

## **PATENTS ACT 1977**

IN THE MATTER OF an application  
under section 72 by Edward Evans Barker  
for the revocation of Patent No 2314392  
in the name of Oystertec plc

### **DECISION ON COSTS**

- 1 In my preliminary decision of 25 July 2002 I found against the proprietors Oystertec plc (“Oystertec”) who had raised objection to filing a counter-statement in proceedings for revocation brought by Edward Evans Barker (“EEB”). The essence of Oystertec’s case was that EEB - a firm of patent agents - must be acting for someone who was the true applicant and whose name ought to be disclosed.
- 2 I said in my decision that I was minded to award costs to EEB at that stage in respect of the preliminary hearing, but I gave the parties an opportunity to make submissions on the matter in the light of Oystertec’s concern at the hearing that EEB might as a litigant in person not be entitled to costs. The parties made their submissions in letters dated 12 and 15 August 2002, but I deferred further consideration of the matter to await the outcome of an appeal to the Patents Court by Oystertec against my decision. The appeal has been dismissed and indeed Oystertec have filed their counter-statement. I therefore now return to the matter of costs in relation to the preliminary hearing.
- 3 As Oystertec pointed out in the first limb of the submission in their patent agent’s letter of 12 August 2002, I had agreed with them that Form 2/77 had been incorrectly completed. However, the correction of the form is a quite minor consequence of my finding on the main point in issue, upheld on appeal, that EEB were entitled to file the revocation action without disclosing the name of anyone for whom they might be acting. I do not therefore consider that this in truth a case where both sides have won something and lost something - and should therefore bear their own costs - as Oystertec contend.
- 4 Oystertec’s alternative argument in the second limb of their submission is that EEB have been found to be the true applicants for revocation, and should therefore be treated as litigants in person as regards an award of costs; EEB would therefore be entitled to recover out-of pocket expenses such as statutory fees and disbursements (including the cost of counsel) but not compensation for the time expended in preparation of their own case. Accordingly Oystertec contend that any award of costs by the comptroller should be substantially reduced from the normal scale to reflect the non-availability of such compensation. EEB (in their letter of 15 August 2002) thought that it was reasonable for them to engage counsel, Oystertec having done so and having put forward arguments on issues and case-law outside a patent agent’s usual remit.
- 5 I believe that these arguments miss the point. Irrespective of whether or not EEB are a litigant in person before the courts, I do not think that this concept has any relevance to

proceedings before the comptroller. Costs before the comptroller are not intended to compensate parties for their expenses but are merely a lump sum contribution to those expenses; they are guided by a standard scale which reflects the fact that the comptroller ought to be a low cost tribunal for litigants and gives a measure of predictability.

- 6 To my mind, it follows from the hearing and the appeal that EEB are as entitled as anyone else to bring an application for revocation in their own name before the comptroller, irrespective of whether or not they are acting for a principal. I can see nothing in EEB's position or conduct of the proceedings which justifies a departure from the comptroller's normal scale of costs. I therefore consider that EEB are entitled to a contribution, in accordance with the normal scale, to their expenses of considering Oystertec's evidence and preparing and attending the preliminary hearing. Although the evidence filed by Oystertec was not extensive, the arguments at the hearing were lengthy and complex, involving human rights issues.
- 7 I therefore order Oystertec plc to pay to Edward Evans Barker the sum of £1000 within 7 days after the expiry of the period for appeal against this decision. If an appeal is lodged payment will be suspended pending the outcome of the appeal.
- 8 This decision relates to a matter of procedure and the period for appeal is therefore 14 days.

Dated this 19<sup>th</sup> day of December 2002

**R C KENNELL**  
Deputy Director acting for the Comptroller

**THE PATENT OFFICE**