 10,204,806 & 10,221,690 Of Tradesafely.Com Limited

Thank you for your letter of 12 August 2005 addressed to my colleague Mr Sydney Fulda. I am writing this letter to assist your U.S. Attorneys and through them the Legal Examiner in the U.S. Patent Office to understand the Consent Order you have attached. I am writing this letter from information within my own knowledge or information that I have obtained from the file kept by my firm in connection with the litigation in the High Court of Justice Chancery Division between Tradesafely.com Limited and Michael Hawkes and others which was the subject of the Consent Order.

For the avoidance of doubt, I am a Solicitor of the Supreme Court, admitted on 15 August 1997. I confirm that I presently hold a valid practising certificate under the Solicitors Act 1974 and that my Roll Number/Law Society Reference Number is 32711. As noted above, my firm had conduct of litigation between Tradesafely.com as Claimant and Michael Hawkes and others and I have examined my firm's file in respect of that matter.

I attach to this letter a copy of the sealed Order of the Court. The Order was drawn on 5 November 2001 by Deputy Master Weir and sealed on 10 December 2001. Effectively, the sealed Order confirms that the Consent Order attached to your letter was in fact judicially considered and approved. As you will readily see, the terms of settlement set out in the Schedule attached to the sealed Order are identical to those set out in the Schedule attached to your letter.

The procedure was that the parties agreed terms of settlement and submitted what is known as a Consent Order to the Court for its approval. The sealed Order confirmed that the Court approved that Application on those terms.

At paragraph 3 of the Schedule to the Order, it is clear that Michael Hawkes, Robert Brownsword, David Donahue and Semaphore Multimedia Limited collectively and individually, acknowledged that the intellectual property set out in the Witness Statement of Joshua Rowe and in the Exhibits to that Witness Statement is owned by "the Company". It would in my view be perverse to interpret "the Company" as anything other than Tradesafely.com Limited and it is clear from my firm's file that the intention was that the intellectual property would belong to Tradesafely.com Limited.

I note that the Schedule refers to a Witness Statement of Joshua Rowe dated 18 July 2001. I have also seen a Witness Statement from Joshua Rowe dated 2 August 2004 confirming that the Witness Statement was really dated 18 July 2000 and that the date recorded in the Schedule is a typographical error. I can also confirm this to be the case as the Witness Statement formed the basis of an Application for an Injunction that was heard on 18 July 2000. The copy of the Witness Statement on my file is indeed dated 18 July 2000.

At paragraph 17 of Mr Rowe's Witness Statement, under the heading "Steps Taken To Protect Intellectual Property Rights Of Tradesafely" it states that:

"17. Between March and May 2000 Tradesafely sought to protect its intellectual property rights in the Concept. The following applications have been made:

- 17.1 Registration of a patent for the Tradesafely concept;
- 17.2 Registration of a patent for an ancillary payment authorisation method where customers are making credit-card payments on-line.

... All of these applications are pending. Relevant documents are exhibited at JR3".

At Exhibit JR3 to Mr Rowe's Witness Statement of 18 July 2000 there appears, inter alia, a letter from you to Mr Rowe headed "New British and European Patent Applications for Tradesafely.com Limited. Our file: 41600" followed by a specification dealing with "METHOD AND APPARATUS FOR INTERNET WEB SITE ACCREDITATION", including an abstract.

Also in Exhibit JR3 attached to Mr Rowe's Witness Statement of 18 July 2000 is a letter from you to Mr Hawkes of 20 March 2000 headed "New UK and European Patent Applications: Payment Authorisation Method and Apparatus: Our file: 41640". Attached to that letter is a specification headed "European and UK Patent Applications" giving an application date of 17 March 2000, a title of "PAYMENT AUTHORISATION METHOD AND APPARATUS" and made in the name of the

"Applicant: Tradesafely.com Limited". Again there is an abstract attached to the specification. I understand from you that these European and UK Patent Applications duly became the International Patent Applications and now form the U.S. Patent Applications 10-221,690 and 10-204,806.

Paragraph 17.3 of Mr Rowe's Witness Statement and the balance of Exhibit JR3 deal with a Trademark Application which is of no relevance to your present enquiry.

I consider that it is clear that the Intellectual Property set out in the Witness Statement and Exhibit of Mr Rowe (and referred to in the Consent Order/sealed Order) is that set out at paragraph 17 and Exhibit JR3.

I therefore consider that the effect of the Court Order and the settlement terms reached between the parties is that Tradesafely.com Limited owns the relevant intellectual property rights which I understand from you now form the basis of the U.S. Patent Applications specified above.

I confirm that the information provided in this letter is true to the best of my knowledge and belief. If I can be of further assistance to you, please do not hesitate to contact me.

Kind regards,

Yours sincerely

ELLIOT LISTER

Exhibit 2 – Extracts from the Patents Act 1977 (as amended) as published by the UK Intellectual Property Office (formerly the UK Patent Office).

Patents Act 1977 (as amended)

Right to apply for and obtain a patent

7.-

(2) A patent for an invention may be granted -

(a) primarily to the inventor or joint inventors;

(b) in preference to the foregoing, to any person or persons who, by virtue of any enactment or rule of law, or any foreign law or treaty or international convention, or by virtue of an enforceable term of any agreement entered into with the inventor before the making of the invention, was or were at the time of the making of the invention entitled to the whole of the property in it (other than equitable interests) in the United Kingdom;

(c) in any event, to the successor or successors in title of any person or persons mentioned in paragraph (a) or (b) above or any person so mentioned and the successor or successors in title of another person so mentioned; and to no other person.

(3) In this Act "inventor" in relation to an invention means the actual deviser of the invention and "joint inventor" shall be construed accordingly.

Mention of inventor

13.-(1) The inventor or joint inventors of an invention shall have a right to be mentioned as such in any patent granted for the invention and shall also have a right to be so mentioned if possible in any published application for a patent for the invention and, if not so mentioned, a right to be so mentioned in accordance with rules in a prescribed document.

Right to employees' inventions

39.-(1) Notwithstanding anything in any rule of law, an invention made by an employee shall, as between him and his employer, be taken to belong to his employer for the purposes of this Act and all other purposes if -

(a) it was made in the course of the normal duties of the employee or in the course of duties falling outside his normal duties, but specifically assigned to him, and the circumstances in either case were such that an invention might reasonably be expected to result from the carrying out of his duties; or

(b) the invention was made in the course of the duties of the employee and, at the time of making the invention, because of the nature of his duties and the particular responsibilities arising from the nature of his duties he had a special obligation to further the interests of the employer's undertaking.

(2) Any other invention made by an employee shall, as between him and his employer, be taken for those purposes to belong to the employee.

(3) Where by virtue of this section an invention belongs, as between him and his employer, to an employee, nothing done -

(a) by or on behalf of the employee or any person claiming under him for the purposes of pursuing an application for a patent, or

(b) by any person for the purpose of performing or working the invention,

shall be taken to infringe any copyright or design right to which, as between him and his employer, his employer is entitled in any model or document relating to the invention.

Interpretation

130.-(1) In this Act, except so far as the context otherwise requires -

"employee" means a person who works or (where the employment has ceased) worked under a contract of employment or in employment under or for the purposes of a government department or a person who serves (or served) in the naval, military or air forces of the Crown;

IN THE HIGH COURT OF JUSTICE

HC 00 03231

CHANCERY DIVISION

DEPUTY MASTER WEIR

MONDAY THE 5TH DAY OF NOVEMBER 2001

BETWEEN

TRADESAFELY.COM LIMITED

Claimant

and

- (1) MICHAEL HAWKES**
- (2) Robert Brownsword**
- (3) David Edwin Donahue**
- (4) Semaphore Multimedia Limited**

Defendants



UPON THE APPLICATION of the parties

AND UPON the parties having agreed terms of settlement as set out in this Order and the Schedule hereto and by their respective Solicitors having agreed in writing to this Order and to there being no Order as to the costs of the Claim

IT IS BY CONSENT ORDERED

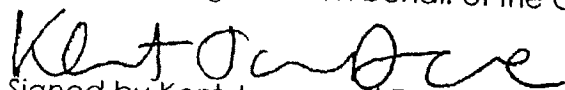
- (1)** that the Claimant do have permission to withdraw its claim against all four Defendants
- (2)** that the Claimant's Solicitors be discharged from the undertaking referred to at paragraph 2 of Schedule 2 to the Order dated 18th July 2000 and be permitted to release to the Claimant the sum of £20,000.00 and accrued interest held by the Claimant's Solicitors in its client account

SCHEDULE

1. ~~Within 7 days of service of this Order upon him, the First Defendant shall~~
deliver to the Claimant's solicitors:
 - 1.1 a duly executed stock transfer form in respect of 440 ordinary shares of £1.00 each in the capital of the Claimant (the "Shares") in favour of Joshua Rowe;
 - 1.2 share certificate numbered 5 in respect of the Shares; and
 - 1.3 the written consent of any party required to validly transfer the Shares from the First Defendant to Joshua Rowe.
2. Within 7 days of the Claimant's receipt of the documents referred to at paragraph 1 to the Schedule, the Claimant will pay to the Third Defendant the sum of £5,900.00 in settlement of the Third Defendant's claim against the Claimant.
3. The Defendants, and each of them, acknowledge that the Intellectual Property set out in the witness statement of Joshua Rowe dated 18 July 2001, the exhibit thereto are owned by the Company.
4. The terms of this Order and the Schedule are in full and final settlement of all or any claim that either party has against the other.

Dated: day of October 2001.

Signed by Berg & Co on behalf of the Claimant



Signed by Kent Jones and Done on behalf of the Defendants

IN THE HIGH COURT OF JUSTICE

HC 00 03231

CHANCERY DIVISION

DEPUTY MASTER WEIR

5TH NOVEMBER 2001

TRADESAFELY.COM LTD -v- HAWKES

ORDER

The Court sent copies of this Order to :-

Claimant's Solicitor

BERG & CO
SCOTTISH MUTUAL HOUSE
35 PETER STREET
MANCHESTER M2 5BG
Ref:CK/BEC/2852-1

Defendant's Solicitor

KENT JONES & DONE
CHURCHILL HOUSE
REGENT ROAD
STOKE-ON-TRENT
ST1 3RQ
Ref:18Hal40/5kf

Reddie & Grose

16 Theobalds Road
London WC1X 8PL

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European Patent Attorneys
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European Trade Mark Attorneys

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Fax +44 (0) 20 7242 3290/0286
E-mail r&g@reddie.co.uk
Website www.reddie.co.uk

Paul Tomlinson
Berg Legal

By Email Only
pault@berg.co.uk

Certified to be a true and
accurate copy of the original

Signed 

Dated 10.30.2006

Richard C. Abnett M.A.
Paul A. Brereton M.A.
Nicholas S. Marlow B.Sc.
Linda J. Harland B.Sc.
Jonathan M. Davies D.Phil.
Patrick A.D. Lloyd B.Sc.
Aidan J. Robson M.Sc.
Helen R. Wakerley M.A.
Jan M. Vleck M.A.
Simon J.N. Goodman Ph.D.
Ian M. Loveless M.A.
Philip I. Bates Ph.D.
Julie K. Richardson Ph.D.
Neil Thornton Ph.D.
Nick Reeve M.Sc.
Julie E. Millburn D.Phil.

Associates
David S. Jackson B.Sc.
Arthur Andrews Dip.EE.

Consultants
Keith E. Geering B.A.
F.A.B. Valentine M.A.

VAT No. GB 243 9087 49

30 October 2006

Dear Paul

**United States Patent Application No's. 10/204,806 & 10/221,690
of Tradesafely.com Limited/Michael Hawkes
Our ref: P/41600.US01 & P/41640.US01/PADL/erw**

Following our recent telephone conversation I have now completed my review of the relationship between the two UK priority applications and the two PCT applications. The specification of PCT application PCT/GB01/00079, which became US application 10/221,690 is identical to the specification of the priority application GB 0006541.7 filed on 17 March 2000. It is also identical to the specification of EP 00302183.9 which was filed on the same day and from which the PCT also claims priority. I have compared the text of the applications and can find no differences. Indeed, I have even noted a small number of typographical errors that occur in both documents. This accords entirely with my recollection that the PCT application was filed without any amendment to the text.

The situation with the second application, US 10/204,806, which is the regional phase of PCT/GB01/00754 and claims priority from UK application 0004304.2 filed on 23 February 2000 is a little more complicated. On 20 November 2000 I met Joshua Rowe and Steve Bolan of Tradesafely.com Limited at their offices. At that stage Mike Hawkes had already left the company and my notes refer to the existence of the court order. In that meeting we discussed the content of the UK application and it was agreed that the present claims did not bring out the invention clearly enough. Moreover, since the application was originally filed, Tradesafely had moved away from the idea of downloading an applet onto the user's system and preferred downloading an image including a cookie to the user's web browser. We agreed that the specification should be amended to reflect these two changes. My understanding was that there was no change in inventorship.

Turning now to the specification, I would first note that there are no differences between the drawings of the PCT application published WO 01/68878 (application PCT/GB01/00754) and the drawings of the priority application GB 00043042.

In the description, starting first at the description of drawings and the specific description between pages 4 and 16 of the published PCT application the brief description of drawings is identical. The

paragraph commencing at page 5 line 5 is identical except that of each occurrence of the term "applet" the words "or cookie" have been added for the reasons mentioned above. At the end of this paragraph, a four line paragraph was deleted from the original application. This paragraph read as follows:

"The unique serial number provided by the corporate server is a combination of a pre-allocated corporate registration number and a value which is unique and generated each time a page request is received."

The paragraph beginning at page 5 line 20 is identical except that a typographical error has been corrected in the word "made" at line 34.

The paragraph beginning at page 6 line 1 is newly added to the PCT application and accentuates the use of a challenge phrase. This material was in the priority UK application but we sought to draw out its relevance in the International application. The paragraph beginning at page 6 line 5 is identical to its counterpart in the original application except that the final sentence is a new sentence. This sentence is very closely based on the paragraph deleted from the original application shown in italics above.

The paragraphs commencing at lines 12 and 19 on page 6 are identical to their counterparts in the priority application.

The next paragraph, commencing at page 6 line 29 is identical except for the addition of the word "preferred" at the end of line 33.

The paragraph beginning at page 7 line 8 is identical to its counterpart in the priority application. The next paragraph has been slightly amended. At page 7 line 11 the words "may also incorporate a system for the have been inserted and the words "is based on" have been deleted. The remainder of the paragraph is identical. The definition of unique serial number appearing at page 7 lines 27-29 was slightly changed in that the reference to "CGI process ID" was changed from process_ID. The priority application included a four paragraph definition of each of the terms in this statement of the unique serial number. This definition was removed from the International application. In the original, the definition of unique serial number appeared before the sentence commencing "once established..." at page 7 line 25.

The example given at page 7 line 30 down to page 8 line 5 is unchanged. The next paragraph, beginning at page 8, line 6 differs in that the word "optional" has been inserted at line 6 and the final sentence; "the time is expressed as a Universal Time Code" added. The next paragraph re-introduces some of the deleted material from the explanation of the unique serial number referred to above. The first sentence is identical to one of the deleted paragraphs. The second sentence is a rewritten version of the fourth deleted paragraph. The original referred only to Unix based systems whereas the rewritten version makes it clear that Unix is only one example of a system that cannot support an iteration count.

The next text, commencing at page 8 lines 23 through to page 9 line 2 is identical. The paragraph commencing at page 9 line 3 is identical except that the words "or cookie" have been added after "applet" and the second sentence, referring to the inter-changeability of applets and cookies, and the first sentence are new. The only further change on page 9 is the introduction in the PCT of the

words "or similar" at line 30. Between pages 10 and 11 line 9, the only change is insertion of "or similar mechanisms" after "Java" at page 10 line 1.

Between page 11 line 10 and page 13 line 20 the only difference between the priority application and the International application is the insertion of the word "optional" before "serial number" at page 11 line 13.

The pseudo code appearing at page 13 line 22 – page 14 line 35 is identical to that in the priority application although, for clarity, some underscores(_) were omitted between words in the PCT case.

The remainder of the description from the beginning of page 15 until the end was added to the International application. The first paragraph introduces the possibility of using cookies and link mechanisms instead of applets. The second paragraph brings out the importance of the challenge phase. The challenge phase was in the application as originally filed (see for example figure 4 blocks 504, 506 and 512) but it was considered that its importance needed to be highlighted. This is not new material merely a change in emphasis of existing material. The remaining paragraphs are further explanation of how the embodiment described previously works were cookies used instead of applets.

Reverting now to the beginning of the description, page 1 – page 2 line 20 are identical in both applications. Page 2 line 21 – page 4 line 27 is a summary of the invention which reflects the language used in the claims. Rather than identify all the differences here I will explain how the claims were amended. These amendments were carried through to the statement of invention.

In the claims, the original UK Application had 38 claims. There were only 21 claims in the International application.

In claim 1 of the PCT application, the words "the indication including sending a predetermined user originated identifier back to the user" were added to claim 1 of the priority application to form claim 1 of the PCT application. Claims 2-8 of the PCT are identical to claims 2-8 of the UK Application. Claims 9 and 10 of the PCT are new claims. These two claims are based on the use of cookies and links which were added to the PCT application.

PCT claims 11, 12 and 14 were new claims which drew out features of the verification process that had been described but not claimed in the original application. Claim 13 is equivalent to original claim 23.

I should add that claims 9-22 and 24-27 of the UK application were not taken into the PCT application as they related to the applet and Tradesafely preferred using cookies to applets. They did not wish to pursue applet claims, particularly in countries which charged excess claim fees.

Claim 15 of the PCT application is a system claim equivalent to claim 28 of the priority application. It has been amended in a similar way to claim 1 in that the words "and, if authentic, returning a pre-determined user originator identifier to the user" were added to UK claim 1 to form PCT claim 1.

Claim 16 is equivalent to UK claim 29 except that the penultimate feature – “displaying at the remote location an identifier originating from the remote location if the sign is authentic;” was added to the UK claim to form the PCT claim. The reasoning was the same as the method and system claims 1 and 15. Claim 17 is equivalent to UK claim 30 amended in exactly the same manner as claim 16 above.

PCT claims 18-21 are identical to UK claims 31-34. UK claims 35-37 were deleted as being no longer of importance. UK claim 38 is an omnibus claim which refers back to the drawings and is not permitted in most jurisdictions outside the UK. It was therefore deleted.

In summary, the PCT application differed from the UK application in two main respects. Firstly, the importance of the challenge phase was accentuated in the PCT application and the display of the challenge phase (“the predetermined user originated identifier”) was added as a limitation to the independent claims. This feature was in the original application and is described with respect to figure 4. Secondly, the disclosure was updated to discuss the use of cookies as an alternative to applets and some dependent claims were added to these features.

I have given you a very detailed analysis of the differences as I do not know what is required by the US Patent Office. Once you have had a chance to review the analysis I suggest that you contact Scott Harris at Fish & Richardson again to clarify exactly what should appear in the memorandum.

Please let me know if you need anything further from us.

Yours sincerely

Patrick A. D. Lloyd

CC. Joshua Rowe