



Neutral Citation Number: [2025] EWHC 348 (Pat)

Case No: HP-2020-000025

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 19 February 2025

Before:

MR. JUSTICE MELLOR

Between:

ORDERLY MIND LIMITED

Claimant

- and -

QUEUE-IT ApS
(incorporated under the laws of Denmark)

Defendant

- and-

THE FAIR QUEUE PEOPLE LIMITED

Third Party

MR. GEOFFREY PRITCHARD (instructed by **Waterfront Solicitors LLP**) appeared on
behalf of the Claimant and The Third Party

MR. JAMES WHYTE (instructed by **Bristows LLP**) for the **Defendant**

Hearing date: 20 December 2025

Further evidence and submissions in writing: 7 January 2025 – 3 February 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON MR JUSTICE MELLOR

MR. JUSTICE MELLOR:

1. This is a patent case in which the claimant, Orderly Mind Limited and an associate company which is the third party, The Fair Queue People Limited, are suing a Danish company, the defendant, Queue-It ApS, for infringement of the claimant's patent, EP (UK) 1,751,954. It is a patent to a *'queuing system, a method and computer programme product for promoting the provision of services over a communication network'*. It is right to recognise that the relevant systems of claimant ('C') and defendant ('D') are arch competitors in the market. D has brought a counterclaim for invalidity of the patent and for unjustified threats against C and the third party.
2. This claim has been before me on a number of previous occasions for directions. Progress has been delayed by continuing difficulties in C formulating its case on infringement. Each side blames the other for these difficulties. C blames D for its allegedly deficient PPD and D blames C for failing to articulate its case on infringement. I am not in a position to apportion blame.
3. However, in November 2023 I felt compelled to adjourn the original trial date, then set to commence in January 2024 because, at a late stage, C's then solicitors came off the record just before the date set for exchange of expert's reports. At the due date, D was ready to serve its expert report, but C was not.
4. C took a long time to seek to re-list the trial with the result that the trial is now floating from 24 November 2025. In the meantime, C's infringement case had still not been tied down. D therefore issued an application for directions which prompted C to issue its application for permission to amend its pleadings. Those (and other applications) came before me on 20 December 2025 and the parties summarised the issues for decision as follows:
 - i) Amendment of C's infringement case. Although D did not resist the grant of permission in principle, it says that the expansion of the infringement case impacts on its costs budget, so it is necessary for the Court to have some idea of the scope and impact of the proposed amendments.
 - ii) Revision of D's costs budget. D seeks approval of a revised costs budget. D says the revisions arise both from effluxion of time (due to the vacation of the original trial date) and the consequent impact of inflation, and from additional costs due to significant developments in the case since the current costs budgets were approved in April 2022. C says the increase should be much smaller than that sought by D.
 - iii) Security for costs: There have already been two orders for security for costs. In line with the increase in budget (and in light of C's worsening financial position), D seeks further security in the same proportion as previously. C says its claim would be stifled if further security were ordered, but also says that it will be able to satisfy any order for costs beyond the security already paid.
 - iv) Revised Directions down to trial: In the result, only a few minor disputes remained.

5. It was unfortunate that these applications came before me on the very last day of term. Furthermore, during my pre-reading I identified what I saw as a problem with the most significant increase in D's costs budget. D sought and continues to seek an increase in its budget for expert evidence of £287,500 but D's evidence provided no breakdown of that figure or information as to how much of its existing budget for expert evidence of £440k had been spent. Accordingly, at the start of the hearing, I expressed my provisional view that I would need further evidence from D's solicitors before I was in a position to decide on D's revised costs budget. This naturally impacted on D's application for further security.
6. This difficulty was acknowledged so we proceeded with argument on such of the issues as could be decided and then I gave directions for the service of further evidence on (a) D's costs budget and (b) the additional security sought. Unfortunately, the issues became somewhat protracted. Since the 20 December 2024 hearing, I have received the first witness statement of Mr Westley (C's accountant), King 8 and 9, Jelf 12 and 13, Harris 6, a debenture proposed by C and D's markup of it, although, as I shall explain, D has recently changed its mind as to the appropriateness of C providing a debenture over certain assets by way of security for costs. I also received sets of written submissions from each side addressing the major issues: revision to D's costs budget, security for costs, further directions and costs.
7. In those submissions, each side offered to attend a hearing if I so directed, but both rather assumed that the further issues would be determined on the papers. Having heard the original submissions and having read and considered the further materials provided to me, I consider this is the right course to avoid further costs being expended. So I will address the issues in the order set out above.

Infringement

8. With D effectively accepting C's proposed amendments to its Statement of Case on Infringement ('SOCI'), on 20 December I heard argument as to whether I should order D to serve a responsive statement of case. I so decided, and my short ruling is recorded in the transcript as follows:

21 This is a further CMC in this rather troubled litigation
22 that has come before me for directions a number of times.
On
23 a previous occasion I was forced to adjourn the trial, and the
24 trial is now going to come back late next year.
25 The ongoing problem in this case concerns the scope of
1 the case on infringement under claim 9 of the patent. The
2 statement of case on infringement of claim 9 has gone
through
3 a number of iterations, and it is fair to say that each side
4 blames the other for all the twists and turns in this case.
5 However, there is no doubt that in the latest iteration of the
6 draft amended statement of case on infringement of claim 9
the
7 claimant has now set out a number of new allegations.

8 Although there is no application formally before me requiring
9 the defendant to plead back to this statement of case on
10 infringement, I believe that it will be sensible to have the
11 defendant's response to this statement of case.
12 Now, this response is subject to a number of
13 qualifications. First of all, I am not going to require it to
14 be served until after the defendant has formulated its
15 responses to this statement of case in the sense of any
16 changes to the validity case, any changes to the defence.
17 I also make it clear that I am not requiring the defendant to
18 plead out matters of construction, and I appreciate that may
19 lessen the value of this statement of case, but Mr. Whyte
has
20 made the point that the defendant really cannot be expected
21 effectively solidify its case on construction until after its
22 expert evidence has been fully developed.
23 So this statement of case will not require the defendant
24 to set out matters of construction, unless it is happy to do
25 so. I think this statement of case should be served before
1 the expert evidence, just so that both the court and the
2 claimant has at least a formulated response to this statement
3 of case. Now, in saying that, I appreciate there has been
4 much discussion of all these allegations in the various
5 witness statements, and in the correspondence that has been
6 served, but I still think it would be helpful to have a
7 distillation of the defendant's position, leaving aside
8 matters of construction in relation to this statement of case.

9. In that ruling, I had in mind D's summary of the developments in C's infringement case (see [13] in its Skeleton Argument) and D's characterisation of C's latest infringement pleading as containing three new ways of alleging infringement (the '9999999' case, the 'Transfer Link' case, the 'QueueID' case), plus a new case on equivalence. In its evidence and submissions, C sought to downplay the significance of these amendments. However, the infringement case now sought to be pursued is different from that which existed when D's initial expert report was drafted. Claim 9 is a method claim. C's case concentrates on integers 9.2 (allocating a queue identifier to the request for service) and 9.8 (the step of allocating the queue identifier to the request for service is performed independently of whether the request for service is currently eligible for service by the service host). In particular, D suggests that, in each of the infringement cases outlined above, C ignores integers 9.4 to 9.6 of claim 9. These integers concern what is done with the queue identifier once allocated. C's primary position is that those integers can be ignored in the case of the D's SafetyNet response, as a matter of normal construction of the claim. C's secondary case is that if those integers have to be satisfied on a normal construction, that does not matter on its equivalents case.

10. On any view, these allegations depend on a broad interpretation of claim 9. It is therefore not surprising that D says it will have to reconsider the position on validity and consider possible *Gillette/Formstein* defences. As indicated in my ruling, I considered that D should formulate its pleading on those aspects before responding to C's SOCI.

D's costs budget

11. The revisions to D's costs budget which are sought are set out in its Precedent T dated 11 December 2024. The overall increase sought amounted to some £514k. To that figure, D seeks to add a further £29k to deal with the cost of D's responsive SOCI, giving a total of some £544k.
12. As already mentioned, the increase sought as regards expert evidence is £287,500, but there are other significant increases sought (and one deduction of £16.4k because it is assumed now that no witnesses of fact are required). In summary, the increases sought are (together with a summary of the justification put forward):
- i) £68.6k in respect of statements of case, made up of (a) £27k odd already incurred as costs of dealing with C's Supplemental SOCI; (b) £29k odd incurred considering C's revised version of its Supplemental SOCI and (c) £12.5k in respect of costs considering and making any further amendments to pleadings in light of the latest revised infringement case.
 - ii) £103.9k in respect of disclosure, made up of (a) £33.7k incurred in preparing a re-amended PPD; (b) £21k odd incurred implementing the audit and escrow regime; (c) £36k incurred in addressing a series of queries raised by C & Professor Knottenbelt on the PPD and (d) £12.5k of costs considering further amendments to the PPD in light of C's latest infringement case.
 - iii) £27.5k for additional Trial preparation, ascribed to the increase in issues and further validity arguments arising out of the C's latest infringement case
 - iv) £28.5k increase in Trial costs, due to the effects of the increase in issues and inflation
 - v) £5.34k increase in PTR costs, due to inflation.
 - vi) Finally, a new Contingent Cost A: Directions to Trial of £10k.
13. In the latest round of evidence and submissions, attention was focussed on:
- i) the increase sought of £287.5k for expert evidence. C says it should be no more than £88k, with £25k as a contingency for any new prior art.
 - ii) an increase of £29k for the new responsive SOCI. C offers half that amount.

Applicable principles

14. These were not in dispute. Any increase in budget must (a) be in relation to a significant development and (b) be in relation to costs which could not be reasonably foreseen (CPR3.15A and the notes thereunder).

15. Nearly all the arguments are encapsulated in the proposed revision for expert evidence which is also the largest individual increase sought, so I discuss this topic first.

D's budget for expert evidence

16. D had already spent £90k on expert evidence before I set the costs budgets in April 2022, with D's costs budget for expert evidence being set at £350k. C accepts that 1/3 of this amount should be attributed to the reply report. Mr Jelf reports that D has already incurred the higher sum of £461k (which includes the original £90k).
17. Mr Jelf has also set out a breakdown of the additional sum now sought of £287.5k. Some £17.5k is accounted for by inflation. For the remainder, Mr Jelf has provided a breakdown of the hourly rates and hours for the personnel involved. He points out that the adjournment of the trial has meant that the senior associate and associate working on this case had to change, which will undoubtedly increase the hours required to prepare the expert report dealing with the new aspects of the case.
18. In response, Mr Harris of C's solicitors says the sum sought is excessive and Counsel makes the same submission on the basis this is a 'straightforward patent case'. The offer of £88k is based on roughly £23k to be spent on investigating new prior art, £31k on construction and equivalence, £32k on infringement, with a contingency of £25k. Mr Harris points out that C is spending much less, due to lower hourly rates and fewer hours.

Analysis

19. I have no doubt that an increase in D's costs budget for expert evidence is warranted. The difficulties experienced to date on the infringement case demonstrate this is not a straightforward patent case and the case now pleaded by C indicates this case at trial is likely to involve several moving parts and interplay between construction, infringement & validity.
20. Furthermore, I consider that the figures put forward by C are too low, but also that the total figure sought by D is a little high. I note that when I approved the costs budgets back in April 2022, I did so by reference to Bristows then hourly rates. For understandable reasons, the hourly rates now quoted by Mr Jelf for the work to be done on experts' reports in the future are higher.
21. Looking at costs more generally, I also bear in mind that it is likely to cost less to formulate the infringement allegations than for D to respond to them in the circumstances of this case. The response is multi-faceted since it includes (a) a response to the factual basis of the allegations, (b) their impact on construction arguments, (c) their impact on relevant prior art and invalidity attacks/squeezes. These responses have to be covered, as appropriate, in fresh expert evidence
22. As I have indicated already, D's legal team appear to have a good grasp of C's infringement case, including the case on equivalence. What remains to be investigated is the impact of that case on validity. I realise that investigating all these points with an expert requires care on the part of the lawyers but I am left with the impression that the hours quoted by Mr Jelf are a little high.

23. In all the circumstances I allow an increase in D's budget for expert evidence of £230k.

D's budget for Statements of Case

24. I have directed that D must serve a responsive SOCI. Although D estimates this cost at some £29k, I note that there has already been extensive discussion of C's infringement case as now pleaded. D appears to have a very good understanding of that case. Whilst I acknowledge that D's responsive SOCI must be prepared carefully, I do not consider that a reasonable cost is more than £22k.
25. As for the other individual increases, it will already have been noted that the bulk of them are accounted for by costs incurred since I set the original costs budget. However, due to the adjournment of the trial and the several changes in C's infringement allegations, I have no doubt that there have been significant developments since the original costs budgeting exercise. Accordingly, I allow the following further revisions:
- i) £65k for statements of case. I have reduced the figure sought slightly because I perceive a degree of overlap between the anticipated costs of £12.5k and the additional increase I have already made of £22k in respect of D's responsive SOCI.
 - ii) £90k for disclosure. I have reduced the figure sought somewhat because I am not persuaded that any further amendment to the PPD has been justified.
 - iii) £3k for the PTR. The existing costs budget is £35,620. The increase sought is £5.34k and solely ascribed to inflation. Although the PTR is an important stage in the progress to trial of any patent case (and this applies particularly to this one), I consider that D's increases due to inflation are somewhat too high.
 - iv) £20k for Trial preparation and £25k for Trial, on the basis that most of the strategy regarding the new issues will have been formulated in the course of preparing D's responsive SOCI, its amended pleadings and expert reports.
 - v) £10k for Directions to Trial, since it appears at least that sum in contingent costs has now been incurred.
26. I ask D's solicitors to complete the revised Precedent T with the sums I have allowed.

Additional Security for Costs.

27. To date, C has provided security for D's costs in the sum of £1.23m. In broad terms, security has been ordered at roughly 73% of D's estimated total costs. D now seeks additional security up to a total sum of £1.632m i.e. an additional £402.5k by way of payments of £50k on the first of each month from February to August 2025, with a final payment into court of £52k on 1 September 2025.
28. The additional sum sought of £402.5k was calculated by applying the same proportion of security as awarded by Mr Karet KC and Bacon J. i.e. 73.8% to the total of £544k odd. However, the total revisions to D's costs budget I have allowed total £465k. I see

no reasons to alter the proportion of costs to be ordered by way of security, which yields a figure for the additional security in the sum of £343k.

29. C's position is that the Court should not order security by way of any further payments into court for 4 reasons:
- i) The sum of £1.23m in Court already is likely to be sufficient security when taking into account D's likely costs recovery after trial.
 - ii) Any further (non-trivial) payment into court would stifle the claim.
 - iii) The debenture offered by C is an appropriate form of alternative security.
 - iv) The balance of prejudice favours no order for additional security. On this point C relies on:
 - a) The impecuniosity of C. C's point is that even if the claim is not entirely stifled, the order of any substantial additional security will greatly impair C's ability to bring this to trial in an appropriate manner – meaning that Mr King might have to represent C and be its expert witness.
 - b) The substantial security already paid.
 - c) The disparity of arms. C contends that D is prepared greatly to outspend C.
30. These arguments raise some reasonably familiar issues. In particular, I have had regard to the summary of the applicable principles by Henshaw J. in *Pisante v Logothetis* [2020] EWHC 3332 (Comm), which it is unnecessary to set out. Furthermore, I am satisfied that there has been a material change in circumstance since the last order for security was made (see *Stokors SA v IG Markets Ltd* [2012] EWHC 1684 (Comm)) and now.
31. As I have already recorded, C says that the or any substantial order for security by way of payment into court would stifle the claim. This engages a principle identified by the Court of Appeal in *Al-Koronky v Time-Life Entertainment Group Ltd* [2006] EWCA Civ 1123 at [25] to the effect that the Court should not order security in a sum which it knows the claimant cannot afford. But this also means that the claimant must be 'full and candid' in setting out what his means are. All these factors go to the Court's discretion to order security and in what sum, a discretion which also engages C's Article 6 rights.
32. In this case, the way the evidence has developed meant I thought I had a reasonably full picture of the financial position of C, its subsidiary and their sole director and shareholder, Mr King, but there have been developments.
33. So far as C is concerned, the latest evidence shows that it is able to generate profit of ~£38k a month and will continue to do so pending trial, but I realise that C must continue to pay its own legal costs.

34. In the discussions regarding the provision of security since the 20 December hearing, D raised the prospect of providing security by way of a debenture over C's assets. The process culminated in D providing comments on C's proposed draft debenture but at the same time, D becoming distinctly lukewarm about the sufficiency of a debenture as adequate security. The reason for this change of heart was the discovery that C does not own the software on which C's business is founded. Instead, it is said to be owned by Mr King personally. As D has pointed out, quite how this squares with Mr King being an employee of C and, as a director, owing fiduciary duties to C has not been explained. Furthermore, the position now revealed appears to be contrary to previous indications that C was the owner of the all-important software. I leave aside how we got to the present situation and proceed on the basis that C's software is owned by Mr King and OTL, C's operating subsidiary, has an 'informal licence' from him to use and licence the software to customers.
35. The evidence also reveals that Mr King has c. £250k of personal assets
36. So far as the debenture is concerned, the issue is whether the fact that OTL only has a licence to use the software (as opposed to C or OTL owning the software) means the debenture is no longer adequate alternative security.
37. The basic idea of the debenture was to provide additional security by way of charges over C's assets, which would become enforceable if C failed to satisfy a costs order. D's thinking was that this would provide a measure of security, to the extent it was not provided in cash, in circumstances where C does have a significant asset, namely the group's Queue-Fair business (itself crucially dependent on the software), but not enough cash in hand. As explained at Jelf 13 ¶¶13-16, the debenture was proposed to be supported by an undertaking in the following terms:
- AND UPON Mr King and the Claimant having provided an undertaking to the Defendant and the Court that they will not to the extent of powers available to them in any capacity, until further order, cause or allow the business of or the assets of the Claimant and the companies in its group to be divested, transferred or otherwise dissipated (other than in the ordinary course of business)
38. This was intended to ensure that the assets in C's group were not transferred out, leaving effectively an empty shell. See Jelf 13, which states at ¶11: "[The undertaking] would ensure that the assets in the Orderly Group companies (particularly the trading business and associated software/IP) cannot simply be moved out of the Orderly Group." Waterfront's letter of 22 January confirmed that Mr King and C were prepared to offer the requested undertaking, without suggesting that this would not be its effect.
39. However, as set out above, it has since transpired that the IP in the software that underlies the Queue-Fair business is apparently held neither by C nor by OTL, but by Mr King personally. Accordingly, D submitted that this very significantly eroded the practical utility of this undertaking, since it would not apply to the 'core' asset of the IP, which is not within C's group to start with.

40. It does not matter how the current situation regarding the asset position on C's side has come about. The fact remains that, as the asset position stands:
- i) Mr King is the person who stands to gain if C's claim succeeds.
 - ii) C and its operating subsidiary continue to generate profits and income but only as long as Mr King continues to licence the essential software to OTL under his 'informal licence'.
 - iii) If C loses this claim, Mr King would be able to walk away from C and OTL and, as owner of the software, he would be able to establish a new business which would rise from the ashes of C and OTL.
 - iv) In addition to owning the software, Mr King has substantial assets, estimated at around £250k, which it appears he wishes to insulate from any costs orders made against C.
41. In these circumstances, I am entirely satisfied that if I order additional security in the sum of £343k, C's claim will not be stifled. If Mr King wishes to secure the benefits of a win by C in this litigation, he must be prepared to put his own assets forward by way of security and that includes his ownership of the software.
42. I take D's point that the value of a debenture over C's assets has been eroded because the Orderly Mind software is owned by Mr King. However, there remains value in C (and its operating subsidiary) because they have an on-going business. The continuation of that on-going business is critically dependent on Mr King continuing with his 'informal licence' of the software to OTL, which means that undertakings are required from Mr King personally for the debenture option to be a viable mode of the provision of security.
43. In these circumstances, in the draft Judgment distributed to the parties I proposed to provide for an election by C to be exercised within a short time, the exact time to be discussed. The election would be between:
- i) paying £49k by way of further security on the 1st of each month from March to September (which would make a total of £343k by way of further security) or
 - ii) providing an executed debenture in the terms of D's mark up of C's proposed debenture (along with such further revisions as may be agreed between the parties) the debenture to be supported by certain undertakings.
44. In the draft of this Judgment I set out a set of proposed undertakings to be given by Mr King and the Claimant. D's solicitors suggested one revision which prompted another from me. C's solicitors made two sets of submissions. In the course of those submissions, another pertinent fact came to light namely that Mr King has granted open source licences to end-users in respect of certain aspects of the Queue-Fair software. This raises the prospect, notwithstanding that OTL is supposed to be *the* trading company, of Mr King seeking to exploit the software himself, which would be another way in which the value of the mooted debenture would be eroded or even destroyed.

45. I have wondered whether to abandon the possibility of security being provided by way of a debenture but I have decided to proceed with my proposal of an election because it appears that a somewhat complicated set of undertakings can be formulated which will preserve the value of a debenture by way of security. Having had several sets of submissions on the form of the undertakings, I now settle the undertakings in the following terms. In addition to the undertaking set out in paragraph 37 above, the undertakings required are as follows.

‘Mr King undertaking to the Defendant and the Court:

- i) that he will not, without the permission of the Court, sell or transfer his ownership of the Orderly Mind software or any interest in it or otherwise grant any charge or security interest over the software until after the conclusion of this litigation.
- ii) that he will not terminate the licence to OTL to use and licence the use of the Orderly Mind software until after the conclusion of this litigation.
- iii) (by way of confirmation of the position) that he has not granted any licences (other than licences in respect of which there has been granted an open source licence) over the Orderly Mind software other than to OTL and that (i) the licence to OTL is an exclusive licence without the right to OTL to grant the right to another party to license the use of the Orderly Mind software; and (ii) that he will as part of entering the debenture arrangement authorise OTL to grant licences to any open source code aspects of the software.
- iv) that the licence to OTL will remain exclusive without the right to OTL to grant the right to another party to licence the use of the Orderly Mind software until the conclusion of this litigation

Wherein (1) ‘the conclusion of this litigation’ means that all outstanding costs orders in favour of D have been paid and (2) ‘the Orderly Mind software’ means the software used by OTL in its operating business and licensed to customers of OTL, and versions of it.’

46. In their submissions, C complained that the effect of an undertaking which required the licence to OTL to be exclusive would grant OTL rights against third parties which would be potentially perpetual in effect (if outstanding court orders were not paid in full), such that the copyright would be worthless in the hands of Mr King. I realise that one effect is that D effectively gets full security for its assessed costs but I see no point in cutting down the effect of the debenture. However, C’s complaint appears to miss the point: the whole point of this arrangement is to ensure that, in the event that D is successful in this litigation, it will recover its costs. Accordingly, what I have indicated above is the final form of the undertakings required from C if it wishes to elect to provide the debenture. I will include in my Order permission to apply to me in case of difficulty regarding the debenture.

Further Directions

47. Various relatively minor disputes remained as to the appropriate revisions to the directions down to trial. I indicated my decision on those points in a proposed Order

distributed with the draft Judgment. However, the parties will have to file short written submissions as to the costs of this saga before the Order can be finalised.