

PATENTS ACT 1977

BETWEEN

Loadhog Limited

Claimant

and

Polymer Logistics BV

Defendant

PROCEEDINGS

Application under section 72 of the Patents Act 1977 in
respect of patent N^o GB 2,440,699 B

HEARING OFFICER Stephen Probert

DECISION — COSTS**Introduction**

- 1 The substantive part of these proceedings has now concluded, with the application to revoke the patent failing on all of the grounds pleaded. It follows that the defendant is entitled to a contribution towards its costs in the action. At the hearing on 19th and 20th April 2010, the matter of costs was stayed at the request of the parties until after my substantive decision¹ had issued. Nevertheless, in that decision I expressed a preliminary view that I could see no reason to depart from the Comptroller's published scale of costs. I have now received written submissions, including submissions in reply, from both sides as to the costs that should be awarded.
- 2 Although both parties have agreed with my preliminary view that I should make an award of costs in accordance with the Comptroller's published scale, there is a significant difference of opinion as to how the scale should be applied to the circumstances of this particular case. Having carefully considered the parties' written submissions (presented in accordance with my directions), I now give this decision as to costs.

¹ BL/O/195/10 dated 18th June 2010

Costs

- 3 Tribunal Practice Notice (TPN) 4/2007 explains how costs are to be determined in proceedings before the Comptroller ². It includes the following standard scale of costs that is to be applied.

Preparing a statement and considering the other side's statement	From £200 to £600 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 £500 if the evidence is light to £2000 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	Up to £1500 per day of hearing, capped at £3000 for the full hearing unless one side has behaved unreasonably. From £300 to £500 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 The claimant has also reminded me that I have already made an interim award of costs to the defendant as a contribution to their expenses in connection with preparation for a preliminary hearing on striking-out³.
- 5 The defendant seeks an order for costs in the amount of £15,580.50. This is said to be in accordance with the published scale, and the defendant then provides a detailed breakdown showing how this amount is reached. However, I don't agree with the way in which the defendant has applied the scale. For example, they have applied the 'evidence' element (the second row in the above table) to each piece of evidence filed in the proceedings, with the result that they seek £2,000 for preparing their own evidence, plus £2,000 for considering the claimant's expert evidence, plus six separate amounts of £500 each for considering the six other witness statements filed by the claimant.
- 6 That is not the way in which the Comptroller intends the scale to be applied. The evidence element of any costs order should be between £500 and £2000 **in total** (ie. considering all the evidence in the proceedings). As a general rule, it is not intended that any item in the table should apply more than once in any award of costs. If it did, it would defeat one of the fundamental purposes of the published scale — ie. predictability of costs. I have therefore followed the published scale as I believe it should be applied:-

Considering the claimant's statement(s) and preparing their counterstatement(s). £400

²The claimant's submissions refer to TPN 6/2008 which supplements TPN 4/2007 specifically in relation to trade mark proceedings. But the relevant figures are the same, and nothing turns on this minor slip.

³BL O/031/10 dated 28th January 2010.

Preparing evidence and considering the claimant's evidence. (The evidence in this case included lengthy reports from expert witnesses.)	£1600
Preparing for and attending the hearing on 19 th and 20 th April 2010. (The hearing lasted 2 days, including an adjournment to enable counsel to prepare closing speeches.)	£3000
Travel and accommodation expenses for the defendant's expert witness.	£1080

Total £6,080

- 7 I have examined the travel and accommodation expenses for the defendant's expert witness, and I am satisfied that they are reasonable in the circumstances. I have therefore awarded the full amount sought in this category. The claimant has commented that the mileage element of Mr ten Bok's travel expenses is high because the claimant chose to rely on an expert witness from Holland. I don't know where in Holland Mr ten Bok lives, but I note that Amsterdam (roughly in the centre of Holland) is closer to Newport than some parts of the UK.
- 8 Moreover it is likely that when the defendant chose Mr ten Bok as their expert witness for this case, they anticipated that he would fly to the UK if required to attend a hearing. (In the event, when the time came for Mr ten Bok to attend the hearing to be cross-examined, a cloud of ash from an Icelandic volcano had closed European airspace and he had to drive to the hearing.)
- 9 The defendant has claimed three nights' hotel expenses for Mr ten Bok in relation to his attendance at the hearing. Although Mr ten Bok's cross-examination was concluded during the first day of the hearing, I think it is reasonable that the defendant should want to make sure that he was available during the second day, either to support its legal team or in case he was required to clarify some part of his evidence.

ORDER

- 10 I order the claimant, Loadhog Ltd, to pay the defendant, Polymer Logistics BV, six thousand, and eighty pounds (**£6,080**) as a contribution to its expenses in the revocation proceedings.

Appeal

- 11 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

S PROBERT

Deputy Director acting for the Comptroller