

Quicker trials at lower cost

'Fast' and 'cheap' are perhaps not words normally associated with Intellectual Property litigation. However 'faster' and 'cheaper' are certainly the ideas behind the recent procedural changes in the Patents County Court (PCC).

Indeed 'faster' and 'cheaper' were the ideas behind the foundation of the Patents County Court 20 years ago, but until now it has not achieved its goal. There are two main reasons for this. Firstly, the procedures were the same as those of the High Court (which can be slow and expensive) and secondly, there was no limit to the award of costs or damages against the losing party.

This latter point has often been a deterrent for small and medium sized businesses, making them think twice about enforcing their own rights or defending themselves against others, particularly when the opponent is a large company with lots of money to spend. The problem is that with no limits in place, the other side's costs can be quite a worry, so much so that it can put smaller businesses off even when they have a good case with a good chance of success.

Until now, it has been difficult to streamline cases in the PCC because of the cumbersome procedures, but from 1 October 2010 the PCC rules have changed.

There is now a limit of £50,000 for costs in a trial to determine liability. If a party is found liable, there is a further limit of £25,000 for costs in the subsequent enquiry into the level of damages. Furthermore, it is not just the total costs which are capped. There is a scale of costs limiting the amount that can be awarded for each stage of the case. Therefore pulling out of a case early can further reduce costs liability. Of course both sides can still spend as much as they like on the case, but one side should no longer be able to price the other side out of it.

For now there is still no limit on the award of damages in the PCC, but there is a proposal to limit this to £500,000 in due course.

To speed things up, the new rules require much more comprehensive statements of case at the start of the procedure containing all the facts and arguments that are to be relied upon. From these, the judge can identify the main issues and decide whether further procedures (experiments, witness statements, expert's reports, etc.) are really necessary based on a cost-benefit test. The default position will be to exclude these procedures. The judge can therefore keep much stricter control and should be able to keep things moving along as well as keeping down unnecessary expenditure. There is also now a policy to keep the trial itself to no more than 2 days in length. If the parties agree, the judge can decide the case based on the papers alone.

Cases can still be transferred between the High Court and the Patents County Court, but the rules put limits on when this can happen and the court must always take into consideration the ability of a party to afford litigation in the High Court as well as the overall value of the claim at issue. There will still be times when it is appropriate for high value cases to be transferred up to the High Court with the full range of trial procedures, but there will also be times when that is not justified and would adversely affect one of the parties.



There can be no doubt that there is now a clear distinction between the High Court and the Patents County Court. The new framework for efficiency should allow the court to fulfil its goals of being a faster and cheaper route to justice and should hopefully make litigation much more accessible to SMEs.

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