

Who owns an invention? Decide early!

It is important to resolve, as soon as possible in the patenting process, who owns the invention in question. A recent case illustrated this issue very well. In that case, Cook Biotech Inc claimed that an artificial heart valve, made by Edwards Lifesciences, infringed their European Patent 1255510. The patent was based on an International application, filed in January 2001, claiming the earlier filing date of a US application, filed in January 2000.

The US application was filed in the names of three inventors. Only one of these worked for Cook Biotech when they made the invention. Cook Biotech owned the rights to his invention under his employment contract. However, the other two inventors did not assign their rights to Cook Biotech until 2002.

During the case, Edwards Lifesciences argued that the International application could not claim the earlier date of the US application because, when Cook Biotech filed the International application, they had not obtained the rights to the invention from all three inventors.

The court agreed with Edwards Lifesciences. The court held that International application could not claim the earlier date, and the patent therefore had an earliest effective date of January 2001.

This was crucial, because a very relevant document had been published in 2000, between the filing dates of the US application and the International application. Its publication date was now before the effective date of the patent and so it could be used against the patent. The court found that this document made the invention and so held the patent to be invalid.

It is crucial that ownership of an invention must be settled before any patent application is filed. This will prevent any subsequent challenge to the applicant's entitlement to file.

For further information, please visit
<http://alpha.bailii.org/ew/cases/EWHC/Patents/2009/1304.html>