



05 June 2013

PATENTS ACT 1977

BETWEEN

Coupling Technology Limited

Claimant

and

Coupling Solutions LLC

Defendant

PROCEEDINGS

Reference under section 8 of the Patents Act 1977
in respect of patent application numbers
GB 1018849.8 and GB 1107429.1

HEARING OFFICER

A C Howard

Mr Chris Aikens of 11 South Square, instructed by Appleyard Lees, represented
the Claimant

Mr Harris Bor of Wilberforce Chambers, instructed by Page, White & Farrer,
represented the Defendant

Hearing date: 30 and 31 May 2013

PRELIMINARY DECISION – COSTS

Introduction

- 1 Coupling Technology Limited has made a reference under section 8(1)(a) and 8(3)(c) claiming to be entitled to patent applications GB 1018849.8 and GB 1107429.1, and seeking to be named as patent applicant in respect of both applications. The applications proceed in the name of Coupling Solutions LLC, who dispute the reference.
- 2 These proceedings have reached the stage of the substantive hearing being appointed, for three days in late June. On 10 May 2013 counsel for the parties had agreed a timetable for the examination and cross-examination of witnesses at the substantive hearing.
- 3 However, on 22 May 2013 the Defendant wrote to the comptroller to request a

postponement of the substantive hearing until September or October “due to a scheduling conflict”. The Claimant opposed this request for postponement.

- 4 At a case management conference and hearing held on 30 and 31 May 2013, I heard from both parties in relation to the request, and on 31 May I gave an oral decision refusing the request for postponement and giving my reasons for doing so. Following that oral decision, Mr Aikens asked for an award of costs in relation to this preliminary matter. This decision deals with that costs matter only.

The law

- 5 Section 107(1) of the Act says:

The comptroller may, in proceedings before him under this Act, by order award to any party such costs or, in Scotland, such expenses as he may consider reasonable and direct how and by what parties they are to be paid.

- 6 It is long-established practice that costs awarded in proceedings before the comptroller are guided by a standard published scale. The scale costs are not intended to compensate parties for the expense to which they may have been put, but merely represent a contribution to that expense. This reflects the fact that the comptroller ought to provide a tribunal which, as far as possible, has low and predictable levels of costs. Tribunal Practice Notice 4/2007 sets out the standard scale and explains how costs are to be determined¹.

Arguments and analysis

- 7 Unsurprisingly, I did not hear lengthy submissions from either side on costs in relation to this preliminary matter. Mr Aikens asserted simply that the Claimant had won on the postponement point, and so should have an award of costs, on the scale. Mr Bor resisted this and pointed out that, although the Defendant had requested the postponement, the case management conference had become necessary in order to clarify matters following a mistake by the Office. Thus, he said, each side should bear its own costs.
- 8 In terms of an Office mistake, Mr Bor was referring to an email sent by the Hearings Clerk on 23 May (the day after the Defendant’s request for a postponement) which suggested the postponement was to go ahead. This was based on the Office’s mistaken belief that the Claimant was not resisting the Defendant’s postponement request. The position was rectified the following day, when the Hearings Clerk emailed the parties again to say that, in view of the fact that the Claimant did in fact oppose the request, a case management conference would be set up to discuss the matter.
- 9 However, I do not see that the email of 23 May can really be said to be the cause of the case management conference. The cause was that the Defendant had sought a postponement and the Claimant did not agree. All the 23 May email did was muddy the waters, for a little over 24 hours, as to that fact. So I do not see that this mistaken email was the cause of the case management conference and I do not agree that it provides a reason for reducing the costs award.

¹ See www.ipo.gov.uk/p-tpn-42007

- 10 More widely, it is clear that the Defendant sought the postponement and failed. At the 30 May conference and hearing, Mr Bor could give me no further details as to the Defendant's "scheduling conflict" that had arisen. Despite a further opportunity on 31 May, I heard only very general references to the Defendant's witnesses' trade shows, customer visits and holidays over the coming months.
- 11 So I can see no reason why the Defendant should not contribute to the Claimant's costs in this preliminary matter on the usual scale. Taking into account the hour spent attending the two sessions of the case management conference and hearing, and a modest amount of preparation time, I award £300 in costs.

Conclusion

- 12 I conclude that £300 is awarded to the Claimant as a contribution to their costs in this preliminary matter. This sum is to be paid by the Defendant within 7 days of the expiry of the appeal period set out below.

Appeal

- 13 Any appeal must be lodged within 28 days.

A C HOWARD

Divisional Director acting for the Comptroller