



## PATENTS ACT 1977

BETWEEN

|                                |           |
|--------------------------------|-----------|
| TOP Optimized Technologies, SL | Claimants |
| TOT Power Control, SL          |           |
| and                            |           |
| Vodafone Group plc             | Defendant |

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PROCEEDINGS

Applications under section 13(3) and rule 10(2) in respect of EP(UK) 2071737 B1

HEARING OFFICER                      J E Porter

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## DECISION

### Introduction

- 1 On 23 February 2018, the claimants filed a reference under section 37 concerning entitlement, in respect of European Patent (UK) 2 071 737 B1. At the same time, the claimants filed applications concerning removal and addition of inventors, under section 13(3) and rule 10(2) of the Patents Rules 2007 (as amended).
- 2 In a decision dated 16 March 2018 ([O/175/18](#)), the hearing officer acting for the comptroller was satisfied that the comptroller should decline to deal with the section 37 reference, due to parallel proceedings before the High Court (claim no. HC-2017 000399).
- 3 He also stayed the applications filed under section 13(3) and rule 10(2) until such time as a determination was made by the High Court in the related proceedings.

### Progress of the court proceedings and contact with the parties

- 4 Since that time, the Office has written periodically to the parties seeking an update on the court proceedings.
- 5 The claimants' representative said in 2019 that the court proceedings were stayed. In a further letter of 17 March 2020 (erroneously dated 2019), the claimants' representative said that the claimants intended to make an application to the High Court to lift the stay, and that they would notify the Office if and when the application was granted.

- 6 Although the Office has continued to contact the parties periodically, no further updates on the status of the court proceedings have been received. A response from the claimants' (new) representative on 5 March 2024 explained simply that the claimants were attempting to contact the defendant.
- 7 In an Office email of 29 October 2024, a final period was set for the parties to provide the comptroller with an update on the status of the court proceedings. The email said that, in the absence of a response, the hearing officer may then give a preliminary view on the termination of the proceedings before the comptroller, and on the matter of costs. The email also sought any submissions the parties may have on costs.
- 8 The claimants' representative responded on 26 November 2024 to say simply that the claimants had not had any response from the defendant.
- 9 Neither the March 2024 nor the November 2024 response referred to the court proceedings. Therefore, the Office has had no information from either party regarding the status of the court proceedings since the update provided in March 2020.

### **The preliminary view**

- 10 In light of this situation, the Office wrote to both parties on 10 December 2024 setting out my preliminary view. My view was that there had been little or no substantive contact from the parties for some considerable time, and no update about the progress or outcome of the court proceedings, and so I was minded to consider the proceedings withdrawn and to make no award of costs to either party.
- 11 A period of 14 days was set for the parties to respond. No response from either party was received.

### **Conclusion**

- 12 In light of no further responses being received, I confirm my preliminary view as set out in the Office letter of 10 December 2024.

### **Order**

- 13 I order that the applications filed under section 13(3) and rule 10(2) are now treated as withdrawn. No order is made as to costs.

### **Appeal**

- 14 Any appeal must be lodged within 28 days after the date of this decision.

**Dr J E PORTER**

Chief Hearing Officer, acting for the Comptroller