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Our Ref: DRG/NC3/59250.00001

20 October 2015

Dear Sirs

Techrights Blog – Not for publication

We refer to an e-mail sent from your Mr Green to our Mr Griffiths at 12:00pm yesterday.

Your e-mail asserts that our letter dated 16 October 2015 was not in compliance with the pre-action protocol for defamation. You do not particularise exactly why, but it seems that your main complaint relates to the short deadline given for a response. We reject this assertion.

We remind you that paragraph 13 of the practice direction to the pre-action protocol states that the court will not be concerned with technical infringements of the protocol when the matter is urgent e.g. when an injunction is sought. That was precisely the reason why we gave a short deadline. Your client has published extremely serious allegations of corruption and criminality about our clients. It was published on 15 October 2015. We were instructed on 16 October 2015 to advise on seeking urgent injunctive relief against your client. In the circumstances, it was entirely reasonable and proper for our clients firstly to give your client an opportunity voluntarily to remove the article. It was also entirely reasonable for a short deadline to be given. Your suggestion that the pre-action protocol required our clients to allow 14 days for a response in circumstances such as this is absurd.

Your e-mail asserts that the EPO is not able to maintain an action in defamation by reason of the Derbyshire principle and/or section 1 of the Defamation Act 2013. We reserve our position on this pending an analysis of the loss and damage suffered by the EPO and the fact that Derbyshire does not preclude other causes of action e.g. malicious falsehood and breach of confidence. It is also academic given that the allegations are made also against Mr Philpott. It goes without saying that allegations of corruption and criminality are of the most serious type and are likely to cause (if they have not already done so) serious harm to his reputation.

In the light of the article being removed, we await your client's full response by 30 October 2015. However, we should add that should the article reappear (or article(s) / allegation(s) of a similar nature) then our clients reserve their rights immediately to initiate legal proceedings without further notice to you.

It has since been brought to our attention that your client has published a further article concerning our clients (http://techrights.org/2015/10/16/genesis-of-epo-microsoft-ties/). This article contains further defamatory allegations concerning our clients, including:

"EPO's Jeremy Philpott Confirms That Discriminatory (Software) Patent Processing Practices Started With Microsoft, Because of Microsoft

...While patent lawyers of European SMEs accuse Microsoft of swamping the EPO

Summary: Jeremy Philpott comes to Grant Philpott's defence after it became evident that Microsoft, a notorious patent bully, is treated like a V.I.P. by the European Patent Office (EPO)

THE EPO's non-technical managers (the source of so much abuse as of late) are in very poor form. It hasn't been an easy week for the management, which saw around 1,300 of its own employees protesting in public, despite a terrible protest-crushing effort that caused protesters to risk their lives (more on that in our next post).

We now know for sure that Grant Philpott pushed or pressed patent examiners to treat Microsoft like a V.I.P., ignoring a lot of European SMEs whose patent applications (far fewer) were overdue for much longer a time. One British patent lawyer told us that for SMEs it can take up to 9 or even 20 years (yes, the lifetime of a patent) just to be granted a patent, based on his worst experiences. "This is incredible stuff," told us one person who is an expert in this field, "and proves what we knew–the EPO has a cosy relationship with Microsoft." Grant Philpott (not to be confused with Jeremy, whom we last mentioned here 6 years ago and probably hasn't a family relation with Grant) did not comment on this. Somebody else does. That's Jeremy (shown to the left, photo from epo.org). All we know is that the EPO's Web site claims he is "Deputy Spokesperson" in "Communication, Munich" (his bosses are named above him), so he may not have been careful enough. Maybe not so well prepared. He only revealed yet more internal information — information that we ourselves could not obtain, let alone verify. Nice own goal got scored there!

Jeremy Philpott inadvertently only revealed yet more information, without introducing any new defence of these practices (we saw the same spin in WIPR the other day). IAM spoke to the EPO for the other side of the story, pursuing a response that somehow salvages the EPO's already-tarnished reputation. It resembles what we heard before, but it highlights the special role Microsoft played in all this..."

The essence of the article is that our clients' "special" relationship with Microsoft leads them intentionally to prioritise Microsoft's applications over other smaller applicants in similar circumstances. This is false, defamatory and indefensible. The truth of the matter is that our clients have implemented a process which avoids Microsoft's applications (and those of other large patent filing entities' applications) from dominating the accelerated examination request programme at the expense of smaller entitles. This is achieved by throttling the flow of accelerated examination requests from large entitles into the programme. That is obviously a fair, reasonable and balanced process. It is one which benefits small entities as it prevents larger entities from overloading the accelerated examination process.

We note that the article provides no substantiation for the "special" relationship which is alleged. This is because none exists. This is yet another example of an article which makes seriously damaging allegations concerning our clients. We are investigating the impact of this on the EPO, but as regards Mr Philpott it should come as no surprise that allegations such as this about his professional integrity have caused or are likely to cause serious harm to his reputation. They also continue to cause him immense distress and anxiety. In the circumstances, our clients demand that your client immediately take the following action:

1. Remove the article from the Techrights Blog immediately and by no later than 10:00am on 21 October 2015;

2. Undertake not to republish the article (or any such similar words);

3. Publish an apology on the Techrights Blog (in terms to be agreed with us);

4. Agree to pay our clients damages (in a sum to be agreed); and

5. Agree to indemnify our clients for the costs incurred in dealing with this matter.

Your client's attitude to the requests in paragraphs 1 – 3 above will determine our clients' attitude to paragraphs 4 – 5.

We look forward to hearing from you. If we do not hear from you by 10:00am on 21 October 2015 in relation paragraphs 1 – 3 above concerning the new article we will take that as confirmation that you reject these demands. In those circumstances, we will revert to our client for instructions on issuing legal proceedings and, if so advised, we will do so without further notice to you.

Yours faithfully

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