

PATENTS ACT 1977

BETWEEN

Rigcool Limited

Pursuer

and

Optima Solutions UK Limited

Defender

PROCEEDINGS

Reference under section 37, and applications under section 13(3) and 72(1)(b),
of the Patents Act 1977 in respect of patent GB 2441058B

HEARING OFFICER Stephen Probert

DECISION — EXPENSES

- 1 The substantive issues between the parties in these proceedings have fallen away, as a result of the pursuer withdrawing. Even though we did not get as far as a counterstatement or evidence rounds, the parties did battle over several preliminary issues, resulting in two preliminary decisions. This third (and final) decision records the outcome of a last skirmish on the subject of expenses.
 - 2 I have received written submissions on expenses from both sides, and as agreed with them, I now give this decision on the basis of those written submissions and the papers on the official file.
- Expenses**
- 3 Tribunal Practice Notice (TPN) 4/2007 explains how expenses are to be determined in proceedings before the Comptroller. It includes the standard scale that is usually applied, and also provides guidance concerning situations when the Comptroller may award expenses above the scale.
 - 4 The defender, Optima Solutions UK Ltd (“Optima”), has requested an award of expenses to the fullest extent permissible under the scale, or, if I consider it appropriate, an award above the standard scale. Optima has suggested that off scale expenses might be appropriate in this case because of the timing and the unexplained and abrupt nature of the withdrawal of the reference and applications by Rigcool Ltd (“Rigcool”). I do not think that there is anything unreasonable about

the timing or manner of the pursuer's withdrawal. It does seem to be right, in the majority of circumstances, to discourage a pursuer from withdrawing promptly from litigation by the threat of having to pay increased expenses to the other side. I am satisfied that there has been no "wider breaches of rules, delaying tactics or other unreasonable behaviour" on either side in these proceedings that would justify off scale expenses.

- 5 Rigcool submits that Optima has no grounds for an award of expenses above a few hundred pounds. They point out that there has only been one short hearing in the proceedings so far, and that was held by telephone. They also note that although Optima 'won' the first preliminary issue ¹ (ie. the time bar point), they 'lost' on the second preliminary issue ² (ie. extension of time under rule 107).
- 6 As no evidence was filed by either side, and Optima has not had to pay any official fees or travel expenses for witnesses, only two items from the official scale apply, and I have assessed them as follows:-

Considering Rigcool's statement	£200
Preparing for, and participating in, the telephone hearing on 28 th April 2011.	£400
Total	£600

ORDER

- 7 I order the pursuer, Rigcool Limited, to pay the defender, Optima Solutions UK Limited, six hundred pounds (**£600**) as a contribution to its expenses in these proceedings.

Appeal

- 8 Under section 97(4), any appeal shall lie to the Court of Session. According to the Rules of the Court of Session 1994, any appeal must be lodged within six weeks of the date of this decision.

S PROBERT

Deputy Director acting for the Comptroller

¹ BL O/149/11

² BL O/182/11