

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU,  
A. LOIZOU, MALACHTOS, JJ.]

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NICOS CHRISTODOULIDES,

NICOS  
CHRISTO-  
DOULIDES

*Appellant,*

v.

*and*

REPUBLIC  
(REGISTRAR  
OF PATENTS)

THE REPUBLIC OF CYPRUS, THROUGH  
THE REGISTRAR OF PATENTS,

*Respondent.*

(Revisional Jurisdiction Appeal No. 81).

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*Patents—Section 9(1) of the Patents Law, Cap. 266—Has not introduced into our law the whole United Kingdom law of patents (including statutory provisions relating to compulsory licences), but only that part of it which relates to the power to grant appropriate judicial remedies, as it is expressly stated in the aforesaid section 9(1) of the Law.*

*Patents—Compulsory licences—Not introduced into our law—See supra.*

*Compulsory licences—See supra.*

This is an appeal against the determination, in the first instance, by a judge of this Court (vide (1971) 3 C.L.R. 164), of a recourse made by the appellant against the refusal of the respondent Registrar to issue to him a compulsory licence in relation to Cyprus patent No. 237; this patent was granted in the United Kingdom to the interested party in this case and was subsequently registered in Cyprus; it is a patent relating to a medicine.

The respondent's refusal was based on the view that there is no provision in our relevant legislation—the Patents Law, Cap. 266—for the granting of compulsory licences in Cyprus.

The Court, after reviewing the facts and the history of our relevant legislation, dismissed the appeal and :-

Held, (1) We take the view that, as the learned trial Judge

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found, section 9(1) of the Patents Law, Cap. 266 (see this section 9(1) set out *post* in the judgment) has not introduced into our law the whole of the United Kingdom law of patents—including statutory provisions relating to compulsory licences—but only that part of it which relates to the power to grant appropriate judicial remedies, as it is expressly stated in the said section 9(1).

(2) Moreover, we are quite satisfied that the construction we have placed on section 9(1) (*supra*) is in no way incompatible with Articles 25 and 28 of the Constitution (*Editor's Note*: Article 25 safeguards the liberty to exercise any profession and to carry on any trade, occupation or business, subject to certain restrictions. Article 28 entrenches the principle of equality before the law, the administration etc.).

*Appeal dismissed. No  
order as to costs.*

The facts sufficiently appear in the judgment of the Court dismissing this appeal.

### **Appeal.**

Appeal from the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 2nd June, 1971, (Case No. 249/69) dismissing applicant's claim for the issue to him of a compulsory licence in relation to Cyprus patent No. 237.

*A. Dikigoropoulos*, for the appellant.

*S. Georghiades*, Senior Counsel of the Republic,  
for the respondent.

*A. Triantafyllides*, for the interested party,  
H. Hoffman—La Roche & Co. A.G.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : This is an appeal against the

determination, in the first instance \*, by a judge of this Court of a recourse made by the appellant against the refusal of the respondent to issue to him a compulsory licence in relation to Cyprus patent No. 237; this patent was granted in the United Kingdom to the interested party and was subsequently registered in Cyprus; it is a patent relating to a medicine.

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The respondent's refusal was based on the fact that there is no provision in our relevant legislation—the Patents Law (Cap. 266)—“for the granting of compulsory licences in Cyprus.”

What we have to decide in this appeal is whether, as submitted by counsel for the appellant, section 9(1) of Cap. 266 has introduced into the law of Cyprus the United Kingdom law relating to patents, including—in relation to compulsory licences—section 41 of the United Kingdom Patents Act, 1949.

Section 9 of Cap. 266 (modified under Article 188.3 (a) of the Constitution so that the word “Republic” is substituted for the word “Colony”) reads as follows:-

“9.(1) Subject to the provisions of this Law, the Law relating to patents for the time being in force in the United Kingdom shall, in so far as circumstances admit, apply to the Republic and the Supreme Court shall have power in accordance with such law to grant either absolutely or on such terms and conditions as shall seem just all remedies to which any person may be entitled within the Republic in respect of either claim to or defence of any right, title or interest in relation to any letters patent in force under a certificate granted under this Law.

(2) The Supreme Court shall have power, upon the application of any person who alleges that his interests have been prejudicially affected by the issue of a certificate of registration, to declare that the exclusive privileges and rights conferred by such

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\* Reported in (1971) 3 C.L.R. 164.

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certificate of registration have not been acquired on any of the grounds upon which the United Kingdom patent might be revoked under the law for the time being in force in the United Kingdom.

(3) Such grounds shall be deemed to include the manufacture, use or sale of the invention in the Republic before the priority date applicable to the patent in the United Kingdom, but not to include the manufacture, use or sale of the invention in the Republic by some person or persons after the priority date applicable to the patent in the United Kingdom and before the date of the issue of the certificate of registration under section 6 of this Law.

For the purposes of this subsection the expression 'priority date' in its application to a patent in the United Kingdom has the meaning assigned to it in section 5 of the Patents Act, 1949."

It is useful to trace the history of Cap. 266 : It was enacted as the Patents Law, 1957 (Law 40/57) and on its coming into operation the then existing Patents Law (Cap. 200 in the previous, the 1949, edition of the Laws of Cyprus) was repealed. There was nothing like section 9(1) of Cap. 266 in Cap. 200; section 9 of Cap. 200 read as follows :-

"9. The Supreme Court shall have power upon the application of any person who alleges that his interests have been prejudicially affected by the issue of a certificate of registration, to declare that the exclusive privileges and rights conferred by such certificate of registration have not been acquired on any of the grounds upon which the United Kingdom patent might be revoked under the law for the time being in force in the United Kingdom.

Such grounds shall be deemed to include the manufacture, use or sale of the invention in Cyprus prior to the date of the patent in the United Kingdom, but shall not include the manufacture, use or sale of invention in Cyprus by some person or persons after the date of the patent in the United Kingdom

and prior to the date of the issue of the certificate of registration under section 6.”

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It will be noted that sub-section (2) of section 9 of Cap. 266 is identical with the first paragraph of section 9 of Cap. 200, while sub-section (3) of section 9 of Cap. 266 has re-enacted in an amended form the second paragraph of section 9 of Cap. 200, namely the phrase “the date of the patent in the United Kingdom” was replaced by the phrase “the priority date applicable to the patent in the United Kingdom”; the “priority date” applicable to a patent in the United Kingdom being defined as having the meaning assigned to it in section 5 of the Patents Act, 1949. It is clear that the object of re-enacting the second paragraph of section 9 of Cap. 200 in the amended form in which it appears as sub-section (3) of section 9 of Cap. 266 was to bring our law as regards “the exclusive privileges and rights” (see sub-section (2) of section 9 of Cap. 266), conferred by registration of a United Kingdom patent in Cyprus, into conformity with the principles on the basis of which section 5 of the Patents Act, 1949, was enacted.

In our opinion it is obvious that the legislature decided to make the aforementioned specific amendment of the second paragraph of section 9 of Cap. 200, by means of section 9(3) of Cap. 266, because it was not the intention of the legislature to introduce, by the opening phrase of section 9(1) of Cap. 266, the whole of the Patents Act, 1949, as part of the law of Cyprus.

Moreover by Law 40/57, which repealed the then in force Cap. 200 and which is now Cap. 266, there were introduced new provisions, other than section 9(3), which were also intended to harmonize the Cyprus law of patents with the United Kingdom law of patents; surely such a course would not have been adopted if by virtue of section 9(1) of Law 40/57 (now section 9(1) of Cap. 266) the whole United Kingdom Law of patents, including statutes, was to become part of the Cyprus law of patents.

It has been submitted by counsel for the appellant that unless we construe section 9(1) of Cap. 266 as introducing into our law the whole of the United Kingdom law of

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patents no sense may be made to section 7 of Cap. 266. With this proposition we are unable to agree: Section 7 confers on the holder of a certificate of registration of a patent in Cyprus privileges and rights subject to all conditions established by the law of Cyprus as though the patent had been granted in the United Kingdom with an extension to Cyprus. It should be noted that section 7 of Cap. 266 is exactly the same as section 7 of the earlier Patents Law, Cap. 200, and as there was nothing in Cap. 200 such as section 9(1) of Cap. 266 it follows that section 7 is to, and can, be given a meaning irrespective of the applicability in Cyprus of the whole United Kingdom law of patents; therefore, the existence of section 7 is not at all a reason for treating section 9(1) as having rendered applicable in Cyprus the whole United Kingdom law of patents.

The nature of a compulsory licence is a matter which may also be looked at in deciding whether it could have been intended to introduce here, in the way in which section 9(1) has been drafted, the relevant United Kingdom law: As it appears from Terrell on the Law of Patents (12th ed., paragraph 656) a compulsory licence is a mode of limiting the rights of a patentee if he does not voluntarily agree to throw his invention open by means of a licence on terms to be agreed with him; since under our own legislation, Cap. 266, there is no power to register here in Cyprus, in the first instance, an invention as a patent it would be rather odd if the authority which does not possess such power (namely the Official Receiver and Registrar, acting as Registrar for the purposes of Cap. 266) were entitled to interfere with the rights of an inventor, who is grantee of a patent in the United Kingdom and who has registered his patent in Cyprus, by limiting such rights by a compulsory licence granted in Cyprus.

For all the above reasons we take the view that, as the learned trial judge found, section 9(1) of Cap. 266 has not introduced into our law the whole of the United Kingdom law of patents—including statutory provisions related to compulsory licences—but only that part of it which relates to the power to grant appropriate judicial remedies, as it is expressly stated in section 9(1).

Learned counsel for the appellant has not submitted that Cap. 266 is in any way unconstitutional, but he invited us to construe section 9(1) thereof in the light of the provisions of Articles 25 and 28 of the Constitution; we are quite satisfied that the construction which we have placed on section 9(1) is in no way incompatible with these Articles.

As this case involved a novel point of law the trial judge did not make an order as to costs; in the circumstances counsel for the other parties have not asked for an order as to the costs of the present appeal and so we let each party bear his own costs.

*Appeal dismissed. No order as to costs.*

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