IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP 155/95

UNDER The Patents Act 1953

IN THE MATTER of a Decision of the Commissioner of Patents in respect of Letters Patent Number 237086

BETWEEN ANCARE NEW ZEALAND LIMITED

Appellant

A N D CIBA-GEIGY NEW ZEALAND LIMITED

Respondent

Hearing: 20 November 1995

Counsel: C.L. Elliott for respondent in support of the application
I.C. Carter for Commissioner of Patents in support of the application
O. Woodroffe for appellant in opposition to the application

Judgment: 20 November 1995

JUDGMENT OF DOOGUE J

The appellant is the holder of a patent in respect of a sheep drench. The respondent seeks to have the patent revoked. The respondent applied for the revocation of the patent and on the same day filed an application requesting an extension of time of three months for the filing of the statement of the case relating to its application.

The Commissioner of Patents granted the latter application but limited the period of time to two months. The appellant has appealed from that decision. The respondent has applied for leave to adduce evidence as to

Rules which is applicable to patents by virtue of the provisions of R 725ZZA.

The present application is under R 725ZW of the High Court Rules. The leave of the Court is required. The basis upon which leave will normally be granted is that it may have an important bearing on the case: see Beecham Group Ltd v Bristol-Myers Company (No. 2) [1979] 2 NZLR 629, 631, 632. As already indicated, that may be the position here. Whether it will transpire that it is the position is a different matter. Certainly the Court in a situation such as this should be appraised of the practice which has led to the decision of the Commissioner. This, unusually, is an appeal relating to a procedural point and not an appeal relating to a substantive issue, where the reluctance of the Court to permit fresh evidence to be adduced is apparent upon the cases unless it is essential to enable justice to be done.

In the present case the reasons advanced in opposition to the application are specious. Whilst the appellant appears to complain about issues of possible delay, it is the appellant's very opposition which is leading to the delay. The evidence sought to be adduced, if it is not of assistance to the Judge hearing the appeal, will no doubt be put aside. It is relatively short and uncomplicated evidence. It does not go to the merits of the appellant's parent or the application for its revocation. It goes solely to matters of practice. It would be quite wrong for me upon this application to endeavour to prevent such evidence being before the Court at the time of the hearing

determined to be admissible or, if admissible, the weight to be given to it.

Costs are reserved. The parties have been in court approximately an hour and a quarter but the matter was adjourned from 10.00 a.m. until 2.15 p.m. before they could be heard.

Solicitors for appellant:
Woodroffe & Keil, Auckland

Solicitors for respondent:
Baldwins, Auckland

Solicitors for Commissioner of Patents:
Crown Law Office, Wellington