



Neutral Citation Number: [2026] EWHC 300 (Pat)

Claim No.: HP-2022-000024

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Date: Friday, 30th January 2026

Before:

MR. JUSTICE RICHARDS

Between:

DAVID PARSONS

Claimant

- and -

CONVATEC LIMITED

Defendant

ALEXANDER HUTTON KC and BEN NORTON (instructed by **Kingsley Napley LLP**)
appeared for the **Claimant**.

ROBERT MARVEN KC and CHRIS AIKENS (instructed by **Freshfields LLP**) appeared for
the **Defendant**.

Approved Judgment

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MR. JUSTICE RICHARDS :

1. This is a substantial claim brought by the Claimant under s40 of the Patents Act 1977 (the **Act**). The Defendant says that the logic of the Claimant's own pleaded case is that the claim is worth up to £366 million. A 27-day trial has been listed for 2027. However, despite the size of the claim, both parties have agreed that costs budgeting is appropriate and this judgment therefore deals with matters arising from both sides' costs budgets.
2. The Claimant argues that s106 of the Act has some bearing on the level at which I should approve the Defendant's budget. The Defendant does not accept that s106 has any effect and says that, even if it does, it should not result in the sort of adjustments that the Claimant seeks. This judgment deals with matters on the assumption that s106 has no effect. I will give a separate reserved judgment that deals with s106 and its consequences should it apply.

The approach I will follow

3. The parties agreed that I should apply the following summary of applicable principles set out in the judgment of Joanna Smith J in *Various Shared Appreciation Mortgage Borrowers v BOS* [2022] EWHC 254 (Ch).
 - i) Where budgeted costs are agreed between the parties, the court can do no more than record that agreement (CPR 3.15(2) (a)). However, where the court has reservations as to the agreed figures on grounds of reasonableness and proportionality, it may record its comments to that effect (see WB, Vol 1 at 3.15.4).
 - ii) Where budget phases are not agreed, the court will review them and record its approval after making appropriate revisions (CPR 3.15(2)(b)).
 - iii) The court will limit its approval in respect of the budgeted costs of each phase to those which are both reasonable and proportionate (PD 3E at paras 5 and 12).
 - iv) In deciding the reasonable and proportionate costs of each phase of the budget, the court will have regard to the factors set out in CPR 44.3(5) and 44.4(3) (PD 3E at para 5). Pursuant to CPR 44.3(5), costs incurred are proportionate if they bear a reasonable relationship to (amongst other things, and focusing on the factors identified by the parties as relevant in this case): (i) the sums in issue in the proceedings; (ii) the complexity of the litigation; and (iii) any wider factors involved in the proceedings such as reputation or public importance. Pursuant to CPR 44.4(3), the court will have regard to various additional factors, many of which overlap with those in CPR 44.3(5). Neither of the parties to this application focused on any additional factors in CPR 44.4(3), although I note that one

factor that does require the court's attention is "the receiving party's last approved or agreed budget".

v) When reviewing budgeted costs, the court will not undertake a detailed assessment in advance but rather will consider whether the budgeted costs fall within the range of reasonable and proportionate costs (PD 3E at para 12). See also *Various Claimants v Scott Fowler Solicitors* [2018] EWHC 1891 (Ch), per Chief Master Marsh at [16]: "I emphasise that the court is not required to have regard to the constituent elements of each budget phase (it may do so) and the court's task is to decide whether the total for each phase falls within a range of reasonable and proportionate costs." See also *Yeo v Times Newspapers Ltd* [2015] EWHC 209 (QB) per Warby J, as he then was, at [66]. What is reasonable and proportionate in this context must be viewed objectively.

vi) The court's task is not to carry out a calculation or strict arithmetical exercise. Reasonableness may involve having close regard to the calculations in the budget, but proportionality does not (*Various Claimants v Scott Fowler Solicitors* [2018] EWHC 1891 (Ch) at [16]).

vii) A comparison between budgets may be informative but it can never be determinative; "the court is not a slave to comparison" (*Various Claimants v Scott Fowler Solicitors* [2018] EWHC 1891 (Ch), at [17]). Similar work in the hands of different legal teams may result in different costs. That is why, if they are to be approved by the court, a party's costs need only fall within a range. Thus the "touchstone" need not be the lowest amount a party could reasonably be expected to spend: "the court should allow some flexibility to the parties to ensure that their conduct of the action is not unnecessarily and potentially unfairly hampered by an unrealistically low assessment or by only the lowest assessment of what would constitute reasonable and proportionate expenditure" (see *Discovery Land Company v Axis Specialty Europe* [2021] EWHC 2146 (Comm) per Peter MacDonald Eggers KC sitting as a deputy High Court judge at [18]).

viii) Whilst it is helpful to have an eye on the overall budgeted figure, that is not the focus of the task set for the court – PD 3E para 5 is expressly concerned with the reasonable and proportionate costs of "each phase".

ix) The future (i.e. estimated costs) element of the costs budget is binding on a subsequent detailed assessment and the figure for those costs should not be departed from on assessment (whether upwards or downwards) unless a "good reason" can be shown (CPR 3.18 and *Harrison v University Hospitals NHS Trust* [2017] 1 WLR 4456). Accordingly, decisions made by

the court at the costs management stage are both significant and important.

4. I canvassed with the parties some additions and extensions to Joanna Smith J's formulation of principles that arise given the particular circumstances of this case and the way the debate about costs budgets has unfolded.
5. I did not understand the following points to be controversial:
 - i) The issue of "proportionality" is separate from the issue of "reasonableness". Even if it would be reasonable to incur particular costs, the court will not approve those costs as part of a budget if it would be disproportionate to incur them.
 - ii) Avoiding an arithmetic exercise (Joanna Smith J's point (vi)) means that the costs budgeting exercise cannot be resolved simply by determining "appropriate" hourly rates for solicitors and counsel. Of course, if hourly rates applied are excessive, that may well indicate that the sums budgeted for particular stages are unreasonable or disproportionate. However, the mere fact that Freshfields' hourly rates for Grade A fee earners (£1,100 per hour for partners, for example) are high does not of itself mean that costs that involve an application of those rates are necessarily unreasonable or disproportionate. To give a homely example, a senior partner at Freshfields might be able to do a task in one hour (at a cost of £1,100) that a more junior member of staff would take three hours to do. Provided £1,100 is not an unreasonable or disproportionate cost for that task, the fact that the £1,100 hourly rate is high is not, of itself, a problem.
 - iii) A further reason why a comparison between budgets is not always instructive (Joanna Smith J's point (vii)) is that one side may have more work to do at a particular phase. For example, in this case, the Defendant says that it has by far the greater amount of work to do on disclosure. In addition, the parties may have different approaches to the cases: in this case for example the Defendant sees a much greater need for specialist IP advice than does the Claimant. The reasonableness and proportionality of that position needs to be tested, but it is capable of explaining a difference between the respective parties' budgeted costs. Moreover, it is also possible that one side has simply under-estimated costs of a particular phase.
 - iv) I can, and should, have regard to incurred costs when considering the reasonableness and proportionality of future budgeted costs.
6. Both parties agreed that I should approach the question of reasonableness and proportionality from an *inter partes* perspective. There is nothing wrong with a party instructing a particularly expensive firm of solicitors, for example, because the case is important and they want to win. If I consider that a party has done that, and that particular budgeted costs are "unreasonable", I am not suggesting that lawyers are overcharging their own clients. Rather, I am simply looking at what is reasonable and proportionate to be incurred on an *inter partes* basis.

7. I was referred to the well-known dictum of Leggatt J (as he then was) at [13] of *Kazakhstan Kagazy v Zhunus* [2015] EWHC 404 (Comm), that:

the touchstone is not the amount of costs which it was in a party's best interests to incur, but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party.

8. I remind myself that today I am engaged in a costs budgeting exercise, whereas Leggatt J made that dictum when deciding on a payment on account of costs. I note, as did Joanna Smith J in her point (vii), the judgment in *Discovery Land Company v Axis Specialty Europe* [2021] Costs LR 947, that in the context of costs budgeting the quest is not for the absolute lowest amount. A figure can be within a reasonable and proportionate range and still be reasonable and proportionate even if it is not the absolute lowest figure.

Factors set out in CPR 44.3(5) and CPR 44.4(3)

9. I am required to take into account the factors set out in CPR 44.3(5) and CPR 44.4(3). I invited both sides to make introductory submissions on how those factors should affect the costs budgeting exercise and I now set out my conclusions following those submissions.
10. The sums in issue in this dispute are potentially very high. The Claimant seeks a payment equal to 10-15% of the value of the Defendant's global sales of particular products. The Claimant's own assessment, which depends on no confidential information as to the value of the Defendant's actual sales, values relevant sales at some \$3.3 billion. Ostensibly the Claimant could be seeking, on his own formulation of the claim, a payment of some £366 million from the Defendant. I was referred to some other decisions in which awards were made under s40 of the Act at much lower percentage shares than the 10% to 15% that the Claimant seeks. However, the Claimant has not limited his claim by reference to any such lower percentage. The Defendant, in my judgment, is entitled to proceed on the basis that it could have to pay a very large sum if this claim succeeds.
11. This is also complicated litigation in a specialist area. The claim relates to seven patent families and 73 individual patents. The trial is listed for some 27 days. Some matters are common ground, but many issues of some complexity are not agreed. It remains in dispute the extent to which the Claimant is the inventor or sole inventor in relation to a number of the inventions at issue. The extent of the benefit that the Defendant derived from patents/inventions remains disputed. There are also questions of some potential factual complexity as to the extent to which any "outstanding benefit" that the Defendant derived came from inventions/patents or rather from other matters such as the way products were marketed, or the skill with which the Defendant was able to get them to market. The question as to what a fair share of any benefit should be is also at large.

12. There is also a new issue of law that arises in this claim. Section 40 of the Act has been modified since it was first enacted. In its new form, s40 asks whether, having due regard to factors such as the size and nature of the Defendant's undertaking, the invention or the patent or the combination of both is of outstanding benefit. That raises the prospect of "outstanding benefit" coming from inventions and not just patents or any of the various permutations of inventions and patents, including all of the relevant inventions and patents considered together. The court will need to decide on the scope of the enlarged s40.
13. The Claimant is, as matters stand, relying on all possible permutations of invention and patent for the purposes of s40 of the Act. That is a compendious case and I consider that to be a relevant factor as well.

The Defendant's costs budget

14. With those introductory comments, I will start with the Defendant's costs budget which was the subject of most challenge.

The Claimant's general criticisms of the Defendant's budget and conduct

15. The Claimant prefaced his submissions with some general observations on proportionality and the Defendant's conduct of the case. Significant issue has been taken with the Defendant's incurred costs to date which are at least double those that have been incurred by the Claimant. The Claimant submits that the rates that the Defendant's solicitors have applied when calculating those incurred costs are manifestly excessive. (On going through the costs budgets in detail, it became clear that there is only really a material difference between solicitors' hourly rates at the most senior levels. The Defendant's solicitors apply Grade A rates for their partners, of counsel and senior associates of £1,100, £915 and £675 respectively as compared with corresponding figures of £700 and £525 for the Claimant's solicitors. At levels below this, there is little difference between solicitors' hourly rates.)
16. However, while I will take into account the level of incurred costs when fixing both sides' cost budgets, in my judgment the Claimant's high-level critique of those incurred costs does not assist greatly. If the incurred costs to date are indeed unreasonable or disproportionate that can be dealt with at an assessment.
17. The Claimant invites me to deprecate the incurred costs and the conduct of the Defendant to date and make observations to this effect. I will not do so. This litigation has been proceeding for some time and significant costs have been incurred. Mr. Hutton KC gave a potted summary of the proceedings to date which suggests that there have been some wins and some losses on both sides, with both sides having been ordered to replead their cases. I do not see how, with the benefit of the necessarily partial snapshot that can be given within the time constraints of today's hearing, I can form any view on the reasonableness or proportionality of costs that have been incurred thus far. In my judgment a costs judge performing a detailed assessment of incurred costs would be much better placed than me to do that. Since I do not fairly consider I can make any consideration on those costs today, I will not do so.

18. In his Precedent R Discussion Report the Claimant submitted that, because of what he characterises as the Defendant's grotesque overspending, I simply cannot have any confidence in the Defendant's costs budget. The Claimant asks me to take the kind of hard line of the Defendant's budgeted costs that was taken in *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd* [2015] 2 Costs LR 353, [2015] EWHC 481 (TCC). That point was not pressed in oral submissions today. However, for completeness I do not accept it. This is a complex claim in which the Claimant is seeking a large sum of money from the Defendant, and, as matters stand, relying on all possible permutations of patents and inventions as giving rise to an outstanding benefit to the Defendant. Opinions can reasonably differ on whether the Defendant's costs to date are reasonable and proportionate. However, I do not consider them to be so obviously unreasonable or disproportionate as to call into question whether I can trust the costs budget. In my judgment, the Claimant's accusation that the Defendant has been overspending to date is really nothing more than the usual debate, involving admittedly large numbers, as to the proportionality and reasonableness of costs. I do have confidence in the Defendant's costs budget and a hard line approach of the kind set out in *CIP Properties* is not, in my judgment, justified.

Issue/Statements of Case

19. Ultimately there was relatively little debate on the budgeted costs of this stage.
20. The parties' budgets, Precedents R and skeleton arguments canvassed a debate about the budgeted costs in connection with an RFI from the Claimant and an amended Reply.
21. However, the Claimant has submitted no RFI, and it is not clear whether any amended Reply will be prepared. In the circumstances, it seemed to me that the preferable course was simply to leave this phase unbudgeted and neither side sought to dissuade me from that course.

Case Management Conference

22. Estimated costs under this heading relate to a further one-day CMC to take place in May 2026, in which items such as expert evidence will be on the agenda. The Defendant estimates £193,600, broken down as to £118,600 for solicitors and £75,000 for counsel. The Claimant's estimated costs for this phase are £125,455.
23. The Claimant is offering £122,000, a sum lower than his own estimated costs to reflect what he says is the incremental work he has of preparing the bundles. The Claimant accepts the estimated costs of the Defendant's counsel, but criticises as unreasonable the Defendant's solicitors' costs.
24. The Defendant's estimated costs strike me as comparing favourably with the costs of other CMCs. The Defendant has undertaken an arithmetic interrogation of the Claimant's incurred costs and concluded that the Claimant incurred some £640,000 of costs for a two-day CMC before Mellor J in November. The Claimant has not explained how that calculation has misfired beyond saying that there was a lot on the agenda at the hearing before Mellor J. For its part, the Defendant's incurred costs for the November CMC were some £430,000.

25. Of course, I do not know whether the costs that either side incurred on the November CMC were reasonable or proportionate. However, the comparison suggests to me that the Defendant's budget is likely to be closer to the mark than that of the Claimant.
26. I consider that some relatively modest reduction to the Defendant's budget is indicated to reflect the fact that the Defendant has chosen to instruct an expensive firm of solicitors. Of the Defendant's solicitors' costs some £77,600 (out of £118,600) is estimated to be incurred by the particularly expensive Grade A fee earners. Particularly given that counsel are also to be instructed (at an estimated cost of £75,000), I consider that the solicitors' costs are, to a degree, unreasonable on an inter partes basis. However, in my judgment, the reduction should be relatively modest. I am going to allow the Defendant £170,000 for the CMC stage.

Disclosure

27. The Defendant's estimated costs are some £100,000 for counsel, £270,000 for disbursements associated with the hosting of some one million documents and £1,145,775 of solicitors' fees: a total of £1,515,775. The Claimant offers £1,155,000.
28. Much of the disclosure is on the basis of Model C, mainly about the nature of actual contribution to inventions and patents. However, some issues require Model D disclosure. The Defendant estimates that it will be necessary to locate and host some 1 million documents that span some 32 years of the Claimant's career.
29. The Claimant is prepared to agree an estimate of £100,000 overall for counsel. In later stages the Claimant will argue that four counsel are not needed, but he accepts that £100,000 overall is a reasonable figure for counsel involvement in the disclosure exercise. The Claimant suggests that efficiency savings could be achieved by using AI. There is some challenge to the hosting fees that the Defendant is proposing to incur. However, the bulk of the challenge is really to the sheer number of hours that the Defendant's solicitors are proposing to spend on the task.
30. It is common ground that there is no reason to expect that the disclosure costs of the Defendant and the Claimant should be symmetrical. It is quite clear that the Defendant has by far the greater disclosure exercise.
31. I do not see any need to reduce the estimate by reference to hosting fees. The trial is now taking place in 2027, later than had been hoped, and hosting fees have to be incurred all the way up to trial. It strikes me that it is a matter for the Defendant how many Relativity accounts it needs. Having 11 enables multiple people, at varying levels of seniority to be working on the disclosure exercise at the same time. I see nothing unreasonable or disproportionate about 11 accounts given the scale of the disclosure exercise.
32. It seems to me that the Defendant is adopting an entirely orthodox approach to disclosure. Investing time in training its machine learning systems so that a good job is made at the first stage of disclosure is a proportionate and reasonable way to go about things. The disclosure exercise itself strikes me as a complicated one. Potentially, a statement buried in an e-mail praising the Claimant's contribution to a particular invention might look like a passing pleasantry, but could turn out in disclosure to be significant. Disclosure will need to capture points such as this.

33. I do, therefore, consider that the Defendant has a difficult and extensive disclosure exercise. It is easy for the Claimant to say that AI should reduce costs. However the Claimant has not shown me specific steps involving AI that it says the Defendant should be taking but is not.
34. That said, a lot of the work that will be done on the disclosure exercise is relatively routine and Freshfields are an expensive firm. They have done something to control the costs of the exercise. However, I do see some element of luxury in their estimate. Some of that luxury comes in the hourly rates. While it is reasonable and proportionate to deploy senior level resource on a disclosure exercise so that it proceeds properly and does not need to be redone, I am not satisfied that all £215,000 odd of the costs of Grade A fee earners, at very high hourly rates, is reasonable and proportionate on an inter partes basis.
35. Some of the luxury, in my judgment, comes from the number of hours that are estimated by more junior fee-earners who are also being charged at rates in excess of guideline rates on a task that, while extensive, is reasonably commoditised.
36. I am proposing to reduce the estimate at the disclosure stage to £1.3 million.

Witness statements

37. The Defendant estimates some £978,600 broken down as to £871,600 for solicitors, £100,000 for counsel and some £7,000 of disbursements. That estimate is prepared on the basis that there are going to be six factual witnesses. The Claimant offers £382,000 compared with his own estimate of £493,000, which assumes that only three witnesses will be required on the Claimant's side.
38. I have considered whether a comparison between the Claimant's and Defendant's estimated costs sheds much light on the question. I do not consider it does. I would not necessarily expect symmetry between the costs of the Defendant and the costs of the Claimant.
39. Clearly both Claimant and Defendant will be giving evidence on the Claimant's contribution to inventions and patents. That issue will be right at the heart of the case.
40. The Defendant quite clearly sees an additional dimension to this case which the Claimant is not required to investigate or to give evidence on. In essence, the Defendant is disputing the extent to which any benefit that it derived came from inventions or patents or a combination of them. It makes the point that that benefit could conceivably come from the marketing of the products, the way they were produced and distributed and regulatory matters. The Defendant may be right or wrong about that. However, it is reasonable and proportionate for the Defendant to give evidence by way of witness statement on these issues.
41. I do not, therefore, accept the Claimant's general proposition that the Defendant's burden at the witness statement stage is lower than his. I regard the Claimant's offer of £382,000 as much too low.
42. That then leads to the question of what sum would be reasonably and proportionately incurred taking into account the additional matters on which the Defendant wishes to

lead evidence. I take into account that Practice Direction 57AC applies. Moreover, it seems to me that the additional issues on which the Defendant wishes to give evidence will be less involved and significant than the issues of inventorship. Therefore, I do not accept the Defendant's suggestion that because the Claimant estimates £493,000 for three witnesses, its estimate of around double that sum in relation to six witnesses is necessarily reasonable and proportionate. The additional three witnesses for the Defendant, it seems to me, will not be addressing matters as complicated as the other three witnesses dealing with inventorship and patents.

43. The Claimant does not dispute counsel's costs. He is prepared to accept that £100,000 of counsel costs overall on witness statements is reasonable and proportionate (although he does not accept that four counsel are needed). The focus of the Claimant's challenge is on the costs of the Freshfields team which he says is top heavy and recording too much time.
44. I agree with some elements of that criticism. I think that there is scope to reduce the costs that are reasonable and proportionate on an inter partes basis. I return to the point that Freshfields is an expensive law firm. Given the amounts at stake, I can quite understand why the Defendant wishes to instruct a firm of Freshfields' standing. However, that does not necessarily make all of Freshfields' estimated costs reasonable and proportionate on an inter partes basis.
45. Freshfields' most senior Grade A fee earners are estimated to spend 580 hours on the six witness statements. More junior fee earners are spending 900 hours. I regard that mix of time, and the total time, as unreasonable on an inter partes basis, taking into account the provisions of Practice Direction 57AC.
46. I propose to reduce the estimated costs of the witness statement phase to £700,000.

Expert Reports

47. Initially there was a real difficulty with all phases from, and including the expert report phase. The Claimant was budgeting on an assumption that both sides would be calling a single financial expert, that being the full extent of the expert evidence permitted by existing case management directions. The Defendant, by contrast, was budgeting on the basis of 6 experts: anticipating that the May CMC will result in permission being given for that number of experts.
48. Following an email from my clerk, the Defendant helpfully prepared overnight an estimate for the expert report, and subsequent phases, on the assumption that just a single expert would give evidence. That estimate was agreed during the hearing, as was the Claimant's expert budget, it being confirmed that both budgets were based on the Defendant's assumptions as to the extent of expert reports, the absence of a Joint Expert Memorandum and the absence of a meeting between experts. If those assumptions are shown to be inaccurate following the CMC in May, the budgets for expert evidence will have to be revisited.

Pre Trial Review

49. The Defendant estimates £257,900, £152,900 for solicitors and £105,000 for counsel. That is based on an assumption that the PTR will last for two days. That assumption is

borne out by existing case management directions that provide for a single two-day PTR.

50. The Claimant's own estimate for the PTR is £144,160 (£118,325 of solicitors' costs and £25,835 of counsel's costs). He offers £140,000, less than his own estimated costs to take into account the costs of the bundles. The Claimant's critique is of the mix of hours that are spent by the Defendant's solicitors. He says that counsel fees should be reduced from £105,000 to £25,000 and that 220 hours to be recorded by the Defendant's solicitors is simply too much.
51. I do see some force in the point that with two such well-advised parties, one would not necessarily expect a packed agenda at the PTR. However, there is a PTR that has been listed for two days and we cannot lose sight of that.
52. On the face of matters, one might accept symmetry. After all, the parties at the PTR are doing the same work. Bundles and the preparation of bundles will not make that big a difference. However, here I do consider that the Claimant has underestimated in their costs for counsel. £25,000 for counsel for a two-day hearing strikes me as being on the low side. Therefore, I am not persuaded by the Claimant's point that a reasonable and proportionate figure is the Claimant's estimate of his own costs.
53. I think the truth here lies somewhere in the middle. £200,000 strikes me as a reasonable and proportionate figure for the PTR. That gives due weight to the fact that the PTR is in the diary for two days. However, it also acknowledges that the agenda may well not be a full one that needs the kind of input that has been estimated from both counsel and Freshfields' expensive legal team.

Trial preparation

54. Based on an assumption of a single expert, the Defendant now estimates costs of £2,051,250 with solicitors at £681,250 and disbursements such as counsel and experts at £1,370,000. I agree with the Defendant that the logic of the Claimant's offer has not changed. The Claimant's Precedent R shows that he has throughout been making his offers on the basis of one expert. Therefore, the Claimant's offer is £1,083,875, which is slightly lower than his own estimate of £1,142,225 to reflect the costs of the bundle.
55. The difference between the two figures is largely attributable to two factors. First, the Defendant is fielding a four-person counsel team, an IP silk and a junior, plus a financial silk and a junior, paying that four-person team brief fees of around £1.1 million. By contrast, the Claimant is fielding essentially a two-person counsel team that contains no IP specialists (although he will obtain some occasional and limited assistance from an IP junior) and estimating brief fees for that team of £631,000. There is a marked difference in estimates of solicitors' time at the trial preparation stage: £681,250 for the Defendant as against £344,750 for the Claimant.
56. The Claimant says one should expect symmetry at this stage, but I do not agree given the different approaches to the case that the parties are taking. It does strike me as reasonable and proportionate for the Defendant to take the position that IP expertise is needed. The Defendant wishes to make a case on inventorship by disputing the extent to which the Claimant was an inventor, or sole inventor, in certain areas. It is reasonable for the Defendant to consider that the case involves the kind of forensic

analysis of what the inventions actually are that is the province of an IP specialist. The Defendant also wishes to make points on the extent of the Claimant's inventions and whether they contribute to the significant sales. The Defendant's point in essence is that, to the extent the invention is of a narrow nature, it might be expected to have less effect on sales and therefore less contribution to benefit, and the wider the invention, the more likely it would be to have that effect. It does seem to me that that exacting approach to the nature of the invention also falls within the province of an IP specialist. Given the size and complexity of Dr Parsons' claim, it is reasonable and proportionate for the Defendant to wish to include an IP silk and junior on its counsel team.

57. The reasonableness and proportionality of this general approach is emphasised by the fact that the Claimant is putting all inventions, all patents, and all combinations of them in issue.
58. However, the fact remains that the Defendant is proposing to pay its counsel team brief fees that are nearly twice as much as the Claimant's counsel team is estimated to receive. It is also proposing that its solicitors will incur almost twice as much costs in preparing for trial as the Claimant's legal team. A good part of that difference is explained by the extra IP dimension that the Defendant perceives. I do not consider that the Claimant can complain about a good part of the costs of that IP dimension given the expansive way in which he puts his case on s40 of the Act.
59. However, I am not satisfied that the extra IP dimension makes the entirety of the Defendant's estimate reasonable and proportionate, judged on an inter partes basis, based on what I have seen and heard today.
60. Even taking into account the additional IP dimension that the Defendant perceives, I am not satisfied that it is reasonable and proportionate for the Defendant's counsel team to receive brief fees twice those of the Claimant's team. I am proposing to make a reduction of £200,000 for what I consider to be unreasonable brief fees on an inter partes basis.
61. The next question then is what to do about solicitors' costs. Part of the difference between the two sides' estimates is explained by the extra IP dimension that the Defendant reasonably perceives. However, Freshfields' hours do suggest to me a top-heavy team on this phase at expensive hourly rates. I do see a risk of overlap with counsel and I do see an element of a Rolls-Royce service on this phase of the dispute that, on an inter partes basis, is unreasonable.
62. I therefore propose to reduce the estimate of the Defendant's solicitors' costs by £150,000 and so reduce the Defendant's estimate by £350,000 in total.

Trial costs

63. On the basis of the Defendant's revised figures, budgeting by reference to just one expert, we have the Defendant estimating £877,800 for solicitors with disbursements, that is counsel and experts, of £972,500 making a total of £1,850,300.
64. While I have reduced the brief fees for the Defendant's counsel team at the trial preparation phases, I consider that the refreshers for counsel of £9,500 and £4,500 for

silks and juniors respectively are reasonable and proportionate.

65. I also consider it reasonable and proportionate for all four members of the Defendant's counsel team to attend trial on every day. As Mr. Marven KC points out, it is not going to be the case that evidence and other issues emerge in nicely compartmentalised packets. Having reasonably identified an additional IP dimension to the case, it is reasonable and proportionate for the counsel team dealing with the dimension to be in court for the entire trial.
66. I will, however, reduce the estimate of the costs of the Defendant's solicitors for attending trial. The Defendant estimates that, on each of 30 days, a Grade A partner with a charge-out rate of £1,100 per hour will spend 10 hours per day in addition to the same level of involvement by 3 other team members. Most of that time will be spent in court listening to counsel conduct the trial. I consider that to be unreasonable and disproportionate on an inter partes basis.
67. I recognise that a Grade A partner might need to do some work on this dispute during the trial. However, it strikes me as both unreasonable and disproportionate on an inter partes basis to have a full 4-person team sitting in court listening to counsel's submissions. Rather than seeking to estimate residual time that a Grade A partner might reasonably spend, even when he or she is not sitting in court, and do the same for all other fee earners on the team, I propose to deal with the issue in a reasonably broad brush manner. I will reduce the costs by £330,000 being the amount of Grade A partner time. That, admittedly, makes no allowance for time that the Grade A partner might spend while not in court. However, equally, it leaves the time spent by other members of the team sitting in court untouched, even though I do not consider it reasonable and proportionate for a full 4-person team to be in court throughout. Overall, a £330,000 reduction leads to an estimate that is within the reasonable and proportionate range.
68. There is some debate on the costs of the Defendant's expert. £60,000 is to be paid to the expert for attending trial. The Claimant's position is that £16,500, their own figure, is more realistic. I consider £16,500 to be so low as to not be a reliable guide as to the reasonable and proportionate costs of an expert attending trial. I am not going to make any adjustment to the £60,000 claimed for the Defendant's expert.

The Claimant's Budget

69. Ultimately, the only phase in the Claimant's budget that was not agreed was the disclosure phase.
70. The Claimant estimates £859,500 for that phase: £703,500 for solicitors and £156,000 for counsel. The Defendant offers £529,000.
71. The Defendant's first criticism is that the Claimant's estimate has gone up by £330,000 since the last iteration of the costs budget without explanation. I do not find that to be on its own a sufficient reason to reduce the budget. A mistake could have been made in the first draft. It does perhaps, as Mr. Marven KC says, raise a flag but it is not in itself a reason to reduce.

72. The more substantial challenge to the reasonableness of the costs is based on the proposition that it cannot be right for the Claimant to incur £859,500 of costs on disclosure when his disclosure exercise is significantly less exacting than that of the Defendant.
73. I think there is clear force in that submission. Of course the Claimant still has to review disclosure provided by the Defendant. However, even recognising that, I consider that the Defendant will be doing twice as much work on disclosure as the Claimant.
74. I allowed £1.3 million to the Defendant for its disclosure exercise. In my judgment, a reasonable and proportionate figure for the Claimant's disclosure exercise is £650,000 and that is the estimate I propose to approve.

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