



PATENTS ACT 1977

BETWEEN

Michael Stephens & Andrew Bartlett Claimants

and

Anthony Brian Mallows Defendant

PROCEEDINGS

Reference under section 37 of the Patents Act 1977 in respect of
GB patent number GB2537810 B

HEARING OFFICER

Phil Thorpe

COSTS DECISION

1 In a decision¹ dated 28th July 2022 I found that Mr Anthony Brian Mallows, Mr Michael Stephens and Mr Andrew Bartlett are the joint inventors and proprietors of the invention in GB2537810 B.

2 On the matter of costs, I noted that

“It is long established practice that in proceedings before the comptroller only a contribution towards the successful party’s costs should normally be awarded and that the amount should be guided by the comptroller’s published scale unless the circumstances warrant departing from the published scale².”

3 I did however allow both sides the opportunity to make written submissions which they both duly did.

4 The claimants, who were successful in their entitlement claim, requests costs in line with the published scale to the amount of £6450. This is made up of the following:

¹ BL O/643/22

² [Tribunal Practice Notice \(TPN 4/2007\)](#)

1. Preparation of statement and consideration of the other side's statement: £650

2. Preparing evidence and considering and commenting on the other side's evidence capped at: £2500

3. Preparing for and attending at hearing capped at: £3300

5 The defendant in its submission contends that each side should bear their own costs or in the alternative that any costs awarded to the claimants should be in line with the published scale. The defendant also in their submission on costs asks me to make orders to give better effect to my determination on entitlement. I will deal with this separately to this decision on costs.

6 On the matter of costs, I am satisfied that a cost award in line with the published scale as set out below is justified.

Task	Cost
Preparing a statement and considering the other side's statement	From £200 to £600 depending on the nature of the statements, for example their complexity and relevance.
Preparing evidence and considering and commenting on the other side's evidence	From £500 if the evidence is light to £2000 if the evidence is substantial. The award could go above this range in exceptionally large cases but will be cut down if the successful party had filed a significant amount of unnecessary evidence.
Preparing for and attending a hearing	Up to £1500 per day of hearing, capped at £3000 for the full hearing unless one side has behaved unreasonably. From £300 to £500 for preparation of submissions, depending on their substance, if there is no oral hearing.
Expenses	(a) Official fees arising from the action and paid by the successful party (other than fees for extensions of time). (b) The reasonable travel and accommodation expenses for any witnesses of the successful party required to attend a hearing for cross examination.

7 The claimants have sought costs at the upper end or slightly beyond the upper end of the published scale for each "task". I have reviewed the conduct of proceedings and make the following observations. These proceedings followed an earlier entitlement dispute involving the parties here in respect of the same patent. Much of the statements and evidence submitted in these proceedings is a rehash of that submitted in the earlier case and this undoubtedly has reduced the costs in these proceedings for both sides.

8 The hearing in these proceedings was also scheduled for two days but in the event only required a single day. I am conscious that the hearing had originally been set for an earlier date, but that hearing was adjourned on the day. It is not necessary for me to go into detail as to the reasons for that adjournment. There was I think blame on all sides including on the office. I note also that both sides agreed to the

adjournment. Consequently, I do not believe that the adjourned hearing should impact on my cost order.

- 9 One factor that does need to be considered is the impact of the intervention by Mr Hall in these proceedings. Mr Hall made several extensive interventions. The first was in November 2011 where he filed a bundle of approximately 250 pages labelled as "A B Mallows evidence" and which according to the covering letter was sent at the request of Mr Mallows. This "evidence" was copied to Mr Mallows and the claimant. A month later Mr Mallows wrote to the office and the other side, to confirm that Mr Hall was not representing him and that any further correspondence from him should be disregarded. However, by then it is reasonable to assume that the claimants had at least considered the material submitted by Mr Hall and that this would have increased their costs.
- 10 Taken all these factors into account I conclude that a fair cost award in line with the published scale is the sum of £2950 made up of the following:
1. Preparation of statement and consideration of the other side's statement: £200
 2. Preparing evidence and considering and commenting on the other side's evidence: £1250
 3. Preparing for and attending at hearing: £1500

Order

- 11 I hereby order Mr Anthony Brian Mallows to pay the claimants, Mr Michael Stephens and Mr Andrew Bartlett, the sum of £2950 as a contribution towards their costs, this sum to be paid within seven days of the expiry of the appeal period below

Appeal

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

Phil Thorpe

Deputy Director acting for the Comptroller