

IN THE MATTER OF APPLICATION NOS. 2269373 AND 2269371 IN THE
NAME OF HELEN HYDE

AND IN THE MATTER OF OPPOSITIONS NOS. 80538 AND 80538 THERETO
BY REED MIDEM ORGANISATION SA

THIRD DECISION

1. I now have to deal with the outstanding issue in these proceedings, which is that of costs. Both parties contend that they have won and ask for an order for costs in their favour. Furthermore, both parties ask for an award of costs above the normal scale pursuant to *Rizla Ltd's Application* [1993] RPC 365. Indeed, the applicant goes so far as to ask for indemnity costs. Yet further, both parties rely upon open, without prejudice save as to costs and without prejudice correspondence containing settlement proposals made by the parties which both parties have put before me.
2. In my judgment the overall effect of my first decision is that the result was a draw. Although the applicant succeeded in defeating the oppositions in relation to a specification of services co-extensive with her actual use, the opponent was successful in defeating her applications for a rather broader specification.
3. So far as the conduct of the proceedings are concerned, I consider that the applicant was at fault in not re-considering the width of her specification at a much earlier stage. Even on appeal, it was only at my suggestion at the hearing that she adopted the fall-back position. Against this, the opponent made an

unsuccessful application to re-open my first decision which caused the applicant to incur further costs.

4. So far as the correspondence is concerned, this shows that the applicant sensibly took the initiative in trying to settle the matter and that thereafter both parties made offers to compromise the proceedings. Neither party made an offer corresponding to my decision, however. Nor did either party make an offer which was clearly more advantageous to the other party than my decision. It is therefore difficult to give much weight to these offers.
5. Looking at the position in the round, I consider that the right result is that each party should bear their own costs. I will therefore set aside the hearing officer's order that the applicant pay the opponent the sum of £1000 and I will make no order as to the costs of the appeal proceedings.

13 March 2006

RICHARD ARNOLD QC

Mark Engelman, instructed by Be, acted for the applicant.

Fry Heath & Spence LLP acted for the opponent.