

Innovation Court's sharpening edge: radical proposals to slash Patent Court costs

August 2009

A radical proposal¹ to cut the cost of patent disputes in the UK was published on Friday 31 July 2009. The Patents Court judges and representatives from the legal professions, (including Alasdair Poore, head of our technology team and current vice-president of the Chartered Institute of Patent Attorneys) are behind dramatic proposals aimed at enabling patent disputes to be fought for a fraction of the existing costs.

Patent battles are renowned for costing millions of pounds and sometimes lasting for years. Now, proposals are being put forward for a major change in direction. The Patents County Court, once popular and renowned for the remarkably costly case in which Andreas Pavel sued Sony in relation to the Sony Walkman, will have its rules rewritten so that intellectual property disputes, including patent battles, can be resolved quickly and for a fraction of the cost of existing claims in the UK. These changes will provide a real boost to innovative businesses which rely on intellectual property, but see the costs of enforcement as a major obstacle especially in the technology field.

Key proposals, aimed at making the court accessible to small and medium enterprises (SME) with patent and other intellectual property disputes such as about trade marks or designs, are to limit legal costs in cases in the Patents County Court to £50,000 - this compares with typical costs up to £1 million or more for patent cases currently in the High Court. The proposals also aim to limit trials to one to two days, to slash the amount of paperwork and documents, and to hold a hearing shortly after the parties have set out their case.

Probably uniquely among proposals for reform of patent litigation in the last 200 years, these proposals have won support from judges, all sides of the intellectual property professions, and small and big business alike. As has been recognised in Lord Justice Jackson's report

on Civil Litigation Costs¹, there is a real recognition that inaccessible justice is no justice at all. The UK needs access to justice for innovative business, as a key element of promoting support for innovation.

The proposals are not without some controversial aspects. The "fundamental English rights" to cross-examine the other side's witnesses will be severely restricted. The "flagship" of English court procedure, "disclosure" (the requirement for all parties to disclose all relevant documents), will be severely curtailed, but like many flag-ships it has often been a very expensive one. The freedom for advocates to have the time to advance any argument, however thin, will be subject to the guillotine.

These proposals draw a balance: crucially they aim to provide a court that SMEs really can make use of. The proposals show real innovation in the UK. For the rest of Europe, this is much closer to what they already have. Now that they have support from business, lawyers and judges, politicians must be lobbied make these proposals happen. Indeed, with the Government's current drive for innovation in cleantech and other fields, this is a real opportunity to take action and make the necessary reforms.

¹Useful links:

- [Working Group's Consultation on Proposals for Reform of the Patents County Court:](#)
- [Lord Jackson's preliminary report](#)

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