

**PATENTS ACT 1977**

CLAIMANT                                      Close Brewery Rentals Limited

DEFENDANT                                    Geco Holdings Limited

ISSUE    References under sections 12, 13 and  
37 and rule 10 in respect of UK patent  
GB2571465

HEARING OFFICER                            H Jones

*Mr Usman Tariq (instructed by Cameron Intellectual Property) for the Claimant*  
*Mr Jamie Muir Wood (instructed by Mohun Aldridge Sykes) for the Defendant*

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**DECISION ON COSTS**

**Introduction**

- 1 In my decision on the substantive matter of entitlement to patent GB2571465 dated 15 April 2021 ([BL O/264/21](#)), I said that the claimant is entitled to an award of costs in its favour and that I would invite further submissions on the quantum of cost award. I indicated in my decision that I did not expect to depart from the standard scale of costs set out at Annex A of the Tribunal Practice Notice 2/2016.
- 2 Immediately after issue of the decision, the defendant invited me to consider correcting the decision because of an error they said I had made in relation to entitlement to the inventions set out in claims 2-9 of the patent. I invited submissions from both sides and eventually rejected the defendant's invitation to correct the decision.
- 3 The claimant has provided detailed submissions on costs arising out of this further matter of correction as well to the substantive proceedings on entitlement to the patent. No detailed submissions on costs have been received from the defendant.
- 4 The claimant submits that I should depart from the standard scale of costs on the following grounds:
  - a) despite having expressly indicated to the claimant that it did not intend to appoint an expert witness, the defendant nevertheless proceeded to submit a report from its expert witness, Professor John Round, without any prior consultation with the claimant and contrary to my earlier indication that I did not think expert evidence would be of much assistance. It then became necessary for the claimant to produce its own evidence in rebuttal, including from its own expert. The claimant had to submit this evidence at very short notice, and the compressed timetable leading up to the original hearing date meant that it was not possible for both expert witnesses

to comply with the Office requirement for a joint statement of agreed and disputed matters. It became necessary to challenge the defendant's expert witness on a number of inaccuracies in his report during his cross-examination, which required some preparatory work.

b) the claimant refers to my comments at paragraph 28 of the decision that parts of the defendant's witnesses' evidence were "pushing at the bounds of credibility", and argues that this constituted an act of bad faith and/or unreasonable behaviour on the part of the defendant that would justify an off-scale award.

c) the defendant's "specious" submissions with regard to correction of the decision forced the claimant to incur further unexpected costs, the timing of these submissions - being after the publication of the decisions - were such that they do [not] fall within the standard scale set out in the Tribunal Practice Notice.

- 5 The claimant refers to the Hearing Officer's comments in *Statoil ASA v University of Southampton* (BL O/268/05):

*It is, though, right to depart from the scale if the behaviour of a party was such that it unreasonably caused the other side to incur costs, because without that sanction it gives a party a carte blanche to be as unreasonable as they like safe in the knowledge that they cannot be clobbered for the extra costs the other side has to incur.*

- 6 In their primary request, the claimant seeks to invoke my discretion to award 100% of its expenses relating to the issue of expert evidence totalling £4,150, and 100% of its expenses relating to the issue of responding to the defendant's post-decision submissions totalling £1,900, as noted in a table of costs provided in the Annex to the submissions. Should I not be persuaded that the claimant's primary request is justified, the claimant invites me to adopt the approach set out in *Statoil v Southampton*, whereby I should start from a position that courts will reduce costs to 60-70% of actual expenses incurred, and apply a further reduction to reflect an estimation of the proportion of the claimant's expenditure that was "probably attributable" to the unreasonable behaviour of the defendant.
- 7 The primary request is for an award of costs in the sum of £12,200 and the secondary request is for an award in the sum of £8,902.50. Given that the hearing took place over two days, the standard scale of costs leading up to issue of decision would range from £3,900 to £6,050 depending on the complexity of the case, and it is the claimant's view that an award of costs at the top end of the scale is appropriate.
- 8 Despite the defendant introducing a report from its expert witness having originally agreed not to do so, I do not consider that the defendant has acted unreasonably in all other aspects of proceedings, nor do I consider that any of the witnesses acted in bad faith. Also, while there was a reasonable amount of documentary evidence to consider and the cross-examination of witnesses required two days to hear, I do not think that the case was at a level of complexity to justify an award at the top end of the scale. I agree with the claimant that it should be allowed to recover a proportion of its actual expenses in relation to the post-decision submissions, and I would consider a sum equating to 100% of its costs to be entirely reasonable in the circumstances. In total, I consider that a scale award of £4,500 plus 100% of the actual expenses in reviewing and responding to the defendant's post-decision submissions, i.e. a further £1,900, to be reasonable in the circumstances.

## **Conclusion**

- 9 I award the claimant the sum of £6,400 as a contribution towards its expenses in these proceedings. The total falls short of the claimant's primary and secondary requests for the reasons given above.

## **Order**

- 10 I hereby order Geco Holdings Limited to pay Close Brewery Rentals Limited the sum of £6,400 as a contribution towards its costs, this sum to be paid within seven days of the expiry of the appeal period below.

## **Appeal**

- 11 Any appeal must be lodged within 28 days after the date of this decision.

**Huw Jones**

Deputy Director, acting for the Comptroller