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BETWEEN

F H BRUNDLE (a private unlimited company)

Claimant

and

MR RICHARD PERRY

Defendant

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REPLY AND  
DEFENCE TO COUNTERCLAIM

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REPLY AND DEFENCE TO COUNTERCLAIM

1. On 12 June 2013, the Defendant served his Defence by way of a letter dated 11 June 2013 addressed to Mr Recorder Meade QC at the Patents County Court ("**the Defence Letter**"). It was served together with a document headed "Counterclaim to Claim CC13P00980" ("**the Counterclaim Letter**"). The Claimant's representatives wrote to the Defendant on 19 and 21 June 2013 pointing out certain deficiencies in those letters and pointing to the relevant guidance in the CPR. On 26 June 2013, the Defendant served a further letter headed "Counterclaim to Claim" ("**the Second Counterclaim Letter**").
2. The Defence Letter is discursive and unstructured, and does not comply with Part 15 CPR. It contains material which is simply derogatory (directed at the Claimant, its Chairman, and others) or irrelevant to the present claim.
3. The Counterclaim Letter comprises no allegations or arguments, but simply a prayer for relief. It is said to be a Counterclaim against the Claimant as well as against two

other companies. No application for joinder has been made, and the present document is the Reply and Defence to Counterclaim of the present Claimants, FH Brundle, only. The Second Counterclaim Letter, similarly, is said to be directed at the Claimant and the two other companies.

4. Nonetheless, insofar as it is able, the Claimant will reply to the Defence Letter, to the Counterclaim letter, and to the Second Counterclaim Letter. Since the allegations made by way of Defence and Counterclaim appear not to be separated between the three letters, all three are dealt with compendiously in this Reply and Defence to Counterclaim.
5. The Claimant joins issue with the Defendant on every allegation made. In this Reply and Defence to Counterclaim, the Claimant will respond only to those matters raised in the three letters that are legally relevant to issues in the present case; that is not to be taken as an admission of any of the further, irrelevant allegations made by the Defendant.
6. **Annex R1** to this Reply and Defence to Counterclaim comprises a copy of the Defence Letter and a copy of the Second Counterclaim Letter, which have both been annotated by the Claimant's representatives with handwritten numbering. Paragraph numbers in this Reply and Defence to Counterclaim refer to those handwritten numbers in Annex R1, unless otherwise specified; when referring to the Counterclaim Letter, a copy of which is at **Annex R2**, the Defendant's paragraph numbers are adopted and referred to as "paragraph C-#".
7. With regard to paragraph 1, it is denied that Mr Perry's patent has been used by the Claimant to produce the Nylofor 3M ("Beam" or "Universal") brackets, and/or to produce the Nylofor 3M Panel (together, "**the Nylofor Products**"). It is further denied that the Nylofor Products are "goods described word for word in the patents claims".

8. The Nylofor Products do not fall within the scope of the claims of the Patent for the reasons given in the Particulars of Claim; there has been no infringement of the Patent by the Claimant.

9. With further regard to paragraph 1, it is denied that the Claimant has defrauded the Defendant. It is noted that, despite being such a serious allegation, the allegations of "fraud" and "defrauding" that are repeated throughout the Defendant's Defence are not supported by any factual basis or evidence. It is further denied that the

three Companies to whom the Defendant says he wrote - namely the Claimant, Betafence Limited and Britannia Fasteners Ltd are "closely linked"; they are wholly independent business entities.

\*  
NOW  
PROVEN  
TO BE  
CONSPIRING  
USING  
DIFFERENT  
CORPORATE  
ENTITIES  
TO BYPASS  
PATENTS  
ACT &  
AVOID  
PERJURY.

10. As to paragraph 1.1, it is admitted that the Defendant made a request of the Claimant to provide a copy of "any official intellectual property they had granted on the Betafence product"; it is further admitted that no document was provided in response to that request. The Claimant is a reseller of the Nylofor Products; it does not own intellectual property in them. Save as aforesaid, paragraph 1.1 is denied.

PROOF OF  
NO INTENT TO  
TARGET R.P.

In particular, it is denied that the Nylofor Products are infringing products, and/or that the Defendant is entitled to a share of any revenues generated by the Claimant's sale of the Nylofor Products.

11. As to paragraph 1.2, it is admitted that the Defendant asked the Claimant to provide an affidavit, and that the Claimant has provided no such document. It is denied that it was necessary or appropriate to provide any such document. It is further denied that there is or at any time has been a need for the Claimant to seek a licence over the Patent from the Defendant in respect of the Nylofor Products; paragraphs 7 to 8 above are repeated. Accordingly, it is denied that the Claimant has "ripped off" the Claimant by its sale and/or offer for sale of the Nylofor Products.

12. As to paragraph 2, it is admitted that:

- a) The Defendant sought from the Claimant an invoice from Betafence Ltd;
- b) Such an invoice was provided to the Defendant by the Claimant's solicitors under cover of a letter dated 29 November 2012 (found at p4 of Annex 5 to the Particulars of Claim herein);
- c) The Patent has lapsed, and the Defendant has sought to have it restored;
- d) The Defendant has submitted a Request for an Opinion from the UK Intellectual Property Office;
- e) The Defendant had not issued any proceedings against FH Brundle, but had threatened to do so, as particularised in the Particulars of Claim herein;
- f) The Defendant received in 2013 a letter from the Chancery Listing Office referring to the present action; and
- g) The Court at the hearing on 16 May 2013 came to the view that the present claim served on the Defendant by first class post may have been lost in transit.

13. Save as aforesaid, paragraph 2 is denied. In particular:

- a) Insofar as it is alleged, it is not admitted that the Claimant was under any obligation to provide any invoicing information to the Defendant pursuant to his request;
- b) It is denied that the Claimant was during pre-action correspondence subject to any burden to prove to the Defendant that the Claimant's acts were not infringements of the Patent;
- c) It is denied that the Patent is currently being restored; the restoration request is being considered and has not currently been concluded; PATENT WAS RESTORED.
- d) It is denied that the Claimant has colluded with Betafence (or with any party) to steal intellectual property of the Defendant, or to defraud the Defendant. There has been no such theft or fraud by the Claimant. → NOW PROVEN OTHERWISE IN EVIDENCE.

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e) It is denied that the Claimant failed to serve its claim upon the Defendant; the Court expressly found at the hearing on 16 May 2013 that service had been properly effected by the Claimant, as recorded in the Certificate of Service that was before the Court at that hearing.

NO PROOF OF POSTING

14. As to paragraph 3, it is denied that the Claimant has defrauded the Defendant; paragraphs 7 to 8 above are repeated. With regard to the suggestion in paragraph 3 that the purpose of the present proceedings is to block the Defendant from making a claim against the Claimant, this allegation is not understood. It is further denied that the conduct of the Claimant in this action has been the opposite of "lawful, proper [and] ethical".

THEY SUE ME TO TAKE OUT AN INJUNCTION TO PREVENT JUSTICE AS NOW PROVEN IN EVIDENCE AND PROCEEDINGS HHJ MACON FOUND NO DAMAGE DONE!

15. As to paragraph 4 it is admitted that the pre-action correspondence addressed the validity of the Patent. Save as aforesaid, paragraph 4 is denied. In particular it is denied that the Patent cannot be invalid because it has been granted; grant by the UK Intellectual Property office of a patent is not a final determination of validity. It is further denied that any silence by the Claimant, in the present action or at any time, on the matter of the Patent's validity amounts to an admission that the Patent is valid.

16. As to paragraph 5, it is averred that:

- a) the Claimant was asked at the hearing before Mr Recorder Meade QC on 16 May 2013, for the purposes of allowing the judge to determine the best directions, whether its intention at that time was to challenge the validity of the Patent; and that
- b) it was indicated the Claimant did not intend to do so.

Insofar as it is alleged that this amounts or amounted to an admission of the Patent's validity, the same is denied.

17. With regard to paragraph 6, it is denied that the Claimant's claim is supported by only two pages of the patent specification; the full patent specification forms Annex 2 to the Particulars of Claim herein.

18. Paragraph 7 is denied; the Nylofor Products do not fall within the Patent. Paragraphs 7 to 8 above are repeated.

NOW PROVEN OTHERWISE IN EVIDENCE. 2015 ONWARDS.

19. As to paragraph 8 it is admitted that the Defendant refused to provide an undertaking to the effect that it would not pursue or make any further threats of patent infringement against the Claimant in respect of the Nylofor Products. Save as aforesaid, no admissions are made in respect of paragraph 8.

20. With regard to paragraph 9 it is denied that the patent claims "exactly what the Nylofor product does". Additionally, it is noted and averred that it is the claims of the patent that determine the scope of the protection granted by that patent.

21. It is denied that the test proposed by paragraph 10 is an appropriate or necessary one. It is further denied that:

a) the Claimant has submitted a falsified and manipulated design sheet; and that

NOW PROVEN IN EVIDENCE SEE BUNDLE.

b) the Claimant has improperly sought to evade any liability to the Defendant arising out of its sale and/or offer for sale of the Nylofor Products; and that

CAD DRAWINGS WITNESS STATEMENT J. TIMLIN ETC.

c) the Claimant indeed has any liability for patent infringement to the Defendant arising out of its sale and/or offer for sale of the Nylofor Products.

liability in conspiracy & fraud INTENT TO INJURE.

22. As to paragraph 11, it is admitted that a letter was submitted by the Claimant's representatives to the UK Intellectual Property office with regard to the Defendant's Patent Opinion request. It is denied that the relief sought by the Claimant is without justification or commercial need. In this regard, paragraphs 9(c) to 9(e) of the Particulars of Claim herein are repeated. Save as aforesaid, no further admissions are made in respect of paragraph 11.

23. It is admitted that the Claimant has not expressed an interest in a commercial relationship with the Defendant. It is not admitted that samples have from time to time been sent by the Defendant to the Claimant. The Claimant has no recollection of ever having received any samples from the Defendant. Save as aforesaid, paragraph 12 is denied in its entirety.

Proof in letter from FET BRUNNLE  
we don't sell wooden fencing only metal fencing  
Subpoena letter

ALSO FET BRUNNLE TOOK PRODUCTS OFF OF MY TRADE STAND AT GLEE EXHIBITION. SUBPOENA W/RT GLEE EXHIBITION ATTENDEES.

24. Paragraph 13 is not understood and does not appear to be relevant to the present claim; no admissions are made with regard to this paragraph.

25. Paragraph 14 is denied; there is no basis for such a cap on costs. It is denied in particular that the Claimant's conduct has at any point been unreasonable. The pre-action correspondence, the correspondence with the Defendant in relation to the hearing on 16 May 2013, and the correspondence since then (which latter two sets of correspondence form Annex R3 hereto), show that the Claimant has adopted a reasonable and constructive approach, mindful of the fact that the Defendant is unrepresented.

26. It is denied, with regard to paragraph 15, that the Claimant has a lack of respect for the IPO, or a flippant attitude to it or its authority. It is noted that there is no basis advanced by the Defendant for this allegation. Similarly, the allegations of fraudulent behaviour in relation to taxation are utterly unsupported and are denied in their entirety.

See Costs DEMAND PAGES 97-99

Subpoena evidence / Manipulation of my tax records at HMRC. Just the tip of the iceberg!!

27. Having regard to the Second Counterclaim Letter and particularly paragraph 2C-1, it is admitted that the Claimant has not offered money to the Defendant. It is further admitted that the Defendant has submitted a request for an opinion from the UK Intellectual Property Office. It is not admitted that the Defendant has in the past written to the Claimant in order to ask whether the Claimant was interested in taking a licence from the Defendant. The Claimant has no recollection of having received such a proposal from the Defendant.

→ ALSO PROOF THAT THE SAME PEOPLE THAT ATTENDED TRIAL IN 2013 WERE THE ONES TAKING PRODUCTS OFF OF MY STAND AT GLEE TRADE SHOW.



28. Save as aforesaid, paragraph 2C-1 is denied. In particular:

a) It is denied that the Claimant has improperly colluded with Betafence Limited or with Britannia Fasteners Ltd. The foregoing denials in respect of the stealing of the Defendant's intellectual property are repeated.

b) It is further denied that the Defendant has produced, imported/exported or manufactured the Nylofor products; the Claimant has merely been engaged in resale of the Nylofor products.

c) It is denied that the Claimant's activities in respect of the Nylofor products have infringed the Defendant's patents, designs and/or unregistered designs. It is noted that in respect of designs and unregistered designs, no such rights have been alleged and/or particularised, nor any basis for their infringement.

d) It is denied that the Claimant's behaviour in respect of the Nylofor products has in any respect been unlawful.

29. Paragraph 2C-2 is denied; in particular, it is denied that the Defendant is entitled to any profit or royalty from the Claimant in respect of the Nylofor products.

30. With regard to paragraph 2C-3, no basis for the relevance of unregistered industrial design rights is pleaded by the Defendant; nor is the same term understood by the Claimant. Similarly, the relevance of the Fraud Act 2006 Competition Act 1998 and/or the Enterprise Act 2002 is denied. *See cross demand*

*Conspiracy etc.*

31. As to paragraph 2C-4, it is denied that there has been any infringement of the Patent or other intellectual property right alleged by the Defendant. It is noted that no such rights are alleged and/or particularised by the Defendant save for the Patent, and no acts of infringement in respect of any such rights have been adequately particularised.

32. Accordingly, it is denied that the Defendant is entitled to the relief claimed in the Counterclaim Letter and/or the Second Counterclaim Letter, and/or to any relief. In

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particular and without prejudice to the generality of that denial, regarding paragraphs C-5, C-6 and C-7 and paragraphs 2C - 4(5), 2C - 4(6) and 2C - 4(7) it is denied that the Court has jurisdiction in respect of matters concerning patents outside the UK.

STUART BARAN

**Statement of Truth**

I, for the Claimant, believe that the facts stated in these Particulars of Claim are true to the best of my knowledge and belief.

Full Name: MICHAEL FRANK BRUNDLE X

(Position) Director X

Signed: *[Handwritten Signature]*

Date: 27 June 2013

CLAIMS  
- TO BE A  
DIRECTOR  
WHEN THE  
FIRM IS  
AN UNLIMITED  
FIRM SO HE  
CAN ONLY BE  
A PROPRIETOR.

Served on the 27th day of June 2013 by **COLLYER BRISTOW LLP**, 4 Bedford Row, London WC1R 4DF, Tel: 020 7470 4432, Solicitors for the Claimant.



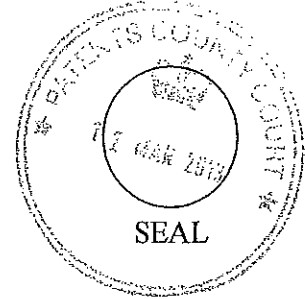
# Claim Form

In the PATENTS COUNTY COURT

	<i>for court use only</i>
Claim No.	SC13P00980
Issue date	12-3-13

**Claimant's name and address including postcode**

**F H BRUNDLE** (private unlimited company)  
 24-36 Lamson Road  
 Ferry Lane North  
 Rainham  
 Essex RM13 9YY

**Defendant's name**

**RICHARD PERRY**  
 19 Yerbury Street  
 Trowbridge  
 Wiltshire  
 BA14 8DP

**Brief details of claim**

- (1) A declaration to the effect that the Defendant's threats of proceedings for infringement of UK patent number 2 390 104 are unjustifiable;
- (2) A declaration that the disposal of, offer to dispose of, use, importation and/or keeping of the Betafence Nylofor 3D Bracket (in its "Beam" and/or "Universal" forms) and/or the Nylofor 3M fence panel does not constitute infringement of any of the claims of UK patent number 2 390 104.
- (3) An injunction to restrain the Defendant (whether acting by his directors, officers, servants, agents or otherwise howsoever) from threatening, or from causing or procuring others to threaten, the Claimant (by letters, circulars, advertisements or any other form or forms of communication) with any legal proceedings in respect of any alleged infringement of UK patent number 2 390 104.
- (4) An inquiry as to the damage caused by the Defendant's threats of proceedings for patent infringement, together with an order for payment of all sums found due to the Claimant;
- (5) Interest applied to all sums found to be due to the Claimant, pursuant to section 69 of the County Courts Act 1984, being at such rate and for such period as the Court sees fit.
- (6) Dissemination and publication of judgment as aforesaid.
- (7) Costs.

**Value**

The total value of all of the relief sought by the Claimant exceeds £5,000. We seek to bring proceedings in the Patent County Court.

Defendant's name and address, including postcode

MR RICHARD PERRY  
 19 Yerbury Street  
 Trowbridge  
 Wiltshire BA14 8DP

£

Amount claimed	TBA
Court fee	£245
Solicitor's costs	TBA
Total amount	-

When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

N1 Claim form (CPR Part 7) (03.12)

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Claim No.	
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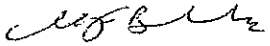
Does, or will, your claim include any issues under the Human Rights Act 1998?     Yes  No

Particulars of Claim attached

**Statement of Truth**  
 \*I believe that the facts stated in these particulars of claim are true.  
 \* I am duly authorised by the claimant to sign this statement

Full name MICHAEL FRANK BRUNDLE

Name of claimant's solicitor's firm - Collyer Bristow LLP

signed  position or office held DIRECTOR  
 \*(Claimant)(Litigation friend)(Claimant's solicitor)    (if signing on behalf of firm or company)

*\*delete as appropriate*

Collyer Bristow LLP  
 4 Bedford Row  
 London  
 WC1R 4TF  
 DX163 Chancery Lane  
 Fax: 020 7470 4432

Claimant's or claimant's solicitor's  
 address to which documents or  
 payments should be sent if different  
 from overleaf including (if appropriate)  
 details of DX, fax or e-mail.

IN THE PATENTS COUNTY COURT

Claim No

**BETWEEN**

F H BRUNDLE (a private unlimited company)

**Claimant**

and

MR RICHARD PERRY

**Defendant**

PARTICULARS OF CLAIM

**THE PARTIES**

1. The Claimant is a private unlimited company incorporated under the laws of England and Wales; it is registered with company number 07168270 and with its registered office at 24—36 Lamson Road, Rainham, Essex RM13 9YY. It is engaged in the business of wholesale supply of metal products, including particularly wrought iron, mesh and other steel items.
2. The Defendant appears on the UK patents register as the proprietor of UK patent number 2 390 104 ("**the Patent**"). His address is listed on the UK patents register as 10 Ashfield Road, Salisbury, Wiltshire, SP2 7EW, United Kingdom. The address for service of the Patent is listed as the Defendant, at Units 9—11, 174 Bedminster Road, Bedminster, Bristol, BS3 5NQ, United Kingdom.

**THE PATENT**

3. The Patent is not in force; its registration lapsed on 8 August 2011 ("**the Lapse Date**"). The registration details for the Patent form **Annex 1** hereto. The Patent itself is annexed hereto as **Annex 2**.

*PATENT INCORRECT FORM J6 WAS A CAN TO CORRECT THE*

4. The Patent is subject to an application for restoration, filed by the Defendant on 28 August 2012. That application for restoration of the Patent has not, at the time of issue of the claim form herein, been determined by the UK Intellectual Property Office.

\* PATENT WAS RESTORED BY MR. ROSEMEYER AT PATENT OFFICE \*  
letter dated 11 Nov - 13 From Patent Office.

THE DEFENDANT'S THREATS

5. The Defendant sent by recorded delivery a letter dated 5 October 2012 to the Claimant ("the First Threat Letter"); the First Threat Letter comprises Annex 3 hereto.

6. The First Threat Letter comprised a threat of proceedings for an infringement of the Patent pursuant to section 70(1) of the Patents Act 1977. Hereunder, the Claimant relies upon the following facts and/or matters:

PARTICULARS OF THREAT

- a) The letter is headed "**Notice Before Proceedings**" in bold type;
- b) Immediately below the header "Notice Before Proceedings", a rider reads:

*Infringement of Patent GB2390104, August 2003 – October 2011  
Through Sales of Betafence's Nylofor 3D Bracket And 3M Panel*

- c) Later within the text of the First Threat Letter, the Defendant asserts that:

*This product infringes my Patent;*

- d) The final paragraph of the First Threat Letter reads as follows (with emphases added):

*I intend to take proceedings against your Company in the High Court* if no amicable solution can be reached regards paying me my share of the profits for your use of my inventions without any licence to do so. Please respond within 14 days or *I will commence proceedings against your Company.*

} giving them a chance to reconcile.

e) The Claimant will say that, taken as a whole, the First Threat Letter clearly constitutes a threat of legal proceedings for infringement of UK patent number 2 390 104.

7. The Defendant sent by recorded delivery a letter dated 21 November 2012 to the Claimant ("the Second Threat Letter"), and a further letter dated 18 December 2012 ("the Third Threat Letter"); the Second Threat Letter and the Third Threat Letter comprise respective Annexes 3A and 3B hereto.

8. The Second Threat Letter and the Third Threat Letter each comprised a threat of proceedings for an infringement of the Patent pursuant to section 70(1) of the Patents Act 1977. Hereunder, the Claimant relies upon the following facts and/or matters:

PARTICULARS OF THREAT

a) The Second Threat Letter is headed "RE: Patent Infringement";

b) In the penultimate paragraph of the Second Threat Letter, the Defendant says (with emphasis added)] "As you and your client both take Patent Infringement very seriously, you will be providing the information I have asked you for and in the meantime I will put a hold on taking any legal proceedings against your client."



PROVIDING OPPORTUNITY FOR THEM TO GO TO ATTORNEY GENERAL. S. V. PROPOS AN G. TO ATTORNEY GENERAL.

c) In the second paragraph of the Third Threat Letter, the Defendant says "your client may still have a liability to me between 2004 -2011 whilst the Patent GB2390104 was in force."



d) The Claimant will say that, taken as a whole, each of the Second Threat Letter and the Third Threat Letter clearly constitutes a threat of legal proceedings for infringement of UK patent number 2 390 104.

9. The Claimant is a person aggrieved by the Defendant's acts as complained of herein, pursuant to section 70(1) of the Patents Act 1977. Hereunder, and

subject to further evidence and/or disclosure and/or the provision of further information, the Claimant relies upon the following facts and/or matters:

PARTICULARS

a) The First Threat Letter is clearly addressed to the Claimant, at its registered address as particularised at paragraph 1 above;

b) The threats of legal proceedings comprised within the First Threat Letter and/or the Second Threat Letter and/or the Third Threat Letter are plainly directed at the Claimant; in this regard, the Claimant relies *inter alia* upon the Defendant's references to "your Company" in the sections of the First Threat Letter quoted at paragraph 6.d) above;

c) The Claimant will say that having the threat of legal proceedings hanging over it impairs the Claimant's ability to go about its business and to maintain its commercial interests;

d) Further, the Claimant will say that if potential customers were to hear that there existed a threat of legal proceedings against the Claimant, that could reasonably be expected to reduce some potential customers' inclination to do business with the Claimant;

e) The Claimant avers that, as a result of the Defendant's threats complained of herein, the Claimant's commercial interests are likely to be adversely affected in a real, as opposed to a fanciful or minimal, way.

10. The threats made by the Defendant as complained of herein are not justifiable, for the reasons particularised under paragraphs 11, 12, 14, 14.d)15 below.

THE CLAIMANT'S ACTIVITIES

11. The Claimant is a wholesale supplier; the Claimant supplies to trade, *inter alia*, the Nylofor 3D Bracket and the Nylofor 3M Panel. These two products are not

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sales records  
any fall  
in sales?  
any  
complaints  
from  
customers  
adduce accounts  
of profits

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great  
world  
wide  
they  
haven't  
fallen  
any  
notice  
failed  
to act  
reference for any IP for  
told there isn't  
any and distributed any way.

How would I  
contact any of  
their customers?

Product  
was discontinued  
new way of  
installing  
hence bracket  
to wife, I don't  
first place.  
Complaints  
in place.



manufactured by the Claimant; they are sourced from a third party, Betafence Limited.

*Corporate responsibility to defend me*

12. Details of both the Nylofor 3D Bracket and the Nylofor 3M Panel are given in the documents taken from Betafence Limited's website which form **Annex 4** hereto. The first three pages of **Annex 4** refer to the Nylofor 3D Bracket; the subsequent two pages relate to the Nylofor 3M Panel. The Claimant relies upon the contents of the documents at **Annex 4** to establish the nature of the Nylofor 3D Bracket and the Nylofor 3M Panel. **Annex 4A** is a document produced by the Defendant, showing photographs of a Nylofor 3D Bracket next to a bracket of the Defendant, produced to the Patent.

13. The Nylofor 3D Bracket is a fence bracket for attaching fence panels (in particular, the Nylofor 3D Panel, shown on pages 1 to 3 of **Annex 4** hereto) to a fence post in a fencing arrangement. The Nylofor 3D Bracket is supplied in two variants, both illustrated on p. 2 of **Annex 4**: the "Beam" bracket and the "Universal" bracket. The Nylofor 3M Panel is a panel incorporated within a fence panel system that would typically be installed using a bracket such as a Nylofor 3D Bracket.

**LACK OF JUSTIFICATION**

14. The acts in respect of which the Defendant threatened proceedings for patent infringement do not constitute, and at no time constituted, an infringement of the Patent. Further, for the avoidance of doubt the Claimant avers that neither the Nylofor 3D Bracket nor the Nylofor 3M Panel is a product that falls within the scope of any claim of the Patent.

*to prove otherwise in evidence 2015 onwards*

PARTICULARS OF NON-INFRINGEMENT

a) The Patent has only a single independent claim: claim 1. Since claim 1 is not and has not been infringed by any of the Claimant's acts in respect of which

the Defendant threatened proceedings, the Patent is not and has not been infringed by any of those same acts.

b) The Claimant's best case on non-infringement, subject to further evidence or disclosure and/or the provision of further information, is comprised in the following claim feature tables.

c) With regards to the Nylofor 3D Beam Bracket ("the Beam"):

Integer	Claim Language	Claimant's averment
1A	<i>A bracket for securing a fence panel to a fence post,</i>	The Beam comprises this integer.
1B	<i>the bracket being adapted to embrace a corner of a fence panel,</i>	The Beam is not adapted to embrace a corner of a fence panel.  The Beam is constructed to engage the end wire of a wire fence panel, as is clearly shown on p. 2 of <b>Annex 4</b> .  Further, the Beam does not "embrace" the part of the fence panel engaged by it, but clips to a terminal wire of said fence panel, engaging principally a single face of the said wire.
1C	<i>and comprising a main body having a rectangular central portion</i>	The Beam does not have a rectangular central portion. The central portion of the Beam has a triangular cross section, as clearly visible from the illustrations on p. 2 of <b>Annex 4</b> and p. 1 of <b>Annex 4A</b> .
1D	<i>adapted in use to lie along the top of the panel,</i>	No part of the Beam is adapted to lie along the top of the fence panel in use; as can be seen from the diagrams on p. 2 of <b>Annex 4</b> , the Beam engages a terminal edge of the fence panel in use, and not at the top of said fence panel. The central portion of the Beam is, in use, perpendicular to the top surface of the panel.
1E	<i>and two contiguous triangular portions</i>	The Beam does not comprise two contiguous triangular portions.
1F	<i>adapted in use to lie one</i>	

18

	<i>each side of the panel</i>	
1G	<i>with one apex adjacent the post and the other spaced therefrom</i>	
1H	<i>and flange means</i>	The Beam does not comprise any flange element to lie against the post. Rather, in use as shown in p. 2 of <b>Annex 4</b> , the Beam is attached to the post with a screw or similar fastening through the central portion of the Beam.
1I	<i>adapted in use to lie against and be attached to the post.</i>	

d) With regards to the Nylofor 3D Universal Bracket ("The Universal"):

Integer	Claim Language	Claimant's averment
1A	<i>A bracket for securing a fence panel to a fence post,</i>	The Universal comprises this integer.
1B	<i>the bracket being adapted to embrace a corner of a fence panel,</i>	The Universal is not adapted to embrace a corner of a fence panel.  The Universal is constructed to engage the end wire of a wire fence panel, as is clearly shown on p. 2 of <b>Annex 4</b> .  Further, the Universal does not "embrace" the part of the fence panel engaged by it, but clips to a terminal wire of said fence panel, engaging principally a single face of the said wire.
1C	<i>and comprising a main body having a rectangular central portion</i>	The Universal comprises this integer.
1D	<i>adapted in use to lie along the top of the panel,</i>	No part of the Universal is adapted to lie along the top of the fence panel in use; as can be seen from the diagrams on p. 2 of <b>Annex 4</b> , the Universal engages a terminal edge of the fence panel in use, and not at the top of said fence panel. The central portion of the Universal is, in use, perpendicular to the top surface of the panel.
1E	<i>and two contiguous triangular portions</i>	The Universal does not comprise two contiguous triangular portions.

See detail of proven infringement on Court file of IP2015000490 & EVIDENCE BUNDLE OF CROSS DEMAND.

1F	adapted in use to lie one each side of the panel	
1G	with one apex adjacent the post and the other spaced therefrom	
1H	and flange means	The Universal does not comprise any flange element to lie against the post. Rather, in use as shown in p. 2 of Annex 4, the Universal is attached to the post with a screw or similar fastening through the central portion of the Universal.
1I	adapted in use to lie against and be attached to the post.	

e) With regards to the Nylofor 3M Panel, it is averred that none of the integers of Claim 1 of the Patent is present, because the Nylofor 3M Panel is not a "bracket for securing a fence panel to a fence post"; the Nylofor 3M Panel is a fence panel, and not a bracket.

15. Additionally or in the alternative, the Claimant avers that the Defendant was not justified in threatening the Defendant in respect of acts carried out after the Lapse Date, because at the time of making such threats the Defendant had no right in the Patent which was or could have been infringed by any acts of the Claimant following the Lapse Date.

LAPSED DUE TO PATENT OFFICE MISTAKES. } patent restored BY OFFICE.

Benefited in outcome of conspiracy and intent to injure

Statute of limitations  
 my friend out about it in June 2012 I have six years to take proceedings they have gotten away with it and even def continue the process

Patent Office - Disproves or offers to disprove

16. Substantially prior to issue of the Claim Form herein, the Claimant informed the Defendant that it was merely engaged in the resale of the Nylofor 3D Bracket and the Nylofor 3M Panel, not manufacture, and supplied evidence that this was the case. Correspondence from the Claimant, relating this assertion and evidence to the Defendant, forms Annex 5 hereto.

LOSS, DAMAGE AND RELIEF

17. By reason of the acts of the Defendant as aforesaid, the Claimant has suffered loss and damage. Unless restrained by the Court, the Defendant threatens and

what loss and damage? nobody knows as one of

intends to continue such acts, whereby the Claimant will suffer further loss and damage.

*no point now*

18. The Claimant is entitled to interest on all sums found due to it, at such rate and for such period as the Court sees fit, pursuant to section 69 of the County Courts Act 1984, and claims the same.

19. The Claimant has complied with its obligations under the Practice Direction on Pre-Action Conduct and Annex A thereto.

20. The Claimant seeks an order for dissemination and publication of the result of this Court's judgment, to be taken at the Defendant's expense in accordance with paragraph 26.2 of the Practice Direction to Part 63 CPR.

AND THE CLAIMANT CLAIMS:

- (1) A declaration to the effect that the Defendant's threats of proceedings for infringement of UK patent number 2 390 104 are unjustifiable;
- (2) A declaration that the disposal of, offer to dispose of, use, importation and/or keeping of the Betafence Nylofor 3D Bracket (in its "Beam" and/or "Universal" forms) and/or the Nylofor 3M fence panel does not constitute infringement of any of the claims of UK patent number 2 390 104.
- (3) An injunction to restrain the Defendant (whether acting by his directors, officers, servants, agents or otherwise howsoever) from threatening, or from causing or procuring others to threaten, the Claimant (by letters, circulars, advertisements or any other form or forms of communication) with any legal proceedings in respect of any alleged infringement of UK patent number 2 390 104.

*millions  
prosecution  
to conceal  
CONSPIRACY  
& OTHER  
OFFENCES*

(4) An inquiry as to the damage caused by the Defendant's threats of proceedings for patent infringement, together with an order for payment of all sums found due to the Claimant;

(5) Interest applied to all sums found to be due to the Claimant, pursuant to section 69 of the County Courts Act 1984, being at such rate and for such period as the Court sees fit.

(6) Dissemination and publication of judgment as aforesaid.

(7) Costs.

(8) Further or other relief.

STUART BARAN

*7* **Statement of Truth**

I, for the Claimant, believe that the facts stated in these Particulars of Claim are true to the best of my knowledge and belief.

Full Name:     MICHAEL FRANK BRUNDLE     *\**

(Position)     DIRECTOR

---

Signed:         *MFB*

Date:            07/03/2013

Served on the 13 day of February 2013 by COLLYER BRISTOW LLP, 4 Bedford Row, London WC1R 4DF, Tel: 020 7470 4432, Solicitors for the Claimant.



2nd Copy

Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

F H Brundle  
Lamson Road  
Ferry Lane North  
Rainham, Essex RM13 9YY

5<sup>th</sup> October 2012 Recorded Delivery

FAO: Chief Executive/Chairman

**Notice Before Proceedings**

Infringement of Patent GB2390104, August 2003 - October 2011 Through Sales Of Betafence's Nylofor 3D Bracket And 3M Panel.

**Claim for Damages Under the Patents Act 1977.**

**Sirs,**

I have written to your Company in the past to see if you would have any interest in stocking any of my fencing products and your reply was that you didn't sell any of these products or that type of fencing and your Company had no interest.

It has now been brought to my attention that your Company has been selling a product of Betafence known as the Nylofor 3D bracket that is used to install Nylofor fencing, for over at least 5 years, according to your Southampton office and you in fact still sell these products.

① This Nylofor product infringes my Patent and I demand you provide an Account of Profits of direct profit on sales of:

1. The quantity of the Nylofor 3D bracket you have sold between August 2003 - October 2011.
2. The number of Nylofor 3M fence panels that have been sold during the same period that are installed using the Nylofor bracket.

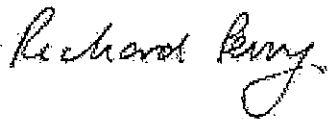


3. The number of fence posts sold corresponding with the number of fence panels sold during the same period.
4. The quantity of add on products sold such as the allen key tool specifically designed to use with the Nylofor 3D bracket.

I am legally entitled to a share of these profits whilst the Patent was in force and which is currently being restored to the register, as it had lapsed temporarily due to Patent Office error in late 2011.

I intend to take proceedings against your Company in the High Court if no amicable solution can be reached regards paying me my share of the profits for your use of my inventions without any licence to do so. Please respond within 14 days or I will commence proceedings against your Company.

Sincerely,



Richard Perry

On behalf of: Claimant  
Initials and surname of witness: PJ Wheeler  
No. of Statement: 1  
Exhibits: "PJW1"  
Date Statement made: 1 May 2013

IN THE PATENTS COUNTY COURT

Claim No. CC13P00980

BETWEEN:

F H BRUNDLE

Claimant

and

RICHARD PERRY

Defendant

---

WITNESS STATEMENT OF PATRICK JOHN WHEELER

---

I, PATRICK JOHN WHEELER, partner of Collyer Bristow LLP of 4 Bedford Row, London WC1R 4TF, acting as solicitors for the above named Claimant, will say as follows:

Documents referred to

1. This witness statement is made in support of the Claimant's application for default judgment in relation to its claims as set out in the Claim form, issued on 12 March 2013.
2. I am duly authorised by the Claimant to make this witness statement on its behalf. The matters set out below which are within my knowledge are true and, where they are not within my knowledge, I believe them to be true.
3. On 13 March 2013, my firm served the Claim form, Particulars of Claim, Annexes 1, 2, 3, 3A, 3B, 4, 4A, and 5, and Response Pack on the Defendant by First Class post, in accordance with CPR 7.5(1).

Letter of Service  
(Page 1 of PJW1)

- 4. In accordance with CPR 6.14, the deemed date of service was 15 March 2013.
- 5. As shown by the letters sent by my firm to the Defendant dated 15 October, 25 October and 29 November 2012 attached at Annex 5 to the Particulars of Claim, the Claimant has set out full details of its claim and has consequently complied with paragraph 7.1(1) and Annex A (paragraph 2) of the Practice Direction (Pre-Action Conduct). Annex 5, Particulars of Claim
- 6. The Particulars of Claim state at paragraph 19 that the Claimant has complied with the requirements of the Practice Direction (Pre-Action Conduct), so pursuant to CPR 63.20(2) and 63.22(2) the deadline for the Defendant to file his Defence was 42 days, expiring on 26 April 2013.
- 7. On 25 April 2013, my firm lodged the Certificate of Service with the Court. Certificate of Service  
(Page 2-3 of PJW1)
- 8. As at the date of this application, I am informed by the Court and believe that no Acknowledgment of Service and no Defence has been filed by the Defendant. Neither such document has been received by my firm.
- 9. The Claimant has agreed to waive its claims to damages and for publication of the judgment and seeks default judgment against the Defendant pursuant to CPR 12.4(2). The Claimant requests the Court to make the declarations and orders as set out in the draft Order attached to this application.

STATEMENT OF TRUTH

*I believe that the facts stated in this Witness Statement are true.*

Signed:   
 Patrick John Wheeler

Dated: 1 May 2013

IN THE PATENTS COUNTY COURT

Claim No. CC13P00980

BETWEEN:

F H BRUNDLE

Claimant

and

RICHARD PERRY

Defendant

---

EXHIBIT "PJW1"

---

This is the exhibit marked "PJW1" referred to in the witness statement of PATRICK JOHN WHEELER dated the 1<sup>st</sup> day of May 2013.

Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

Collyer Bristow LLP solicitors  
4 Bedford Row, London WC1R 4TF

T (Direct) +44 (0)20 7468 7350  
F (Direct) +44 (0)20 7470 4560  
E [sophie.pugh@collyerbristow.com](mailto:sophie.pugh@collyerbristow.com)  
DX 163 London Chancery Lane

Our ref: SEP/PWH/kfh/23640.12  
Your ref:

13 March 2013

Dear Sir

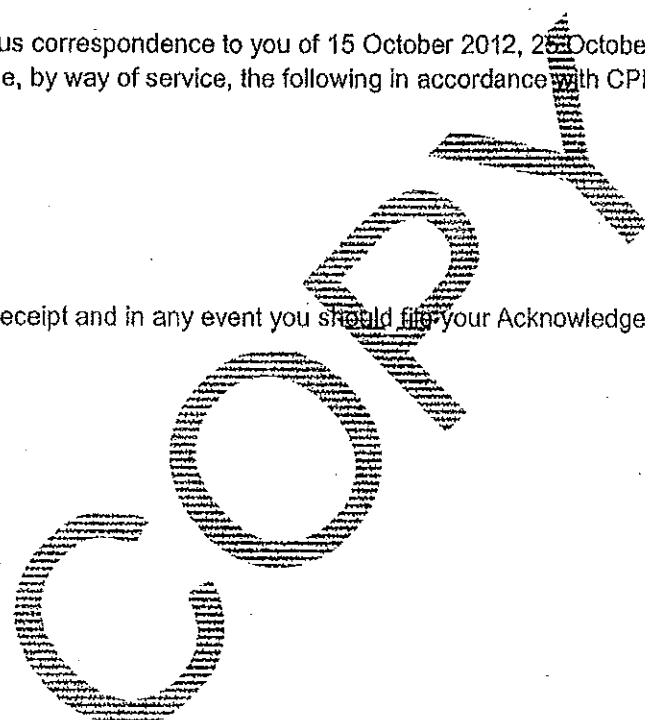
We refer to our previous correspondence to you of 15 October 2012, 25 October 2012 and 29 November 2012. We now enclose, by way of service, the following in accordance with CPR 6.3 - 6.19:

1. Claim Form
2. Particulars of Claim
3. Annexes 1-5
4. Response Pack

Please acknowledge receipt and in any event you should file your Acknowledgement of Service within 14 days.

Yours faithfully

Collyer Bristow



3.1.4.2

# of service

In the PATENTS COUNTY COURT	Claim No. SC13P00980
Name of Claimant FH BRUNDLE	
Name of Defendant RICHARD PERRY	

At what day did you serve?  
 The date of service is

1	5	0	3	2	0	1	3
---	---	---	---	---	---	---	---

What documents did you serve?  
 Please attach copies of the documents you have not already filed with the court.

Claim form  
 Particulars of Claim  
 Annexes 1, 2, 3, 3A, 3B, 4, 4A, and 5  
 Response Pack  
 The Defendant: RICHARD PERRY

On whom did you serve?  
 (If appropriate include their position e.g. partner, director).

How did you serve the documents?  
 (please tick the appropriate box)

by first class post or other service which provides for delivery on the next business day

by delivering to or leaving at a permitted place

by personally handing it to or leaving it with (.....time left, where document is other than a claim form) (please specify)

by other means permitted by the court (please specify)

By Document Exchange

by fax machine (.....time sent, where document is other than a claim form) (you may want to enclose a copy of the transmission sheet)

by other electronic means (.....time sent, where document is other than a claim form) (please specify)

Give the address where service effected, include fax or DX number, e-mail address or other electronic identification

19 Yerbury Street  
 Trowbridge  
 Wiltshire BA14 8DP

Being the  claimant's  defendant's

solicitor's  litigation friend

- usual residence
- last known residence
- place of business
- principal place of business
- last known place of business
- last known principal place of business
- principal office of the partnership
- principal office of the corporation
- principal office of the company
- place of business of the partnership/company/corporation within the jurisdiction with a connection to claim
- other (please specify)

I believe that the facts stated in this certificate are true.

Full name

Signed  Position or office held   
 Claimant's solicitor (If signing on behalf of firm or company)

Date 

2	5	0	4	2	0	1	3
---	---	---	---	---	---	---	---

3-1-4-3

ing to the service of documents are contained in Part 6 of the Civil Procedure Rules (www.justice.gov.uk) you should refer to the rules for information.

**Calculation of deemed day of service of a claim**

A claim form served within the UK in accordance with Part 6 of the Civil Procedure rules is deemed to be served on the second business day after the claimant has completed the steps required by CPR 7.5(1).

**Calculation of the deemed day of service of documents other than the claim form (CPR 6.26)**

Method of service	Deemed day of service
First class post or other service which provides for delivery on the next business day	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day
Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or in any other case, on the next business day after that day
Fax	If the transmission of the fax is completed on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was transmitted
Other electronic method	If the email or other electronic transmission is sent on a business day before 4.30pm, on that day; or in any other case, on the next business day after the day on which it was sent
Personal service	If the document is served personally before 4.30pm on a business day, it is served on that day; or in any other case, on the next business day after that day

In this context 'business day' means any day except Saturday, Sunday or a bank holiday; (under the Banking and Financial Dealings Act 1971 in the part of the UK where service is to take place) includes Good Friday and Christmas Day.

3.1.4.4

EXHIBIT 5

Mr. Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA 14 8 DP

Page 1 of 5

Per e-mail and per registered letter

Y. Ref. :  
O. Ref. : 3158-104 ADV/VHO

Kortrijk, 25 July 2012 X

Referring: your cease and desist letter of June 11<sup>th</sup> 2012, addressed to  
Betafence Ltd

Dear Mr. Perry,

We are writing to you in our capacity of Intellectual Property advisors of  
Betafence Ltd.

Our client provided us with a copy of your letter dated June 11<sup>th</sup>, 2012, in which  
you stated that the product "Nylofor 3-M" for our client as pictured in the drawing  
attached to your letter constitutes an infringement of both GB 2390104 and  
GB 2401616.

We hereinafter provide evidence that this is not the case.

Our client further provided us with your e-mail of July 23<sup>rd</sup>, in which you accuse  
our client of further infringements, without any reference.

We hereinafter assume you refer in this e-mail of July 23<sup>rd</sup> to the same product of  
our client and to the same patents as in your letter dated June 11<sup>th</sup>, 2012. If this  
would not be the case, we welcome you to clarify your accusations in order to be  
able to come to an amicable solution, as our client is not aware of any of their X  
products possibly falling within the scope of your mentioned patents.

AND YET IN EXHIBIT 4 THEY CLEARLY STATE :

KOB nv  
Pres. Kennedypark 31c, B-8500 Kortrijk  
Tel. +32 56 21 35 38  
Fax +32 56 21 60 14 (octr.)  
Fax +32 56 21 04 63 (merk./mod.)  
info@kob.be, www.kob.be

! THEY ARE NOT WILLING TO PAY YOU ANYTHING!  
AFTER PROVING DELIBERATE FRAUD AND INFRINGEMENT!  
bankrekeningen | comptes bancaires | bank accounts  
KBC-Kortrijk no. 460-0471121-32 IBAN BE 90 4600 4711 2132 SWIFT : KREDBEBB  
DEXIA-Kortrijk no. 068-2157844-09 IBAN BE 52 0682 1578 4409 SWIFT : GKCCBEBB



The patent family of GB 2390104 and GB 2401616 comprises:

- GB 2 390 104 B was filed on August 8, 2003 and granted on April 14, 2004. This patent ceased on August 8, 2011.
- GB 2 394 487 B was not mentioned your letter, but is related to the mentioned patents. The application for this patent was filed on February 10, 2004, claiming priority of GB 2 390 104 B and was granted on August 3, 2004. This patent ceased on February 10, 2008.
- GB 2 401 616 B was filed on August 5, 2004, claiming priority of GB 0318635 (GB 2 390 104 B) and was granted on March 3, 2005. This patent is the only patent of this patent family which is still in force.

The patent rights conferred to these patents, did/do not extend beyond the territory of the United Kingdom.

PARA 3

The patent scope for the different patent rights in this patent family is/was defined by the first claim of each of these patents as granted. All further claims depend on the respective first claim. All claims of your patents relate to brackets. By proving hereinafter that the brackets of our client as pictured in the drawing attached to your letter do/did not fall within the scope of the first claims, we prove that they do not fall within the scope of any of the claims and that they therefore do/did not infringe any of your mentioned patent rights.

As it was clear from the start to us that the brackets of our client did/do not fall within the scope of your mentioned patents, we did not yet make a further estimation of the validity of your patent rights, but would not hesitate doing so if you would stick to your wrongful opinion after reading our letter of today.

Non-infringement of the brackets of our client with respect to GB 2 390 104 B

Patent rights related to GB 2 390 104 B (which, as mentioned above, have ceased), were rather limitedly directed to (claim 1 – all other claims being dependent on claim 1):

- A bracket
  - for securing a fence panel to a fence post,
  - the bracket being adapted to embrace a corner of a fence panel,
  - and comprising a main body
    - having a rectangular central portion

adapted in use to lie along the top of the panel,  
 and two contiguous triangular portions  
 adapted in use to lie one each side of the panel  
 with one apex adjacent the post  
 and the other spaced therefrom,  
 and flange means  
 adapted in use to lie against  
 and be attached to the post.

FACT 1

The brackets of our client as illustrated in the drawing attached to your letter are clearly not adapted to embrace a corner of a fence panel. Even if it could be stated that the end wire of a panel would be the corner of this fence panel, then their brackets still clearly do not comprise a portion adapted in use to lie along the top of the panel. Furthermore in use, their brackets certainly do not embrace the side of the panel with portions on each side of the panel, but instead remain mainly on one side of the fence panel. Moreover, their brackets do not comprise flanges to be attached to the post, but are instead attached to the post with a screw through their central portion.

**We can therefore conclude that the brackets of our client as illustrated in the drawings attached to your letter clearly did not infringe the patent rights related to GB 2 390 104 B (which have ceased).**

Non-infringement of the brackets of our client with respect to GB 2 394 487 B

Patent rights related to GB 2 394 487 B (which, as mentioned above, have ceased), were rather limitedly directed to (claim 1 – all other claims being dependent on claim 1):

A bracket

for securing two adjacent fence panels or pieces of timber together,  
 the bracket being adapted to embrace a portion of both sides or  
 surfaces  
 and comprising a main body  
 having a rectangular or square portion  
 adapted in use to lie along a portion of each of the  
 two panels or pieces of timber  
 and two contiguous triangular portions  
 adapted in use to lie one each side of a portion of  
 each of the panels or pieces of timber.

The brackets of our client as illustrated in the drawing attached to your letter are clearly not adapted to embrace a portion of both sides of a fence panel. Furthermore in use, their brackets lie along two panels, but they certainly do not comprise triangular portions which in use lie along a portion of each of the panels.

**We can therefore conclude that the brackets of our client as illustrated in the drawings attached to your letter clearly did not infringe the patent rights related to GB 2 394 487 B (which have ceased).**

Non-infringement of the brackets of our client with respect to GB 2 401 616 B

Patent rights related to GB 2 401 616 B are rather limitedly directed to (claim 1 – all other claims being dependent on claim 1):

A bracket

- for securing a fence railing or fence panel to a fence post,
- the bracket comprising a main body
  - shaped to match the shape of the end surface of the railing or panel,
  - and being adapted to encapsulate a portion of the end of the railing or an edge of a fence panel
    - by means of at least two flanges
      - extending perpendicular to the main body,
      - said flanges incorporating at least one hole for the purpose of receiving a nail, screw or other means
        - to releasably secure the bracket to the railing,
- there being at least one tab
  - extending from said body
  - and struck entirely from within the confines of said flange
  - and incorporating a hole
    - for the purpose of receiving a nail or screw
      - to releasably secure said tab to the post whereby to secure the rail or panel and the post together.

The brackets of our client as illustrated in the drawing attached to your letter are clearly not adapted to encapsulate a portion of the edge of a fence panel. Even if it could be stated that the end wire of a panel would form the edge of this fence panel, then their brackets clearly do not comprise flanges for encapsulating this

5075

35

end wire, which flanges incorporate a hole for the purpose of receiving a nail, screw or other means. Instead their brackets are only attached to the post with a screw through their central portion (which cannot be said to encapsulate an edge of the fence panel). Furthermore, their brackets certainly do not comprise a tab stuck from within the confines of a flange.

**We can therefore conclude that the brackets of our client as illustrated in the drawings attached to your letter clearly do not infringe the patent rights related to GB 2 401 616 B.**

Position of Betafence Ltd

We believe that above argumentation comprehensively illustrates that our client Betafence Ltd is wrongfully accused of infringement of your patent rights.

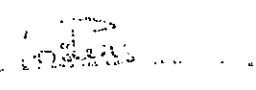
To bring this matter to a good end for both parties, we are looking forward to your withdrawal of your warning letter and to a written declaration of non-infringement of the mentioned patent rights within a term of four weeks, starting from the service of this letter, that is, until

**24 August 2012**

We look forward to hearing from you soon and trust this matter can be set amicably.

In case after our letter of today, you would take further actions based on unfounded grounds resulting in commercial disadvantages to our client, our client reserves the right to take any further counteraction.

Yours Sincerely,

  
Veerle Hostens, ir.  
European patent attorney

*This letter is sent under reservation of all rights of our client and without any acknowledgment prejudicial to their rights.*

4.1.41

Claimant  
PJ Wheeler  
Second  
"PJW2"  
Date: 12 November 2013

IN THE INTELLECTUAL PROPERTY  
ENTERPRISE COURT

Claim No. CC13P00980

BETWEEN:

F H BRUNDLE

Claimant

and

RICHARD PERRY

Defendant

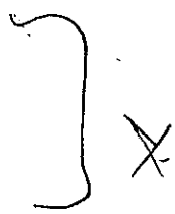


**SECOND WITNESS STATEMENT OF  
PATRICK JOHN WHEELER**

I, **PATRICK JOHN WHEELER**, Partner of Collyer Bristow LLP of 4 Bedford Row, London WC1R 4TF, acting as solicitors for the above named Claimant, **will say as follows:**

Documents

1. This witness statement is made in opposition to the Defendant's application seeking a transfer of this action to the High Court pursuant to an application notice dated 13 September 2013.
2. I am duly authorised by the Claimant to make this witness statement on its behalf. This is my second witness statement in this matter. The matters set out below which are within my knowledge are true and, where they are not within my knowledge, I believe



them to be true.

*K*

- 3. At a hearing on 16 May 2013 of an application by the Claimant for default judgment pursuant to CPR Part 12.4(2), Mr Recorder Richard Meade QC made an order extending time for the Defendant to serve his defence to 13 June 2013.
- 4. On 12 June 2013, the Defendant sent a document to the Patents County Court purporting to be a defence and counterclaim. The Claimant has served a reply and defence to counterclaim, to the extent that it was possible to do so, dated 27 June 2013.
- 5. A case management conference ("CMC") took place before Arnold J on 22 July 2013, a copy of the order from which forms pages 1 to 3 of Exhibit "P JW2". "P JW2" – pages 1-3
- 6. No official transcript was taken of the hearing before Arnold J. However, my trainee Sophie Pugh and I both took contemporaneous notes. I attach as pages 4 to 6 of Exhibit "P JW2" the attendance note prepared by my trainee, which I have checked and amended. "P JW2" – pages 4-6
- 7. Mr Perry's reason for transferring the case to the High Court is his belief that his entitlement to damages would exceed £500,000. As the attendance note of the CMC hearing demonstrates, Arnold J indicated that Mr Perry think very carefully before making an application. He suggested that, since Mr Perry was not a manufacturer of the products in question, it was likely to be very difficult for him to demonstrate that damages exceeded £500,000. He also said that Mr Perry would lose the costs protection of capped costs in the Patents County Court (now the Intellectual Property Enterprise Court).

8.

Mr Perry says he believes that the three companies have sold over the last eight years "enormous volumes of infringing goods". However he acknowledges that he really does not know and that this is only "a hunch" and that he has made "guesstimates". He does not provide any evidence of what his hunch is based upon. The Claimant has no knowledge of the sales levels of the alleged infringing goods either by Betafence Ltd or Britannia Fasteners Ltd. Indeed, the Claimant has no business connection with Britannia Fasteners Limited. My firm is not representing Betafence Ltd or Britannia Fasteners Ltd.

4th sentence →

5th sentence →

6th sentence →

9. Because there has not been any finding of liability for patent infringement – indeed the Opinion of the Intellectual Property Office indicates that such a finding would be highly unlikely, the Claimant has not undertaken a detailed investigation or disclosure of the documents relating to the exact sales volumes of the fence brackets about which Mr Perry complains.

10. Mr Perry estimates that sales by the Claimant of the brackets in question (Nylofix 3D profile brackets ("Brackets")) are 5,000,000 units, at a profit of £1 per unit. I am informed by Michael Brundle, a director of the Claimant, and believe that these figures are massively over-estimated.

11. Because the Claimant does not sell the Brackets separately, but only together with the metal fence panels that they are designed to fit, the Claimant has not kept records of purchases and sales of the Brackets as a separate item. Mr Brundle has calculated from information supplied by Betafence Limited and from his company's accounting records

LIE: DESIGNED TO CONCEAL turnover & profits.

lie. CONTRADICTED HIS OWN TESTIMONY ON PAGE 3.3.53

'THIRD WITNESS STATEMENT'

Para 7 LINES 3-5

... Brackets may be sold separately.

that the Claimant purchased 13,420 Brackets from Betafence Limited between 2008 and today.

Assuming the Limitation Act applies to prevent the Defendant claiming damages earlier than the date of his counterclaim, 11 June 2013, I have added half of the Brackets purchased during 2007 ( $180 \div 2 = 90$ ) to this figure. This gives an approximate total of 14,320 Brackets purchased.

- 12. The Claimant sells the Brackets in kits of 10 for £14.50. Using the same approximation as in paragraph 11 above for 2007, it has sold just over 14,000 Brackets between 2009 and today, with 200 left in stock. If the Claimant had sold all 14,320 of the Brackets which it purchased from Betafence Limited during this period the total sales receipts would have been £20,764. Mr Brundle estimates that the gross profit on those sales (at 2013 prices, and before any deductions) is £9,308.50.

Why doesn't  
MICHAEL BRUNDLE  
STATE THIS IN HIS OWN  
WITNESS STATEMENT?  
HE CLAIMS HE DOESN'T  
KNOW FIGURES.

- 13. I believe that this clearly demonstrates that there is no prospect whatsoever of a damages award to Mr Perry getting even remotely close to £500,000.
- 14. The Claimant considers that there are no compelling reasons for this action to be transferred to the High Court and that, consequently, this application should be dismissed.
- 15. Mr Perry acknowledges that he has issued this application in spite of a very clear indication from Arnold J seeking to deter him from doing so. The Claimant believes that in those circumstances his conduct was unreasonable. I respectfully invite this court to make an order for costs in favour of the Claimant, payable forthwith, pursuant to CPR Part

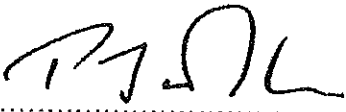


63.26(2).

40

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true.

Signed:   
.....  
**Patrick John Wheeler**

Dated: 12 November 2013

IN THE PATENTS COUNTY COURT

Claim No [                      ]

**BETWEEN**

F H BRUNDLE (a private unlimited company)

**Claimant**

and

MR RICHARD PERRY

**Defendant**

---

**Annex 5**

---

Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

Collyer Bristow LLP solicitors  
4 Bedford Row, London WC1R 4TF

T (Direct) +44 (0)20 7470 4432  
F (Direct) +44 (0)20 7470 4433  
E [patrick.wheeler@collyerbristow.com](mailto:patrick.wheeler@collyerbristow.com)  
DX 163 London Chancery Lane

Our ref: PWH/23640.12  
Your ref:

15 October 2012

Dear sir

## Notice of unjustified threat of patent infringement proceedings

We act for F H Brundle of Lamson Road, Ferry Lane North, Rainham, Essex RM13 9YY ("our client"). Our client has instructed us to respond to your letter of 5 October 2012.

Your letter alleges that our client's sales of Nylofor 3D brackets (the "**Brackets**") constitutes an infringement of Patent GB2390104 (the "**Patent**"). You are aware that our client neither manufactures nor imports the brackets: it is just a reseller.

In your letter of 5 October 2012 you write that "*you intend to take proceedings*" in the High Court against our client for patent infringement. Our client takes any allegation of patent infringement very seriously. We have advised our client that the threat made by you is unjustified.

Our investigations reveal that the Patent lapsed on 8 August 2011 and has not been restored to the register. Unless and until it is restored (which is far from certain) you do not have a valid patent registration. In any event we have advised our client that the Brackets do not fall within the claims of the Patent. Furthermore, even if the Patent is restored to the register we consider that it is liable to be held invalid for lack of novelty and inventive step.

We are aware that you have written to our client's supplier, Betafence Limited, and that their advisers have provided detailed reasons in their letter to you dated 25 July 2012 why, if the Patent is valid and subsisting at all, the Brackets do not infringe. It seems that having had no success with the main supplier you have decided to issue threats to our client as a reseller. That is unacceptable behaviour and we have advised our client that you have made an unjustified threat contrary to Section 70 of the Patents Act 1977, as amended by the Patents Act 2004.

Our client therefore requires that you provide an undertaking by no later than 4.00pm on Tuesday 23 October 2012 that you will not pursue or make any further threats of patent infringement against our client in respect of the Brackets. If you fail to provide that undertaking our client will issue a claim against you for unjustified threats without further notice seeking a declaration, damages and legal costs.

Page 2  
Richard Perry  
15 October 2012

In the meantime, our client reserves all of its rights in this matter.

Yours faithfully

Collyer Bristow LLP

Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

Collyer Bristow LLP solicitors  
4 Bedford Row, London WC1R 4TF

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E [patrick.wheeler@collyerbristow.com](mailto:patrick.wheeler@collyerbristow.com)  
DX 163 London Chancery Lane

Our ref: PWH/23640.12  
Your ref:

25 October 2012

Dear sir

### Notice of unjustified threat of patent infringement proceedings

We refer to our letter dated 15 October 2012. You have not provided the undertaking that was demanded or otherwise responded to this letter.

Our client trusts that you will (as they have) treat this matter as closed and not issue any further threatening letters to them or anyone else. However, if you continue with your threats either to them or to anyone associated with them, they reserve their right to bring a legal claim against you for unjustified threats without further notice seeking a declaration, damages and legal costs.

Yours faithfully

Collyer Bristow LLP

Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

Collyer Bristow LLP solicitors  
4 Bedford Row, London WC1R 4TF

T (Direct) +44 (0)20 7470 4432  
F (Direct) +44 (0)20 7470 4433  
E patrick.wheeler@collyerbristow.com  
DX 163 London Chancery Lane

Our ref: PWH/23640.12  
Your ref:

29 November 2012

Dear sir

### Unjustified threat of patent infringement proceedings

We refer to your letter dated 21 November 2012. It is regrettable that you have not accepted the invitation in our letter of 25 October to treat this matter as closed.

We enclose as requested a copy of one invoice to our client from Betafence Limited for Nylofor 3D brackets. This confirms our client's claim to be a reseller rather than a manufacturer or importer. If and to the extent that you have any grounds for complaint they should clearly be directed to Betafence and not to our client

It is common in claims of infringement of intellectual property rights to have alternative claims or defences which are not mutually consistent. Paragraph 4 of our letter of 15 October 2012 does no more than set out alternative reasons why our client believes that any claim for patent infringement will fail. Our client sees no reason to provide you with further invoices or an affidavit, since it refutes the claims that you make against it and does not believe that those claims are legally capable of being pursued at this time, if at all.

Your letter says that you "will put a hold on taking any legal proceedings" against our client pending receipt of information from our client. This letter and enclosure provides you with all the information our client considers you are entitled to have.

Consequently, our client again requires that you provide a written undertaking by no later than 4.00pm on Thursday 6 December 2012 that you will not pursue any claim or make any further threats of patent infringement against our client in respect of the Brackets. If you fail to provide that undertaking our client will issue a claim against you for unjustified threats without further notice seeking a declaration, damages and legal costs.

In the meantime, our client reserves all of its rights in this matter.

Yours faithfully

Collyer Bristow LLP

Collyer Bristow LLP is a limited liability partnership registered in England under number OC318532, registered office 4 Bedford Row, London WC1R 4DF, and is regulated by the Solicitors Regulation Authority under number 441900. Any reference to a partner means a member of the LLP or an employee with equivalent standing and qualifications. A list of the members is available for inspection at the above address. Collyer Bristow LLP is an Investor in People and is Lexcel accredited.

www.collyerbristow.com

Switchboard +44(0)20 7242 7363

L8484850v1 28/11/2012 12:29

BS.5

46

**BETA FENCE**  
Invoice

Page : 1 / 2

8215108561

17.10.2012

F H BRUNDLE  
 24-36 LAMSON ROAD  
 FERRY LANE NORTH  
 RAINHAM  
 ESSEX  
 RM13 9YY

Your VAT no.  
 GB232242310

Delivery Terms  
 DDU - Delivered duty unpaid (Incoterms 2000)  
 SOUTHAMPTON

Shipment to  
 F H BRUNDLE (LANKESTER STEELS)  
 502 MILLBROOK ROAD  
 THIRD AVENUE, MILLBROOK  
 SOUTHAMPTON  
 HAMPSHIRE  
 SO15 0JX

Sold to : 69271  
 Payer : 29047

Order Contact : Mr Paul Levesley 0114 2567852  
 Sales Representative : Mr James O'Donnell 00447867801174

Please include in your payment the reference to our invoice number: 8215108561

Payment Terms

Paym in month end + 1Mth after InvDate - 2.50%

Invoice due date

30.11.2012

By banktransfer to

Bank account : 40-52-52 42768201 Bank : Fortis Bank

IBAN : GB27 6684 4052 6242 7682 01

S.W.I.F.T : GEDAGB22

General terms of sale: THE RETENTION OF TITLE clause included in our order sheets. These terms apply also to our stock sales.

Item	Material	Quantity	Price	Unit price	Discount/surcharges	Value
------	----------	----------	-------	------------	---------------------	-------

Order number/Date : 3015017767 / 16.10.2012

P.O./Your ref. : 243075

Delivery note no./Date : 4015028351 / 17.10.2012

0010	5412298321982 / 7022475 PANEL NYLOFOR 3D - VERDE RAL 6005 MESH : 200 X 50 MM - 250 X 170 CM PLAN NYL50P004005 Order Item 000010	9 PC	27.39	GBP/PC		246.51
------	---	------	-------	--------	--	--------

0020	5013652841209 / 4021515 Bracket Fixing, Metal, Nylofor Kit, RAL 9005, c/w M8 X 15mm Trilobe Bolt & CSK plastic washer Order Item 000020	10 PC	8.03	GBP/PC		80.30
------	--	-------	------	--------	--	-------

0030	7030683 TRILOBE ALLEN KEY FOR	10 PC				
------	----------------------------------	-------	--	--	--	--

POSTED

Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

Collyer Bristow LLP solicitors  
4 Bedford Row, London WC1R 4TF  
T (Direct) +44 (0)20 7470 4432  
F (Direct) +44 (0)20 7470 4433  
E patrick.wheeler@collyerbristow.com  
DX 163 London Chancery Lane

Our ref: PWH/23640.12  
Your ref:

15 October 2012

Dear sir

**Notice of unjustified threat of patent infringement proceedings**

- ① We act for F H Brundle of Lamson Road, Ferry Lane North, Rainham, Essex RM13 9YY ("our client"). Our client has instructed us to respond to your letter of 5 October 2012.
- ② Your letter alleges that our client's sales of Nylofor 3D brackets (the "Brackets") constitutes an infringement of Patent GB2390104 (the "Patent"). You are aware that our client neither manufactures nor imports the brackets: it is just a reseller.
- ③ In your letter of 5 October 2012 you write that "you intend to take proceedings" in the High Court against our client for patent infringement. Our client takes any allegation of patent infringement very seriously. We have advised our client that the threat made by you is unjustified.
- ④ Our investigations reveal that the Patent lapsed on 8 August 2011 and has not been restored to the register. Unless and until it is restored (which is far from certain) you do not have a valid patent registration. In any event we have advised our client that the Brackets do not fall within the claims of the Patent. Furthermore, even if the Patent is restored to the register we consider that it is liable to be held invalid for lack of novelty and inventive step.
- ⑤ We are aware that you have written to our client's supplier, Betafence Limited, and that their advisers have provided detailed reasons in their letter to you dated 25 July 2012 why, if the Patent is valid and subsisting at all, the Brackets do not infringe. It seems that having had no success with the main supplier you have decided to issue threats to our client as a reseller. That is unacceptable behaviour and we have advised our client that you have made an unjustified threat contrary to Section 70 of the Patents Act 1977, as amended by the Patents Act 2004.
- ⑥ Our client therefore requires that you provide an undertaking by no later than 4.00pm on Tuesday 23 October 2012 that you will not pursue or make any further threats of patent infringement against our client in respect of the Brackets. If you fail to provide that undertaking our client will issue a claim against you for unjustified threats without further notice seeking a declaration, damages and legal costs.



Page 2  
Richard Perry  
15 October 2012

In the meantime, our client reserves all of its rights in this matter.

Yours faithfully



Collyer Bristow LLP

Mr Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire BA14 8DP  
**By Special Delivery**

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E patrick.wheeler@collyerbristow.com  
DX 163 London Chancery Lane

Our ref: PWH/njw/23640.12  
Your ref:

17 October 2013

Dear Mr Perry

Claim No. CC13P00980

Thank you for your letter dated 15 October.

*? WHAT LETTER?  
I CANNOT FIND ANY RECORD  
OF THIS - COPY REQUIRED.*

While we had received copies of the draft application notices from you back in July, we had not received from you either the supporting witness statements or any indication of whether the application notices had been issued and if so, when they would be heard. The issued application notice is the one that contains the date of the hearing, so we had no knowledge of the date of the hearing until we received copies of the issued application notices. If you issue any other applications, please bear in mind that you need to serve the stamped copies on us, otherwise we will not know about any hearing.

You have enclosed two witness statements with your letter. The first one, which refers to the application to add Betafence Ltd and Britannia Fasteners Ltd as parties to the action, consists of two pages. It does not contain a signature or a statement of truth. Is it right that there is a third or additional pages to this witness statement? If so, can you please send us a full version as a matter of urgency.

3

Your letter continues with an assertion which we have refuted on numerous occasions. You are under the impression that our clients are "working together" with Betafence and with Britannia Fasteners. That is not, and has never been, the case. Other than being a customer of Betafence in relation to the brackets in dispute, our client is not "working together" with either company. Consequently, our client is not in a position to answer the questions that you ask.

*→ WHY IS FH BRUNOLE ONLY OFFICIALLY NAMED & ADVERTISED DISTRIBUTOR OF BETA-FENCE PRODUCT IN UK  
Collyer Bristow now representing all three defendant*

So far as your third question is concerned, Mr Justice Arnold explained to you at the hearing that if, and only if, you were successful in your counterclaim for infringement of your patent (which he clearly indicated he considered to be doubtful) so that there was a finding of liability, would you then be in a position to make an application for an enquiry as to damages or an account of profits. It is only at that point that you would be entitled to information about our client's sales of products which have been held to infringe your patent.

You continue to make wild and unfounded accusations against our client. Your civil law complaint of patent infringement does not provide any basis whatsoever for your allegations that our client has "defrauded" you or anyone else or "stolen" any intellectual property. Even as a non-lawyer you must know

- Proof in 1). Advertisement in FENNING NEWS*
- 2). BETA-FENCE WEBSITE SCREENSHOTS*
- 3). LETTER TO IP2015 000090 STATEMENT CLAIMING ACTING FOR*

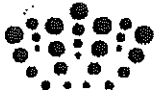
*S-2.39 ALL 3.*

Page 2  
Mr Richard Perry  
17 October 2013

that fraud and theft are entirely different from patent infringement. If you repeat these allegations to any third parties then we will advise our client to bring a further claim against you for defamation.

Yours faithfully

Collyer Bristow LLP



51

Richard Perry  
19 Yerbury Street  
TROWBRIDGE  
Wiltshire  
BA14 8DP

**Intellectual Property Office**  
Patents Directorate  
Concept House  
Cardiff Road, Newport  
South Wales, NP10 8QQ

**Direct Line:** 01633 814341  
**E-Mail:** PDhearings@ipo.gov.uk  
**Switchboard:** 0300 300 2000  
**Fax:** 01633 814491  
**Minicom:** 0300 0200 015

**Your reference:**

**Our reference:** ~~XXXXXXXXXX~~

11 November 2013

Dear Sirs



**Patent Number : GB2390104 (Richard Perry)**  
**Reference under Section 28 of the Patents Act 1977**

1. Please find enclosed a copy of a decision dated 11 November 2013.
2. As the decision has been in your favour, the application has been remitted to the examiner or other relevant case officer who will be in contact with you as required.

Yours faithfully

*K D Cooke*

Darran Cooke (Hearings Clerk)  
Litigation Section  
Patents Directorate

**PATENT  
RESTORED**

- BAD NEWS  
FOR ONE  
OR TWO  
PEOPLE!

S.2.48



**SIMPSON STRONG-TIE®**  
The World's "No Equal" Timber Connector Company

Winchester Road, Cardinal Point, Tamworth, Staffordshire, B78 3HG  
TEL: 01827 255600 -- FAX: 01827 255616

52

Our ref: IH/310804

Mr R Perry  
10 Ashfield Road  
Salisbury  
Wiltshire  
SP2-7EW

Tuesday 31st August, 2004

Dear Mr Perry

Re UK Patent Application GB2390104

We write in respect of your RP fence bracket.

We have given the product very careful consideration and unfortunately on this occasion we have decided not to pursue your offer. The product, whilst very innovative, is outside our core range of structural connectors.

We would like to thank you for giving us this opportunity with the product and wish you every success with it in the future.

As requested we return your samples.

Yours sincerely  
For Simpson Strong-Tie

Ian Harrison  
Technical Director

53

# your cease and desist letter to Betafence Ltd

Veerle Hostens <veerle.hostens@kob.be>

Wed 25/07/2012 11:19

To: reptilogdomains@hotmail.com <reptilogdomains@hotmail.com>;

2 attachments (2 MB)

image001.emz; 3158\_104\_ADV\_reply\_to\_Perry.pdf;

Dear Mr. Perry,

Enclosed, you will find our letter of today in reply to your cease and desist letter to Betafence Ltd.

Yours Sincerely,

Veerle Hostens



Pres. Kennedypark 31c, B-8500 KORTRIJK  
Tel.: +32-56/21.35.38, Fax.: +32-56/21.60.14  
info@kob.be, www.kob.be

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# KOB

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intellectual property services

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patents • trademarks • designs

54

Mr. Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA 14 8 DP

Per e-mail and per registered letter

Y. Ref. :  
O. Ref. : 3158-104 ADV/VHO

Kortrijk, 25 July 2012

**Referring: your cease and desist letter of June 11<sup>th</sup> 2012, addressed to Betafence Ltd.**

Dear Mr. Perry,

We are writing to you in our capacity of Intellectual Property advisors of Betafence Ltd.

Our client provided us with a copy of your letter dated June 11<sup>th</sup>, 2012, in which you stated that the product "Nylofor 3-M" for our client as pictured in the drawing attached to your letter constitutes an infringement of both GB 2390104 and GB 2401616.

We hereinafter provide evidence that this is not the case.

Our client further provided us with your e-mail of July 23<sup>rd</sup>, in which you accuse our client of further infringements, without any reference.

We hereinafter assume you refer in this e-mail of July 23<sup>rd</sup> to the same product of our client and to the same patents as in your letter dated June 11<sup>th</sup>, 2012. If this would not be the case, we welcome you to clarify your accusations in order to be able to come to an amicable solution, as our client is not aware of any of their products possibly falling within the scope of your mentioned patents.

KOB nv  
Pres. Kennedypark 31c, B-8500 Kortrijk  
Tel. +32 56 21 35 38  
Fax +32 56 21 60 14 (octr.)  
Fax +32 56 21 04 63 (merk./mod.)  
info@kob.be, www.kob.be

bancrekeningen | comptes bancaires | bank accounts  
KBC-Kortrijk no. 460-0471121-32 IBAN BE 90 4600 4711 2132 SWIFT : KREDBEBB  
DEXIA-Kortrijk no. 068-2157844-09 IBAN BE 52 0682 1578 4409 SWIFT : GKCCBEBB

The patent family of GB 2390104 and GB 2401616 comprises:

- GB 2 390 104 B was filed on August 8, 2003 and granted on April 14, 2004. This patent ceased on August 8, 2011.
- GB 2 394 487 B was not mentioned your letter, but is related to the mentioned patents. The application for this patent was filed on February 10, 2004, claiming priority of GB 2 390 104 B and was granted on August 3, 2004. This patent ceased on February 10, 2008.
- GB 2 401 616 B was filed on August 5, 2004, claiming priority of GB 0318635 (GB 2 390 104 B) and was granted on March 3, 2005. This patent is the only patent of this patent family which is still in force.

The patent rights conferred to these patents, did/do not extend beyond the territory of the United Kingdom.

The patent scope for the different patent rights in this patent family is/was defined by the first claim of each of these patents as granted. All further claims depend on the respective first claim. All claims of your patents relate to brackets. By proving hereinafter that the brackets of our client as pictured in the drawing attached to your letter do/did not fall within the scope of the first claims, we prove that they do not fall within the scope of any of the claims and that they therefore do/did not infringe any of your mentioned patent rights.

As it was clear from the start to us that the brackets of our client did/do not fall within the scope of your mentioned patents, we did not yet make a further estimation of the validity of your patent rights, but would not hesitate doing so if you would stick to your wrongful opinion after reading our letter of today.

#### Non-infringement of the brackets of our client with respect to GB 2 390 104 B

Patent rights related to GB 2 390 104 B (which, as mentioned above, have ceased), were rather limitedly directed to (claim 1 – all other claims being dependent on claim 1):

##### A. bracket

for securing a fence panel to a fence post,  
the bracket being adapted to embrace a corner of a fence panel,  
and comprising a main body  
having a rectangular central portion



adapted in use to lie along the top of the panel,  
and two contiguous triangular portions  
adapted in use to lie one each side of the panel  
with one apex adjacent the post  
and the other spaced therefrom,  
and flange means  
adapted in use to lie against  
and be attached to the post.

The brackets of our client as illustrated in the drawing attached to your letter are clearly not adapted to embrace a corner of a fence panel. Even if it could be stated that the end wire of a panel would be the corner of this fence panel, then their brackets still clearly do not comprise a portion adapted in use to lie along the top of the panel. Furthermore in use, their brackets certainly do not embrace the side of the panel with portions on each side of the panel, but instead remain mainly on one side of the fence panel. Moreover, their brackets do not comprise flanges to be attached to the post, but are instead attached to the post with a screw through their central portion.

**We can therefore conclude that the brackets of our client as illustrated in the drawings attached to your letter clearly did not infringe the patent rights related to GB 2 390 104 B (which have ceased).**

Non-infringement of the brackets of our client with respect to GB 2 394 487 B

Patent rights related to GB 2 394 487 B (which, as mentioned above, have ceased), were rather limitedly directed to (claim 1 – all other claims being dependent on claim 1):

**A bracket**

for securing two adjacent fence panels or pieces of timber together,  
the bracket being adapted to embrace a portion of both sides or  
surfaces:

and comprising a main body

having a rectangular or square portion

adapted in use to lie along a portion of each of the  
two panels or pieces of timber

and two contiguous triangular portions

adapted in use to lie one each side of a portion of  
each of the panels or pieces of timber.

The brackets of our client as illustrated in the drawing attached to your letter are clearly not adapted to embrace a portion of both sides of a fence panel. Furthermore in use, their brackets lie along two panels, but they certainly do not comprise triangular portions which in use lie along a portion of each of the panels.

**We can therefore conclude that the brackets of our client as illustrated in the drawings attached to your letter clearly did not infringe the patent rights related to GB 2 394 487 B (which have ceased).**

Non-infringement of the brackets of our client with respect to GB 2 401 616 B

Patent rights related to GB 2 401 616 B are rather limitedly directed to (claim 1 – all other claims being dependent on claim 1):

A bracket:

for securing a fence railing or fence panel to a fence post,  
the bracket comprising a main body  
shaped to match the shape of the end surface of the railing  
or panel,  
and being adapted to encapsulate a portion of the end of the  
railing or an edge of a fence panel  
by means of at least two flanges  
extending perpendicular to the main body,  
said flanges incorporating at least one hole  
for the purpose of receiving a nail, screw or  
other means  
to releasably secure the bracket to the  
railing,  
there being at least one tab  
extending from said body  
and struck entirely from within the confines of said  
flange  
and incorporating a hole  
for the purpose of receiving a nail or screw  
to releasably secure said tab to the  
post whereby to secure the rail or  
panel and the post together.

The brackets of our client as illustrated in the drawing attached to your letter are clearly not adapted to encapsulate a portion of the edge of a fence panel. Even if it could be stated that the end wire of a panel would form the edge of this fence panel, then their brackets clearly do not comprise flanges for encapsulating this

end wire, which flanges incorporate a hole for the purpose of receiving a nail, screw or other means. Instead their brackets are only attached to the post with a screw through their central portion (which cannot be said to encapsulate an edge of the fence panel). Furthermore, their brackets certainly do not comprise a tab stuck from within the confines of a flange.

**We can therefore conclude that the brackets of our client as illustrated in the drawings attached to your letter clearly do not infringe the patent rights related to GB 2 401 616 B.**

### Position of Betafence Ltd

We believe that above argumentation comprehensively illustrates that our client Betafence Ltd is wrongfully accused of infringement of your patent rights.

To bring this matter to a good end for both parties, we are looking forward to your withdrawal of your warning letter and to a written declaration of non-infringement of the mentioned patent rights within a term of four weeks, starting from the service of this letter, that is, until

**24 August 2012**

We look forward to hearing from you soon and trust this matter can be set amicably.

In case after our letter of today, you would take further actions based on unfounded grounds resulting in commercial disadvantages to our client, our client reserves the right to take any further counteraction.

Yours Sincerely,



Veerle Hostens, ir.  
European patent attorney

*This letter is sent under reservation of all rights of our client and without any acknowledgment prejudicial to their rights.*

Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

Collyer Bristow LLP solicitors  
4 Bedford Row, London WC1R 4TF

T (Direct) +44 (0)20 7470 4432  
F (Direct) +44 (0)20 7470 4433  
E patrick.wheeler@collyerbristow.com  
DX 163 London Chancery Lane

Our ref: PWH/23640.12  
Your ref:

15 October 2012

Dear sir

### Notice of unjustified threat of patent infringement proceedings

We act for F H Brundle of Lamson Road, Ferry Lane North, Rainham, Essex RM13 9YY ("our client"). Our client has instructed us to respond to your letter of 5 October 2012.

Your letter alleges that our client's sales of Nylofor 3D brackets (the "Brackets") constitutes an infringement of Patent GB2390104 (the "Patent"). You are aware that our client neither manufactures nor imports the brackets: it is just a reseller.

In your letter of 5 October 2012 you write that "you intend to take proceedings" in the High Court against our client for patent infringement. Our client takes any allegation of patent infringement very seriously. We have advised our client that the threat made by you is unjustified.

Our investigations reveal that the Patent lapsed on 8 August 2011 and has not been restored to the register. Unless and until it is restored (which is far from certain) you do not have a valid patent registration. In any event we have advised our client that the Brackets do not fall within the claims of the Patent. Furthermore, even if the Patent is restored to the register we consider that it is liable to be held invalid for lack of novelty and inventive step.

We are aware that you have written to our client's supplier, Betafence Limited, and that their advisers have provided detailed reasons in their letter to you dated 25 July 2012 why, if the Patent is valid and subsisting at all, the Brackets do not infringe. It seems that having had no success with the main supplier you have decided to issue threats to our client as a reseller. That is unacceptable behaviour and we have advised our client that you have made an unjustified threat contrary to Section 70 of the Patents Act 1977, as amended by the Patents Act 2004.

Our client therefore requires that you provide an undertaking by no later than 4.00pm on Tuesday 23 October 2012 that you will not pursue or make any further threats of patent infringement against our client in respect of the Brackets. If you fail to provide that undertaking our client will issue a claim against you for unjustified threats without further notice seeking a declaration, damages and legal costs.

5-1-3

Page 2  
Richard Perry  
15 October 2012

In the meantime, our client reserves all of its rights in this matter.

Yours faithfully

Collyer Bristow LLP

5.1.4

**IN THE PATENTS COUNTY COURT**

Mr Justice Arnold

Date: 22 July 2013

**BETWEEN**

F H BRUNDLE (a private unlimited company)

**Claimant**

and

MR RICHARD PERRY

**Defendant**

---

**ORDER FOR DIRECTIONS**

---

**UPON** hearing the Case Management Conference on 22 July 2013  
**AND UPON** hearing the Defendant and Counsel for the Claimant  
**AND UPON** reading the documents recorded on the Court file as having been read;  
**AND UPON** the issues being identified in the Schedule to this Order

IT IS ORDERED THAT:

**DISCLOSURE**

1. There be no order as to disclosure by either party.

**EVIDENCE**

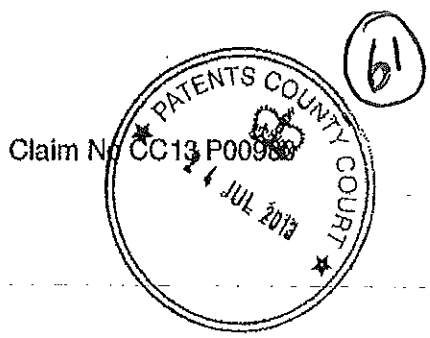
2. The statements of case (and their annexes) of each party shall stand as evidence in chief in the trial.
3. A physical example of each of the two forms of the Nylofor 3D bracket (as referred to in the Particulars of Claim) will be brought to the Court by the Claimant. These examples will stand as evidence in chief. The Defendant may also bring to the Court additional physical examples of brackets and fences.

**EXPERT EVIDENCE**

4. Neither party has permission to adduce expert evidence.

**TRIAL**

5. The issues in the trial shall be those issues listed in **Schedule 1** hereto.



\* 6. There shall be no oral evidence, and no cross-examination, at trial. \*

7. The parties shall, no later than 28 days before trial, serve on the others of them a list of all documents they want to be included in the trial bundles.

8. The Claimant shall, no later than 14 days before trial, serve on the Defendant one set of trial bundles by recorded delivery to his home address, namely: 19 Yerbury Street, Trowbridge, Wiltshire, BA14 8DP.

9. A further set of trial bundles for the Judge's use at trial shall be filed by the Claimant with the Judge's Clerk, no earlier than 7 days and no later than 3 days before trial.

10. The time allocated for the trial is 1 day. The parties are allocated half of that time each.

11. The parties have permission to file skeleton arguments, on or before 4pm not less than three clear days before trial.

12. The parties are to apply to the Clerk of the Lists for a trial date to be fixed.

**PERMISSION TO APPLY**

13. The parties have permission to apply for further directions on 3 clear days' notice to the other parties.

**COSTS**

14. The costs of this CMC be reserved.

On behalf of Betafence Limited  
Mr J Timlin  
Made: 19<sup>th</sup> November 2013  
Number of Statement: 1.

**IN THE INTELLECTUAL PROPERTY  
ENTERPRISE COURT**

**CLAIM NO: CC13P00980**

**BETWEEN**

**F H BRUNDLE**

**CLAIMANT**

**AND**

**RICHARD PERRY**

**DEFENDANT**

**WITNESS STATEMENT OF JAMES TIMLIN**

X

I, James Timlin, of Betafence Limited, P.O Box 119, Shepcote Lane, Sheffield, S9 1TY will say as follows:-

1. This Witness Statement is made in opposition to the Defendant's Application seeking a transfer of this action to the High Court by an Application Notice dated 13<sup>th</sup> September 2013.
2. I am the United Kingdom's Sale Manager of Betafence Limited and I am duly authorised to make this Statement on its behalf. The matters set out below are within my knowledge and are true and, where they are not within my knowledge, I believe them to be true.
3. Mr Perry's reason for seeking to transfer the case to the High Court is his belief that his entitlement for damages will exceed £500,000.
4. Betafence sells the Nylofor 3D Bracket in two forms, the "Beam" and the "Universal". The Beam is the kind complained of by the Defendant (the "bracket"); this is

X

X



explained in the Patent Office's Opinion dated 17<sup>th</sup> July 2013, a copy of which is at pages 1 to 7 of Exhibit "JT1" exhibited to this statement. The bracket is a profiled bracket that attaches either the top or the bottom of the fencing panel to the post. The Universal, which is not complained about, is used to fasten the fence panel at any other point to the post.

check against INDIAN MFR  
TALL IS PROBABLY UNTRUE  
DOESNT TRULY MENTIONED IN EMAIL FROM PANKAJ MEHRA INDIAN MFR.

The bracket is only sold in the United Kingdom and the Republic of Ireland. The bracket is sold in bags of 10 so the reference to yearly sales is to each bag. We sell each bag at an average price of £8.64 giving total sales for the years 2005 to 2013 of £408,395.52. The figures start in 2005 because this is the year in which we first sold the bracket. These figures include sales to the Republic of Ireland

2005	6471
2006	7804
2007	9417
2008	8924
2009	7131
2010	4264
2011	2153
2012	737
2013	367

1) Filed Suspect patent application 13/10/2004  
2) DO NOT HAVE THEIR OWN PATENT OR ANY INTELLECTUAL PROPERTY AT ALL.

Proving copyright  
Creation date on DESIGN CAD drawing has been deliberately falsified. proves intent to injure/defraud.

Total of Bags

47,268

£/Bag

8.64

Total Sales

£408,395.52

proof of turnover

What about sales outside UK?

5.

Mr Perry states in his Statement in support of a transfer to the High Court that our sales of the bracket are at least 5,000,000. In fact they are less than 10% of that (47,268 bags with 10 in each bag is 472,680).

doesn't include

Sales made by F&L BRUNNELL or Britannia Fasteners LTD

STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true

Signed.....

*[Signature]*  
James Timlin

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Dated 19<sup>th</sup> November 2013

66

Opinions

From: sales [sales@britanniafasteners.co.uk]  
 Sent: 09 May 2013 16:05  
 To: Opinions  
 Cc: 'Wilson Andy'; reptilogdomains@hotmail.com  
 Subject: Patent Act 1977:Request for an opinion under Section 74(A) Patent number GB2390104 (Mr Richard Perry)  
 Attachments: AFB 06.pdf

Dear Sirs

Your Reference - Room 3Y31/MS/06/13/GB2390104.

We make the following observations from the documents forwarded.

EXHIBIT PH2 Images 1,2,3 & 4 Clearly show the Bracket AFB06 in its rightful use - fixing steel mesh panels to steel posts.

EXHIBIT PH1 Image 3 Clearly shows the attempted use of Bracket AFB06 in totally the wrong application presumably by the applicant.

EXHIBIT PH3 Pages 1 & 2 The only worthy comparison of note is the colour - black.

Please find attached the design & development drawing of the AFB06 Bracket (drawn 16-04-2003) by Mr M J Humphries of Bekaert which has become Betafence Ltd.

Simple comparison of the Bekaert / Betafence Drawing AFB06, to the sketches submitted of the Richard Perry Fence Bracket show clearly that there is no intellectual infringement as the 2 items are completely different, designed for totally different applications by 2 different parties.

PROVE IT  
 WAS DRAWN  
 AS THIS  
 FRESH  
 DRAWING NOW  
 DATES '2005'  
 COPYRIGHT DATE  
 FOUND IN OTHER  
 CAD DRAWINGS

With this in mind we respectfully ask the Comptroller to refuse the request for infringement.

Yours faithfully

The Directors

Britannia Fasteners Ltd

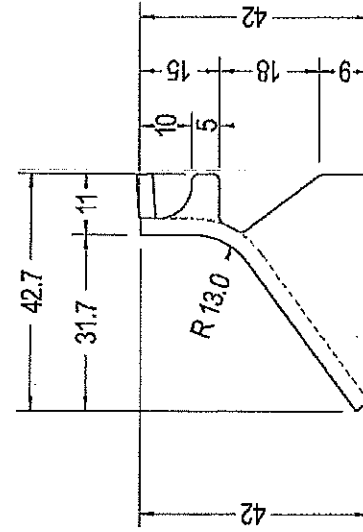
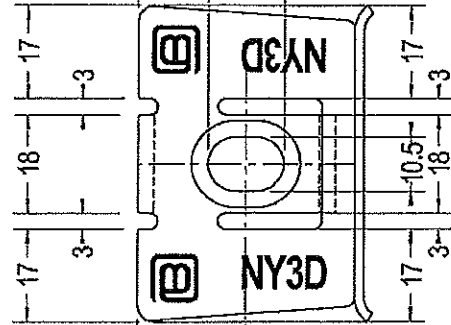
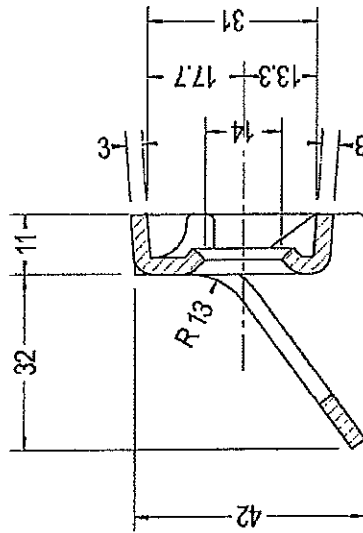
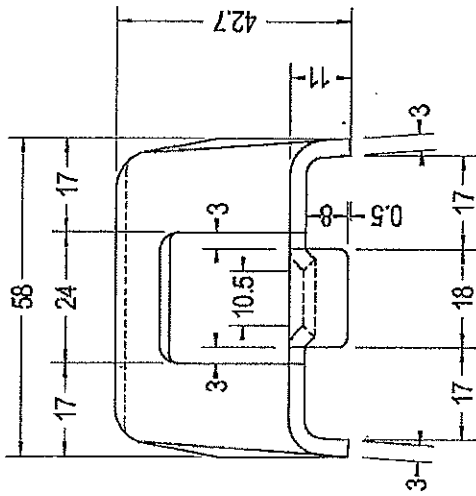
DAVID FORD  
KEVIN ADAMS  
STEPHEN JENKES  
STEVEN NICHOLL

} nobody prepared to put their name to it.

**PRODUCT REF : AFB 06 - TWILFIX 2000 FIXING BRACKET FOR TOP & BOTTOM BEAM PROFILES ON NYLOFOR 3D & MEDIUM FENCE PANELS**

- MATERIAL :** 3mm MILD STEEL FLAT
- SIZE :** 58mm x 38mm x 41mm HIGH
- WEIGHT :** 94 grms
- FINISH :** BLACK ELECTROPAINT UNDERCOAT & BLACK POLYESTER TOP COAT
- TOLERANCES :** +/- 0.5mm

**NOTE : ALL BRACKETS TO BE BRANDED WITH A BEKAERT "B" LOGO, AND THE PRODUCT IDENTITY : NY 3D AS SHOWN ON THE PLAN VIEW**



**REVISION : D -** Width of Countersunk Slot Increased from 10.0 to 10.5mm - 25.05.04

Tinsley Wire - Wigan  
Woodhouse Lane  
Wigan  
Phone x

WV6 7NS  
0870 120 3252  
0870 120 3242

**PRODUCT DESCRIPTION :** Product Development  
Mild Steel Fixing Bracket to suit Nylofor 3D  
Nylofor Medium Top & Bottom Beam Profiles

Drawn	Date	Drawing No :
MJH	16.04.03	AFB 06
REV		D



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Claimant  
PJ Wheeler  
Third  
"PJW 3"  
Date: 19 November 2013

IN THE INTELLECTUAL PROPERTY  
ENTERPRISE COURT

Claim No. CC13P00980

BETWEEN:

F H BRUNDLE

Claimant

and

RICHARD PERRY

Defendant



THIRD WITNESS STATEMENT OF  
PATRICK JOHN WHEELER

I, PATRICK JOHN WHEELER, Partner of Coilyer Bristow LLP of 4 Bedford Row,  
London WC1R 4TF, acting as solicitors for the above named Claimant, will say as  
follows:

Documents

1. This witness statement is made in opposition to the Defendant's application seeking a transfer of this action to the High Court pursuant to an application notice dated 13 September 2013.
2. I am duly authorised by the Claimant to make this witness statement on its behalf. This is my third witness statement in this matter. The matters set out below which are within my knowledge are true and, where they are not within my knowledge, I believe



33.5.1

them to be true.

- 3. The Defendant has sent a letter to the Court dated 14 November 2013, a copy of which forms pages 2 – 12 of exhibit PJW 3, which purports to be a response to this firm’s letter of 12 November 2013 (page 1), but which is in fact a response to my second witness statement dated 12 November 2013. This letter refers to a letter from the IPO dated 11 November which was not attached, so it is exhibited as pages 15 – 20. PJW 3: pp 1 – 12;  
15 - 20
  
- 4. In his letter of 14 November, the Defendant makes a large number of inaccurate assertions about what my witness statement says. It is not proportionate to traverse each and every one of these in a further statement, but suffice to say that none of the assertions that relate to my client and my evidence are accepted. I will briefly deal with two issues only.
  
- 5. First, to assist the court, the words that Mr Perry denies using appear on the second page of his witness statement in support of this application. The word “hunch” appears at the end of the second paragraph, and the word “guesstimates” appears in the first line of the penultimate paragraph. R Perry witness  
statement, p 2
  
- 6. Second, in case it be thought that there is an inconsistency in paragraphs 11 and 12 of my second statement, I wish to clarify that in the Claimant’s brochure, the Nylofix 3D brackets are shown separately from the Nylofor 3D fence panels (see pages 13 and 14). They would also be shown as separate items on customer invoices.
  
- 7. Mr Brundle has informed me that in practice brackets PJW 3: pp 13,14





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Claimant  
PJ Wheeler  
Third  
"PJW3"  
Date: 19 November 2013

IN THE INTELLECTUAL PROPERTY  
BUSINESS COURT

Claim No. CC13P00980

BETWEEN:

F H BRUNDLE

Claimant

and

RICHARD PERRY

Defendant

---

EXHIBIT "PJW3"

---

This is the exhibit marked "PJW3" referred to in the third witness statement of  
**PATRICK JOHN WHEELER** dated the 19<sup>th</sup> day of November 2013.

3.3.6.1

Correspondence between Collyer Bristow and the  
Defendant can be found at Tab 5.2

## Nylofor® 3D

The ideal solution for most types of boundary and low/medium security applications.

Nylofor 3D is a very attractive and cost effective solution. The panels feature 'V' shaped beams at the top, centre and bottom edges, which not only enhance the appearance but also provide an integral support spanning between the posts.

Specification	
Mesh Pattern	200 x 50mm resistance welded at each intersection
Horizontal Wires	5mm dia at 200mm centres
Vertical Wires	5mm dia at 50mm centres
Finish	Polyester coated with a galvanised substrate
Presentation	All panels have a 30mm barbed top edge Post centres at approximately 2.525m

**Post Systems** Twifix 2000 - See page 13

Fence Height m	Panel Size Height/Width mm	Number of Beams	Weight/ Panel Kgs	Product Code
1.7	1730 x 2500	3	19.0	56NY3D18
2.0	2030 x 2500	4	20.3	56NY3D20
2.4	2430 x 2500	4	27.0	56NY3D24

When ordering please add to code: B for Black or G for Green.

No fixings or bolts supplied. For bolts and fixings please see page 13.

ASK FOR A  
QUOTE TODAY!

## Securifor® 2D

Featuring a toe and finger-proof mesh aperture, this system combines an anti-climb and anti-cut fence with excellent through visibility and resistance to vandalism.

This new panel incorporates a unique combination of increased vertical wire diameter and the incorporation of a double horizontal wire. The result is a very rigid panel, higher level of strength and security and extremely flat panel. This is a ground breaking product offering new levels of discreet high security protection for schools and industrial or commercial premises.

Specification	
Mesh Pattern	76.2mm x 127mm welded at each intersection
Horizontal Wires	4mm dia at 127mm centres on the attack face and intermittent 4mm dia double wires at 152.4mm centres on the inside face
Vertical Wires	6mm dia at 76.2mm centres
Weld strength	75% of the minimum tensile strength of the wire
Finish	Polyester coated with a galvanised substrate
Presentation	Panels are butt joined together at each post for security with a unique single drilled fixing bracket Posts are fitted with a single row of M8 threaded inserts Post centres at approximately 2.550m

**Post Systems** Twifix 2000 - See page 14

Fence Height m	Panel Size Height/Width mm	Weight/ Panel Kgs	Product Code
1.2	1220 x 2520	35.0	56SEC2D12
2.0	1985 x 2520	58.0	56SEC2D20
2.4	2442 x 2520	71.0	56SEC2D24
3.0	3048 x 2520	88.0	56SEC2D30

When ordering please add to code: B for Black or G for Green.

No fixings or bolts supplied. For bolts and fixings please see page 13.

## Nylofor® 2D Super

A more robust version of Nylofor 2D, these panels feature twin 8mm wires, one positioned on either side of the verticals for maximum rigidity and resistance to cutting.

This product is also suitable for security applications, offering a higher degree of resistance to impact and vandalism of the fence.

Specification	
Mesh Pattern	200 x 50mm resistance welded at each intersection
Horizontal Wires	2 x 8mm dia at 200mm centres
Vertical Wires	6mm dia at 50mm centres
Finish	Polyester coated with a galvanised substrate
Presentation	All panels have a 30mm barbed top edge which may be positioned at the bottom of the fence if desired Post centres at approximately 2.525m

**Post Systems** Twifix 2000 - See page 13

Fence Height m	Panel Size Height/Width mm	Weight/ Panel Kgs	Product Code
1.0	1030 x 2500	22.5	56NY2DS10
1.2	1230 x 2500	26.6	56NY2DS12
1.8	1830 x 2500	38.8	56NY2DS18
2.0	2030 x 2500	42.8	56NY2DS20
2.4	2430 x 2500	53.2	56NY2DS24

When ordering please add to code: B for Black or G for Green.

No fixings or bolts supplied. For bolts and fixings please see page 13.

## Securifor® 3D

Featuring a toe and finger-proof mesh aperture, this system combines an anti-climb and anti-cut fence with excellent through visibility and resistance to vandalism.

These panels incorporate a pressed 'V' beam section which not only enhances appearance but provides additional strength and support. The ultimate in discreet high security perimeter protection for schools and industrial or commercial premises.

Specification	
Mesh Pattern	76.2mm x 127mm welded at each intersection
Horizontal Wires	4mm dia at 127mm centres
Vertical Wires	4mm dia at 76.2mm centres
Weld strength	75% of the minimum tensile strength of the wire
Finish	Polyester coated with a galvanised substrate
Presentation	Panels are butt joined together at each post for security with a unique single drilled fixing bracket Posts are fitted with a single row of M8 threaded inserts Post centres at approximately 2.550m

**Post Systems** Twifix 2000 - See page 14

Fence Height m	Panel Size Height/Width mm	Weight/ Panel Kgs	Number of Beams	Product Code
2.0	2000 x 2515	46.6	2	56SEC3D20
2.4	2400 x 2515	56.2	3	56SEC3D24
3.0	3000 x 2515	70.0	3	56SEC3D30

When ordering please add to code: B for Black or G for Green.

No fixings or bolts supplied. For bolts and fixings please see page 13.

3.3.6.3

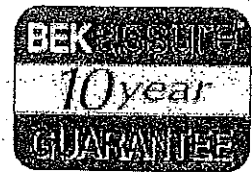
## Twilfix® 2000 Post System

Posts are manufactured from 60 x 60 x 2mm square hollow section and fitted with M8 threaded inserts for securing the panels. Polyester coated with a galvanised substrate. Available with Flat or Pyramid Top Caps.

Twilfix 2000 Posts are suitable for use with the following fence panels:

- Nylofor® 2D and 2D Super
- Nylofor® 3D
- Nylofor® 3-M
- Paladin Classic®
- Paladin FX®
- Roll Top®

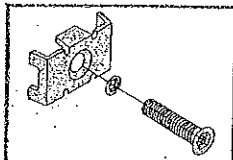
Fence Type	Fence Height m	Overall Length mm	Intermediate/End Posts			Corner Posts		
			Weight Kgs	Number of fixings	Product Code	Weight Kgs	Number of fixings	Product Code
Basic System	0.9	1500	5.4	3	56BOX09I	5.7	6	56BOX09C
	1.0	1500	5.4	3	56BOX10I	5.7	6	56BOX10C
	1.2	1800	6.4	4	56BOX12I	6.8	8	56BOX12C
	1.5	2100	7.5	4	56BOX15I	7.8	8	56BOX15C
	1.7	2400	8.5	5	56BOX17I	8.5	10	56BOX17C
	1.8	2500	8.9	5	56BOX18I	9.3	10	56BOX18C
	2.0	2700	9.6	6	56BOX20I	10.0	12	56BOX20C
	2.4	3100	11.0	7	56BOX24I	11.4	14	56BOX24C



Post price excludes fixing brackets and bolts. Top caps are inclusive.

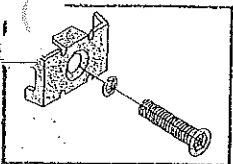
When ordering please add to code: B for Black or G for Green.

## Fixing Brackets



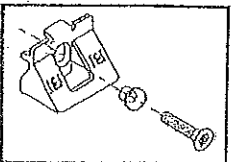
Bracket Type	Product Code
Universal	56AFB01

The universal fixing brackets are common to all panel types and are supplied black coated and sold in bags of 25, complete with black coated M8 tamper-proof, countersunk bolts and washers.



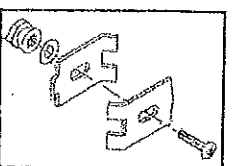
Bracket Type	Product Code
2D Super	56AFB04

Specially designed for Nylofor® 2D Super - sold in bags of 25, complete with black coated M8 tamper-proof, countersunk bolts and washers.



Bracket Type	Product Code
3D Profile	56AFB06

Specially designed for Nylofor® 3D - sold in bags of 10, complete with black coated M8 tamper-proof, countersunk bolts and washers.



Bracket Type	Product Code
2D Super	56AFB07

Specially designed obtuse or acute corner fixing for 2D Super - sold in bags of 10, complete with tamper-proof, countersunk bolts and washers.



Bracket Type	Product Code
Multi-Lift Fit	080162

Designed for multi-lift erection of the Roll Top® System.

3-3-6-4

75

Claimant  
PJ Wheeler  
Third  
"PJW3"  
Date: 19 November 2013

IN THE INTELLECTUAL PROPERTY  
BUSINESS COURT

Claim No. CC13P00980

BETWEEN:

F H BRUNDLE

Claimant

and

RICHARD PERRY

Defendant

---

EXHIBIT "PJW3"

---

This is the exhibit marked "PJW3" referred to in the third witness statement of  
**PATRICK JOHN WHEELER** dated the 19<sup>th</sup> day of November 2013.

Mr Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire BA14 8DP  
**By Special Delivery**

Collyer Bristow LLP solicitors  
4 Bedford Row, London WC1R 4TF

T (Direct) +44 (0)20 7470 4432  
F (Direct) +44 (0)20 7470 4433  
E [patrick.wheeler@collyerbristow.com](mailto:patrick.wheeler@collyerbristow.com)  
DX 163 London Chancery Lane

Our ref: PWH/cxr/23640.12  
Your ref:

12 November 2013

Dear Mr Perry

**FH Brundle v Richard Perry**  
**Claim No. CC13P00980**

We enclose, by way of service, the witness statement of Patrick Wheeler along with the attached Exhibit PJW2.

Please acknowledge safe receipt.

Yours faithfully

Collyer Bristow LLP

Enc.

77

Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire. BA14 8DP

Patents County Court

Rolls Buildings

Fetter Lane, London. EC1A 1NL

FAO: Sir Richard Arnold (Justice) Royal Mail Special Delivery 14<sup>th</sup> – NOV -2013

Claim: CC13P00980 Brundle vs Perry

Dear Sir Richard Arnold,

This document may arrive only a couple of days before the hearing as we have had a death in our family, hence I have not paid much attention to the case over the last week or so.

In response to Collyer Bristow's letter of 12<sup>th</sup> November, I have made some points to be considered:

1). F H Brundle's Solicitor claim they have a 'statement' from Michael Brundle stating the profits have been 'vastly over-estimated' and now he claims he has no idea of the individual fence bracket prices as he buys them in a set, which is an outright lie as his very own website specifies the individual unit prices and as shown in the document for the patent opinion request.

I have a statement from Bill Clinton, ex-president of the United States, who swore to death on world television 'I did not have sexual relations with that woman'. Six months later when presented with hard evidence he then stated on that very same world television 'you got me. I had a sexual relationship with Monica'. No cigar.

Who is Michael Brundle? An executive who doesn't have the ability to build a business of his own from nothing, like I've had to do, and who instead goes around stealing MY work and de-frauding me, so a statement from 'Michael Brundle' claiming profits are 'over-estimated' and that he doesn't even know his cost prices doesn't have an ounce of credibility – it is just another lie. What Board member of any Company doesn't know his cost prices?? His own staff sent me quotations for the product as a separate unit from a kit – documents found in the patent opinion request as absolute proof that his statements are a lie. It is clear that Brundle takes criminal behavior in his stride – I wonder who else he has defrauded to build his little business?

If it is the case that profits are over-estimated, then why hasn't he shown the Accounts of Profits? Yet again more deceit to allow him and his Betafence cronies to get away with their fraud.

Between themselves, Betafence and Britannia Fasteners, they have sold in excess of 5 million pieces of the product in the UK alone - in line with what the Indian manufacturer said in his emails in the patent opinion request document, and the point is that the actual profit on sales is not the only value in question: there is the complete dilution of the value of my patent and the overall adverse affect on my entire portfolio of products and my business and the increased goodwill value to Brundle/Betafence which has been made unlawfully from criminal activity and unjust enrichment, which the new IP Bill will be addressing – criminal sanctions and punishment. I am also technically a manufacturer as I have my own products made abroad which I distribute throughout the UK via my own business and I have lost all the opportunity of having those revenues and profits to reinvest and build my business whilst fraudsters here carry on with their Christmas parties year after year all giving themselves a pat on the back and handing out bonuses for 'how well they're doing' from the profits of products that they haven't designed or paid for.

I also re-iterate, that's just 5 million plus pieces in the UK alone which doesn't even address worldwide sales or the increased sales of the fencing that has only been installed with the use of the infringing product and then the sales between 2011 onwards and the ongoing service sales (they still haven't withdrawn the product from market, which would have been the proper thing to have done). I believe that as we are a part of the EU I can enforce my IP in any member state for other EU Countries especially as Brundle are UK based.

2). Brundle claim they've only sold a few thousand pieces - which may be true of last year if they've already sold the millions of units since 2004 and now there are other ways of installing the same fencing, therefore forcing the product into the end of it's life after they've had all the profit out of it, other than servicing or 'replacement sales' hence, sales would now be decline. Collyer Bristow clearly don't know anything about manufacturing or product lifecycles which is why the Executives should be summonsed to explain themselves and the answers to fundamental questions. I know the answer because I do business with manufacturers and wholesalers all over the world and I know everything there is to know about products. I supply almost 900 retailers with my own products that I invented without any help, funding or finance and without defrauding people like Brundle has.

Betafence don't give a toss – they haven't even bothered to reply to the application notices (although when they read this on Friday passed to them by Brundle, no doubt they will rush some rubbish in next week at the last minute and make some lame excuse).

3). Brundle now claim they are not working with Betafence and yet they still sell the product – so clearly they are stating that they are now manufacturing it themselves or having it imported by someone else – my patent protected product.

4). **My patent has now been restored to the register** and I claim additional damages from 2011 – 2013 as they have admitted they are still selling the product. See attached letter from the Patent Office.

5). After Brundle's Solicitors became all over-excited experiencing their temporary euphoria at the time when the Patent Office published their initial Opinion and in thinking they had automatically won something, I decided to appeal the decision on principle as I am absolutely sick to death of screw up after screw up at the Patent Office, even over something as simple as a fence bracket. They've even sent me a letter a fortnight ago stating that 'Watermist Ltd' have been given time to reply to my appeal – who the hell is Watermist? I've never heard of



them, they're certainly nothing to do with this dispute – yet another mistake. Mistake after mistake after mistake. The only person in the Patent Office with a brain is Eleanor Wade - a graduate working her way up the ladder and, even she told me she thinks my Patent has been infringed. A five year old can identify the components of the bracket that correspond precisely with the claims of the Patent. The Patent Opinion has been appealed – please find a copy attached.

6). Copies of letters from Collyer Bristow and my replies and vice versa attached.

In the letters from Collyer Bristow, the Solicitor continually tries to work the Court onto his side by stating 'what the Court has told me'. It is an outright lie that I claimed a 'hunch' on sales figures – this is not a word I ever use and would not have used it and so therefore he thinks he can use his credibility as a Solicitor to lie to the Court unless of course that Sir Richard Arnold suggested this particular word and I went along with it. Neither did I use the word 'Guesstimates' – this is yet another outright lie. Dishonest people acting for dishonest people. The Solicitor forgets to state along with his other wild and imaginative statements what the Court will be telling him when I prove their fraudulent and immoral behavior and, they still refuse to answer the question about why their clients are using my name 'Richard Perry' on import purchase orders for the product when they do not have and never have had any employees with the same name as myself. When I repeatedly ask why they did this they state that they don't want to communicate with me anymore!

7). I have made numerous settlement offers which have been ignored.

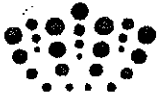
8). The limitations do not apply as I only found out about the fraud and infringement in 2012 and I have six years to go back to claim damages, especially as there is a criminal element to this situation – otherwise the entire system is worthless – these people copy and steal your products and profits, keep it hushed up for eight years and keep their fingers crossed they can get away with it the law wasn't designed to protect these sorts of people - it was designed to protect *me* from *them*.

9). I agree that Sir Richard said that it was irrelevant what the product was *being used for* and 'that this would go on whether or not the product infringed the claims of the Patent' – that is precisely how it should go otherwise the entire patent system is worthless and even an uneducated idiot can identify a fence bracket having a rectangular central portion with a top flange and two sides. This is a ridiculous case and all of the Companies should be punished.

Sincerely,



Richard Perry



Richard Perry  
19 Yerbury Street  
TROWBRIDGE  
Wiltshire  
BA14 8DP

**Intellectual Property Office**  
Patents Directorate  
Concept House  
Cardiff Road, Newport  
South Wales, NP10 8QQ

**Direct Line:** 01633 814341  
**E-Mail:** PDhearings@ipo.gov.uk  
**Switchboard:** 0300 300 2000  
**Fax:** 01633 814491  
**Minicom:** 0300 0200 015

**Your reference:**

**Our reference:** ~~XXXXXXXXXXXX~~

11 November 2013

Dear Sirs



**Patent Number : GB2390104 (Richard Perry)**  
**Reference under Section 28 of the Patents Act 1977**

1. Please find enclosed a copy of a decision dated 11 November 2013.
2. As the decision has been in your favour, the application has been remitted to the examiner or other relevant case officer who will be in contact with you as required.

Yours faithfully

*K D Cooke*

Darran Cooke (Hearings Clerk)  
Litigation Section  
Patents Directorate

**PATENT  
RESTORED**

- BAD NEWS  
FOR ONE  
OR TWO  
PEOPLE!



**Patents Form 2**

Patents Act 1977 (Rule 76(3), 89(1), 98(3))

**Initiation of proceedings before the Comptroller**

Concept House  
Cardiff Road  
Newport  
South Wales  
NP10 8QQ

(See the notes on the back of this form. You can also get a leaflet from the Office explaining the use of this form)

1	Your reference	Fencebrackets
2	Patent application or patent number(s) to which the proceedings relate <i>If none, write "NONE"</i>	GB2390104
3	Full name of the or of each patent applicant or proprietor <i>(if known)</i>	RICHARD PERRY
4	Name, address and postcode of all those initiating proceedings	RICHARD PERRY 19 YERBURY STREET TROWBRIDGE WILTSHIRE BA14 8DP
	Patents ADP number <i>(if you know it)</i>	
5	Relevant legal provision(s) <i>(see notes (d) &amp; (e))</i>	
6	Name of your agent <i>(if you have one)</i>	
	"Address for service" in the European Economic Area or Channel Islands to which all correspondence should be sent <i>(see note (f)) (including the postcode)</i>	
	Patents ADP number <i>(if you know it)</i>	
7	Signature(s) <i>Richard Perry</i>	Date 16 <sup>TH</sup> OCTOBER 2013
8	Name, e-mail address, telephone, fax and /or mobile number, if any, of a contact point	RICHARD PERRY, reptilogdomains@hotmail.com

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Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

The Patent Office  
Patent Directorate  
Concept House  
Cardiff Road  
Newport NP10 8QQ

16<sup>th</sup> October 2013 Royal Mail Special Delivery

RE: Opinon Request for GB2390104      Room 3Y31/MS/06/13/GB2390104

Complaint and request for review

FAO: Comptroller

Dear Sir,

Following my letter of 19<sup>th</sup> July and after receipt of the outcome of the request for an opinion, I would like to request a proper review – please find attached the forms and fee of £50.00.

I don't believe the examiner has properly *and competently* considered all the evidence and her decision would undermine every patent ever granted and I feel that she has come to the wrong conclusion. Her decision and formal opinion has left the matter in a grey area, worthless to either party involved in the dispute, is not fully decisive and is highly questionable for the following reasons:

1). She has fully agreed that the product has all the features as claimed in my claims when she considers the product in use on the wooden fence in the photos Exhibit PH1.

She agrees there is a top flange and that the screw hole is not put through the body as FH Brundle and Betafence claim but through the flange, and she has very cleverly been able to identify:

- There is a main body having a rectangular central portion

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- A top flange with a hole for fixing the bracket to the fence post (flange means adapted in use to lie against and be attached to the post)
- Two triangular sides (triangular portions adapted in use to lie one each side of the panel)

As I drafted the patent myself and was having trouble with the wording of the claims due to having no knowledge on drafting patents, the Patent Office examiner added the wording 'with one apex adjacent the post and the other spaced therefrom' and during communications we both agreed it mean that one side of the triangle is on the post side and the pointed portion of the triangular shape protrudes outwardly from the post across the panel for better support to the panel, which is precisely what the Betafence copy does, as proven in the photos Exhibit PH2 Image 3. It shows a bracket having all the features as claimed in the patent and, the photo even shows the bracket overlying the top corner of the wire panel fixed at the panel's uppermost outwardly protruding point. The fact that it is a wire panel makes no difference - the two triangular sides fall one each side of the wire panel as shown in the photo PH 2 Image 4. It is quite clearly obvious that the product has all the features of the patent, regardless that Betafence have had to tweak the top flange with two recesses to make it fit between the wire.

The examiner has then looked at all the uses of the bracket when she should have dismissed this part of my statement and focused solely on whether the actual product infringes the wording of the patent as I was told by Lord Justice Arnold when I put to him this simple argument:

If I patented a coffee cup and then put tea in it - does it mean that the patent is not infringed despite the tea being put into the same cup having all the features of the patented coffee cup?

The answer is that of course the patent is infringed - a five year old could determine this case- this is simple logical argument and by declaring otherwise would invalidate every patent ever written. In this Betafence case what they have done is taken the coffee cup and used it to shovel sugar - the bracket still has all the features of the patent claim 1, is used within fencing to secure the corner of a fence panel to a fence post and they have deliberately designed the triangular shape of the fence to fit into my bracket and then just angled the flange at a slightly different angle to the main body - but it doesn't make any difference - it is still the same product used in fencing to secure a fence panel to a fence post having all the features of the patent. If they haven't taken my product and copied it with very slight tweaks then why have they wilfully and deliberately used my name 'Richard Perry' on import/foreign purchase orders to authorise and procure manufacture and importation of the goods when they have no one employed with the same name as me and never have done and, more questionably, why has the examiner deliberately ignored this fact? I would have thought that this was fairly fundamental as even the Betafence, Brundle and Britannia Fasteners trio of thieves (everything comes in threes doesn't it?) must believe that they have infringed the patent otherwise what

possible reason would they have to use the name of the owner of the patent on their purchase orders? There is no reason apart from defrauding me of profits they know I am rightfully entitled to.

The examiner has then ignored the fact that the Betafence product wouldn't work without the top flange and it seems to me that this examiner is either completely incompetent or is following a set procedure of training that she doesn't understand or knows how to implement, in particular using the Kimrin Angen argument that is irrelevant in this case. If this argument about obviousness is used then it would be obvious to anyone skilled in the art, in fact any idiot at all, that the bracket would easily fit over the fence panel and attach to the post without any modifications as proven in the photos PH1. It seems that the training must state - 'use Kimrin Angen on every opinion request regardless of the outcome' so that any clown can write a formal opinion (probably to cut budgets) which I believe has greatly affected the credibility of the Patent Office.

The Patent Office write to me to ask if they are able to use my work to train their staff and then don't seem to be able to puzzle out a simple infringement case, of a product without any working or mechanical parts, a product which is made out of one single piece of metal and even copies the size and shape almost to a T - as proven in the photos where I have compared the sizing of the Betafence product to my own product to highlight how Betafence and cronies have just taken my product and copied it.

In her point 14 she has deconstructed my claims into separate points when in fact the claims are not separated - it is one paragraph and there is not full stop between: 'and comprising a main body having a rectangular central portion adapted in use to lie along the top of the panel' - clearly the product in question does lie along the top and uppermost portions of the wire fence panel. Then (viii) 'and flange means' (ix) 'adapted in use to lie against and be attached to the post' which when put together as is claimed in the patent describes exactly the product that is shown in the photos.

2). She says the word apex does not appear in the main description - this is correct as the patent examiner re-wrote the claims for me before the patent office granted it in the first place (so she cannot claim this must be ignored) and the patent clearly means that the invention is supposed to patent a product being put over the corner of a fence panel attaching it to a fence post with the triangular body design - this is exactly the same as the product in question.

4). She says the product in question is used to 'intercept two fence panels' (which is what FH Brundle tell her) when in fact at least several of the photographs show that the product is fixed to one fence panel and one post, which is precisely how Betafence have used it on a wire fence panel and the usage should probably be ignored- clearly the bracket is fixed to the top corner of the wire fence panel as described in my patent description and so it seems the design of the actual fence panel needs further consideration, but in any case, it then leads back to the same analogies of the coffee cup.

The other Nyloform product is not needed in the construction of the fence – the ‘beam’ bracket is all that is required on the corner to secure the panel to the post.

5). The product that infringes a patent does not have to be exactly the same as shown in the drawings of the specification – this is the whole point of having the patent claims to protect as wide a use and as varied a ‘design’ as possible and the examiner actually agrees that the product in question has all the features of the claims – so how she has come to the final decision that it doesn’t it absolutely absurd.

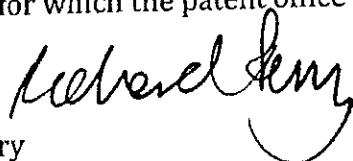
6). I’m wondering if that my rows and disputes with the patent office over the failings of the office that led to the patent to lapse in the first place have had some bearing on the outcome of the request. It lapsed in 2011 through miss-advice of the office over renewal times and fees and it has now taken over 2 years to carry out a simple restoration procedure that any intelligent person could do in a day. Or is that the Patent Office may be liable for the restitution claim through this miss advice and delay and are trying to delay the restoration for as long as possible? It seems to have become mistake after mistake after mistake with many of my other patents and trademarks and I feel this should be pointed out, as these types of wreckless decisions will undoubtedly ruin other people’s patents or just allow worldwide companies to steal people’s work and then hope they can throw expensive lawyers at it to get them out of trouble when they are held to account – it is fraudulent dishonest behaviour where a group of dumb people hide behind layers of Limited Liability Company fronts to cover up criminal activity when in fact stealing intellectual property is no different to an individual robbing a bank.

I wonder if the Patent Office will have the honour and decency to review this examiner’s ridiculous decision and overturn it. The decision isn’t binding on either party but as it stands it paves the way for total abuse of the patent system by Companies like the three involved and leads to situations like this – which is why the Country lags behind almost every other developed nation in the world in terms of innovation, and we are now becoming slaves to the world instead of pioneering a better one.

This is the Patent Office’s message to inventors and innovators: spend hundreds of thousands of pounds and ten years of your life on your invention, get it patented by us and take it to market and then when it is stolen and copied by big companies with endless pockets of money and you don’t get a single penny, we don’t care - as long as big Companies can keep paying tax on unlawfully made profits to pay our wages.

I will put my arguments to the High Court in any case but I would like my patent reinstated as it should be and the office to uphold its validity and value, in the proper decent way for which the patent office was set up and overturn the current decision.

Sincerely,



Richard Perry

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Richard Perry  
19 Yerbury Street  
Trowbridge  
Wiltshire  
BA14 8DP

Collyer Bristow LLP  
4 Bedford Row  
London  
WC1R 4TF

Recorded Delivery 15<sup>th</sup> October 13

Claim: CC13P00980 Your letter of 11<sup>th</sup> October

Sirs,

Find enclosed copies of the applications that you have requested. You did send me a letter a few months ago stating that you had already received these as I copied them to you when I submitted them to the Court, hence I hadn't sent them again.

Your client and the other two Companies are clearly still all working together so perhaps you could answer these questions for me:

**1). The Indian manufacturer states that a stamping authority is needed to produce the products therefore: What action has Betafence taken against Britannia Fasteners to block the import of the products at any time between 2004 - 2011, if any and if not why not? Or isn't it the case that no action has been taken, as Betafence colluded with your client and Britannia Fasteners, hence the purchase orders to the Indian manufacturer in the name of Richard Perry (me) when neither of your businesses have ever employed anyone with the same name as me?**

**2). Why has Betafence discontinued the product? Is it because they've had all profit out of it and now found new and better ways of installing the fencing and wiped out the value of the patent in any large commercial scale OR because i'm bringing a claim against all of you for fraud, IP Theft and compensation/restitution?**

3. Would also confirm that your client is still selling and distributing the product and adduce an Account of Profits on sales that have been made on this product and the sales of the fencing it installs as I have already requested.

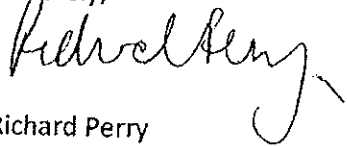
I have heard that there is a strengthened IP bill going through before the end of the year – this would seem the perfect test case for it, as its aim is to impose criminal sanctions on people like your client that go around defrauding others and stealing intellectual property and then hiding behind

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company fronts and endless pockets of money to get them out of it. I will be pushing for your clients to serve a prison sentence when I win this case.

Sincerely,



Richard Perry

CC. Patents County Court



**Evidence**

- 7 The evidence submitted in support of the request for restoration consists of :
  - A letter from Mr. Perry received on 13 June 2012 filed with the Form 16, but no fee was paid at that time on the Form 16.
  - Letters from Mr. Perry dated 10 October 2012, 20 November 2012 and 18 December 2012.
  - A letter from Mr. Perry received on 12 June 2013, enclosing a copy of a bank statement. This evidence was received as a result of additional time I allowed at the hearing.
  - A letter from Mr. Perry dated 26 September 2013, enclosing a copy of another bank statement. This evidence was received as a result of additional time I allowed after the hearing.

**The Law**

8 Section 28(3) of the Patents Act 1977 states:

*If the Comptroller is satisfied that the failure of the proprietor of the patent-*

*(a) to pay the renewal fee within the prescribed period; or*

*(b) to pay that fee and any prescribed additional fee within the period of six months immediately following the end of that period,*

*was unintentional, the Comptroller shall by order restore the patent on payment of any unpaid renewal fee and any prescribed additional fee.*

**The arguments**

9 Examination of the evidence filed prior to the hearing led the Office to maintain its position that a successful case for restoration of this lapsed patent had not been made. This was based firstly on the fact that in his first letter accompanying the (unpaid) Form 16 filed on 13 June 2012, Mr. Perry had unequivocally stated that he "could not afford to renew it at the time..." the renewal was due by 31 August 2011 or in the following six months with appropriate additional late fines. The Office notified Mr. Perry that it was minded to refuse the application based on that evidence, but invited him to file any further evidence he felt appropriate in supporting his case.

10 The subsequent correspondence listed above between the Office and the applicant up until the hearing in June 2013 concentrated on a number of issues:

- Mr. Perry's confusion over whether he had paid the renewal fee at the same time as he had paid another fee on another of his patents at about the same time.
- Mr. Perry's assertions that he was advised by the Office in a telephone

conversation "around October 2011" that the cheapest way to renew his patent was to wait until after the six months late payment arrangements had lapsed, wait for the patent to cease and then apply for restoration instead.

- Getting to the bottom of the conversation Mr. Perry alleges he had in around October 2011 with a male IPO official in which he received the advice referred to in the above bullet point. A recorded telephone conversation between Mr. Perry and an official in the IPO Information Centre (Mr. John Hurley) was traced to have taken place on the on 8 November 2011 and a copy of it was supplied to Mr. Perry, together with a written transcript of the conversation. That recording and transcript shows that Mr. Hurley supplied Mr. Perry with correct advice about what fees and fines were due on the patent in suit and no advice about delaying payment in favour of restoration was given.
- Mr. Perry's insistence that the conversation with Mr. Hurley was not the one he was referring to and that he had had another conversation with another male official at the Office. No record of another conversation has come to light in the evidence and Mr. Perry could not supply any specific information in order for further official records to be checked.

- 11 Based on the above, the Office maintained its position and upheld its decision to reject the application for restoration. The Office's position was that as Mr. Perry had clearly stated that he had no money to pay for the renewal of the patent in suit, had not provided any evidence to the contrary and as he was aware of his inability to pay, this was a *conscious decision* not to pay. Whatever his underlying intention to keep the patent in force had been - Mr. Perry had stated throughout the proceedings that it had never been his intention to let the patent lapse - that inability to pay the renewal fee was not grounds for restoration within the meaning of s.28(3).
- 12 The above issues were all discussed in more detail at the hearing. At the hearing it was clear that Mr. Perry had become very confused about when and what amount he actually had to pay at various points during the period when the patent could still have been renewed. Indeed the recorded conversation with Mr. Hurley had also amply demonstrated this.
- 13 Despite Mr. Perry's initial assertions of impecuniosity, he had also subsequently asserted in evidence and at the hearing that at various stages throughout the period when the patent could have been renewed, he did in fact have funds in place to do so. Indeed at the hearing this became the main focus of his submissions, albeit couched in confusion as to exactly when and what amount he had to pay and strong submissions about the erroneous advice he was allegedly given.
- 14 It was because of this obvious confusion that at the hearing I allowed Mr. Perry further time in which to file additional evidence about his financial position during the relevant period, because in essence, this was going to be the decisive factor in this case.
- 15 In his evidence received on 12 June 2013, subsequent to the hearing, he submitted evidence in the form of bank statements showing that in between May 2011 and July 2011(i.e. within the 3 months prior to the renewal being due – the due date being 8

August 2011), he had sufficient funds in his account to pay the renewal fee of £150 (no fines were applicable at this point).

- 16 However, he clearly decided not to pay the fee at that time and that evidence offers no explanation as to why, so has no determinative bearing on these proceedings.
- 17 It is clear from the evidence that Mr. Perry spoke to the Office on 8 November 2011 (i.e. with Mr. John Hurley) and in that conversation he was notified that at that time, the fee to pay was the £150 renewal fee, plus two months worth of late payment fines of £24 per month, making a total fee of £198 payable in order to renew the patent.
- 18 In that conversation, Mr. Perry had said to Mr. Hurley that although he did not have the full amount payable as of that date, he would have sufficient money to pay the money "...next week when I get paid".
- 19 It seems to me that this is crucial to Mr. Perry's case and because of this I allowed him a further opportunity to provide evidence to show whether as at 8 November 2011 until the last day in November (that being the final date when these fees and fines still applied), that he had sufficient funds to pay the £198 to renew the patent in suit.
- 20 On 26 September 2013, Mr. Perry submitted a letter enclosing copy of a bank statement showing that as of 28 November 2011, he had a balance of £314.44 in that particular bank account.
- 21 This is proof positive that Mr. Perry did indeed have sufficient funds to pay the £198 he needed to pay at that time to renew his patent. This of course begs the question why didn't he pay it if, as he asserts, it was never his intention to let the patent lapse? This goes to the heart of the determination I need to make in this application for restoration.

**Was the failure to pay the renewal fee on time "unintentional"?**

- 22 The essential determination to be made under Section 28 (3) of the Act is that the Comptroller shall restore the patent if he is 'satisfied that the failure... [to pay the renewal fee] .....was unintentional'.
- 23 It is important that the meaning of this requirement is read and understood in totality.
- 24 Whilst it is tempting to look at the word 'unintentional' and decide whether the evidence demonstrates that the circumstances surrounding the facts of the case were outside the applicant's control and unintentional. However, that is not the test.
- 25 The determination is not to be reached by examining the general surrounding circumstances but rather what the reasons were specifically in relation to the failure to renew the patent on time and whether that failure was unintentional.
- 26 In *Anning's Application* (BL O/374/06) the Hearing Officer interpreted 'unintentional' according to its normal English meaning (not done on purpose) and warned against going against the clear meaning of the statute. Although there was a continual underlying intention to proceed it did not follow that the failure was unintentional.

- 27 On appeal, in *Anning's Application* [2007] EWHC 2770 (Pat) the court was clear that the test is not concerned with looking at the unintentionality of a consequence which follows from the failure to do the required thing, but solely about the failure to do the thing itself.
- 28 It has never been in dispute that Mr. Perry always had an underlying intention not to let his patent lapse, but was his failure to pay the renewal fee on time unintentional?

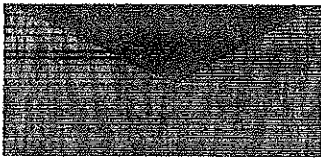
### The analysis

- 29 At the hearing and again in his letter of 26 September 2013 Mr. Perry stated that the reason for not paying the renewal fee and late payment fine by the end of November 2011 when it has been shown he had the money to do so was because soon after speaking to Mr. Hurley on 8 November, he rang the Office again and was further advised that it would be cheaper to allow the patent to lapse and then restore it. Now whilst I have no evidence of this at all, this matter was discussed in some detail at the hearing and Mr. Perry is adamant that this advice was given to him, albeit he suggested the date was around October 2011, not after November 2011. The effect of that alleged official advice was that he thought he could delay the renewal of his patent and await the restoration process.
- 30 What am I to make of this line of argument? At the hearing I gave Mr. Perry my view that this would be wholly inaccurate advice for any IPO official to give and that there is no evidence that it was given. On the other hand Mr. Perry did point out that other errors had been made in the processing of this patent. He pointed out that in a previous restoration action on this same patent, the application for restoration was successful on basis of errors made within the Office. Mr. Perry also pointed me to various small clerical errors made during these proceedings.
- 31 I pointed out to Mr. Perry at the hearing that given he had been through the restoration process before on this patent, I found it somewhat odd that he should be seemingly so unfamiliar with it and the renewals process. Mr. Perry's arguments here were that he was an extremely busy man on various fronts to do with his business, his other patents and indeed other Intellectual Property rights and because of this he is often shifting his monetary and business priorities etc, and admitted to being extremely confused by exactly where he is at any given point with many of his dealings on his patents. He claimed that he was totally unfamiliar with the restoration process because even though he had been through it before, he merely followed the IPO's instructions at the time and really wasn't aware of what process he was in.
- 32 On balance, the best I can make of this line of argument is to accept that Mr. Perry did seek further advice from the Office after his conversation with Mr. Hurley and whatever advice he was given after the correct advice provided by Mr. Hurley, he *understood it* to mean that he could delay the renewal of his patent and await the restoration process as this would be a cheaper option. This seems like wholly unlikely advice in my opinion, but Mr. Perry seemed to me at the hearing to be an open and honest individual, who was clearly struggling to stay on top of his dealings with his patents on various fronts and because of this was hopelessly confused as to what advice he was being given, by whom and how and when to follow that advice.

- 33 It is very clear from the evidence that Mr. Perry has been confused throughout the process about when and how much to pay in order to renew his patent. On the balance of probabilities, taking the best view that I can, I accept that whatever he understood from the official advice given to him, it confused him to such a degree that it led to the fatal non payment of his renewal fees on the patent in suit.
- 34 On that basis it is also clear that the failure to renew the patent in time was unintentional within the meaning of the Act.

**Conclusion**

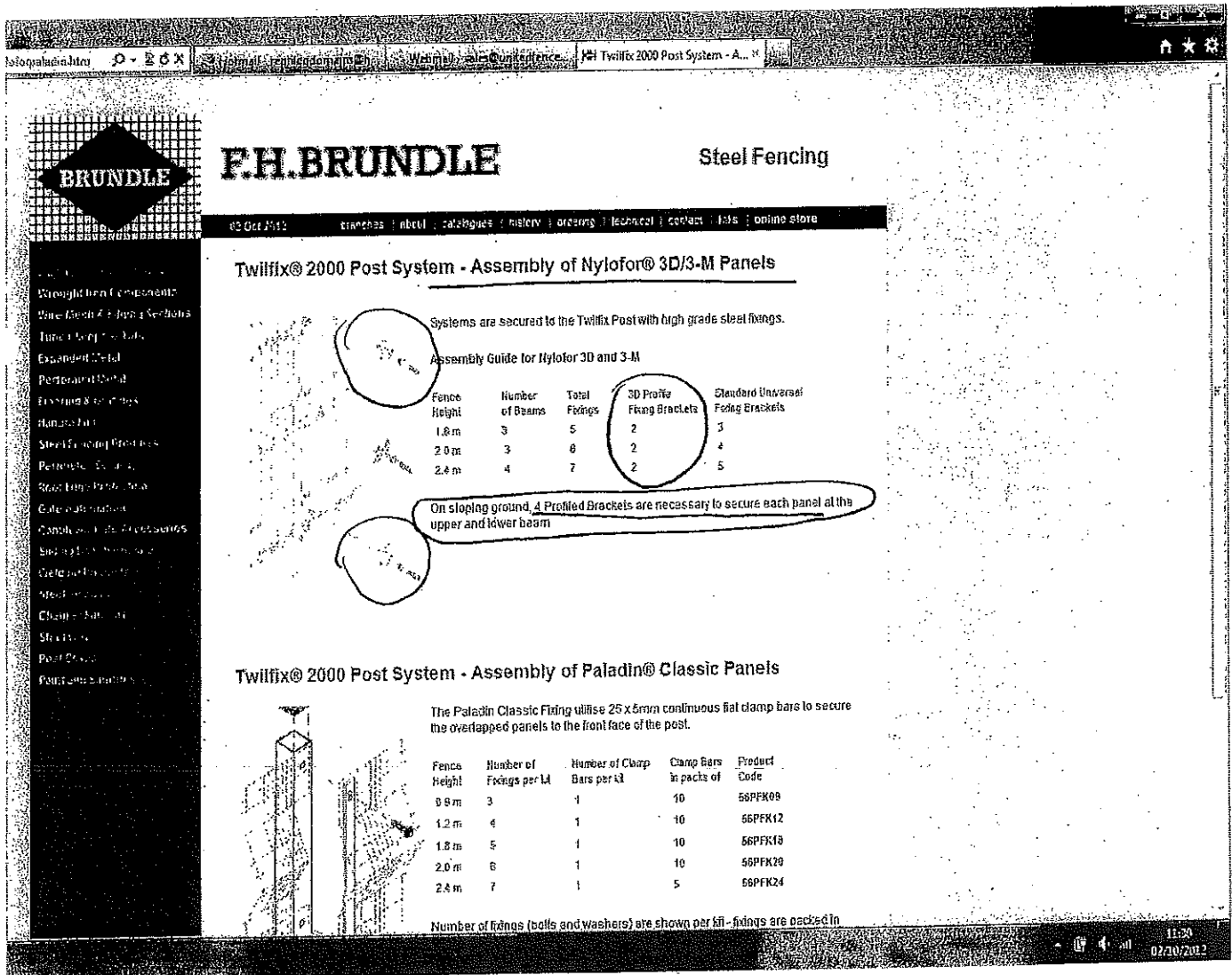
- 35 It is my view that the evidence provided in this case is sufficient to satisfy the Comptroller that the 'unintentional' test has been met. As such I order that the patent be restored.



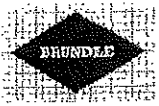
G.J Rose'Meyer  
Hearing Officer  
Acting for the Comptroller

EXHIBIT 12 - Screenshot of Betafence Contracted Wholesalers

'F.H Brundle' Website Showing Nylofor 3D Product In Use And Marketed For Sale.







# F H BRUNDLE

Wholesale Distributors since 1889

QUOTATION 1269673

95

2 of 4

502 Millbrook Road  
Third Avenue  
Millbrook  
Southampton  
SO15 0JX  
TEL : 02380 703333  
FAX : 02380 705555

PAGE : 1  
CUSTOMER CODE: S21112  
QUOTE DATE : 02/10/2012  
YOUR ORDER NO: R.Perry  
QUOTE BY : Lee Ramsden  
DECISION DATE: 16/10/2012  
\*THIS IS NOT AN INVOICE\*

INVOICE TO: BLACKROCK CONSTRUCTION  
19 YERBURY STREET  
TROWBRIDGE  
WILTSHIRE  
BA14 8DP

DELIVER TO: AS INVOICE-TO

Dear Sirs,

We thank you for your enquiry. We are delighted to offer the following prices for your consideration.

Product code	Qty	Description	Price	Disc	Net VAT
NY3M24	21	GREEN NYLOFOR 3M FENCING FENCING PANELS	2430 X 3000mm 64.84		1361.64
56BOX24IG	2	GREEN TWILFIX 2000 FOR 2.4M HIGH FENCE INTERMEDIATE/END POST	3100mm O.A. 32.67		65.34
56BOX24CG	2	GREEN TWILFIX 2000 FOR 2.4M HIGH FENCE CORNER POST	3100mm O.A. 35.41		70.82
56AFB06	5	METAL 3D PROFILE BRACKETS PACK E SOLD IN PACKS OF 10 PIECES	18.60		93.00
080154	5	TRI-LOBE ALLEN KEYS	0.03		0.15

ADD ON  
PRODUCT SALES

Prices quoted will be valid for 14 days from date of quotation

Goods	Vat	Total
1590.95	318.19	1909.14

Place an order please give me a call or speak to our sales staff who are always willing to help and advise.

Kind regards,

Lee Ramsden  
for F.H. Brundle

EXAMPLE USED TO CONSTRUCT A RUN of 200 FT FENCE.

Please ask for a catalogue on our vast range of products or visit [www.fhbrundle.co.uk](http://www.fhbrundle.co.uk)

Directors: RICHARD F. BRUNDLE MBE, MICHAEL F. BRUNDLE

Welded Mesh . Expanded Metal . Perforated Steel . Wrought Iron Components . Industrial Fencing . Prorailing .  
Automated Gate Systems . Tuebclamps and Tube . Stairtreads and Handrail Standards . Steel Sections .

VAT Registration No.GB 232 2423 10



C.90

3 of 4 (96)

From: Lee Ramsden <lee.ramsden@brundle.com>  
To: "sales@blackrockconstruction.co.uk" <sales@blackrockconstruction.co.uk>  
Subject: RE: Quotation from F H Brundle

Sent: Tue 02/10/12 2:34 PM  
Priority: Normal

Hi Richard,

We are able to get in a blue the code is RAL 5010 and you will be looking at about 2months lead time but am unable to get an exact cost at this stage. Also we have sold this system for more than 5 Years so replacement parts are not an issue.

Regards

Lee

From: BlackRock Construction [mailto:sales@blackrockconstruction.co.uk]  
Sent: 02 October 2012 14:27  
To: Lee Ramsden  
Subject: RE: Quotation from F H Brundle

Hi Lee,

i just have two more questions:

- 1). could the supenmarket have it in their own house colours ie: dark blue and if so what is the increase in costs and delivery time
- 2). do you know how long your Company has sold the Nylofor 3m and 3D system for? is it more than 5 years? - i need to give the client some idea of replacement bits etc as we have to guarantee the parts and the work for a year.

Richard

On Tue 02/10/12 2:14 PM , Lee Ramsden [lee.ramsden@brundle.com](mailto:lee.ramsden@brundle.com) sent:

Hi Richard,

Not a problem glad to have been of help.

Regards

Lee

From: BlackRock Construction [mailto:sales@blackrockconstruction.co.uk]  
Sent: 02 October 2012 14:13  
To: Lee Ramsden  
Subject: Re: Quotation from F H Brundle

Hi Lee,

thanks for your trouble.

i will put it to the client and see what they say...

Richard

On Tue 02/10/12 2:10 PM , Lee Ramsden [lee.ramsden@brundle.com](mailto:lee.ramsden@brundle.com) sent:

Hi Richard

Attached is Conf of quote as requested based on about 61m which is equivalent to 200ft.

Delivery is about 4-5 weeks on this product if not in stock.

No 1269673

Regards

Lee

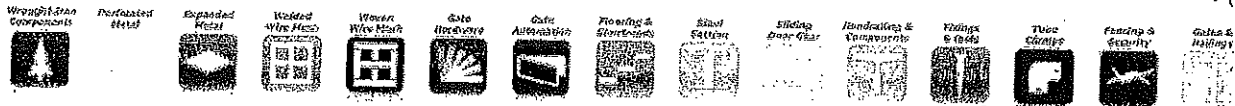
Lee Ramsden

Tel: 02380 707 324  
Fax: 023 8070 5555  
Email: [lee.ramsden@brundle.com](mailto:lee.ramsden@brundle.com)  
Web: [www.fhbrundle.co.uk](http://www.fhbrundle.co.uk)  
F H Brundle  
ISO 9001:2008 Registered

C.91

17

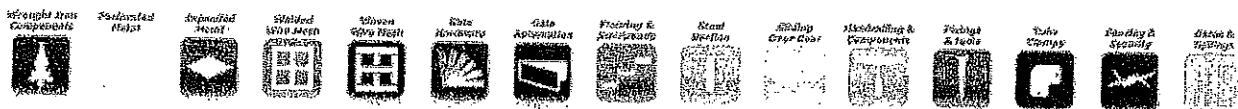
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Lee Ramsden

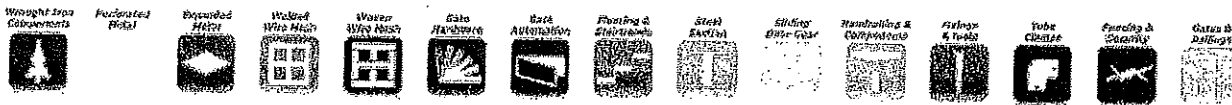
Tel: 02380 707 324  
 Fax: 023 8070 5555  
 Email: [lee.ramsden@brundle.com](mailto:lee.ramsden@brundle.com)  
 Web: [www.fhbrundle.co.uk](http://www.fhbrundle.co.uk)  
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Lee Ramsden

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From: Lee Ramsden <[lee.ramsden@brundle.com](mailto:lee.ramsden@brundle.com)> - RE: Quotation from F H Brundle

C.92