

1986 November 21

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

MEAD CORPORATION OF OHIO, U.S.A.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE REGISTRAR OF TRADE MARKS, AND OR
2. THE REGISTRAR OF COMPANIES AND
OFFICIAL RECEIVER,

Respondents.

(Case No. 759/85).

Patents—Registrability—Dependent on prior registration of same patent in U.K.—The Patents Law, Cap. 266—Section 4—After expiration of the 3 years’ period from registration in U.K., no registration in Cyprus is possible—The word “may” in the said section—Meaning—No power to extend the period—Section 9—Effect—The Convention for the Protection of Industrial Property ratified by Law 63/65—Does not supersede, modify or alter the provisions of Cap. 266—On the contrary benefits conferred by Convention are subject to recognition by Municipal Law.

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Words and Phrases: “May” in section 4 of the Patents Law, Cap. 266.

This recourse is directed against two separate but not unrelated decisions, namely the refusal to register applicants’ patent registered in the United Kingdom on the ground that the application was submitted after the expiration of the three years’ period (Section 4 of Cap. 266) and the refusal to extend the time within which to apply for registration.

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The applicants alleged that the documents were despatched three days before the expiration of the said period by express post, but did not reach Cyprus until the 31.5.85 owing to a strike of postal employees. In their address applicant laid stress on s. 9 of Cap. 266 and the Convention for the Protection of Industrial Property, ratified by Law 63/65 and submitted that the three year period is not mandatory, but directory.

Held, dismissing the recourse: (1) Section 9 of Cap. 266 is confined to extension in Cyprus of the Judicial remedies obtainable in U.K. for the protection of a patent registered in Cyprus (*Christodoulides v. The Republic* (1972) 3 C.L.R. 71 followed). The Convention does not modify, supersede or alter the provision of Cap. 266, but on the contrary the benefits granted by the Convention depend on prior recognition by the municipal laws (Article 2.1).

(2) Registration of a patent in Cyprus is solely dependent on prior registration of the same patent in U.K. In accordance with s. 4 of Cap. 266 no registration can be made in Cyprus of an English patent after the expiration of the three year period provided therein. The word "may" signifies the amenity of seeking registration, but it does not qualify the three year period nor does it confer discretion to extend it.

Recourse dismissed.
No order as to costs.

Cases referred to:

Christodoulides v. The Republic (1972) 3 C.L.R. 71;

Ansor Corporation v. The Republic (1969) 3 C.L.R. 325.

Recourse.

Recourse against the decision of the Registrar of Trade Marks refusing the registration of a patent registered in

the United Kingdom and the extension of the time of its registration.

E. Markides (Mrs.), for the applicants.

St. Ioannides (Mrs.), for the respondents.

Cur. adv. vult. 5

PIKIS J. read the following judgment. The application requires us to review two separate but not unrelated decisions of the Registrar of Trade Marks refusing (a) the registration of a patent registered in the United Kingdom, and (b) extension of the time for its registration. 10

Registration of a patent of the applicants, registered in the United Kingdom on 3rd June, 1982, was refused on the ground that it was submitted after the expiration of the statutory period of three years envisaged by s. 4 of the Patents Law, Cap. 226. As a matter of fact, application for registration in Cyprus was submitted on 21st June, 1985. The decision was promptly communicated to the applicants on 24th June, 1985 (Red. 4, exh. 1). A few days later applicants sought extension of time to apply for registration, a request that was turned down on the ground there was no power to grant it. (Red 5, exh. 1). 15 20

Before me it was argued that both decisions are wrong in law, the first because the three-year-period is directive and not mandatory, and the second because there is discretion to extend the time from the exercise of which the registrar abdicated. Had he addressed himself to the reasons for delay associated with a postal strike he might well find the exercise of his discretion in favour of the applicants duly warranted. Applicants allege the documents for registration were despatched by express post, that is, three days before the expiry of the three-year-period but did not reach Cyprus until the 31st May, 1985, owing to strike of postal employees. 25 30

Irrespective of the implications of any postal strike, respondents dispute the contention that the documents could under any circumstances be submitted to the Registrar on or before the 3rd June, 1985, and may well be right in so contending. 35

In their address applicants laid stress on two other legal provisions, notably, s. 9 of the Patents Law, making in their contention applicable in Cyprus the provisions of English Patent Legislation and Law 63/65 ratifying the Convention for the Protection of Industrial Property. Neither law helps advance the case for the applicants. As authoritatively pronounced by the Full Bench in *Nicos Christodoulides v. Republic*(1) the ambit of s. 9, Cap. 266, is confined to extension in Cyprus of the judicial remedies obtainable in the U.K. for the protection of a patent registered in Cyprus. On the other hand, Law 63/65 leaving aside questions relevant to the character of its provisions whether self-executing or not, does not supersede, modify or alter the provisions of Cap. 266 but on the contrary benefits granted thereunder are dependent on prior recognition by the municipal laws (see Article 2.1). What remains to ponder is the effect of s. 4 with regard to the three-year time limit and the amenity, if any, to extend it. To understand the issue in its true light, it must first be appreciated that s. 4 is not a procedural but a substantive enactment. The genesis of the right to a patent in Cyprus depends on its registration within the period envisaged therein. Registration of a patent in Cyprus is solely dependent on prior registration of the same patent in the U.K., very probably because we lack the means and information to pronounce authoritatively on the originality of the patent. The gap is filled by making provision for the registration of English patents in Cyprus, albeit within a prescribed time limit, sufficiently long, to afford reasonable opportunity to everyone interested to register his patent in Cyprus to do so within three years. As Hadjianastassiou, J., decided in *Ansor Corporation v. The Republic* (2) no registration of an English patent can be made in Cyprus after the lapse of three years from the registration of the same patent in the U.K. Nor do the Patent Rules confer discretion on the Registrar to extend the statutory period (Rule 6 and 28 in particular). The tenor of the judgment is that after the expiry of the three-year-period there is no machinery for registration of an English patent in Cyprus.

(1) (1972) 3 C.L.R. 71.

(2) (1969) 3 C.L.R. 325.

am, with respect, wholly in agreement with this depiction of the effect of the law. The word "may" in the context of s. 4 merely signifies the amenity of the owner of a patent to seek its registration in Cyprus; it does not in any way qualify the three-year-period, nor does it confer discretion on the Registrar to extend it. That being the case, the first decision of the Registrar to refuse registration was inevitable, as well as his second one, there being no amenity to extend the three-year statutory period.

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Hence the recourse is dismissed. The sub judice decisions of the Registrar are confirmed in accordance with Article 146.4 (a) of the Constitution. Let there be no order as to costs.

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Recourse dismissed.

No order as to costs.

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