



Neutral Citation Number: [2021] EWHC 1972 (Pat)

Case No: HP-2016-000018

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

Royal Courts of Justice  
Rolls Building, 7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: 13<sup>th</sup> July 2021

**Before :**

**THE HON MR JUSTICE MELLOR**

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**Between :**

**(1) ANAN KASEI CO. LTD**  
**(2) RHODIA OPERATIONS S.A.S**

**Claimants**

**- and -**

**(1) NEO CHEMICALS & OXIDES (EUROPE)**  
**LTD**  
**(2) NEO PERFORMANCE MATERIALS, INC.**  
**(3) NEO CAYMAN HOLDINGS LTD**

**Defendants**

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**Miles Copeland** (instructed by **Hogan Lovells International LLP** ) for the **Claimants**  
**Adam Gamsa** (instructed by **Bird & Bird LLP**) for the **Defendants**

Hearing date: 9<sup>th</sup> July 2021  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10.30am on Tuesday 13<sup>th</sup> July 2021.

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**THE HON MR JUSTICE MELLOR**

**Mr Justice Mellor:**

**Introduction**

1. I have to rule on a variety of points which remain in dispute between the parties as to the scope of disclosure in this inquiry as to damages. Ordinarily I would have ruled on these points in the course of the hearing last Friday. As matters transpired, it was only possible to complete oral submissions on the various points in the time available before another commitment arrived. Furthermore, it did seem to me that even the experienced and well-resourced parties in this case had failed in certain respects to take due account of the judgment of the then Chancellor, Sir Geoffrey Vos in *McParland & Partners Ltd v Whitehead* [2020] EWHC 298.

**This action**

2. In this action for infringement of EP 1 435 338 (the Patent), the claimants (Rhodia) have already established that the Patent is valid and was infringed by certain acts carried out by the First Defendant, in the judgment of Roger Wyand QC in April 2018. Mr Wyand QC found that various products infringed, including Neo's Commercial Products (called C100N, C100 and C201) and various (but not all) Development Samples, R & D Samples and Other Samples. In October 2019 the Court of Appeal upheld his findings and added the Second Defendant pursuant to a successful procedural appeal by Rhodia. The Third Defendant was added by consent in the course of this inquiry as to damages. I will refer to the Defendants as 'Neo'.
3. The Patent claims essentially pure High Surface Area (HSA) cerium oxide, a substance used in the manufacture of catalytic converters for diesel powered vehicles.
4. In a recent judgment in this case, Fancourt J. correctly described this case as being 'hard fought'. Neither part of this case has been the subject of costs budgeting, and it appears the damages claimed are well above the limit below which costs budgeting would be required. Furthermore, the costs expended on both sides in recent applications indicate that this is an action in which every possible point is being or will be taken. These considerations go to the proportionality of the disclosure sought.
5. In this Inquiry, Rhodia served their Points of Claim on 26 June 2020. In July 2020, Marcus Smith J ordered a trial listing in January 2022 and the trial is now listed for 14 days, floating in a 5 day window from 24 January 2022. Neo served its Points of Defence on 11 September 2020.
6. In December 2020, Fancourt J dealt with various applications, the result of which was (a) the Third Defendant was joined by consent, (b) directions were given relating to the preparation of the Disclosure Review Document (the DRD), and (c) by way of initial disclosure, Rhodia were ordered to disclose an agreement between it and a customer (Party A) relating to Rhodia's supply to that customer of HSA (essentially pure) cerium oxide products, and a further financial document underlying its claimed lost profit margins (the Sales CM

- Report). That disclosure was on an external eyes only basis (to Neo’s solicitors and expert accountants) and the issue of whether those documents needed to be provided to Neo’s COO (from whom it takes instructions) – Mr Kevin Morris – was adjourned with liberty to apply.
7. At that hearing Neo also sought disclosure of licences relating to mixed oxide products. That application was refused, although the Defendants were given liberty to apply as part of Extended Disclosure (as they now do).
  8. The CMC took place before Zacaroli J in February 2021, at which general directions were given but a number of issues were adjourned for several reasons. The issue of Extended Disclosure was adjourned because the scope of disclosure might change, depending on various applications Neo had brought or would bring. Neo had made an application to withdraw admissions that it had imported and kept the C100N, C100 and C201 that it then exported and supplied abroad. It also (assuming it was successful as to withdrawing the admissions) sought summary judgment that it had not “imported” or “kept” those products (or Development Samples) within the meaning of s.60 Patents Act 1977. It further sought summary judgment that the proper counterfactual for Rhodia’s claim was that, had it not brought product (whether Development Samples or Commercial Product) into the UK, it would have routed those same goods through a non-UK port (or supplied the Development Samples to its customers outside the UK) – i.e. that *United Horse Shoe and Nail Co Ltd v John Stewart & Co* (1888) 13 App. Cas. 401 was wrong insofar as it stood for the proposition that it was irrelevant that the defendant could have done what it had done in a non-infringing manner (or that *United Horse Shoe* had been misunderstood).
  9. The Withdrawal Admissions (WA) and Summary Judgment (SJ) applications were heard by Fancourt J. on 26 March 2021. He handed down his judgment on those points on 4<sup>th</sup> May 2021 (with a short supplemental judgment on 10<sup>th</sup> June 2021), allowing (by a narrow margin) certain admissions to be withdrawn but refusing both limbs of Neo’s application for summary judgment. On this application, Rhodia drew my attention to Fancourt J’s view that the points of law that each involved need to be determined not in the abstract but in their factual context.
  10. Following those hearings, various amendments have been proposed by each side to their pleadings. For the purposes of this application I had to consider Rhodia’s draft Amended PoC dated 11 June 2021 and a draft Amended Points of Defence from Neo dated 7 July 2021. I encourage the parties to resolve such minor disputes as remain over the contents of these drafts
  11. It is certainly true that these various applications have taken up considerable time (and costs) so that, as Rhodia submitted, the disclosure issues now need to be resolved, so that the remaining steps to trial can proceed without the trial date being put in danger.
  12. In terms of the progress which has been made to date on disclosure, Rhodia served its proposed List of Issues for Disclosure on 23 December 2020, to which Neo responded on 20 January 2021. Then draft lists were exchanged identifying the models of disclosure suggested by each side on 10 February 2021. As I

mentioned, the issues regarding disclosure were adjourned from the CMC on 26 February 2021 until after the WA and SJ applications had been determined. There has been a significant amount of correspondence in the month leading up to this hearing. It is true that the parties managed to resolve some issues and narrow disputes on others, for which I am grateful. However, I understand that all the discussions took place in correspondence – no meetings (not even virtual) between the solicitors took place to discuss the outstanding disclosure issues.

**The issues in the inquiry.**

13. The pleadings are extremely detailed. Rhodia claims damages under 9 heads. The first head ‘Supply of Commercial Products within the UK’ has been compromised. Heads 2-7 are concerned with supplies outside the UK consequential on infringing acts within the UK, whether Commercial Products imported into, kept or supplied in the UK, Development Samples, R&D Samples or Other Samples imported, kept or supplied in the UK or supplied outside the UK. Head 8 ‘Price Reduction’ has been withdrawn. Head 9 is concerned with further sales post-patent expiry.
14. Under each remaining Head, Rhodia’s primary claim is for lost profits, or the loss of a chance to make profits, on sales it would have made abroad, claiming in the alternative a reasonable royalty. Thus, at the trial, there will be a series of financial issues concerning what profits Rhodia would have made and the level of a reasonable royalty. Perhaps the most significant issues will concern remoteness and causation. In addition, there are likely to be a series of more detailed issues as to precisely what acts done in the UK are infringing acts, including the position of goods stored in bonded warehouses and whether any testing, evaluation or certification took place during such storage. All these issues are fact-sensitive, causation particularly so.
15. An important part of the background is the way the industry works. On this the pleadings reveal a considerable amount of common ground. Certainly in the EU, business appears to be transacted on a long term basis, due in part to the regulations on emissions introduced by the EU. The EU Regulation in question was adopted on 20 June 2007 and introduced both the Euro5 and the Euro6 standards. The Euro5 standard came into force in September 2009, and Euro6 in September 2014. I understand Euro6 will remain in force until Euro7 is introduced but that is still in development.
16. The legislative backdrop explains (at least in part) the way in which Neo secured the business of one of the three key customers for HSA cerium oxide in the EU, Johnson Matthey International (JMI).
17. Neo supplied a Development Sample to JMI in January 2008 and made a presentation in June 2008. A total of 2 Development Samples were supplied by Neo to JMI before the Limitation Period began on 13 April 2010. Neo admit that JMI evaluated the Development Samples in the UK. This was followed by 500kg quantities of what is termed ‘Production Part Approval Process’ (PPAP) product. Neo pleads that these PPAP deliveries were only made outside the UK, but it appears there were three PPAP deliveries and one was made to the UK.

Neo admits that commercial supply began on 27 January 2014 and that Neo and JMI agreed the specification for C100N on 8 September 2014.

18. Of course, it is well-known that vehicle manufacturers much prefer dual sources of supply. Rhodia was supplying its HSA cerium oxide product to JMI concurrently with Neo. Rhodia's sales to JMI peaked in 2015 but decreased steadily after that.

### **The DRD**

19. The DRD lists 33 issues, of which two have been removed because they concern Heads 1 and 8. The 31 which remain are issues in the action, but they are not issues for disclosure. I can give some examples:
  - (a) Issue 3: what margin, had Rhodia supplied Commercial Product instead of Neo, is it entitled to recover?
  - (b) Issue 5: the level of reasonable royalty Rhodia is entitled to recover for the First Defendant's infringing acts?
  - (c) Issue 8: whether the overseas sales are too remote from the s.60 PA 1977 acts to recover damages in respect thereof.
  - (d) Issue 9: whether the factual causation of any sales of Commercial Products outside of the UK was the importing and/or keeping of those products within PA'77.
20. In Section 1B of the DRD, under certain of the 'issues for disclosure', one side or the other did identify certain categories of documents or types of documents which were sought. This, however, did not take place in relation to a number of the issues which remain in dispute.
21. What has happened in the lead up to this hearing illustrates the problems caused by listing in the DRD issues in the action and not issues for disclosure. Instead of focussing on what types of documents would be likely to contain the required information, the debates focussed on whether very particular points had or had not been pleaded or admitted, and Neo continued to make arguments of this nature during this hearing. Rhodia attempted to progress matters by presenting Neo with a detailed Notice to Admit Facts to which Neo responded on 5 March 2021. Neo made certain admissions but there remain many issues in dispute.
22. What has happened in this case seems to me to have stemmed from the parties' failure to take sufficient notice of at least the following key points made in the *McParland* judgment:
  - (a) First, the importance of properly identifying the issues for disclosure, and not simply listing out in the DRD the issues in the action (see [46] and [49]). It is a quite different exercise from the creation of a list of issues for determination at trial (see [56]);
  - (b) Second, compliance with the Disclosure Pilot need not be costly or time-consuming (see [55]). In this case, it is likely that if the parties had

properly identified the issues for disclosure, there would have been far fewer than the 33 originally listed, probably fewer than 10. The disputes would then have been easier to resolve;

- (c) Third, unduly granular or complex lists of Issues for Disclosure should be avoided (see [57]). See the preceding point.
- (d) Fourth, the need for a high level of cooperation between the parties and their representatives in agreeing the Issues for Disclosure and completing the DRD (see [53]). This means the parties have to think cooperatively and constructively about their dispute and what documents will require to be produced for it to be fairly resolved (see [4]). Co-operation between legal advisers is imperative (see [58]). It seems to me that in ‘hard fought’ litigation, the need for cooperation between representatives is even more important. Unfortunately in this case, the cooperation which was required was hindered by the fact that the parties set off on the wrong foot in their identification of the issues for disclosure. This led to the disputes over what had or had not been pleaded, when in fact those disputes could and should have been more easily resolved if attention had been focussed on what documents were likely to exist and which were required to resolve the issues in this inquiry. The lack of proper cooperation led to the disclosure disputes being debated in expensive and lengthy correspondence. Some of this could have been avoided if the parties’ representatives had met to discuss these disputes.

- 23. I do not wish to be overly critical of the parties, but the Disclosure Pilot does require a general sea change in thinking which this application illustrates has not yet come about.
- 24. With that introduction, I can turn to the disclosure points which I need to determine. I should add that the oral submissions I received from both sides were well structured and succinct. I am grateful to both Counsel for their assistance.

### **Causation**

- 25. The ‘issues for disclosure’ concerning causation are 9, 11, 14 and 19, each relating to a particular head of damage. Rhodia seeks Model D. Neo offers Model B. It is clear that causation lies at the heart of this inquiry, which is no doubt why Mr Copeland argued this point first.
- 26. In its evidence and Skeleton Argument, Neo took the position that no further disclosure (beyond its initial disclosure) on causation was necessary because there were no facts in dispute on the pleadings. Neo’s offer of Model B is apparently on the basis that all the key documents have already been produced.
- 27. Neo’s position was founded on certain key admissions. The admission in relation to JMI (which is representative of others) is to this effect:

‘Neo accept that their intention and objective in importing and keeping in the UK and supplying Development Samples in the UK, and as applicable C100N commercial product to JMI was to procure a commercial contract with JMI for the sale of C100N whether supplied inside or outside the UK’.

28. The admission was without prejudice to Neo’s position that certain of the acts did not fall within s.60 of the Patents Act 1977 – these were some of the arguments on which Fancourt J. refused summary judgment.
29. Even though that admission was similar to one requested by Rhodia, it was just one of a number which were requested. It can be seen that it is a very particular admission. In particular, it begs the question as to whether Neo’s intention and objective were actually achieved. Although Neo professed a degree of bafflement as to what could be left in issue, it is clear to me that this admission leaves it open to Neo to argue that, for some other reason, its objective and intention were not achieved, or that the commercial contract resulted from other causes. Indeed, Neo are quite clearly running certain of its own intervening non-infringing acts as breaking the chain of causation.
30. In oral argument, Neo’s position was more nuanced. Mr Gamsa accepted there were factual issues to be resolved but he invited me to consider three issues:
  - (a) First, the nature of the disputes on the pleadings;
  - (b) Second, whether those issues are suitable for disclosure;
  - (c) Third, whether Model B or Model D
31. These submissions were founded on the same false premise which I identified above: that before disclosure can be ordered, it is necessary to be able to point to some specific allegation in the pleadings that either identifies or plainly requires consideration of the actual documents sought. This approach confuses the purpose of pleadings – which is to identify the points in issue – and the purpose of identifying issues for disclosure in the DRD – which is to focus minds on what documents are required to resolve the points in issue on the pleadings. The pleadings do not have to descend to the detail required when identifying and justifying what documents are required for a fair resolution of the points in issue on the pleadings.
32. Quite apart from the debate over Neo’s admissions, Mr Copeland for Rhodia took me through a number of points on the pleadings to demonstrate there were facts in dispute on causation which require disclosure to resolve them fairly, including the following:
  - (a) Whether Neo’s acts in the UK were the cause of the sales made overseas;
  - (b) Whether it was the infringing Development Samples or the non-infringing ones which were part of the development of C100N.

- (c) Did JMI provide feedback to Neo on the infringing Development Samples? If so, what was it?
  - (d) What was the role of the C100N which was supplied in small quantities prior to the agreement on the specification of C100N?
  - (e) Is it correct, as Neo alleges, that the PPAP supplies were instrumental in the foreign sales?
  - (f) Is it correct that there were no PPAP supplies in the UK?
33. There were others, but I accept each of those points as being not only in dispute but points which are highly likely to be answered or illuminated by documents in Neo's possession. Furthermore, as I observed in the course of argument, Neo have made some very specific points in their Points of Defence which indicate to me that Neo must have reviewed their documents very closely in order to make them. Overall, it is clear to me that causation in this inquiry requires disclosure from Neo.
34. Addressing the factors set out in PD51U, para 6.4, I am satisfied that Model D disclosure (without narrative documents) from Neo on causation is appropriate for the following reasons:
- (a) The issues of causation in this damages inquiry are highly fact-specific and factually complex;
  - (b) This case is important because the value of Rhodia's claim is considerable (even if the indication of the likely value is confidential);
  - (c) It is highly likely that Neo has documents with a high probative value. Mr Copeland gave as examples: documents concerning the provision of Development Samples to JMI for testing, feedback from JMI, documents concerning the provision of C100N to JMI to allow it to qualify the product, negotiations over the supply of C100N to JMI;
  - (d) Although the Model D disclosure sought will involve some expense on Neo's side, the expense in the context of this inquiry is reasonable and proportionate. Neo gave some overall estimates as to the cost of disclosure, but, as Mr Copeland pointed out, these were made before the disclosure issues narrowed.
  - (e) Both parties are well able to bear the costs of disclosure. Neo has already had to pay Rhodia hundreds of thousands of pounds in costs and Neo expended large sums in costs on its WA and SJ applications.
35. Finally, there is significant mistrust between these parties. As I mentioned, this litigation is being fought hard so it is to be assumed that Neo will take every possible point open to it. In line with the then Chancellor's indication in *McParland*, this is a case where the simplest and most appropriate course is to order Model D disclosure.



### **The Mixed Oxide issue**

36. This arises in the context of the reasonable royalty issues where Rhodia advances a claim that it would only licence its HSA cerium oxide product at a rate equal to its profit.
37. The issue is whether Rhodia should give disclosure of licences relating to its mixed oxide products, which I understand to be an older technology than the HSA cerium oxide technology in the Patent in suit. Neo contends that it should on the basis that the mixed oxide licences are comparable to licences of HSA cerium oxide products, even though the products are not substitutable. Rhodia points out that Neo has not advanced any plea that the mixed oxide licences are comparable and also that Neo suggested in the past that it needed to see the licences to decide whether they are comparable. Rhodia says that it has an entirely separate mixed oxide patent family (about which the parties are in separate litigation).
38. On the current information, I am not persuaded that disclosure of Rhodia's mixed oxide licences is reasonable or proportionate or that those licences are sufficiently relevant. The fact that Rhodia grants mixed oxide licences at a rate (let me assume) which is less than its profit would not be at all surprising, but I do not see how that would assist the Court in identifying a reasonable royalty for products embodying the different technology covered by the Patent in suit. Indeed, the request for disclosure seems to me to be speculative. Therefore I decline to order disclosure of the mixed oxide licences.

### **Where decisions were made**

39. This is one narrow issue which remains on Issues 6 and 17 which are concerned with whether Neo imported into the UK and/or kept, within the meaning of s60 PA 1977, Commercial Products subsequently supplied to customers outside the UK and infringing Development Samples within the limitation period.
40. Disclosure issues arose because Neo were permitted to withdraw their admissions that they had imported or kept within s60. Most of the issues have been agreed, leaving this one which is concerned with whether Neo should produce documents evidencing where decisions were made about the ultimate destination of products sold to a particular customer, Neo having agreed to provide such documents in relation to JMI.
41. Rhodia's case for disclosure depends on a decision of the Court of Appeals of Barcelona dated 17 May 2006 in which the Court ruled:
  - (a) First, that Article 50(1)(b) of the Spanish Patents Act 1986 (regarding infringement of process claims) corresponded to Article 25(b) of the Community Patent Convention;
  - (b) Second, on a question of infringement in relation to goods which originated in Argentina, arrived in Spanish territory but were destined for a non-EU destination.

42. The Court considered three situations, the first of which was where products are imported and exported, and whose destination is decided once they are in Spanish territory. In that situation, the Court had no doubt that the acts of importation should be considered infringing.
43. Accordingly, Rhodia says that an interpretation of s.60 of the Patents Act 1977 is that there is infringement in the case where decisions as to a product's destination are taken whilst in the jurisdiction. Hence, it says, the relevance of the disclosure sought.
44. Mr Gamsa had three points in response. The first was, in essence, to say that if Neo was right on the question of law argued before Fancourt J. then no disclosure was necessary. If Neo was wrong, he said that any importation would infringe, so again disclosure was not necessary. His second point was there was a difference between this customer and JMI, in that this customer was 'export-only'. Finally, he argued this request was speculative and there was no pleading as to where decisions had been made.
45. Mr Gamsa's first argument fails to meet the intermediate point raised by the Spanish decision. As Mr Copeland said, it depends on how Neo is wrong. Mr Gamsa's second and third points beg the question as to what Neo's documents will actually reveal. This is a situation in which decisions were certainly made as to the destination of product, but Rhodia cannot know what decisions were made, when or where, without seeing Neo's internal documents. I am satisfied that the disclosure sought by Rhodia is required.

#### **Issue 5: reasonable royalty and Neo's pricing**

46. Neo has agreed to provide its contracts with their customers which will reveal the actual prices of the infringing products. Rhodia says more is required. Rhodia wants to see documents concerning the negotiations over price. It says the documents are relevant to the issue of reasonable royalty in that they will reveal whether Neo pressed for a higher price and were 'batted down' or did not press, or reveal that there were different approaches taken to different customers. All this, it is said, will shed light on the extent to which Neo would have been able to charge a higher price, including the reasonable royalty.
47. In my view, this request is too speculative at this stage. Although the documents might not be that hard to find, I also consider this request is disproportionate, even in the context of this inquiry.
48. Furthermore, I have in mind that Rhodia will be able to deploy in its evidence, if it so chooses, its own experience of price negotiation in the market for essentially the same product. Of course, if Neo respond, that might provide a better basis for requesting the underlying documents at that stage.

#### **R&D Samples**

49. R&D Samples were internal to Neo. Customers were only ever supplied with Development Samples (some of which were found not to infringe) free of charge or Commercial Product for which they were charged.

50. Rhodia contends that the issue of causation over the R&D Samples is conceptually different to that over the Development Samples, therefore Neo should give disclosure relating to the R&D Samples. It might well be conceptually different but, if I assume Rhodia has failed on causation over the infringing Development Samples and/or the Commercial Product supplied in the UK, I fail to see how Rhodia could possibly establish a case based on their internal R&D Samples. Accordingly, I reject this request for disclosure. It is disproportionate.

### **The Party A documents**

51. Pursuant to the liberty to apply in Fancourt J.'s disclosure order in December 2018, Neo has an outstanding application that Rhodia's confidential documents can be shown to Neo's Chief Operating Officer, Mr Kevin Morris.
52. As I mentioned above, back in September 2020, Marcus Smith J. ordered that certain confidential documents should be disclosed to Mr Morris on the basis of confidentiality undertakings plus a further undertaking not to be involved in the negotiation or sign off of any agreements with customers concerning the price of HSA cerium oxide products or any substitute for such products for use in diesel catalyst engines, either alone or as part of a portfolio of products. On 18 December 2020, one of the Orders made by Fancourt J was for disclosure forthwith by Rhodia of its agreement with Party A in relation to HSA cerium oxide products. The Order contained a provision that Rhodia had to provide a copy of the Order to any third parties whose interests were engaged by the disclosure.
53. What are now referred to as 'the Party A documents' are a collection of four documents. They concern a contractual arrangement between Rhodia and Party A which may be relevant to Heads 2 (Supply outside the UK of Commercial Products imported and/or kept in the UK) and 5 (Supply outside the UK consequential to import and keeping of Development Samples within the UK). I am told that at the CMC in February, Zacaroli J made it clear that the Party A documents would have to be disclosed.
54. In the course of the hearing I received copies of three letters written by solicitors for Party A, Bristows LLP, two addressed to Rhodia's solicitors and one to Neo's. A difficulty arose because in their first letter, Bristows presented various points as to the highly sensitive and confidential nature of certain of the documents, asked Hogan Lovells to ensure that the letter was drawn to the attention of the Court but insisted that the content of the letter was not provided to Neo or its solicitors and not read aloud at the hearing. This is not an acceptable way to proceed. Anything seen by the Court must be provided to both parties, on suitable terms to preserve confidential information.
55. The solution to this difficulty is to appoint a hearing at which Party A can either be represented or have its position considered by the Court and both parties. This issue is now reasonably urgent and should preferably be resolved before the end of this term. If that is not possible (and I understand the lists are now very busy), it will have to be heard in the Long Vacation.

56. Party A's objections could conveniently be resolved along with another issue as to confidentiality which remains unresolved – Neo's application concerning Mr Morris. Although during the hearing, discussions proceeded on the basis that separate hearings would be appointed, on reflection I consider all these confidentiality points should be resolved at one hearing. It is inevitable that Party A's strongest objection will be to the Party A documents being shown to Mr Morris. If a hearing cannot be accommodated this term, I am satisfied that the resolution should not wait until October, so it should be heard in the Long Vacation, preferably (and most economically) before a Judge of the Patents Court because of their experience in dealing with these types of confidentiality issues.
57. I invite the parties to agree the terms of an Order giving effect to this Judgment.