



**PATENTS ACT 1977**

PROCEEDINGS

Application under Section 72 of the Patents Act 1977  
to revoke EP(UK) Patent No. EP 1 295 550 B1

BETWEEN

John Horsfall & Sons (Greetland) Ltd

Claimant

and

Robert J. MacDonald

Defendant

HEARING OFFICER

Stephen Probert

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**DECISION (& ORDER) ON COSTS**

1. My decision of 23<sup>rd</sup> March 2017<sup>1</sup> dealt with the substantive issues in these proceedings, but left the issue of costs to be decided after the parties had had an opportunity to provide specific submissions in writing. I indicated in my earlier decision that in the absence of written submissions, I anticipated awarding costs in accordance with the published scale.

***The submissions***

2. I have received a brief written submission from the defendant, who was successful at the substantive hearing. It concerns the issue of whether I should award costs in relation to the attendance of the witness, Mr Tim Meadows, at the substantive hearing. Mr Meadows was the claimant's witness, but was required by the defendant to attend the hearing to be cross examined on his witness statement. The issue is therefore whether I should make a deduction from the costs to be awarded to the defendant in respect of the witness expenses. The witness expenses, which have been paid by the claimant, came to £762.53.
3. As I said in my earlier decision, the issues covered during the cross examination of Mr Meadows were not crucial to the decision I reached. Nevertheless, as the defendant's submissions on costs argue, they did help to inform my decision (eg. at paragraphs 35, 36 & 55).

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<sup>1</sup> BL O/138/17

4. Furthermore, assuming that the defendant did not wish to accept Mr Meadow's evidence as unchallenged — a reasonable assumption in my view — they had little alternative but to request cross examination. In the circumstances I do not think it would be appropriate to make any deduction from the costs to be awarded to defendant in respect of the witness' expenses.

***The calculation***

5. As these proceedings commenced before 1<sup>st</sup> July 2016, the standard scale is that set out in Tribunal Practice Notice (TPN) 4/2007. In respect of the relevant categories in the scale, I award the following amounts:-

Preparing a statement and considering the other side's statement	£300
Preparing evidence, and considering and commenting on the other side's evidence	£700
Preparing for and attending a hearing (15 Dec 2016)	£1,500
Official fees	-
<b>Total</b>	<b>£2,500</b>

***Order***

6. I hereby order the claimant, John Horsfall & Sons (Greetland) Ltd, to pay the defendant, Robert J. MacDonald, the sum of £2,500 as a contribution towards the costs of these proceedings. This sum is to be paid within seven days of the expiry of the appeal period below.

***Appeal***

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

**Stephen Probert**

Deputy Director, acting for the Comptroller