



Neutral Citation Number: [2021] EWHC 2384 (IPEC)

CLAIM NO. IP-2019-000081

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS OF ENGLAND & WALES**  
**INTELLECTUAL PROPERTY LIST (ChD)**  
**INTELLECTUAL PROPERTY ENTERPRISE COURT**

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

Date: 26 August 2021

**Before :**

**DAVID STONE**  
**(sitting as a Deputy High Court Judge)**

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**Between :**

**CORMETON FIRE PROTECTION LIMITED**

**Claimant**

**- and -**

**(1) PYROCEL LIMITED, formerly CORMETON  
ELECTRONICS LIMITED**

**(2) JOHN AITCHISON**

**Defendants**

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**Mr Thomas St Quintin** (instructed by **McDaniels Law**) for the **Claimant**  
**Mr Dominic Hughes** (instructed by **Gateley Legal**) for the **Defendants**

Hearing date: 18 August 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 Protocol: This judgment is to be handed down by the deputy judge remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be 26 August 2021.**

**David Stone (sitting as a Deputy High Court Judge) :**

1. Following a hearing on 19 and 20 November 2020, I gave judgment in these proceedings on 18 January 2021. My reasons for judgment can be found at [2021] EWHC 11 (IPEC) (the **Main Judgment**). The background to this dispute is set out in the Main Judgment, from which I excerpt here this brief summary from paragraph 1:

“Cormeton Fire Protection Limited, the Claimant, has since 1967 been in the business of providing mechanical fire protection solutions (including fire extinguishers). In 1989, to expand its business into electronic fire protection solutions (such as fire alarms), the Claimant teamed up (to use a neutral term) with Mr John Aitchison, the Second Defendant. Cormeton Electronics Limited, the First Defendant, was registered as the corporate entity to run this new endeavour from the Claimant's premises. All went well. In 2003, the First Defendant, requiring more space, moved out. Both parties continued to trade under names which included the word CORMETON, and used similar logos. While there were some reports of alleged confusion (to which I refer below), the parties continued to cross-refer work to each other, and were on good terms. This changed in or about 2015, when the parties fell out. In 2016, the Claimant applied to register the word CORMETON as a trade mark. Following pre-action correspondence, these proceedings were commenced in 2019. The Court is thus required to address the issue of two businesses which have traded in similar fields and under similar names for a long period of time, and which used to work together but which are now hostile to one another. In short, the Court is asked to determine who gets to use the word CORMETON, and for what goods and services.”

2. Relevantly for the purposes of this judgment, I found that in 2003 the Claimant and the First Defendant had agreed that the First Defendant would not trade under CORMETON ELECTRONICS or CORMETON ELECTRONICS LIMITED in relation to mechanical fire safety goods and services – rather it would only trade in the supply and sale of electrical fire safety goods and services.
3. Also on 18 January 2021, following hand-down and a form of order hearing, I made a series of orders (the **Order**). The Order included injunctions (at paragraph 1), delivery up (paragraphs 2 and 3), a standard order for *Island Records v Tring* disclosure (paragraph 4) and further orders for the Claimant to elect a damages enquiry or account of profits.
4. I refused the Claimant permission to appeal part of my Order relating to the Claimant's copyright claim. On the renewal of that request before the Court of Appeal, that court also refused permission.
5. Unfortunately, that has not resolved matters between the parties. The Claimant now returns to the court by application notice seeking a further three orders:

- i) a declaration that automatic gaseous extinguishing systems (**AGEs**) and automatically operated ventilation systems (**AOVs**) are mechanical fire safety goods and services, and therefore not goods and services in which the First Defendant is entitled to trade under the CORMETON ELECTRONICS name, following the injunction granted in the Order;
  - ii) an order for further information pursuant to paragraph 5 of the Order, that is relating to what the Claimant says is insufficient information provided for the purposes of *Island Records v Tring* disclosure prior to the Claimant's election of an account of profits or damages enquiry; and
  - iii) costs.
6. Whilst smoke dampers were mentioned before me, I was not asked to make any particular ruling in relation to them.
7. The Claimant asked that I deal with its application on the papers, and evidence and detailed written submissions were filed by both sides. The Defendants filed further written submissions requesting a hearing, with both sides indicating that matters had somewhat moved on, and that the issues between the parties had narrowed. Unusually, I therefore listed a short hearing, in the hope that the parties would make further progress in narrowing the issues between them. The hearing was listed in the vacation (having established the availability of counsel) so that there would not be a further two month delay to the determination of the Claimant's application. I am grateful to all involved, particularly the court staff, for ensuring the hearing could go ahead in the vacation.
8. My hope that the issues would narrow was partially realised – the Claimant has now dropped its application in so far as it relates to AOVs, and the request for further *Island Records v Tring* information has narrowed. The other issues remained live at the hearing, and I will deal with each in turn.
9. I was provided with the following witness statements:
  - i) on behalf of the Claimant, a witness statement of Mr Niall Head-Rapson, a director of McDaniels Law, the Claimant's solicitors, which exhibited a 52 page bundle of correspondence;
  - ii) on behalf of the Defendants, a fifth witness statement of Mr John Aitchison, the Second Defendant, who is also a director of the First Defendant, which exhibited three documents, the first of which is said to be confidential, and in relation to which I will make confidentiality orders in the usual form; and
  - iii) on behalf of the Claimant, a witness statement of Mr Michael Warburton Junior, who is now the managing director of the Claimant, with an exhibit concerning Pneumatically Actuated Fire Suppression Systems and annexing pre-2003 invoices said to show the Claimant working on AGEs. Michael Junior (as in the Main Judgment, I use that

expression to differentiate him from Mr Michael Warburton Senior, meaning no disrespect) did not give evidence at the trial, but provided this witness statement in response to Mr Atichison's fifth witness statement.

10. Mr Tom St Quintin, instructed by McDaniels Law, appeared for the Claimant. Mr Dominic Hughes, instructed by Gateley Legal, appeared for the Defendants. I am grateful to the parties and their representatives for their detailed written submissions.

### **Are AGEs “mechanical fire and safety goods and services”?**

11. In the Main Judgment, I set out what the parties had agreed in 2003, on the basis that that agreement, although not reduced to writing, governed the future conduct of the First Defendant in relation to use of the name CORMETON and its variants. The expression “mechanical fire safety goods and services” was taken from the parties' written submissions. I was not addressed at the time on what it meant, and no issues were raised as to the boundaries of the expression, nor whether particular goods or services fell within or without it.
12. Some unclarity was raised at the form of order hearing, and so the Order includes the following paragraph after the four sub-paragraphs recording the terms of the injunction:

“Save that this injunction shall be stayed in respect of Automatic Gaseous Extinguishing Systems that have an electrical or electronic component and in respect of Automatic Operating Ventilation (AOV) Systems that have an electrical or electronic component until 4pm on Monday 1 February 2021 and the Defendants have liberty to apply for an extension to such stay pending any application for clarification of the scope of this injunction.”
13. That permission to apply was not exercised by the Defendants.
14. As set out above, a dispute has now arisen as to whether AGEs fall within the scope of the Order. If I find that they do, then the Claimant submits that the First Defendant will have to stop providing those goods and services under a name which includes the word CORMETON.
15. In his fifth witness statement, Mr Aitchison set out in detail his description of what an AGE is, including the way in which electronic detectors detect a problem and issue warnings before releasing gas to extinguish any fire. Further, Mr Aitchison explained that the First Defendant has worked on AGE systems for clients since the 1990s.
16. In his witness statement in response, Michael Junior disputed that evidence, describing it as “highly selective”. Rather, Michael Junior described AGEs as “large, non-portable fire extinguishers that use extinguishing agents including gas to put out fires, installed in high-value or high-risk areas.”

17. Further, Michael Junior questioned the detail provided by Mr Aitchison on the First Defendant's work on AGEs prior to 2003, observing that to the best of his recollection (and, having asked them, the recollections of his parents Michael Senior and Mrs Warburton, each of whom had given evidence at the trial) it was the Claimant who provided AGEs to clients prior to 2003, not the First Defendant. Michael Junior also noted that between 1999 and 2004 he was employed elsewhere, but remembers selling AGE components to the Claimant. He does not remember selling such components to the First Defendant. He concludes "[i]f [the First Defendant] was working on other AGE systems then it did so without permission and without the knowledge of my company or my family".
18. Neither Mr Aitchison nor Michael Junior was cross-examined on this application.
19. In relation to this part of its application, the Claimant made three submissions:
  - i) given the stipulation in the Order, the time for disputing whether AGEs fall within the scope of the injunction has passed – the Defendants ought to have applied to extend the stay of the injunction in relation to AGEs: as they have not, the injunction came into effect at 4pm on Monday 1 February 2021;
  - ii) properly construed, AGEs are mechanical, even if some have some electronic elements; and
  - iii) in any event, if the real question is whether the 2003 licence enabled the continuance of the sale of AGEs, the First Defendant did not sell or service AGEs prior to 2003, or if it did (which was not admitted), they were in such small amounts as to be *de minimis*.
20. In relation to the first of these points, counsel for the Defendants conceded that "looking back, it would have been better to lance the boil" prior to the 1 February 2021 deadline. But he stressed that the question before the court is a complex one on which the witnesses disagree, and ought preferably to be solved at the damages enquiry or account of profits, following cross-examination of the witnesses.
21. I disagree. The issue had been raised at the form of order hearing as one that required clarification. To accommodate that, the parties were given an opportunity to discuss and resolve the question. The stay in the order is clear – AGEs were exempt from the injunction until 1 February 2021, at which point, if no further action had been taken, the injunction would bite. No further action was taken. The Defendants have therefore missed their opportunity, and no request was made for relief from sanctions. AGEs were expressly mentioned in the Order as excluded until 1 February 2021 in order to give the Defendants an opportunity to argue this point. They did not take that opportunity. It is now too late.
22. The Defendants are not assisted by the explanation given by their counsel that views on the definition of AGEs differ and/or that it is otherwise unclear what

an AGE is. Even if true (and I do not accept that it is), that was something that the Defendants ought to have raised prior to 1 February 2021.

23. If I am wrong in that, I turn now to the Claimant's other two submissions, taking the third submission first. It should be remembered that whilst "mechanical fire safety goods and services" and "electrical fire safety goods and services" are useful shorthand expressions, what really matters is what was agreed between the Claimant and the First Defendant in 2003. And what was agreed was that the parties would carry on as they had previously. As I set out at paragraph 67 of the Main Judgment:

"In my judgment, it is most likely that the agreement reached (orally, as I have found) was that the First Defendant's use of CORMETON could continue as before. The Claimant, as the original owner of the CORMETON name, agreed to the First Defendant continuing to use the CORMETON name as it had been when collocated at Seaton Delaval."

24. That, therefore, is, in my judgment, the relevant question to be determined on this application: what was the position with AGEs prior to 2003? I have read carefully the relevant witness statements and the written submissions of the parties and listened carefully to counsels' oral submissions.
25. As he was not cross-examined, I accept Mr Aitchison's recollection of what work the First Defendant did on AGEs prior to 2003 – he says that during that period, the First Defendant installed approximately 5 to 10 AGEs and maintained an additional 5 to 10 systems on sites where the First Defendant did not install the AGE. From the invoices provided by Michael Junior, installation of a system appears to cost less than £10,000, and servicing costs approximately £500. (Counsel for the Defendants criticised any reliance on those figures, but on the evidence before me, they would appear to be ball-park correct, and sufficient for present purposes). The annual turnover of the First Defendant is in the multiple millions of pounds. Five to ten installations over a period of 13 years is, therefore, in my judgment, *de minimis* in the circumstances. That is therefore consistent with Michael Junior's recollection (and that of his parents) that the First Defendant did not undertake AGE work prior to 2003 – the amount was so little as not to be noticed by Michael Senior. AGEs were simply not a sufficiently significant part of the First Defendant's pre-2003 trading, even on its own evidence, to be something in the contemplation of Claimant at the time the 2003 licence was granted.
26. That leaves the Claimant's second submission (which I am dealing with third, and briefly). The evidence before me shows that AGEs can include both electrical and mechanical elements. In my judgment, the bulk of most AGE systems will be mechanical – the release of gas upon detection of a fire. To the extent that there are warning alarms (and not all AGE systems have them), then that aspect will be electrical. But the addition of an electrical alarm does not make what is otherwise a mechanical system (and therefore within the purview of the Claimant) an electrical system (and therefore within the Claimant's licence to the First Defendant).

27. For these reasons, I accept the Claimant's position that AGEs fall within the prohibition set out in paragraph 1 of the Order and have done so since 4pm on 1 February 2021. On the basis that the Order is clear, I do not consider that further declarations are necessary, and in the exercise of my discretion I decline to grant them.
28. I should add that nothing prevents the First Defendant from providing and/or maintaining AGEs under a name which does not include the word CORMETON. But it must stop using a name which includes CORMETON in relation to these goods and services within 21 days of the date of this judgment.

### ***Island Records v Tring disclosure***

29. As set out above, on 18 January 2021 I made orders for *Island Records v Tring* disclosure. The Defendants provided such disclosure, but not to the satisfaction of the Claimant. However, after this application was filed, the Defendants filed and served the fifth witness statement of Mr Aitchison, which, the Claimant conceded, went some way to answering its outstanding requests. By the time of the hearing, the Claimant's application for further information therefore sought only the following:
- i) all the information referred to in paragraph 4 of the Order in the period from 18 January 2021 (that is, the date of the Order) to date;
  - ii) all the information required by paragraphs 4(d) and (e) of the Order in respect of the use of CORMETON *solus* – the Claimant seeks estimates and an explanation of how those estimates have been made; and
  - iii) an explanation of why the Defendants say they would be entitled to deduct costs in each category.
30. The Defendants reminded me, in their counsel's oral and written submissions, that *Island Records v Tring* disclosure cannot become what he described as a "never-ending request for further information". Rather, what is required is merely sufficient information to avoid the Claimant's having to have a "stab in the dark" (he took those words from *Brugger v Medic-Aid (No 1)* [1996] FSR 362 at 363) when making its election. Further, counsel for the Defendants reminded me that this case is slightly unusual, in that both sides know each others' businesses well, having traded under the same roof for a number of years. Given that they have not done so since 2003, now nearly 20 years ago, this last point seems to me only to go so far.
31. I turn now to each point on which further information is still sought.

### ***Information from 18 January 2021***

32. The Claimant submitted that the Defendants have limited the information provided to the period prior to 18 January 2021, that is, the date of the Order. The Claimant submitted that infringement is ongoing, at least in relation to

AGEs, and that therefore information should be provided for the period since the Order.

33. In my judgment, this misunderstands the nature of *Island Records v Tring* disclosure. There is no ongoing obligation to update the information provided over time. *Island Records v Tring* disclosure is provided to enable the Claimant to make an election. Once made, the parties proceed along that route. If there is a delay in making the election (as there has been in this case), I cannot see on the facts before me any reason to require the Defendants to provide an update on the information already disclosed. I reject this request.
34. The Claimants have a point that in this case *Island Records v Tring* disclosure ought to have been provided covering the period up to the date of the provision of the disclosure. Instead, the information provided covered the period only up to the date of the Order. But the Defendants have provided disclosure covering nearly 8 years, and so the difference of approximately 4 weeks, on the facts of this case, is neither here nor there. I do not consider that it is appropriate or proportionate to require further disclosure in relation to that four week period. In relation to any further *Island Records v Tring* disclosure to be given in this case (for which, see below), I would expect the Defendants to provide relevant information for the period up to the date the disclosure is given, rather than up to the date of the Order or the date of this judgment, unless some contrary agreement is made with the Claimant to simplify its calculations.

#### *Use of CORMETON solus*

35. The Claimant submitted that the Defendants have not provided an estimate in respect of their use of CORMETON *solus*. In the Main Judgment, I found that the First Defendant had used CORMETON on its own (as opposed to with other words) and that this use fell outside the licence provided by the Claimant. It was therefore unlawful use, and the Order (at paragraphs 4(d) and (e)) required the Defendants to provide estimates of that use.
36. In response, the Defendants say that the use of CORMETON *solus* was “haphazard”, and “that damages caused by the use of CORMETON *solus* are minimal”. The Defendants therefore concede that damage has been caused by the use of CORMETON *solus*. The Defendants have also conceded that CORMETON *solus* was used on uniforms, van livery, stickers and signage, marketing materials, promotional gifts (eg pens, mugs etc), email signatures, the First Defendant’s website, calling cards and company IDs, log books, certificates, quotations and various other products and documents. But counsel for the Defendants submitted that “the game has to be worth the candle” (taking those words from *Lilley v DMG Events Limited* [2014] EWHC 610 (IPEC) at paragraph 25). He suggested an alternative approach, including dealing with the matter as part of disclosure once the Claimant’s election has been made, but he said further time and expense on this now was not justified.
37. I disagree with the Defendants’ submissions. As the Claimant pointed out, the Order in relation to *Island Records v Tring* disclosure was not appealed. The order having been made and having become final, it ought to be complied



with. It is not for the Defendants to say at this point that complying with the order is “not worth the candle”.

38. There was discussion before me as to what further is needed from the Defendants in order to comply with this aspect of the Order. I was keen in those discussions to ensure that the requirements on the Defendants are both realistic and proportionate. Many of the types of documents referred to would also have included use or uses of CORMETON ELECTRONCS LIMITED, as use of the full company name is required by law on certain documents. Whilst it remains open to the Claimant to argue in due course that additional revenue or profits might attach to the additional use of CORMETON *solus*, it seems to me disproportionate at this time to order that detailed level of disclosure.
39. In my judgment it is not necessary in order to enable the Claimant to make its election for the Defendants to provide every example of when the First Defendant used CORMETON *solus*. But, following discussions with the parties’ representatives at the hearing, and mindful of the Overriding Objective, in my judgment the Defendants should provide:
- i) estimates of the numbers of uses of CORMETON *solus* on uniforms, van livery, stickers, pens and mugs – because this information should be readily available through searching and the actual numbers are likely to be low; and
  - ii) representative samples of invoices which use CORMETON *solus* (even if CORMETON ELECTRONIC LIMITED also appears on the invoice) and estimated date ranges on which those forms of invoice were used.
40. Counsel for the Claimant stressed that the Defendants should provide the “sums received” in relation to the uses set out in the immediately preceding paragraph. I do not see how the Defendants can realistically estimate the sums received in relation to, say, 300 coffee mugs printed with CORMETON *solus*. They are likely to say that no sums were received. Where it might matter is in relation to invoices. By providing the estimated date ranges on which various forms of invoice headed CORMETON *solus* were used, the Claimant will be in a position to understand roughly the estimated sums received by the First Defendant overall in those periods, given the detailed financial data already provided. It would be disproportionate, particularly given the sums involved and the fact that this case is being determined in the IPEC, to go further.
41. As set out above, the Order only requires estimates. Those estimates should be given within 28 days of the date of this judgment. (I have provided a slightly longer time period to account for the summer holiday season.)

### *Deductions*

42. The Order set out, in paragraphs 4(b) and (e), a requirement for “an explanation of why the Defendant says it would be entitled to deduct costs in each such category”. The Claimant submitted that this had not been done, and that the Defendants’ response that this was a matter for legal argument was

“simply wrong”. Counsel for the Claimant submitted that there was no dispute as to the relevant law to apply – and that the Defendants could (and indeed should) provide the relevant information on the basis of the law.

43. Whilst counsel for the Claimant correctly set out part of the argument made by the Defendants (which I have no hesitation in rejecting), his written submissions did not address the more substantive point made by the Defendants – that they have provided sufficient information for the Claimant to make its election. As counsel for the Defendants has set out in his written submissions, and which he took me to at the hearing, the Defendants have provided in Mr Aitchison’s fourth witness statement deductions from turnover split into three categories (direct costs, maintenance division support staff expenses, and general overheads) together with an explanation of each. Mr Aitchison has also provided a calculation of apportionment. Following the Claimant’s application, Mr Aitchison’s fifth witness statement provided still further information about the maintenance division support staff expenses and general overheads, as well as a break-down in exhibit JTA4.
44. Counsel for the Defendants again reminded me that the aim of *Island Records v Tring* disclosure is to enable the Claimant to make an election. Counsel for the Claimant has been unable to convince me that there is insufficient information to make an election at this point. Contrary to the Claimant’s submissions, I do not consider it practicable or proportionate to order the Defendants to go through each deduction, and say why each avoids the two stipulations fatal to deductibility as set out in *OOO Abbott and Anor v Design & Display Limited and Anor* [2014] EWHC 2924 (IPEC). I therefore will not grant the order sought for further information in relation to this third sub-category. In my judgment, the Defendants have sufficiently complied with the Order, and the Claimant has what it needs to make an election.

### **Costs**

45. The Claimant has been successful in relation to parts but not all of its application. Further, those parts not pressed have become so largely, but not completely, because the Defendants provided further information in response to the application. For the purposes of costs assessment, I consider the Claimant to be the overall “winner” on this application.
46. Usually in the IPEC, costs of an application would not be assessed until the end of the relevant stage of the matter (eg, liability or quantum). However, the Claimant submitted that the Defendants have behaved unreasonably, and that that unreasonable conduct led to the Claimant’s application having to be made. The Claimant therefore seeks a costs order now under CPR rules 45.31(4A) in conjunction with rule 63.26(2).
47. Further, the Claimant submits that because its application was to enforce compliance with an order (being the Order of 18 January 2021), the stage costs cap of £3000 does not apply, on the basis of rule 45.31(4A). Rule 45.31(4A)(b) allows recovery “in addition to the amount of the scale costs” of “costs relating to the enforcement of any court order”.

48. The Claimant has filed an updated costs schedule, with its costs of the application said to be £8,394. The Defendants made no application for costs, and did not provide a costs schedule.
49. I note in passing that this particular application arises at an odd point in proceedings. The trial has been completed, liability determined, orders made, and permission to appeal dealt with by this court and by the Court of Appeal. For the purposes of assessing costs in the IPEC, the liability phase was therefore complete prior to this application being heard. I should add for completeness that the Claimant has already exceeded the £50,000 costs cap for the liability phase of proceedings, so it will receive nothing unless it can lift that costs cap for the purposes of this application.
50. Further, the second phase, quantum, has not yet properly begun, because the Claimant has not yet made its election of a damages enquiry or an account of profits. It could, of course, be said that the *Island Records v Tring* disclosure is part of the process of enabling the Claimant to make that election, but even if that could be said about that particular order sought by the Claimant (on which it has only succeeded in part), it certainly cannot be said in relation to the question of whether or not AGEs are mechanical fire safety goods and services, on which the Claimant has succeeded completely.
51. The Claimant concedes that in order to obtain an award of costs it must clear two hurdles:
- i) it must demonstrate that the Defendants' behaviour in relation to the application was unreasonable in order to obtain costs outside the £50,000 costs cap which has already been reached; and
  - ii) unless it can demonstrate that the claimed costs were in relation to enforcement of an order, the £3000 stage cap for applications would apply.

*Unreasonable behaviour*

52. The Claimant submits that the Defendants have behaved unreasonably in:
- i) failing to comply with paragraph 4 of the Order requiring the provision of *Island Records v Tring* disclosure;
  - ii) refusing to provide information in respect of the use of CORMETON *solus*;
  - iii) refusing in correspondence to provide the information sought and only providing some information after this application had been issued;
  - iv) still failing after what was described as "their second effort" to meet the requirements of the Order; and
  - v) continuing to breach the Order by trading in AGEs and smoke dampers.

53. I was helpfully referred by counsel to *Akhtar v Bhopal Productions (UK) Limited* [2015] EWHC 154 (IPEC) where HHJ Hacon set out in a detailed judgment how the various caps in the IPEC work. In that case, His Honour found that the relevant party's conduct in failing properly to particularise a statement of case had been unreasonable. I was also referred to the decision of HHJ Birss QC (as he then was) in *Phonographic Performance Limited v Hamilton Entertainment Limited and Anor* [2013] EWHC 3467 (IPEC) where His Honour said:

“The defendants’ failure was not simply a mistake or misunderstanding. The defendants had taken an obstructive approach throughout the litigation and this aspect was a part of it. The defendants’ behaviour was unreasonable and that unreasonable behaviour directly led to the claimant incurring cost it would otherwise not have had to incur. I will disapply the cap for that stage.”

54. The provision for lifting the cap in relation to applications where there has been unreasonable behaviour is aimed at encouraging parties to act reasonably, so as to try to prevent unnecessary applications in the IPEC, a costs-capped jurisdiction. Where there has been unreasonable behaviour in relation to an application, the CPR enables the court to assess costs at the conclusion of the application (thereby avoiding having to wait until the end of proceedings – which may be some time) and to lift the cap on those costs. Counsel for the parties agreed that the test for unreasonable behaviour is a lower hurdle than for abuse of process, as has been considered by the IPEC on a number of occasions, and I accept that submission.
55. Doing the best I can on the information before me, I do not consider that the Defendants have behaved unreasonably in relation to *Island Records v Tring* disclosure. The Defendants have won on some points, and on others, the Claimant has succeeded in a modified way. However, in relation to the AGE issue, I do consider that the Order made on 18 January 2021 was clear, and that the Defendants’ failure to challenge prior to 1 February 2021 whether AGEs fell within or outside the Order was clearly fatal to their defence to this application. It was therefore unreasonable to resist that part of the Claimant’s application.
56. I have been asked to assess costs summarily. I have little information before me as to how much of the total costs of this application relate to the AGE issue. On the basis of the volume of the evidence before me, the parties’ written submissions, and the time occupied by this issue at the hearing, doing the best I can and adopting a broad brush approach, I consider this to account for approximately 60% of the costs of this application.

#### *Enforcement of an order*

57. Turning to the second hurdle, it is clear to me that the Claimant’s application relates to the enforcement of an order, and therefore falls within CPR 45.31(4A)(b). The £3000 application cap therefore does not, in my judgment, apply.

58. As set out above, the Claimant claims costs of £8,394. I have determined that the Claimant is entitled to recover now 60% of those costs, which is £5036.40. The remainder of the Claimant's costs are reserved, although I should indicate that in relation to the *Island Records v Tring* aspect of the application, I consider that the Claimant only succeeded on 70% of that application – both before me, and in relation to the additional information provided by the Defendants after the application was filed.