

PATENTS ACT 1977

IN THE MATTER OF an application
under Section 72 by Eastman Kodak
Company for the revocation of UK
Patent No 2314719 in the name of
American Photo Booths Inc

DECISION

- 1 This decision concerns a patent, GB 2314719, which has been granted to American Photo Booths Inc (the defendant). The patent application was initially filed in the United States under the Patent Cooperation Treaty, and claims a priority date of 22 January 1996. Eastman Kodak Company (the claimant) seeks revocation of the patent. The two sides have submitted their cases and the claimant has also submitted a small amount of evidence. They have now agreed that I should decide the issue on the basis of the papers before me, without a hearing.

The patent

- 2 GB 2134719 relates to photo kiosks, that is to say in general terms, the familiar installations where people can obtain photographs for passports or the like by putting money in a slot. However, the patent specification envisages something with rather more facilities than a traditional basic kiosk. For example, it uses a digital camera to give the user the ability to manipulate the photograph in a number of ways, in particular by removing the background against which the photograph was actually taken and replacing it with something different. Also, it suggests the output could be in the form of peelable stickers rather than a traditional photographic print.
- 3 There are two independent claims, one to an apparatus and one to a method. They are broadly, though not precisely, equivalent and read as follows:

1. A direct view photo kiosk for automatically taking, processing and delivering to a user in response to user-activated controls photographic images of the user posed at the photo kiosk comprising:

an electronic image device for electronically forming, in response to a signal activated by a user, first electronic imaging information representative of the user posed in a region provided at the kiosk for the user to pose;

optical reflection means positioned between the region provided for the user to pose and said electronic imaging device for reflecting the image of the user within said kiosk to form a folded and extended length optical path to narrow the depth of field within said region provided for the user to pose and thereby defocus a background image;

an electronic processor for electronically processing said first electronic imaging

information to form second electronic imaging information representative of multiple images of the image represented by said first electronic imaging information;

said second electronic imaging information representing said multiple images being arranged in a preselected pattern for being produced in hard copy form on a single sheet;

a printer for printing out hard copy images responsive to electronic imaging information delivered thereto;

said electronic processor including means for delivering said second electronic imaging information to said printer for printing out from said printer on a single multilayer hard copy sheet said multiple images represented by said second electronic imaging information; and

delivery means for automatically delivering to said user said single multilayer hard copy sheet containing said multiple images.

6. A method of automatically taking, processing and delivering to a user in response to user activated controls photographic images of the user posed at the photo kiosk comprising:

electronically forming, in response to a signal activated by a user, first electronic imaging information representative of the user posed in a region provided at the photo kiosk for the user to pose;

providing an extended length, folded optical path within said kiosk to narrow the depth of field in said region provided for the user to pose and thereby defocus a background image;

electronically processing said first electronic imaging information to form second electronic imaging information representative of multiple images of the image represented by said first electronic imaging information;

said second electronic imaging information representing said multiple images being arranged in a preselected pattern for being produced in hard copy form on a single sheet;

delivering said second electronic imaging information to a printer;

printing out from said printer on a single multilayer hard copy sheet said multiple images represented by said second electronic information; and

automatically delivering to said user said multilayer hard copy sheet containing said multiple images.

5 The description and claim 1 relate to “direct view” photo kiosks, which are defined as kiosks which present an open face to the user, who can operate the controls and pose for the photograph in an open and unenclosed space. This is in distinction to the currently more familiar “photo booths” in which the user poses within an enclosed space. However claim 6, the method claim, is not restricted to direct view kiosks.

The law

6 The relevant law is well known and I can summarize the key provisions very briefly. Section 72(1) of the Patents Act 1977 gives me the power to revoke the patent, on application by any person, on any of a number of grounds which include:

“(a) the invention is not a patentable invention;

(c) the specification of the patent does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art.”

7 The expression “patentable invention” is defined in section 1(1):

“A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say -

(a) the invention is new;

(b) it involves an inventive step;

(c) it is capable of industrial application;

(d)

and references in this Act to a patentable invention shall be construed accordingly.”

8 I do not need to refer to any other sections. Neither side has referred me to any case law.

Grounds for revocation

9 In the claimant’s original statement of case, filed on 1 March 2001, the only grounds specified were lack of novelty or inventive step having regard to eleven documents. After the defendant had filed its counterstatement, refuting these grounds, the claimant sought leave to admit additional grounds which, it said, had arisen from the counterstatement. The request was contested by the defendant, and the matter became the subject of a preliminary decision. In that decision the hearing officer decided to admit the additional grounds.

10 Consequently, the full grounds are now as follows:

(a) The patent does not relate to a patentable invention in that the invention

claimed is not capable of industrial application, and/or the specification of the patent does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art.

(b) Claims 1 and 6 do not relate to a patentable invention in that they lack novelty having regard to an earlier patent specification, GB 2253490 A (“Photostar”).

(c) Claims 2 and 7 do not relate to a patentable invention in that they lack inventive step having regard to Photostar and the following further patent specifications and other documents:

- D2 WO 93/07710 (PMI PHOTOMAGIC)
- D3 WO 91/15082 (ØIEM ET AL)
- D4 US 5343386 (BARBER)
- D5 WO 90/16008 (PVI INC)
- D6 JP 63-025647 (FUJI)
- D7 US 4507166 (POSNER)
- D8 US 4460634 (HASEGAWA)
- D9 “Every Customer a Star” - Photo Marketing, October 1994, pages 20-25
- D10 GB 2152005 (PHOTOLEAFLETS)
- D11 Japanese Utility Model Registration No 3014733

(d) Claims 3-5 and 8-12 only add to claims 1,2, 6 or 7 features that are disclosed in Photostar, and consequently these claims also lack novelty or inventive step.

(e) The omnibus claims 13 and 14 are directed to arrangements substantially as described in the specific embodiments and there are no features in those embodiments which represent a patentable invention in view of the above cited prior art.

Evidence

- 11 There is very little evidence for me to consider. The claimant has filed two short witness statements by a lens designer and optical engineer in its employ, John David Griffith, and a witness statement by its patent agent, Richard Dudley Hawkins. The defendant has elected not to file any evidence.

Industrial application and sufficiency

- 12 I will turn now to the grounds for revocation that I have listed first, under (a) above. There are two grounds here, though I shall consider them together as they are closely related and based on the same argument. I shall refer to the grounds as “industrial application” and “sufficiency” for convenience.
- 13 The argument centres on one particular feature of the two main claims, that is, in claim 1:

“optical reflection means positioned between the region provided for the user to

pose and said electronic imaging device for reflecting the image of the user within said kiosk to form a folded and extended length optical path to narrow the depth of field within said region provided for the user to pose and thereby defocus a background image”

and in claim 6:

“providing an extended length, folded optical path within said kiosk to narrow the depth of field in said region provided for the user to pose and thereby defocus a background image”.

These passages were introduced into claims 1 and 6 during examination of the application. They are of considerable importance because it is common ground that if there is a distinction between these claims and what is disclosed in Photostar, these passages are an important part of that distinction.

14 Support in the description for these passages can be found on page 4:

“The improved kiosk utilizes an extended internally folded optical path lengthening the camera to subject distance to enhance defocusing of the background image.”

and on page 11:

“In the embodiment of the invention as shown in Fig. 1, the folded optical path which extends from the subject through the view tunnel opening 28 and the optic mirror 30 to the camera 16 results in the attainment of a narrow depth of field at the range of the subject with resultant defocusing of the background image around the subject. The apparatus is also configured so that the subject can stand directly in front of the kiosk . . .”

15 The description does not give any reason for defocusing the background. However it does explain (on pages 3 and 8) that a user-selected computer generated “foreground” image is substituted for the defocused background image.

16 The claimant says there is a problem with these passages in claims 1 and 6 because increasing the distance between the camera lens and the subject will increase the depth of field, not decrease it. Their evidence goes to supporting this allegation. In his first witness statement, Mr Griffith says that merely folding the optical path has no effect on the depth of field. He then goes on to show, by means of a calculation using standard paraxial depth of field equations for what he regards as a typical lens focal length and F number, that doubling the lens-to-object distance quadruples (in round figures) the depth of field. He points out that this also lowers the magnification, and then says:

“At this point I thought that the author of the patent claim must mean that he extended the optical path and then redesigned the optical system to maintain the original magnification and object coverage by selecting a new lens of longer focal length.”

However, by going through the calculations again on the assumption that both the optical path and the lens are changed, he shows that there is still no significant change to the depth of field.

- 17 Mr Hawkins also addresses this point in his evidence by referring to a section on “depth of field” in “How Things Work - The Universal Encyclopedia of Machines” which explains that “with close-ups the depth of field diminishes considerably . . .”
- 18 The defendant has not submitted any evidence to counter this. All I have is an assertion that the claimant’s submissions are ignoring the wording of the claims which require the depth of field to be narrowed “within the region provided for the user to pose”. This, the defendant says, means that by effectively moving the camera back (by folding the optical path), the zone in which the person can stand and still be in focus is moved closer to the front of the kiosk (and hence further away from the background).
- 19 In his second witness statement Mr Griffith points out that all this means is that the in-focus zone is moved further away from the background. Even without this evidence that is what I would have understood the defendant to be saying, and on that basis, I find the defendant’s interpretation to be straining the plain language of claims 1 and 6. The whole thrust of these passages is that the depth of field is reduced - not that the in-focus zone is merely moved - compared to what it would have been had the optical path not been folded, and this is reinforced by the supporting passages in the description. Moreover, the defendant’s assertion implies that a direct view photo kiosk would otherwise be designed with the in-focus zone some way away from the front of the kiosk, and that seems to me to be quite implausible. The defendant’s assertion also implies there is a substantially fixed in-focus zone, and this does not seem compatible with the fact that in the preferred embodiment the camera is autofocus, which means it will have a variable in-focus zone.
- 20 That leaves me with the claimant’s evidence on this point. This is uncontroverted, and moreover, whilst I would be wary of relying on my own technical knowledge when I have expert evidence, I have to say that I am sure anyone who has ever used a camera with an adjustable lens will agree this evidence is fully consistent with their own experience. In these circumstances, I accept the defendant’s submission that, as drafted, these passages in the claims and the supporting passages in the description do not make technical sense.
- 21 I do not think it would be right to stop there, because I take the view that the person skilled in the art is expected to read the specification constructively. That means that if they come to a passage that does not appear to make sense, they should assume the writer did not intend to write nonsense and should endeavour to glean what the writer really intended from the specification as a whole. However, Mr Griffith did precisely that in the extract from his evidence I have quoted above. He assumed the writer had not explained fully what he or she had in mind, explored what he saw as a possible alternative interpretation but still couldn’t get the passages to make sense. Thus even a constructive approach does not overcome the problem.
- 22 I am therefore reluctantly forced to the conclusion that claims 1 and 6 each have a passage that the person skilled in the art is unable to construe in a way that makes

sense. I say “reluctantly” because even when the language of a patent specification contains mistakes, it should normally be possible to work out what is supposed to be going on by approaching the specification constructively, but that does not seem possible here.

- 23 So what are the implications of the difficulty with these passages in claims 1 and 6? The claimant submits that since it is not physically possible for an extended length, folded optical path to give rise to a narrowing of the depth of field and a consequential defocusing of the background image, the claimed invention cannot work and cannot therefore be capable of industrial application. It also submits that equally, since the invention cannot work, the specification does not (and could not) disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art. I agree on both counts, and accordingly find that the invention claimed in claims 1 and 6 is not a patentable invention. Since claims 2 - 5 and 7 - 12 are dependent on claims 1 and 6 and since the omnibus claims rely on the corresponding passages in the description, it follows that they also do not relate to a patentable invention.

Novelty - claim 1

- 24 Having found the claims invalid on the industrial application and sufficiency grounds, strictly I do not need to consider any of the other grounds. However, I feel it might be helpful to consider them in case I should, on appeal, be overturned on the finding I have made above. I will start with the assertion that claim 1 is not new because it is all disclosed in Photostar.
- 25 Photostar relates to an automatic picture taking machine, ie a photo kiosk. Although the specification describes in particular a photo kiosk of the closed type, in the form of a booth, there is a clear broadening statement at page 3 from line 7:

“Conveniently the housing may be in the form of a booth with said zone bounded by said outer wall of the upstanding box structure and by one or more further walls defining therewith a partial or complete enclosure. However, the booth construction is not essential and the box structure may stand alone with the said picture taking zone unbounded and not enclosed.”

and further, from line 19:

“... the machine may be intended for use by a person standing in front of the machine. Thus, the housing may be in the form of a console or booth with an adjacent floor above which is located the picture taking zone, said floor area being a standing area whereby the system is adapted for the taking of a picture of a standing person.”

I am therefore satisfied, and it is not contested by the defendants, that the disclosure in Photostar contemplates a direct view kiosk as required by claim 1.

- 26 The claimant argues that every element of claim 1 can be found in Photostar. The defendant does not deny that most of the features are there, but argues specifically that feature I have just been considering under the industrial application and sufficiency

grounds is not present, viz:

“optical reflection means positioned between the region provided for the user to pose and said electronic imaging device for reflecting the image of the user within said kiosk to form a folded and extended length optical path to narrow the depth of field within said region provided for the user to pose and thereby defocus a background image”.

- 27 The kiosk disclosed in Photostar unquestionably has a folded optical path. The specific embodiment in Photostar includes a camera (20) which points upwardly and a mirror (21) to direct the image of a subject to the camera, and this arrangement is exactly the same as that provided in the specific embodiment of the patent in suit, in the form of a vertically aligned camera (16) and a single mirror (30), to constitute a “folded and extended length optical path”. However, the defendant argues that Photostar does not disclose or suggest a folded and extended length optical path “to narrow the depth of field within the region provided for the user to pose and thereby defocus a background image”.
- 28 This, of course, immediately brings up the problem of knowing what this means. My conclusion when considering industrial application and sufficiency was that this passage did not make sense. However, my starting presumption in considering novelty is that I am wrong on that, and that means I will have to attribute some meaning to this passage in order to come to a conclusion on novelty. There seem to me to be two possibilities. One is that the narrow depth of field and defocused background flow from having a folded optical path, even though I can’t understand how. The second is that these do not flow from the folded optical path, in which case the claim must be requiring, not as inter-dependent features, both a folded path and narrow depth of field/defocused background.
- 29 I can deal with the first possibility very briefly. If one flows from the other, because Photostar has a folded path it must also have a narrow depth of field and defocused background and must therefore meet the requirements of the claim. There are passages in Photostar which could be taken to suggest that it provides a folded path for other reasons, eg to allow for height adjustment or to make the kiosk more compact, but Photostar’s reasons for providing a folded path are irrelevant if the first possibility is true.
- 30 The second possibility is less straightforward. Photostar has a folded optical path, but the question is, does it also disclose a narrow depth of field with consequent defocusing of the background? The claimants have directed attention to three passages in Photostar. The first and third really only go to providing the folded path and do not help with this specific question. However, the second is potentially more relevant. It reads (with emphasis taken from the claimant’s statement):

“The camera may incorporate an appropriate optical system *giving sharp focusing over a suitable range within the intended picture taking zone*. The optical alignment of the camera with the subject in the zone may be direct or if desired angular via one or more interposed mirrors.”

31 The claimants argue that by providing sharp focusing over a suitable range where the subject is standing in front of an unbounded picture zone, the background, which is effectively located at infinity, will be defocused. The defendant says this does not follow. It sets out its argument in the counterstatement in the following terms:

“With respect to the second part the Photostar Application does state that the camera is to provide a sharp focus over the intended “picture taking zone”. This does not relate to defocussing the background but rather relates to focussing of the image of the person having their picture taken. At page 4, lines 5 to 7 of the grounds for revocation it is argued that by providing sharp focussing over a suitable range a background at infinity will be defocussed. It does not follow from the fact that the “picture taking zone” is in focus that the background is out of focus, even if the background is at infinity. Whether the background is in focus depends on the camera’s depth of field, which is not discussed in the Photostar Application. Also, it is not correct that the background will be “effectively located at infinity”; typically such photo machines are used in urban environments where the background is only a few metres away.”

32 The defendant’s argument continues by discussion of the chroma key process which forms part of the Photostar disclosure. This process is a known technique for providing a selectable, electronically-generated background or foreground to an image, a facility which both the patent in suit and Photostar offer. In the chroma key process, the subject is photographed against a uniform coloured background, usually blue, and the image is electronically processed to replace the blue colour with a scene of choice. The defendant argues that if one is using the chroma key process it is “not possible” to defocus the background.

33 I have to say that, on the face of it, the defendant’s argument about the chroma key process seems unsound. As I understand it, this process simply requires a uniform colour background. The background will still be blue whether it is in focus or out of focus. Whilst the overall onus in these proceedings is on the claimant, this particular argument is the defendant’s and so the onus of establishing that it is “not possible” to defocus the background when using the chroma key process rests on the defendant. I do not feel it has discharged that onus. In the absence of any explanation from the defendant, or any expert evidence to the contrary, I reject the argument that because Photostar uses the chroma key process, the background cannot be defocused.

34 I return therefore to the passage from Photostar quoted above. The description in Photostar is largely in the context of a booth in which there will be a back wall close behind the subject. Nevertheless it does include references to a “direct view” kiosk and those references precede the passage in question. Whilst Photostar does not go into the direct view option in any detail, it contains nothing to suggest that this option requires radical changes to the optical system. In fairness, I note that the defendant has rightly pointed out that one feature would certainly need changing - the chroma key process could not work (or at least, could not work in a straightforward way) with a direct view kiosk because the kiosk itself cannot provide the background. However, this is only an optional feature in Photostar, and indeed one that is relegated to a position well down the list of options.

- 35 What the above passage in Photostar teaches is that, even in a booth where the space within the booth between its front and back walls is of necessity very limited, the optical system is designed to give a sharp focus over only a limited range of distances within that space. Pedantically one could argue that a “range” could extend to infinity, but construing this passage constructively in its context, I believe it teaches a bounded in-focus range, not an unbounded one, although that does not rule out the possibility that the kiosk background might be within that range. Take the back of the booth away to turn the kiosk into a direct view one: the background will now be a lot further away. As Photostar contains nothing suggesting that the optical system needs to be altered radically for the direct view option and, it seems to me, there is no obvious reason for doing so, the background will inevitably be out of focus. In short, whilst Photostar does not expressly mention having a defocused background, I am satisfied that will be the natural consequence of carrying out its teachings in the context of a direct view kiosk.
- 36 Consequently, I am satisfied that whichever of the two possibilities for the meaning of this passage in claim 1 is appropriate, the features required are disclosed explicitly or implicitly in Photostar.
- 37 I should observe that “depth of field” and “defocused” are not precise concepts. In principle, the image is sharp only for objects in the focal plane and everything outside this plane is not strictly in focus. However, in practice there is a range over which the image is perceived as acceptably sharp. The actual value of this range depends on how one defines “acceptably”, but I do not feel this uncertainty matters for the purposes of the present specification, and indeed the claimant has not made an issue of it.
- 38 Although most of the argument centred on the provision of the defocused background image, there is one other feature that the defendant asserts is not in Photostar. That feature is the provision of:
- “an electronic processor for electronically processing said first electronic imaging information to form second electronic imaging information representative of multiple images of the image represented by said first electronic imaging information”.
- 39 The claimant has directed attention to a passage (page 15, from line 15) in Photostar which states that the image data is fed to the printer via appropriate decoding apparatus, and asserts that when multiple identical images are printed, which is an option contemplated in the specification (for example on page 13 lines 18 to 22), there must necessarily be stored a corresponding plurality of sets of electronic signals. Hence an electronic processor to form electronic imaging information representative of the multiple images must be present. The defendant argues that there are “numerous other ways” of handling the data before being fed to the printer. However, it only mentions two: optical duplication and feeding a single image to the printer more than once.
- 40 On the first option, Photostar uses a digital camera and Mr Hawkins asserts in his witness statement that he finds it difficult to understand how optical duplication could be used with a camera that generates electronic signals and a printer that receives electronic signals. I agree. The first option strikes me as fanciful and inconsistent with

the disclosure in Photostar. It is fanciful because it is inconceivable that one would take the digital output and convert it to an optical signal and back again purely for the purposes of duplicating it. It is inconsistent with Photostar because no such digital-optical-digital conversion step is shown in Photostar's flow diagram.

41 I accept that, on the face of it, its second option is possible, but I do not think this provides an effective defence. Even if the Photostar circuitry were to feed the signals representing one image to the printer more than once, it would still have to create additional signals telling the drive circuitry to "go through that lot again", and the combination of those additional signals and the basic image signals would clearly constitute "electronic imaging information representative of multiple images of the image". Again Mr Hawkins makes this point in his witness statement, although in slightly different words. Accordingly I am satisfied that the "electronic processor" required by claim 1 is present in Photostar.

42 There is one other feature in claim 1 on which I feel I ought to comment, and that is the requirement that the electronic processor includes:

"means for delivering said second electronic imaging information to said printer for printing out from said printer on a single multilayer hard copy sheet said multiple images represented by said second electronic imaging information".

The defendant has not disputed the claimant's allegation that this is disclosed in Photostar, and to that extent I need say no more about it, and indeed arguably should say no more about it. However, I feel I must place on record my view that the claimant's argument on this appears unsound. Photostar refers to printing on a card that has been pre-printed with material such as postcard marking, and the claimant argues that the layer of print is a second layer. I find its argument unconvincing because I do not believe any rational reader would regard the print as a second layer in this context. In my view, more pertinent is the fact that claim 1 does not appear to require a multilayer sheet to be there but only requires what one might call "means for printing" on a multilayer sheet. As multilayer sheets are commonplace, it seems to me that any standard printer would be suitable for this purpose, and that the reference to a multilayer sheet imposes no restriction on the scope of the claim.

43 In summary, then having considered the relation between claim 1 and Photostar with some care, I am satisfied that even if I am wrong on industrial application and sufficiency, claim 1 is bad for want of novelty.

Novelty - claim 6

44 Claim 6 relates to a method of automatically taking, processing and delivering to a user photographic images. It is not restricted to "direct view" kiosks, and to that extent is wider in scope than claim 1. However, it has the same requirements for a folded optical path and defocused background and in essence the same requirements for an electronic processor. Accordingly, in principle my finding that claim 1 is not novel also applies to claim 6.

45 However, one of the steps of the method of claim 6 is:

“printing out from said printer on a single multilayer hard copy sheet said multiple images represented by said second electronic information”.

This strikes me as more clearly restrictive than the corresponding passage in claim 1 because it goes beyond “means for printing” and requires a multilayer sheet to be used. That, however, gives me a difficulty. The defendant has not challenged the claimant’s argument that a printed sheet is a multilayer one, and because there has been no hearing I have not been able to give the parties an opportunity to comment on my concerns about this. If this were crucial to my overall finding on validity, I would have written to the parties before finalising my decision to give them an opportunity to make submissions. However, given my finding on industrial application and sufficiency, I have decided that would not be a sensible course of action in this case. I think the proper course of action is for me to make no finding at this stage on whether claim 6 is novel. If, following an appeal, this case were to be referred back to me because I had been overturned on industrial application and sufficiency, I could then give both sides an opportunity to address this point.

The remaining claims

46 That only leaves the patentability attack on the remaining claims. Clearly in view of my difficulty with claim 6, I cannot really go further at this stage with considering any of the claims that are dependant on claim 6. I have the similar problem with claim 2, because this goes into the detailed construction of the multilayer sheet and I am not sure where that stands in view of my “means for printing” interpretation of claim 1. Again, to come to a conclusion on this I would need to give the parties an opportunity to comment on the interpretation of claim 2. Since claims 3 to 5 are all dependant on claim 2, again I cannot usefully consider them further at this stage either. In these circumstances, considering the omnibus claims would also be a pointless exercise.

Conclusion

47 I have found that the specification does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art, and that the patent does not relate to a patentable invention in that the invention disclosed is not capable of industrial application. I have also found that claim 1 is not novel, but made no finding on the novelty or inventiveness of the remaining claims. I have considered whether to give the defendant an opportunity to amend the patent to overcome these findings, but have come to the conclusion that would be inappropriate in the present case because the very nature of my findings mean that no amendment is possible which would overcome them without contravening the ban in section 76(3) on adding matter to the specification. I therefore revoke the patent.

Costs

48 Both sides have requested an award of costs in its favour, though neither has made any particular submissions on this point. I note that costs in respect of the preliminary hearing were deferred until completion of the proceedings.

49 The defendant has been unsuccessful both in the preliminary proceedings to decide

whether the statement of grounds should be amended and in this decision. I therefore award costs to the claimant. In accordance with the scale of costs applicable to proceedings commenced after 22 May 2000, and taking into account the preparation for the preliminary hearing, I order the defendant to pay £1000 to the claimant as a contribution to its costs.

Appeal

50 As this decision is not on a matter of procedure, any appeal should be lodged within six weeks.

Dated this 8th day of November 2002

P HAYWARD

Divisional Director, acting for the comptroller

THE PATENT OFFICE