

The Cost of Proportionality

- ▶ The Patents Court has ruled on costs budgets in a case concerning an infringement claim for a simple patent
- ▶ Costs budgets have to be proportionate to the value of the claim in question

What's it about?

In this case, Judge Hacon has ruled that the Claimant's, Marks & Spencer Plc, costs budget was not proportionate to the simple patent infringement case in hand. The patent concerned was a simple elastic loop on the cuff of children's clothing to enable easy fastening of the button. The Claimant's costs budget was £700,000. The Defendant's costs budget was £300,000.

Why does it matter?

The Claimant put forward various arguments as to why the requirement within the Court rules for the costs to be proportionate should be rebutted. The Claimant argued that its costs budget was in line with average costs in the Patents Court, noting that lower costs would be incurred had either party elected to bring the claim in the IPEC. Judge Hacon pointed out that the Patents Court often dealt with much larger and complex cases which warranted such costs, whereas this simple patent case did not. He went further to point out that the choice of court was representative of the size of the parties and it did not demonstrate complexity of the case.

The Claimant also argued that it did not have to mirror the Defendant's simple approach towards the claim, budgeting for only £300,000 costs. Judge Hacon acknowledged this, but did not believe this allowed the Claimant free reign on their costs budget. Most importantly, Judge Hacon pointed out that the Claimant's ability to trade was not in danger. Judge Hacon reduced the Claimant's costs budget to £363,000.

Now what?

It is well-established that costs in litigation must be proportionate and the relevant part of the procedural rules link this to the value of the claim.

If the costs significantly exceed half of the value of the claim, then that will suggest that the costs are not proportionate. Parties must try and accurately assess the value of the claim (including the value of the injunction sought) when drawing up their costs budget, to ensure that costs are proportionate.

Marks & Spencer Plc v Asda Stores Ltd [2016] EWHC 2081

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