

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Tuesday, 22nd February 2023

Before:

RECORDER DOUGLAS CAMPBELL KC
(Sitting as a Judge of the Patents Court)

Between:

KIGEN (UK) LIMITED

Claimant

- and -

(1) THALES DIS FRANCE SA
(a company incorporated under the laws of France)
(2) THALES DIS FRANCE SAS
(a company incorporated under the laws of France)

Defendants

Written submissions by SUKHJIT DHADWAL of Reed Smith LLP for the Claimant
Written submissions by THOMAS JONES of Counsel (instructed by Kirkland & Ellis International LLP) for the Defendants

Application considered on the papers

JUDGMENT

RECORDER DOUGLAS CAMPBELL KC:

1 I have two applications before me.

- 1) The first is an application made under paragraph [15] of my Order dated 2 February 2023 whereby I am asked to approve or revise the parties' Stage 1 Costs Budgets ("the Stage 1 Costs Budgets Application").

2) The second is an application by the Defendants dated 16 February 2023 whereby the Defendants seek permission to rely upon their Amended Costs Budget filed and served on 9 February 2023 (“the Defendants’ Amended Costs Budget Application”).

2 Although the sums at stake are substantial, the written submissions from both sides have helpfully crystallised the issues to be decided. I will not prolong this judgment by extensive quotation from these submissions but will simply set out my essential reasoning and conclusions.

3 It is convenient to take the Defendants’ Amended Costs Budget Application first. This Application is not opposed by the Claimant and I am in no doubt that I should grant it. In particular I agree with Thales’s analysis of the legal position, and note that their application to correct errors in their original budget was made promptly. I do however accept Kigen’s submission that Thales should bear the costs of rectifying those errors, ie the costs of this application.

4 I now turn to the Stage 1 Costs Budgets Application. My initial impression was that each side’s Stage 1 Costs Budget exceeded the reasonable and proportionate costs of each phase, having regard to the factors set out at CPR Part 44.3(5) and 44.4(3): see PD3E paragraph 5. Neither side has given any real explanation as to why the pleadings and CCMC should be so expensive. Kigen has at least addressed the factors set out in CPR Part 44.3(5), but has only done so at a general level. The case may be complex and the sums substantial, but that is the beginning and not the end of the explanation.

5 That said, I accept that the parties are better placed than I am to assess the likely level of expenditure. I also bear in mind that the rules on costs budgeting apply to all sorts of cases, from impecunious litigants in person seeking modest sums (where cost budgeting plays an important role in access to justice) to the most complex commercial disputes between sophisticated and well-funded litigants (where the need for cost budgeting is less obvious). The Court can reasonably adopt a lighter touch in cases falling with the latter category, such as the present case.

6 So far as Kigen’s cost budget is concerned, it seems to me that the sums offered by Thales in their budget report (excluding the error of £6 229.45 for expert reports) are already generous. This is because it amounts to allowing about £920 000, taking incurred figures into account, to produce a Statement of Case and prepare for and attend a Costs and Case Management Conference. There is no reason of principle to go beyond that. Hence I will so order.

7 So far as Thales's costs budget is concerned I note that Kigen has two main points. The first point relates to the Amended Costs Budget Application, but I have already granted that application so it falls away. The second point (or rather group of points) relates to the fixed fee arrangement between Thales and its solicitors. I agree with Thales that this is irrelevant at the budgeting stage, so it falls away as well. Kigen had no other objections to Thales's costs budget, most likely because Thales's figures were significantly lower than its own. The upshot is that I allow Thales's costs budget.

8 I would not in any event order Thales to disclose their retainer with their solicitors in the absence of a properly formulated application from Kigen to this effect.

9 I invite the parties to submit an agreed order giving effect to the above findings. If an order cannot be agreed, the parties are invited to submit their respective drafts and I will summarily settle it.

10 That leaves the matter of costs of the Stage 1 Costs Budgets Application. My provisional view is that notwithstanding Thales's greater success this has been an exercise in case management. However I am conscious that I have not heard submissions on this aspect and I therefore permit both sides to file such submissions in relation thereto.