

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2247435
IN THE NAME OF BIOVEX LTD**

AND

**IN THE MATTER OF OPPOSITION NO 52184 THERETO
BY NOVARTIS AG**

BACKGROUND

1. Following an opposition filed by Novartis AG against an application by Biovex Ltd to register the trade mark ONCOLYSE in Class 5, I issued a written decision on 11 November 2002 rejecting the opposition subject to a limitation of the applicant's specification of goods.
2. It is implicit from this that the opposition would have succeeded in the absence of the aforesaid limitation.
3. In the event, the application was subsequently amended in conformity with the terms of my decision.
4. My earlier decision invited the parties to make written representations on the apportionment of costs once the final outcome of the opposition was known. I subsequently received written submissions from Mr R A Blum of Gill, Jennings & Every on behalf of the applicant which argued that following their limitation of the specification of the application, costs should be awarded to the applicant.
5. No submissions were received from the opponent.
6. Having regard to the scale of costs set out in Tribunal Practice Notice 2/2000 and having regard to limited amount of evidence filed in the case and the fact that no oral hearing was required, I would have been minded to award the applicant the sum of £800 if the application had been wholly successful. The question that arises is what, if any discount, should be applied to reflect the fact that the applicant was only successful on the basis of a limitation of the specification.
7. On the one hand, the opponent's stated grounds of opposition, and the position reflected in their evidence and written submissions, does not suggest that the opposition would have been avoided if the limitation of goods had been applied earlier. On the other hand, costs should generally follow the event, and if a party is only partly successful this should be reflected in the costs awarded.

8. Taking these factors into account I order the Novartis AG of Switzerland to pay BoiVex Limited the sum of £600. Subject to an appeal, this sum to be paid within 35 days of the date of this decision.

Dated this 19 Day of February 2003

**Allan James
For the Registrar**