

Powering ahead

BioPower Systems

included in the broadest apparatus claim, and in the absence of evidence that the process concept was itself sufficient to encompass the apparatus that put the process into practice, each of Polwood and Foxworth was held to be jointly entitled to the patent.

Cases involving issues of inventorship typically turn on their own facts and *Polwood v Foxworth* is no exception. The case is informative, however, in illustrating the analysis involved in applying the particular facts of any case to the general issue of inventorship. It reinforces and tacitly approves the approach to determining inventorship that has been adopted in previous Patent Office decisions, and re-emphasises the importance of discerning from the patent specification as a whole what it is that is said to have been invented.

¹ *Polwood Pty Ltd v Foxworth Pty Ltd* [2008] FCAFC 9 (18 February 2008).

² *Row Weeder Pty Ltd v Nielsen* (1997) 39 IPR 400 at 405

³ *Costa v G R and I E Daking Pty Ltd* (1994) 29 IPR 241 at 246

⁴ *JMVB Enterprises Pty Ltd v Camoflag Pty Ltd* (2005) 67 IPR 68 at [132]



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One of Spruson & Ferguson's clients, and the winner of the University of Sydney's 2006 Spruson & Ferguson Intellectual Property Strategy Prize, BioPower Systems Pty Limited, has recently been awarded a \$5 million grant under the Australian Government's AusIndustry Renewable Energy Development Initiative (REDI). The REDI grant will be matched by BioPower to fund a \$10.3 million, two-year project involving the deployment and ocean-testing of the company's wave and tidal current energy converters. The company has also received cornerstone funding from CVC REEF Limited, the Federal Government's Renewable Energy Equity Fund.

BioPower System's ocean power conversion technologies are based on the concept of biomimicry, using biological species as inspiration in engineering design. The bioWAVE wave power system and bioSTREAM tidal power system are visibly reminiscent of sea plants and swimming species. The inventor of these ocean power technologies, BioPower's Chief Executive Officer, Dr. Tim Finnigan, said: "Some of the traits that we observe in large sea plants and fish provide us with clues on how to design machines that will function well in the ocean environment, convert energy efficiently, and survive in the worst storms."

BioPower plans to build and install full-scale, 20-metre prototypes of both its wave and tidal-stream systems, each capable of generating enough power to supply up to 500 homes. BioPower has identified two preferred sites in Tasmania. BioPower has conducted preliminary site investigations at King Island as a location for testing of the bioWAVE, and at Flinders Island as a location for testing the bioSTREAM. At both locations, the company proposes 250kW installations supplying power into Hydro Tasmania's distribution system on the islands. Both islands rely on diesel-fired generators and wind for power supply, so the project could further reduce greenhouse gas emissions through the addition of carbon-free renewable energy.

Spruson & Ferguson extends its congratulations to Tim Finnigan and the team at BioPower Systems on its successes to date and wishes the company well in its upcoming full-scale ocean testing.

Further information on BioPower is available at www.biopowersystems.com.

