



BL O/324/06

20 November  
2006

## PATENTS ACT 1977

BETWEEN

Pace Micro Technology Plc

Opponent  
(Claimant)

and

Koninklijke Philips Electronics NV

Proprietor  
(Defendant)

PROCEEDINGS

Opposition to an application under section 27 to amend patent  
no EP(UK) 0755604

HEARING OFFICER

R C Kennell

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## DECISION ON COSTS

- 1 In my decision O/191/06 of 14 July 2006, following a hearing, I refused to allow amendments requested by the proprietor Koninklijke Philips Electronics NV ("Philips") under section 27 but allowed them an opportunity to submit alternative amendments. Philips has done this and the alternative amendments are to be advertised. The issue of costs arising from the hearing remains to be settled, and I will now deal with this.
- 2 The proceedings were relatively simple. Neither side filed any evidence. Only Philips attended the hearing, Pace having previously indicated that they would like the issues to be decided on the basis of the arguments on file, and that they would not be attending any hearing.
- 3 The parties have made submissions on costs in letters from their patent attorneys. Pace's submission on 21 August 2006 claimed reimbursement of costs of £5350, which was itemized and appeared to be the total of its expenses including discussions between the parties before filing the opposition. In the light of this the Office reminded the parties on 3 October 2006 that costs before the comptroller were not generally awarded on a compensatory basis and were guided by the standard scale which is published at paragraph 5.45 of the "Patent Hearings Manual" and [2000] RPC 598. Philips in its submission on 12 October 2006 sought a considerable reduction from the standard scale on the grounds that most of the notice of opposition,

and all of the changes to it following consideration of the counter-statement, related to matters in which Pace was unsuccessful. It did not think it should have to pay costs for groundless objections.

- 4 Costs before the comptroller are not intended to compensate the parties for the expense they have incurred but merely to contribute to that expense. Whilst it is possible (as explained at paragraph 5.47 of the "Patent Hearings Manual") for compensatory costs to be awarded where a party has incurred extra expenditure on account of unreasonable behaviour by the other side, Pace has not put forward any examples of such conduct and did not succeed at the hearing in its unsubstantiated allegation that Philips had acted in bad faith by employing covetous claiming. On the other hand, Pace did succeed overall in showing that the proposed amendments were not allowable. Even if it did not succeed on the particular allegation of lack of novelty, I do not think it was unreasonable for it to have argued this point.
- 5 I do not therefore think that the position of either party is tenable. I consider that costs should follow the event and should be awarded on the comptroller's normal scale, taking account of the fact that no evidence was filed and Pace did not attend a hearing.
- 6 I therefore direct that the defendant Koninklijke Philips Electronics NV shall pay the claimant Pace Micro Technology Plc the sum of £550 within 7 days of the expiry of the appeal period below. Payment will be suspended in the event of an appeal.

### **Appeal**

- 7 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

**R C KENNELL**

Deputy Director acting for the Comptroller