

SUPREME COURT OF NEW SOUTH WALES

REGISTRY: Sydney
NUMBER: 13229/01

IN THE MATTER OF:

First Plaintiff: THE INSTITUTE OF PATENT AND TRADE
MARK ATTORNEYS OF AUSTRALIA
ACN 004 194 263

Second Plaintiff: JOHN M SLATTERY

Defendant: KLAUS ZIMMER-VORHAUS

AFFIDAVIT

GARY DAVID MARES of 141 Wolseley Road, Oakville, in the state of New South Wales, Chartered Accountant and Business Consultant, states on oath:

1. I was appointed on 26th April 2000 as the Company Secretary of Technology Licensing Limited ACN 080 939 135 ("the Company") and held that position until my resignation on 27th November 2001.
2. Technology Licensing Limited is listed on the Australian Stock Exchange ("ASX") and changed its name on or about 27th June 2001 to Captech Group Limited.
3. I was awarded the degree of Bachelor of Commerce majoring in Accounting, Finance and Systems (with merit) at the University of New South Wales on 7th October 1983.
4. I was admitted to the membership of The Institute of Chartered Accountants in Australia on 9th September 1985 and on 20th October 1995 advanced to a Fellow of The Institute of Chartered Accountants.

Sheet 1

Signed:

Deponent

Taken by:

Josefina Orleans
A Justice of the Peace
Josefina Orleans (J.P.)

(Registration No.: 9105263)

Affidavit
Filed on behalf of the Defendant
Form 46 r431

Phone:

Facsimile:

Ref: C:\Documents and Settings\Gary Mares\My
Documents\Gary's Junk\GDM
Personal\Sundries\Affidavit100102.doc

5. I have had 16 years experience in a major accounting firm plus a further 8 years experience in commercial accounting, compliance and company secretarial procedures.
6. In my duties as Company Secretary of Technology Licensing Limited ("the Company") I was responsible for overseeing the work undertaken by the company's patent attorney, Paul Robert Taylor of Paul R. Taylor & Associates, a Fellow of The Institute of Patent and Trade Mark Attorneys in Australia.
7. A wholly owned subsidiary company of Technology Licensing Limited, being Workman Industries Pty Limited had developed certain intellectual property and had engaged the services of Paul Robert Taylor ("Taylor") of Paul R. Taylor & Associates to apply for patents within Australia and overseas.
8. On or about July 2000 I became concerned of the status of certain intellectual property so as to undertake an audit of Workman's patents together with the status of the overseas patent attorney accounts comprising invoices for services rendered.
9. In having undertaken the audit through to September 2000, I became aware of significant accounts that Taylor had been paid for by the Company and/or by Workman including charges for services of various overseas patent attorneys which Taylor had included in his invoices but had failed to account to such overseas patent attorneys for the monies paid to him by the Company and/or Workman.
10. Repeated requests for an explanation from Taylor were sought however Taylor declined to co-operate or provide any explanation as to any possible misunderstanding.
11. On 25th September 2000 I had a telephone conversation with Mr Malcolm Royal, a senior member of the Board of The Institute of Patent and Trade Mark Attorneys ("IPTMA"), in connection with the activities of their member, Taylor.

I said: "Taylor has been paid the overseas patent attorney fees and has not settled the accounts with the overseas patent attorneys. In one case, he hasn't paid them anything in three years although he has been paid. He has also let two Australia applications lapse according to Halfords."

Mr Royal said: "I would ask that you put your complaint against Mr Taylor in writing with any additional evidence you can supply to support your assertions."
12. On 27th September 2000 I forwarded a letter to Mr Royal of IPTMA. Exhibit "GDM1" is a copy of the covering letter forwarded to Mr Royal.
13. On each of 20th October 2000 and 23rd October 2000 I sent a further fax to Mr Royal of IPTMA, in the absence of any contact from IPTMA.



James

14. On 1st November 2000 following a further telephone call to IPTMA I spoke to Mr Tony Ward.

I said: "I have previously spoken to Mr Malcolm Royal about my complaint against Paul Taylor. Are you familiar with my complaint?"

Mr Ward said: "Yes, Mr Royal has passed the matter on to me."

I said: "What action has been taken in relation to my complaint."

Mr Ward said: "We have been trying to contact Paul Taylor but we have been unable to contact him."

I said: "I would have thought the evidence speaks for itself. There has been a systematic fraud going on by Taylor over a number of years. I am being asked to pay accounts again to overseas patent attorneys that I have already paid Taylor on his invoices. What action do you propose to take against him?"

Mr Ward said: "You would probably be ware that this is not the first complaint we have had against Paul Taylor."

I said: "Well as a Chartered Accountant, if I did what he has done my Institute (of Chartered Accountants in Australia) I would be hauled before the Disciplinary Tribunal, they would fine me and kick me out of the Institute (of Chartered Accountants in Australia). What will your Institute be doing?"

Mr ward said: "Well, I don't want to be responsible for taking away his livelihood."

I said: "So who can see that Taylor will be dealt with as he deserves so he cannot continue perpetrating his fraud?"

Mr Ward said: "The Professional Standards Board for Patent and Trade Mark Attorneys can handle complaints against Patent and Trade Mark Attorneys. There is a formal process that the complaint must follow and the Professional Standards Board can assist in that regard."

I said: "So although you have my complaint and the evidence required to take action against Taylor, you are telling me that you will not take any action against him."

Mr Ward said: "The Professional Standards Board can assist you."



TONY WARD

15. On 15th November 2000, I sent a further letter to Mr Tony Ward of IPTMA concerning further information that I had received about the activities of Taylor. Exhibit "GDM2" is a copy of the covering letter forwarded to Mr Ward.

16. On or about 27th July 2001 I received a telephone call from Ms Rhonda Nicholas, solicitor. Ms Nicholas was acting for the complainants in two complaints brought before the Professional Standards Board for Patent and Trade Mark Attorneys, including the complaint made by myself.

I said: "Can you tell me what the current position is in relation to Taylor."

Ms Nicholas: "The Board has determined that Mr Taylor has two cases to answer.He was given three months to resign his membership of the Institute of Patent and Trade Mark Attorneys at a special meeting in June."

17. On or about 13th September 2001 I had a telephone conversation with Mr Doug Carter, President of IPTMA following receipt of his letter dated 4th September 2001 advising that Taylor had resigned his membership.

I said: "You are telling me that all the Institute did was allow Taylor to resign his membership? What lessons have been learned from this? Perhaps you should research what other Institutes and Professional bodies have by way of disciplinary processes. Are you proposing to change your By-laws to reduce the likelihood of the Taylor's doing the same thing again and being held accountable by your Institute."

Mr Carter said: "We could not do much more than that.."

I said: "Well, The Institute of Chartered Accountants would revoke your membership certificate, fine the member for bringing the Institute into disrepute for starters. I am telling you I am not happy about the manner in which my complaint was handled by the Institute. I certainly got the impression that you did not take the matter serious and then Tony Ward's comments about not wishing to be responsible for taking away the guy's livelihood were beyond belief. He is your Secretary and if that is indicative of how you deal with your errant members then there will be more Paul Taylors of the world ...getting away without so much as a slap across the wrist. Yes I am annoyed. It is disgraceful the way in which the Institute has handled my complaint, which I understand is but one of many against Taylor and which you chose to take no action."

Mr Carter said: "He was given the opportunity to respond to the complaints but chose to resign as a member before we could take any further action."



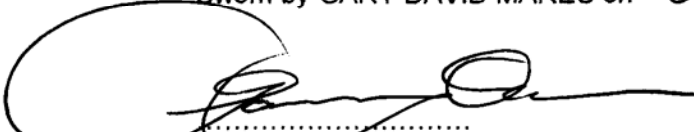
Paul Taylor

I said: "I understand he was given three months to resign."

Mr Carter said: "Yes."

I said: "I am annoyed that even though the evidence was there some 9 months ago that your Institute chose to take no action against Taylor and allowed him to continue on with his activities."

Sworn by GARY DAVID MARES on 28th May 2002 at Sydney in the presence of:



Deponent



A Justice of the Peace

Josefino Orleans (J.P.)
(Registration No.: 9105263)





Technology
Licensing
Limited

"GDM 1"

BY FACSIMILE: 03 9614 1867 Part 1 (28²⁹ pages)

27th September 2000

This is the signature marked "GDM 1" referred to in the affidavit of P. MURPHY sworn before me on 28/5/00

Justice of the Peace

Mr Malcolm Royal
The Institute of Patent and Trade Mark Attorneys in Australia
c/- Phillips Ormond and Fitzpatrick
367 Collins Street
Melbourne VIC 3000

Dear Mr Royal,

PAUL TAYLOR OF PAUL R. TAYLOR AND ASSOCIATES

I refer to my discussion with you of 25th September 2000 in connection with Mr Paul Taylor.

Subsequent to my discussion with you further information has come to light from Halfords (whom I have appointed to independently review the status of our patents) which has necessitated our company having to apply to IP Australia for reinstatement of two patents.

I commenced employment with Technology Licensing Limited as Group Company Secretary on 26th April 2000 and at the time the company was heavily reliant upon the services and expertise of Mr Taylor and his firm for the patents of the company. The files of the company are somewhat scant as there has been a lack of appropriate documentation evidencing the patent work from Mr Taylor. The company's files largely consist of Mr Taylor's own correspondence and related fee accounts.

The complaints in respect of Mr Taylor are as follows:

1. Mr Taylor made verbal representations to the due diligence committee of Technology Licensing Limited that all the necessary assignments from the inventors had been obtained. A further written report on the Patents of the subsidiary company, Workman Industries Pty Limited, was set out in the company's prospectus dated 3rd November 1999 (Exhibit 1). It has subsequently come to light that an assignment from an inventor, Mr Richard Isles, was not signed and a letter has been received from Mr Isles attorney with respect to same (Exhibit 2). Mr Taylor has been unable to produce a copy of the purported assignment documents and a search of the company's records has failed to produce any evidence of the purported assignment but has forwarded a letter dated 19th August 2000 (Exhibit 3). In that communication, Mr Taylor alleges that

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McCabes, Lawyers advised that it had been signed by Mr Isles. I have contacted McCabes and that have no record of same. In any event, a competent patent attorney should have all copies of the relevant documentation required to effect an assignment from the inventor, particularly given the representations made in Mr Taylor's report as set out in the prospectus of the company dated 3rd November 1999.

2. On 4th July 2000 Mr Taylor had an appointment to meet with me at the company's premises at Taren Point to provide a status report on the patents of Workman Industries Pty Limited. Mr Taylor failed to make the appointment even after it had been rescheduled for an hour later that morning to assist Mr Taylor.
3. A written status report was requested from Mr Taylor in respect of the status of the company's patents. A status report was received from Mr Taylor on 1st August 2000 (Exhibit 4-1). Related correspondence is also attached (Exhibit 4-2). A number of issues have caused us to express serious doubts as to the accuracy of the status report. Firstly, I became aware that items identified as "awaiting search report" and renewals due later in the year were in fact overdue. Secondly, in recent days it has come to light that the Canadian patent has not been prosecuted for lack of promptly settling past fees (Exhibit -1). Thirdly, Halfords have informed me on 26th September 2000 that two patents in Australia have lapsed from failure to file examination requests by the respective due dates of 4th February 2000 and 19th July 2000 (Exhibit 5). By email dated 23rd August 2000 Mr Taylor requested monies in relation to his outstanding account, in particular to pay the US patent attorney (Exhibit 6). By email dated 24th August 2000 I requested that Mr Taylor instruct the US patent attorneys to renew the patent and provide me with their bank account details so the funds could be sent to their bank account (Exhibit 7). In the same email I expressed concerns as to the incorrect advice contained in his status report dated 21st July 2000 (Exhibit 4-1). To ensure overseas patent attorneys received the funds for the renewals I arranged to promptly remit the US and UK attorneys fee directly to enable the patent to be renewed (refer correspondence contained in Exhibits 12-6 and 12-13).
4. Having been concerned insofar as the inaccuracies in the status report of Mr Taylor dated 21st July 2000 (Exhibit 4-1); particularly as a result of the US and UK matters, from the available company records I commenced a circularization of the overseas patent attorneys to audit the company's IP. By letter dated 13th September 2000 (Exhibit 8) Mr Taylor was requested to provide a full list of all the overseas patent attorneys handling our patent matters so that the circularization could confirm that all attorneys had been contacted. By letter dated 21st September 2000 (Exhibit 9) Mr Taylor was requested again to provide the information requested. By email dated 22nd September 2000 (Exhibit 10) Mr Taylor undertook to provide the information on Monday 25th September 2000. My response to Mr Taylor is provided hereto (Exhibit 11). Contrary to Mr Taylor's assurances nothing has been received by me as at the time of writing this letter.
5. Responses to my letters to overseas associates of Mr Taylor have indicated that a significant amount of fees that are due to those associates remain unpaid. I attach copies of the letters sent and the responses received (Canada Exhibit 12-1 and 12-2), Peoples Republic of China (Exhibit 12-3), South Korea (Exhibits 12-4 and 12-5), United Kingdom (Exhibit 12-6 and 12-7), Japan (Exhibit 12-8), India (Exhibit 12-9), South Africa (Exhibit 12-10), Vietnam (Exhibit 12-11), New Zealand (Exhibit 12-12) and United States of America (Exhibit 12-13 and 12-14). Whilst Mr Taylor has been requested to provide copies of associates charges to

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support any of his unpaid fee accounts, nothing has been forthcoming. The company accounting staff have done a full analysis of Mr Taylor's billings (Exhibit 13) and particulars of all outstanding invoices have been requested from Mr Taylor. Nevertheless, I have obtained copies of the Chinese Associates outstanding fee accounts and compared those fee accounts to Mr Taylor's billings. Such charges appear to have been included in Mr Taylor's disbursements billings and although we have paid such charges to Mr Taylor, such fees have not been remitted to the associates. A comparison of outstanding associates charges with the analysis of Mr Taylor's billings reveals that such billings include associates charges.

You will note from an examination of correspondence set out in the foregoing Exhibits that a director of the company, Mr Gary Stewart, had some concerns earlier this year over the associates charges not being paid. I understand that Mr Stewart met with Mr Taylor and Mr Taylor undertook to rectify the situation promptly. In view of the monies paid to date to Mr Taylor, no accounts have been paid since about March 2000 pending a full reconciliation and further particulars from Mr Taylor. You will appreciate my serious concerns after examining the attached documentation and Mr Taylor should be asked for a full explanation as to his lack of co-operation and the lack of professionalism displayed in handling our patent matters.

The Institute of Patent and Trade Mark Attorneys is authorised to contact Mr Geoff Davidson of Halfords in relation to, upon my instruction, their independent review of the patents of Workman Industries Pty Limited.

Please contact me on 0418 236 335 or facsimile 02 4580 8294 if I can be of further assistance.

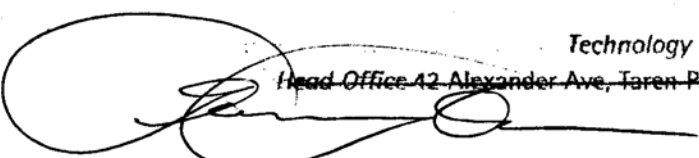
Yours sincerely



Gary D Mares
Group Company Secretary
Technology Licensing Limited
[Mobile: 0418 236 335]
[Facsimile: 02 4580 8294]

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TLD

"GDM 2"

BY FACSIMILE: 03 9650 3611 (17 pages)

15th November 2000

This is the signature marked "^uGDM 2" referred to in the affidavit of G.D. Mares sworn before me on 28/11/00

Justice of the Peace



Mr AJ Ward
The Institute of Patent and Trade Mark Attorneys in Australia
1 Little Collins Street
Melbourne VIC 3000

Dear Mr Ward,

PAUL TAYLOR OF PAUL R. TAYLOR AND ASSOCIATES

Further to my telephone conversation with you of 1st November 2000 I attach additional evidentiary correspondence in connection with Mr Paul R Taylor concerning the non-payment of overseas associates fees (Malaysia, Korea and Vietnam).

I have separately taken my complaint to the Professional Standards Board for Patent and Trade Mark Attorneys ("PSB"). Following advice from the Secretary of the PSB the complaint is to be filed by way of statutory declaration. In view of our discussion of 1st November 2000 and the lack of co-operation that you advised Mr Taylor has provided to date to your Institute I also request the Institute of Patent and Trade Mark Attorneys pursuant to Part 4 of Chapter 20 of the Patent Regulations.

Please contact me on 0418 236 335 or facsimile 02 4580 8294 if I can be of further assistance.

Yours sincerely



Gary D Mares
Group Company Secretary
Technology Licensing Limited
[Mobile: 0418 236 335]
[Direct Facsimile: 02 4580 8294]

Return

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