



PATENTS ACT 1977

BETWEEN

University of Southampton

Claimant

and

Windracers Limited

Defendant

PROCEEDINGS

References under sections 12, 13 and 37 in respect of UK patent GB 2585185B
and related foreign and convention applications

HEARING OFFICER

B Micklewright

COSTS DECISION

Introduction

- 1 These proceedings relate to references under sections 12, 13 and 37 of the Patents Act 1977 in respect of UK patent GB 2585185B, EP patent application 20734623.0 and US patent application number 17/618.719 (“the patents”). Following a request made by the defendant that the comptroller decline to deal with the references, in a decision¹ dated 4 December 2024 I concluded that the question before me involved matters which would be more properly dealt with by the court. In accordance with sections 12(2) and 37(8) I therefore declined to deal with the references under sections 12 and 37 and ordered that the section 13 proceedings be stayed pending the outcome of parallel court proceedings.
- 2 In my decision I provided an opportunity for the parties to make further submissions in relation to costs. Both parties provided written submissions and were content for me to decide the question of costs based on these written submissions.

Assessment of costs

- 3 It is long established practice that in proceedings before the comptroller only a contribution towards the successful party’s costs should normally be awarded and

¹ [BL O/1158/24](#)

that the amount should be guided by the comptroller’s published scale unless circumstances warrant departing from the published scale. The current scale is published as Tribunal Practice Notice (TPN) 1/2023:²

Scale of costs in proceedings commenced on or after 1 February 2023

Task	Costs
Preparing a statement and considering the other side’s statement	From £250 to £750 depending on the nature of the statements, for example their complexity and relevance
Preparing evidence and considering and commenting on the other side’s evidence	From £600 if the evidence is light to £2600 if the evidence is substantial. The award could go above this range in exceptionally large cases but will be cut down if the successful party had filed a significant amount of unnecessary evidence
Preparing for and attending a hearing (including procedural hearings) or submissions-in-lieu	Up to £1900 per day of hearing, capped at £3900 for the full hearing unless one side has behaved unreasonably. From £350 to £650 for preparation of submissions, depending on their substance, if there is no oral hearing
Expenses	(a) Official fees arising from the action and paid by the successful party (other than fees for extensions of time) (b) The reasonable travel and accommodation expenses for any witnesses of the successful party required to attend a hearing for cross examination

- 4 These proceedings were commenced on 7 December 2023 and were served on the defendant on 31 January 2024. The two-page statement of grounds was amended on 20 February 2024 to correct a serial number of a US patent application. The proceedings were stayed until 15 July 2024 to allow the parties an opportunity seek an amicable settlement. A settlement was not, however agreed. On 12 July 2024 the defendant requested that the comptroller decline to deal with the references due to the defendant initiating proceedings in the High Court. They filed a three-page counter-statement on 15 July 2024. Whilst this counter-statement had deficiencies, submissions on whether an extension should be allowed to correct the deficiencies were heard together with submissions on whether I should decline to deal with the references at a preliminary hearing on 18 November 2024. I note that no evidence was filed in relation to this preliminary hearing, and evidence rounds did not commence before the comptroller in relation to the substantive questions.
- 5 The claimant’s submissions on costs were very brief, merely stating that they resisted a costs reward in favour of the defendant on anything other than the standard scale.
- 6 The defendant provided more detail to their submissions on costs, but they essentially boiled down to the following: the comptroller decided in the defendant’s

² Tribunal Practice Notice (TPN) 1/2023: Costs in proceedings before the Comptroller, available at <https://www.gov.uk/government/publications/tribunal-practice-notice-tpn-12023-costs-in-proceedings-before-the-comptroller/tribunal-practice-notice-tpn-12023-costs-in-proceedings-before-the-comptroller>

favour on each point, and the defendant should therefore be awarded costs, on the scale.

- 7 It is therefore apparent there is little between the parties in relation to their submissions on costs. Given that I decided in the defendant's favour, and the substantive case will now be dealt with by the courts, it seems to me to be entirely appropriate to award costs at this stage in the proceedings. Like the parties, I see no reason for departing from the standard scale of costs published by the comptroller.
- 8 Both the claimant's statement of grounds and the defendant's counter-statement were straightforward and very concise. On that basis I believe an award of £250 at the bottom of the scale is justified. The hearing itself lasted just under an hour, and submissions restricted only to the relevant preliminary points. Given the brevity of the hearing and the restricted nature of the submissions, I award the defendant £350 under this head, which takes into account preparation of submissions.

Cost order

- 9 I hereby order the claimant, the University of Southampton, to pay the defendant, Windracers Limited, the sum of £600 as a contribution towards their costs, the sum to be paid within seven days of the expiry of the appeal period below.

Appeal

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

BEN MICKLEWRIGHT

Deputy Director, acting for the Comptroller