



**PATENTS ACT 1977**

BETWEEN

Titan Torque Services Ltd and  
HRG Well Solutions Ltd

Applicants

and

Hydra Systems AS

Defendant

PROCEEDINGS

Application for a declaration of non-infringement under section 71 of the Patents Act in respect of patents GB2499172B and GB2555058B

HEARING OFFICER

Phil Thorpe

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**Costs Decision and Declaration**

**Introduction**

- 1 In a decision<sup>1</sup> dated the 4<sup>th</sup> of June 2024 I determined that the method of using the SJI Mk II Tool as disclosed in the video provided by the applicants and as described in the amended statement of case dated the 22<sup>nd</sup> of July 2022 did not infringe either GB2499172B or GB2555058B. I set out a draft declaration giving effect to that determination and invited both sides to make further submissions on the form of the final declaration as well as on the matter of costs.
- 2 Both sides filed submissions on the 9<sup>th</sup> of July 2024.

**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 that the amount should be guided by the comptroller's published scale unless the circumstances warrant departing from the published scale<sup>2</sup>.

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<sup>1</sup> [BL O/508/24](#)

<sup>2</sup> [Tribunal practice notice \(2/2016\): Costs in proceedings before the Comptroller - GOV.UK \(www.gov.uk\)](#)

- 4 The defendant argues that the conduct of the applicants was such that I should depart from the published scale or in the alternative award in part costs against the applicants even though they were successful in securing a declaration of non-infringement.
- 5 More specifically the defendant argues that the applicants, in addition to filing a replacement expert report (Mr. Devereux's first report) which I had previously directed be allowed, also submitted a further report from the same witness ("Devereux 2") which was not allowed or even contemplated by my directions. The defendant also notes that Devereux 2 was not revealed to the Office or the defendant until it was served. Further its late appearance imperilled the hearing date, it took points that the witness had already had the opportunity to take and relied on new and unspecified information about the product at issue. All these factors point to unreasonable behaviour by the applicants. The defendant notes also that it had to commission a further expert report in response to Devereux 2.
- 6 I would observe that having heard arguments from both sides at the substantive hearing, I allowed part of Devereux 2, and the entirety of the defendant's further report, to be admitted into proceedings. I should make clear that the defendant took a very reasonable position at the hearing of only partially objecting to the second report of Mr Devereux.
- 7 Nevertheless, looking back at the proceedings I am satisfied that the actions of the applicants did result in extra costs being incurred by the defendant. This stemmed from the applicants not setting out their case as fully and precisely as they could have early in the proceedings which then fed into the way that the expert evidence, including that of Mr Devereux, was presented. I do not believe however that this crosses into unreasonableness, but it is a factor that I should consider when assessing costs.
- 8 The defendant argues also that any cost award should reflect that the applicants were only partially successful with their application. In particular, the declaration that they have secured is very substantially narrower than what they had initially sought. The final declaration that I make below is indeed narrower than what I was originally asked to make, but I do not believe that it represents the sort of partial success that would be a factor in the assessment of costs.
- 9 I would note that I made an interim cost order in favour of the defendant when granting permission to the applicants to supplement the evidence filed by their first expert, who had indicated that he was not able to continue, with the report of Mr Devereux. The applicants argue that this interim cost order ought to be considered sufficient to deal with any additional expense incurred by the defendant because of this. In the absence of any submissions on this from the defendant, I am content to leave the interim cost order to stand in respect of the costs associated with the substitution of the applicants' expert witness.
- 10 Turning to the headings in the published scale and reflecting the comments made above I make the following award –

*Preparing a statement and considering other side's statement*

- 11 This was not a particularly complex case though the applicants' statement of case still required amendment to better particularise the product for which the declaration was sought. The defendant's counterstatement in response to the amended statement of case was concise covering just 13 pages. On that basis I believe an award of £350 to the applicants, which is towards the lower end of the published range, is justified.

*Preparing evidence and considering and commenting on other side's evidence*

- 12 As I have discussed above the applicants were guilty of a lack of precision and conciseness in their evidence which did lead to the defendant incurring additional costs. Further the weight of the evidence that influenced my decision was not great with the major issue being the proper construction of the claims which is a matter for me rather than experts. Taking these factors into account I award the applicants £500 under this head.

*Preparing for and attending a hearing*

- 13 The hearing lasted just under two days. A significant portion of this was taken up with pleading points relating to the scope of the applicants pleaded case and arguments about the admissibility of the applicants second report from Mr Devereux. As noted above only part of this second report was ultimately admitted.
- 14 I would note that the defendant also sought to run new arguments at the hearing which the applicants successfully objected to. This added also to the length of the hearing but not to the extent of the actions of the defendant.
- 15 Weighing up these factors I have concluded that an award of £1500 to the applicants for preparing and attending the hearing is appropriate.

**Cost order**

- 16 I hereby order the defendant, Hydra Systems AS, to pay the applicants, Titan Torque Services Ltd and HRG Well Solutions Ltd, the sum of £2350 as a contribution towards their costs, this sum to be paid within seven days of the expiry of the appeal period below.

**Submissions on the declaration**

- 17 Only the defendant made any substantive submissions on the draft declaration that I provided in my earlier decision. Specifically, they requested that the declaration explicitly reflect that I was not addressed on the question of contributory infringement and consequently made no finding in that respect. This they suggest, can be simply done by the addition of the word "direct" prior to infringement in the declaration. I accept this suggestion.

**Declaration on non-infringement**

- 18 I therefore declare, on the basis of the evidence and arguments before me, that the use or the offer for use of the method of plugging and abandoning a well using the SJI Mk II Tool as set out below does not and would not constitute a direct infringement of either GB2499172B or GB2555058B. The method of using the SJI

Mk II Tool is as disclosed in the video having the file name “SJI Mark 2 Tool Video.mp4” and which can be viewed at:- <https://titanservices.egnyte.com/fl/vsAzPf7gHS> in combination with the description as set out in the amended Statement of Grounds filed by Titan Torque Services Limited at the UKIPO on 17<sup>th</sup> January 2023 (filed in support of the Declaration of Non-Infringement application by Titan Torque Services Limited and HRG Well Solutions Limited in relation to UK Patents GB2499172B and GB2555058B)

### **Appeal**

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

**PHIL THORPE**

Deputy Director on behalf of the comptroller