

## **PATENTS ACT 1977**

IN THE MATTER OF an application  
under section 72 by Camfil AB  
for the revocation of Patent No GB2329854  
in the name of Interfilta (UK) Ltd

### **DECISION ON COSTS**

#### **Background**

- 1 The substantive hearing on this application by Camfil AB for revocation of Patent No GB2329854 took place on 13 and 14 May 2002. Prior to the issue of my decision the Patent Office received uninvited submissions from the defendants, arguing that there had been severe procedural irregularities at the hearing which warranted reopening the proceedings. They also sought to resile from a concession that had been made at the hearing. Consequently issuance of my decision was put on hold and on 18 September I held a further hearing to consider these submissions. I concluded that I did indeed have discretion to take account of submissions like this made after the conclusion of the substantive hearing, but in the event I decided not to exercise my discretion in the defendants' favour to allow them to reopen the proceedings. I issued a decision to this effect on 7 October.
- 2 In this decision I made clear that, since the matters raised at the hearing on 18 September could and should have been raised at the substantive hearing, the claimants had been put to a considerable amount of unnecessary effort and expense and I did not consider it was fair for them to bear those expenses. I therefore said I would award them a lump sum which approximated to the full costs they had incurred in dealing with the submissions. I said I would take as the starting point the schedule of costs provided by their patent agents, Boulton Wade Tennant, which amounted to just over £12,800, but would allow the defendants an opportunity to submit comments on the schedule. I did, though, indicate that any comments should be specific and properly argued.

#### **Arguments submitted**

- 3 The defendants duly commented in a letter dated 18 November 2002. Their comments included a number of general arguments about the hearing on 18 September, namely, that (1) it was called to decide an important point of law, *viz* whether the comptroller had discretion to take account of submissions made after the conclusion of the hearing, (2) it had been accepted that procedural errors in the video cross-examination had been highlighted which would result in modification of the Office's guidance and (3) that it would have been wrong simply to raise their complaint about the cross-examination at appeal. In respect of the detailed schedule of costs, they contended that it included costs relating to items that I had not considered at the hearing on 18 September. In these circumstances they considered that it was just and right for each side to bear its own costs.

- 4 In response to the defendants' general arguments, the claimants pointed out that I had already decided that costs should be awarded to them and that this matter could not be reopened in general terms. In respect of the detailed schedule, they argued that the comments from Interfilta were vague and did not address the question of whether the specific costs were appropriate. In the claimants' view all the costs on the schedule related to issues which they understood would be argued at the hearing. Some of the issues for which appropriate preparations were made were not addressed because the defendants had misunderstood the issues to be considered.

### **Conclusion and order**

- 5 I accept that the general arguments made by the defendants are all correct, but in making them they are overlooking the important consideration to which the claimants have correctly drawn attention. Both sides submitted their arguments as to the basis on which a costs award should be made at the hearing on 18 September. Accordingly, when I decided to award the claimants an amount substantially equal to their full costs I did so taking full account of the very points that the defendant is now reiterating. For example, in paragraph 12 of the decision I had accepted that I had discretion to take late submissions into account and in paragraph 41 I agreed that it was an important point of public interest to establish the appropriate arrangements for cross-examination by video link, pointing out however that it was not necessary to reopen the present case to do so. I had also accepted that the Office suggestion that the defendants should raise their complaint about the video cross-examination at appeal was wrong. I therefore agree with the claimants that these submissions by the defendants are out of order. They do not relate to the matter on which they were invited to comment in paragraph 70 of my decision, namely the schedule of costs provided by the claimants.
- 6 I turn now to the defendants' comment on the schedule. Whilst this comment falls well short of the specific comments that I requested and comes close to the sort of vague, blanket objection to which I said I would pay little attention, I have nevertheless considered it carefully. However, I have concluded that the claimants are right on this point too. The hearing was offered in an official letter dated 22 July and accepted by the defendants on 26 July. Requests from the Office, in response to requests from the claimants, that the defendants make their submissions at least one week before the hearing so that the claimants knew what they were supposed to be dealing with fell on deaf ears. The first indication of the case which the defendants intended to argue was provided in the skeleton argument, filed on 17 September, i.e. the day before the hearing, by Mr Giles Fernando, counsel for the defendants. The claimants had thus been put in the position of having to prepare their case for the hearing without knowing the issues that they needed to address. In these circumstances I think it ill-behaves the defendants to claim that some of the costs relate to matters which, in the event, were not considered at the hearing.
- 7 I gave the defendants an opportunity to make specific and properly argued comments on the schedule of costs offered up by the claimants. They have made a number of submissions in general terms, all of which I have rejected. They have made no submissions on any specific items in the schedule, which means they have given me no grounds for supposing that any of the costs in the schedule is unreasonably high or unreasonably incurred. Accordingly I have no grounds for cutting down the amounts

in the schedule. Therefore I direct that Interfilta (UK) Ltd should pay to Camfil AB the sum of £12805.75 for their costs in respect of the matters that gave rise to the hearing on 18 September. This sum should be paid within 7 days of the expiry of the appeal period for the present decision, payment being suspended if an appeal is lodged.

- 8 For the avoidance of doubt, this costs award is additional to the £3000 costs I awarded in my decision on the substantive issues.

**Appeal**

- 9 As this decision is not on a matter of procedure, the period within which an appeal may be lodged is six weeks.

Dated this 10<sup>th</sup> day of December 2002

**P HAYWARD**

Divisional Director, acting for the comptroller

**THE PATENT OFFICE**