



PATENTS ACT 1977

BETWEEN

Surinder Pal Kaur	Claimant
and	
Bhupinder Seran	Defendant

PROCEEDINGS

Reference under sections 13 and 37 of the Patents Act 1977 in respect of patent number GB2469819

HEARING OFFICER

Julyan Elbro

Cameron Intellectual Property for the claimant
Pioneer IP Ltd for the defendant
Hearing date: Decision on the papers

DECISION ON COSTS

Introduction

- 1 In a Decision dated 30 May 2014¹ I concluded that the claimant's claim for entitlement to GB 2469819 was not made out. I noted that the defendant had therefore won and was in principle entitled to a contribution to his costs in accordance with the Comptroller's standard scale, and indicated that I would give both parties an opportunity to make submissions on this point. The defendant made a request for costs of £3000 in a letter dated 13 June 2014, with a breakdown based on the Comptroller's scale on 8 July 2014. The claimant made submissions in a letter of 27 June 2014.
- 2 The Comptroller's standard scale of costs is set out in Tribunal Practice Notice 4/2007². The scale costs are not intended to compensate parties fully for the expense to which they have been put, but to represent a contribution to that expense. This policy reflects the intention that the IPO be a low cost tribunal for litigants, and builds a degree of predictability as to how much proceedings before the

¹ BL O/239/14 http://www.ipo.gov.uk/pro-types/pro-patent/pro-p-os/p-challenge-decision-results-bl?BL_Number=O/239/14

² See <http://www.ipo.gov.uk/p-tpn-42007.htm>

IPO may cost them. The hearing officer retains discretion, however, to depart from the scale in exceptional circumstances.

The claimant's submissions

- 3 The claimant made three arguments as to why either no costs should be awarded, or that the costs should be significantly reduced.
- 4 Firstly, the claimant stated that the defendant on several occasions failed to copy correspondence between the defendant and the IPO to the claimant, adding to the claimant's costs. In my view, while this is unfortunate, it is at least partly explained by the defendant's then lack of legal representation, and given that the scale represents only a contribution to the defendant's costs, I do not believe it gives sufficient reason for reducing a costs award in this case.
- 5 Secondly, the claimant complained that the defendant only appointed a representative in the week before the case, giving no reason for not appointing one sooner, adding to costs as the claimant had to liaise with the newly appointed representative. I do not consider this a reason to reduce a costs award; there is no evidence that the defendant was able to obtain representation earlier and simply failed to do so.
- 6 Finally, the claimant argues that the defendant's earlier lack of representation will have reduced what he had to pay, and thus his actual costs would have been "minimal". While I do not accept that his actual costs would have been minimal, I agree that I should take into account that the defendant was unrepresented during some of the activities covered by the scale.

Scale costs

- 7 The published scale contains a number of categories for which scale costs may be awarded:
 - £200-£600 for preparing a statement and considering the other side's statement. The defendant requests £400 under this heading. The claimant's statement in this case appears to me at the bottom end of complexity, raising no complex legal questions and focusing on the key factual issues in dispute. I note that the defendant was unrepresented at the time of making his counterstatement, although his representatives will still have needed to consider the claimant's statement when taking on the case. I award £200 in respect of this category.
 - £500-£2000 for preparing evidence and considering/commenting on the other side's evidence. The defendant requests £1000 under this heading. A feature of this case is that there was significant evidence in chief given at the hearing (which is covered by an award relating to the hearing below), but there was also a significant (although not overwhelming) amount of documentary evidence which needed to be considered. Again, I note that the defendant's advisors were not appointed at the time of the defendant submitting his evidence prior to the hearing. Overall, I consider £800 the appropriate amount to award under this heading.

- £1500 per day of the hearing for preparation and attendance. The defendant requests £1600. I note that the defendant was fully represented in the run-up to the hearing, including submission by his representatives of skeleton arguments, as well as on the day itself. Although the hearing took place over the course of a single calendar day, it was a significantly extended working day, and I consider the £1600 requested to be appropriate.

Conclusion and Order

- 8 I order that the claimant should pay the defendant a total of £2600 as a contribution to his costs in this matter. This sum is to be paid within 7 days of the expiry of the appeal period set out below.

Appeal

- 9 Any appeal must be lodged within 28 days

JULYAN ELBRO

Divisional Director acting for the Comptroller