

PATENTS ACT 1977

IN THE MATTER OF a reference under sections 8, 12, 13 and 82 by I.D.A. Limited, Colin Thomas Metcalfe, David Julian Lax and Polymer Powder Technology (Licensing) Limited in respect of UK application No GB 9814507.1, international application No PCT/GB99/02090, European application No 99929525.6 and Australian application No 4631799 in the name of the University of Southampton, and of applications for a patent deriving or claiming priority therefrom

FOURTH PRELIMINARY DECISION

Introduction

- 1 The applications in suit relate to the control of insect pests, particularly cockroaches, by exposing them to a composition containing magnetic particles. The GB application was filed on 3 July 1998 and the other identified applications claim priority from it. The above reference was filed on 17 September 2001, and I have already given three preliminary decisions, on 12 February 2002, 30 October 2002 and 7 November 2002.
- 2 The second and third of these were intended to deal with a number of outstanding preliminary issues regarding the confidentiality of certain items of evidence and information, and whether disclosure and inspection of further documents should be ordered. Although the parties had indicated a willingness for these matters to be decided on the basis of the papers on file and to abide by the decision of the comptroller, correspondence between the parties and with the Patent Office arising out of the decisions left outstanding a number of matters which would not be capable of resolution before 25 November 2002, the date on which the substantive hearing was due to commence. It is fair to say that matters were not helped by the delay - for which the Patent Office must bear some responsibility - in my decision of 7 November 2002 reaching the parties, and this is regretted.
- 3 The substantive hearing was therefore cancelled and instead a case management conference was called under rule 88(1A) of the Patents Rules 1995 with a view to settling the outstanding matters on confidentiality and disclosure. This took place before me on 25 November 2002: James St Ville, instructed by Raworth Moss & Cook, appeared for the claimants and Daniel Alexander, instructed by Boulton Wade Tennant, appeared for the defendants. The proceedings took place in camera, given that the issue of confidentiality impinged on much of the discussion. However, it was anticipated that not all of the transcript of the conference would need to be kept confidential, and I am satisfied that none of this decision (except for a confidential annex) needs to be so treated.

The background to the dispute

- 4 In the applications in suit Philip Howse and Roger Ashby are named as the inventors. The nub of the claimants' case is that the idea of using magnetic particles instead of electrostatic particles in insect traps had originated from Colin Metcalfe, with later contributions on the encapsulation of magnetic powders being made by David Lax. The claimants allege that Mr Metcalfe telephoned Dr Howse (now Professor Howse although for convenience I will refer to him by his title at the relevant time) on 24 April 1998 to suggest the use of magnetic particles, having read a newspaper article dated 2 April 1998 about a cockroach trap invented by Dr Howse which used electrostatic powder. However, the defendants allege that Dr Howse had by then already conceived the idea of using magnetic particles to trap or kill insects having disclosed it in confidence to others in autumn 1997, and that Mr Ashby's contribution related to the magnetic materials themselves.
- 5 The outstanding dispute on confidentiality centres around the evidence submitted by the defendants to prove the disclosure by Dr Howse. This comprises a second witness statement from Dr Howse and witness statements from Ian Baxter and two individuals X and Y (named in the confidential annex to this decision). All of this evidence is at present subject to confidentiality directions under rule 94(1) dated 29 May 2002 and 25 June 2002, under the terms of which it is available only to the professional advisers of the claimants. In my decision of 30 October 2002 I said that I was minded to withdraw these directions, subject to comment by the defendants (who had previously indicated a wish to reconsider their position were I so minded). The defendants in consequence wished to make publicly available a redacted version of Dr Howse's statement and to withdraw the evidence of X and Y on account of obligations of confidentiality owed to X and Y's employers. The claimants however wished the evidence to remain and have sought to compel the attendance of X and Y for cross-examination. The defendants are content for the directions to be withdrawn in respect of Mr Baxter's evidence.
- 6 The dispute on disclosure and related matters stems from my decision of 7 November 2002 in which I ordered disclosure and inspection of a number of categories of documents at the instigation of the claimants, albeit in more restricted terms than formulated in their request. Both parties are now seeking disclosure of further relatively limited categories of documents.
- 7 In my decision I also ordered the defendants under rule 112 to supply a copy of a research agreement. The defendants have raised a number of concerns about this, and have asked for an extension of the period to appeal against my decision.

The conduct of the proceedings

- 8 At the outset of the case management conference I said that I did not consider the conduct of the parties to date to have been entirely helpful: the Patent Office had been faced with a flood of correspondence since August 2002 which had proved extremely difficult to keep abreast of, some of it seemingly more to do with point scoring between the two sides rather than getting to grips with the issues. Nevertheless I accepted that confidentiality and disclosure were areas in which the devil lay in the details, and that although the dispute on these was intense it nevertheless seemed narrow.

- 9 Indeed, it was apparent that in the run-up to the case management conference counsel for both sides had been making strenuous efforts to narrow the areas of dispute, and expected to be able to take this further. Their skeleton arguments foreshadowed a compromise on the issue of confidentiality, and outlined what was being proposed by way of agreement between the parties. I was content to accept this as a basis on which to proceed, and during the conference it proved possible to refine the agreement further and also to reach agreement on most of the outstanding points on disclosure. It was in consequence agreed that after the conference counsel would send me a minute confirming what the parties had agreed, and that I would reserve my decision until I had seen this.
- 10 On 29 November 2002 two documents (appended to this decision as Annexes 1 and 2 respectively) headed “Minute of Order Regarding Witness Statements” and “Draft Minute of Order” and signed jointly by Mr St Ville and Mr Alexander were filed, recording the extent of the agreement reached between the parties, and what remained outstanding for me to decide. I accept the terms of these agreements (subject to some points which I will explain below) and I am grateful to Mr St Ville and Mr Alexander for their assistance in narrowing the area of dispute. My decision will incorporate their agreement and rule on the matters still outstanding.
- 11 As I stated at the conference, I considered it essential for the conference to deal as far as possible with all the outstanding preliminary matters, and not to open up further areas of preliminary dispute. If either party is dissatisfied with the terms of my decision below it is of course open to them to appeal. However, only if very good cause is shown will I consider any further preliminary points raised in correspondence which are not foreshadowed by the decision.

Minute of order regarding the witness statements of X and Y (Annex 1)

- 12 I accept the undertakings and agreements in the preamble to the minute. However, since the intention of the parties is that the variation of the existing confidentiality directions which it entails is to be further modified by the variations sought in the draft minute of order, I will as far as possible give effect to these in a single direction (see below) varying the existing directions in the light of both minutes. Subject to this new direction, and to the undertakings and agreements in the preamble, I order that the witness statements of X and Y shall be treated as withdrawn and shall not appear on the file of the proceedings which is open to public inspection.

Draft minute of order (Annex 2)

Variation of existing confidentiality directions (paragraphs 2-4)

- 13 I am satisfied that the relaxation of the existing directions and the extension of the “confidentiality club” to include Ralph Brown, Colin Metcalfe and David Lax as well as legal advisers which the parties propose effects a reasonable balance between the interests of the parties and the public interest in disclosure. At the conference Mr St Ville also mooted the possibility of including Allan Churchman in the “club”; however Mr St Ville said that he was not pressing the matter at this stage and so at present I will make no direction in respect of Mr Churchman.

- 14 The directions as to confidentiality are now spread across a number of documents, and for clarity I will therefore consolidate these as far as possible into a new direction taking account of both minutes of order.
- 15 I should say that the documents mentioned in paragraph 4 of the agreement have not in fact been annexed but as regards the letters and skeleton arguments have been separately supplied with suggestions for redaction. Subsequent correspondence between the Office and the parties to clarify some ambiguities has indicated that there may still be differences between the parties as to what ought to be confidential in these documents. As regards the transcript of the conference, it was agreed that I should give the parties an opportunity to mark up for my consideration the areas which ought to remain confidential. I will therefore defer making any further direction in respect of the documents mentioned in paragraph 4 until the parties have had an opportunity to comment further.

Directions as to confidentiality under rule 94(1)

Evidence

- 16 In respect of the evidence filed by the parties, I withdraw my directions dated 29 May 2002, 25 June 2002 and (in my second preliminary decision) 30 October 2002, and I now direct that the evidence filed in these proceedings shall be open to public inspection, with the exception of the following documents or parts thereof :

Defendants' evidence in chief:

The witness statements of X and Y in their entirety.

Paragraph 1 and the names of X and Y in the second witness statement of Philip Howse.

Claimants' evidence in reply:

Part 35C(i) of the second witness statement of Allan Churchman (except the first paragraph) and Exhibit AEC2 thereto.

All of parts (a), (c) and (e), and the wording after "plans to run our" in part (d), in Exhibit CTM17 to the second witness statement of Colin Metcalfe.

which I direct shall be treated as confidential under rule 94(1). I direct that correspondingly redacted versions of these documents, except for those documents which are confidential in their entirety, shall be placed on the file of the proceedings which are open to public inspection.

- 17 I direct that the evidence above which is treated as confidential shall be disclosed only to the professional advisers of the parties and to Ralph Brown, Colin Metcalfe and David Lax.
- 18 Although the agreement in the minutes of order defining the "confidentiality club" refers to "legal advisers", the parties have since agreed that "professional advisers" (the term used in my existing directions) is preferable, and I have directed accordingly in the above

paragraph.

Correspondence, skeleton arguments and transcript

- 19 For the time being my directions aforesaid remain in force insofar as they apply to correspondence, and also I will not lay open to public inspection any further documents including the skeleton arguments and transcript of the conference which are marked as confidential. The parties have a period of 7 days from the date of this decision to offer any further comments as to which portions of these documents should be confidential, and I will then issue a further direction in respect of them.

Disclosure, inspection and provision of documents (paragraphs 5-7)

Paragraphs 5-6

- 20 On disclosure I am satisfied that the categories which the parties have listed as agreed in paragraph 5 relate to the matters in question in the proceedings, and that disclosure is both proportionate between the parties and necessary to dispose fairly and expeditiously of the proceedings. There are however some matters on which agreement did not prove to be possible, and I will now rule on these.
- 21 In paragraph 5(5) of the draft minute of order, the following disclosure is agreed, save for the portions in square brackets:

“documents dating from 24 April 1998 until the end of [June or December] 1999 relating to the understanding of the respective parties as to their entitlement to make and file the application for the patent in question and the respective parties’ rights thereunder [and documents recording Roger Ashby’s refusal to sign and/or excuses for not signing an agreement with the Claimants]”

- 22 The arguments at the conference did not suggest that the parties were far apart on the period for disclosure. Mr Alexander sought December 1999 for the concluding date as marking the approximate point at which the relationship between the parties broke down, which seems to me broadly consistent with paragraph 25 of the claimants’ statement of case, and with paragraph 13 of the defendants’ counter-statement suggesting that draft agreements were being exchanged up to 21 December 1999. Mr St Ville considered that June 1999 was preferable on grounds of proportionality and cost. However December 1999 would seem to me to be the more logical of the two in the light of the parties’ statements. Further, the category of documents is relatively narrow, and there is nothing before me to suggest that the extra six months is going to result in a great deal more work for the parties, or in any sort of “fishing” disclosure. I will therefore order disclosure for the period from 24 April 1998 until the end of December 1999.
- 23 The request in the second square bracket arises from my refusal in my decision of 7 November 2002 of the claimants’ request for disclosure of documents relating to

“disputes, commercial considerations and/or advice which led, might have led, or were said to have led Roger Ashby to refuse to sign an agreement with the Referrers including those with Exosect Limited, William Aston and/or Robin Fuller”,

a category which I considered vague and potentially wide-ranging. Despite Mr Alexander's view was that the new category was no better than the previous one, I am satisfied that the reference to documents recording something specific now makes the request clear and proportionate, save for one point. Mr Alexander thought that the reference to "excuses" was prejudicial in suggesting that excuses were actually offered, and it was unlikely that any documents in those terms would exist. I agree, but I think Mr St Ville pointed to a way forward by referring to a "note giving an explanation". I will therefore order disclosure of documents which record Roger Ashby's refusal to sign an agreement with the claimants and/or his reasons for such refusal.

24 The minute of order allows the parties until 23 December 2002 to complete the disclosure and provision of documents. In view of the slight delay in issuing this decision, which is regretted, I will extend this period by one day, ie to 14 days from the date of this decision, so as to coincide with the period for appeal and to allow the parties the two week period which they considered adequate at the conference.

25 Otherwise in accordance with paragraphs 5-6 of the minute, and subject to the amendment of paragraph 5(5) to read:

"documents dating from 24 April 1998 until the end of December 1999 relating to the understanding of the respective parties as to their entitlement to make and file the application for the patent in question and the respective parties rights thereunder; and documents recording Roger Ashby's refusal to sign an agreement with the claimants and/or his reasons for such refusal;"

I therefore order that the parties shall, within 14 days of the date of this decision, furnish to the other a list of the documents in the specified categories which are or have been in their possession, custody or control and two copies of the documents listed; and that the parties shall at any reasonable time on reasonable notice make available for inspection the originals of such documents as may be requested by the other party. For the avoidance of doubt I confirm that the category in the second limb of paragraph 5(5) relating to Roger Ashby is independent of the first limb and not therefore restricted to a particular period.

Paragraph 7

26 The remaining area of dispute concerns the provision of a copy of the research agreement between the defendants and a company Z. The name of the company is not material to my decision below, and, since it has not yet been resolved whether it should be identified in the particular context of the research agreement, I will delete the name from the draft minute appended to this decision and will identify the company in the confidential annex thereto.

27 In my decision of 7 November 2002 I considered the research agreement to be a document referred to in evidence and ordered the defendants to supply a copy to the Office and to the claimants in accordance with rule 112. I gave them the option of asking for it to be treated as confidential, provided that it was made available at least to the claimants' legal advisers.

28 The defendants had in their letter of 6 November 2002 sought to file a redacted version

of the second witness statement of Dr Howse in which references to the agreement were masked. In consequence they suggested in their letter of 14 November 2002 that it was not necessary to supply a copy of the agreement, but that if I did not agree, a redacted version of the agreement with commercially sensitive matters deleted could be made available to legal and professional advisers. In their letter of 21 November 2002 they asked for an extension of the period to appeal against my decision to allow the matter to be considered at the case management conference.

- 29 At the conference Mr Alexander said that the defendants would not oppose the confidential disclosure to the claimants' legal advisers of the clauses of the agreement relating to confidentiality and to the scope of Z's work with the defendants. Mr St Ville did not think this went far enough, and drew attention to the mention of what he thought was the agreement in Mr Metcalfe's second witness statement and in Exhibit SJA1 to Ms Allard's evidence (relating to magnetic materials being outside an agreement). He thought it would in consequence be necessary for the claimants also to see anything in the agreement which went to the defendants' obligations under it, and that it would be preferable for the whole document to be available to the claimants' legal advisers to be sure that the meaning of any part was not distorted.
- 30 Mr Alexander thought that Mr St Ville's concerns went to breach of agreement rather than the questions in issue before the comptroller. However, although the passages to which Mr St Ville drew my attention do not in my view unambiguously identify the specific agreement in question, I am persuaded by his argument. Quite irrespective of the strict requirement of rule 112, I think there is a sufficient likelihood that the terms of the agreement relate to the matters in issue and bear upon the interpretation of other items of evidence to justify it being made available to the claimants and the comptroller. Further, without the whole of the agreement I do not think it will be possible to be satisfied as to what interpretation is to be placed on any particular part of it.
- 31 I accept that the defendants and their sponsors have a legitimate concern about the commercial sensitivity of the information in the agreement, but it is the defendants who have referred to the document in evidence. It remains part of the evidence even if redacted from the version which is open to public inspection, and should accordingly be available to both the claimants and the comptroller. I am not persuaded that the concerns about commercial sensitivity cannot be satisfied by restricting the availability of the document to the claimants' legal advisers and, if necessary, by holding in camera any discussion of the terms of the agreement at the substantive hearing.
- 32 The draft minute referred to the comptroller's powers to order disclosure as an alternative to the provision of a copy under rule 112. In my view the reasoning above applies equally to the availability of the document to the claimants by way of disclosure under rule 103, but I believe it is necessary for a copy of the document to be made available to the comptroller. I therefore consider it appropriate to proceed under rule 112 rather than rule 103.
- 33 Under rule 112, I therefore order the defendants to supply a complete copy of the agreement to the claimants and to the Patent Office within 14 days of the date of this decision. It is open to them to request that all or part of the document should be treated as confidential under rule 94(1), but the complete document should be available at least to

the legal advisers of the claimants. This order replaces the order which I gave in my decision of 7 November 2002.

Evidence in reply (paragraph 8)

- 34 At the conference Mr St Ville explained that the claimants might wish to file evidence in reply to the second witness statement of Dr Howse and the witness statements of Ian Baxter, X and Y, once Mr Metcalfe and Dr Lax had been able to consider the technical implications of the presently confidential evidence. Although Mr St Ville considered that the claimants should be able to file this as of right, I do not think this is correct. Bearing in mind that this would be outside the normal evidence rounds and that the claimants' legal advisers have already had sight of the defendants' confidential evidence, I consider that it is for the claimants to request leave to file any further evidence in reply, explaining why this is necessary and why it could not have been filed with the remainder of the evidence in reply. In accordance with the timetable agreed by the parties, I therefore order that if the claimants wish to file further evidence in reply they should by 15 January 2003 furnish a copy of that evidence to the Office and seek leave for it be admitted into the proceedings. The defendants will have an opportunity to comment before such leave is granted.

Date for substantive hearing (paragraph 1)

- 35 Again in accordance with the timetable agreed by the parties, I order that the substantive hearing should take place as soon as possible within the period from 1 February 2003 to 15 April 2003.

Costs (paragraph 10)

- 36 Mr St Ville suggested that I should award costs to the claimants on the grounds that they might not have had to prepare for the conference if the defendants had shown earlier signs of willingness to compromise. Mr Alexander on the other hand pointed to areas where he thought the claimants had been slow to move and preferred to reserve costs. I am with Mr Alexander on this, the more so since I have already reserved costs in respect of my preliminary decisions of 30 October 2002 and 7 November 2002 - of which these proceedings are a development - to the substantive hearing. I will therefore leave the matter of costs in respect of the case management conference also to be decided at the substantive hearing.

Appeal (paragraph 9)

- 37 Since it relates to a procedural matter, the period for appeal from this decision is 14 days.
- 38 In the draft minute the parties have agreed that the period for appeal from the order in paragraph 8 (concerning rule 112) of my decision of 7 November 2002 should be extended so as to expire at the same time as the period for appeal from this decision. Such extension may now be unnecessary in view of the order that I have now given in this matter, but if the defendants still wish to appeal the earlier decision, the period for appeal from the order

in paragraph 8 thereof is extended to expire 14 days from the date of this decision.

Dated this 10th day of December 2002

R C KENNEL

Deputy Director acting for the Comptroller

THE PATENT OFFICE

PATENTS ACT 1977

IN THE MATTER OF UK application No. GB 9814507.1 and International application No. PCT/GB99/02090, European application No. 99929525.6 and Australian application No. 4631799 in the name of the University of Southampton, and of applications for a patent deriving or claiming priority therefrom

AND IN THE MATTER OF a reference under section 8, 12, 13 and 82 by I.D.A. Limited, Colin Thomas Metcalfe, David Julian Lax and Polymer Powder Technology (Licensing) Limited in relation thereto

ANNEX 1 TO FOURTH PRELIMINARY DECISION

**MINUTE OF ORDER
REGARDING WITNESS STATEMENTS**

UPON the Defendants (Respondents) undertaking not to object to the Claimants (Referrers) putting the witness statements of X and Y (the identities of whom are set out in the Confidential Annex hereto) to the Defendants' other witnesses

AND UPON the Defendants indicating that they intend to make Philip Howse and Ian Baxter available for cross examination at the substantive hearing of these proceedings

AND UPON the Claimants undertaking to withdraw the witness summonses served upon X and Y and not to compel their attendance at the hearing

AND UPON THE PARTIES AGREEING that as between the parties the witness statements of X and Y may be relied upon as evidence of the facts which they contain

BY CONSENT IT IS ORDERED THAT:

1. the witness statements of X and Y shall be treated as Confidential within the terms of the Direction as to Confidentiality made herein dated 29 May 2002
2. the direction in paragraph 2 of the Direction as to Confidentiality made herein dated 29 May 2002 shall be amended to read "As to disclosure to the Claimants, I direct that the witness statements of X and Y shall be disclosed only to their legal advisers, Colin Metcalfe and David Lax"
3. save as aforesaid the witness statements of X and Y shall be treated as withdrawn and shall not appear on the public file

PATENTS ACT 1977

IN THE MATTER OF UK application No. GB 9814507.1 and International application No. PCT/GB99/02090, European application No. 99929525.6 and Australian application No. 4631799 in the name of the University of Southampton, and of applications for a patent deriving or claiming priority therefrom

AND IN THE MATTER OF a reference under section 8, 12, 13 and 82 by I.D.A. Limited, Colin Thomas Metcalfe, David Julian Lax and Polymer Powder Technology (Licensing) Limited in relation thereto

ANNEX 2 TO FOURTH PRELIMINARY DECISION

**DRAFT
MINUTE OF ORDER**

UPON the hearing of the second Case Management Conference in these proceedings

AND UPON hearing Counsel for the Claimants and Counsel for the Defendants

IT IS ORDERED THAT:

1. the parties shall arrange for the substantive hearing herein to be fixed to be heard so soon as possible after 1 February 2003 and before 15 April 2003

Confidentiality

2. the Directions as to Confidentiality made herein dated 29 May 2002 and 25 June 2002, the Second Preliminary Decision herein dated 30 October 2002 and any other directions as to confidentiality be varied such that the Witness Statement of Ian Baxter and the redacted version of the second Witness Statement of Phillip Howse attached to the Defendants' letter dated 6 November 2002 be placed on the public file and the said directions as to confidentiality be amended to exclude the said documents from their ambit
3. the Directions as to Confidentiality made herein (including those dated 29 May 2002 and 25 June 2002, the Second Preliminary Decision herein dated 30 October 2002 and any other directions as to confidentiality) shall be amended to read "As to disclosure to the Claimants, I direct that the documents the subject of the directions as to confidentiality be disclosed only to their legal advisers, Ralph Brown, Colin Metcalfe and David Lax"

4. the redacted copies of the letters, skeleton arguments and transcript annexed to this order be placed on the public file and the said directions as to confidentiality be amended to exclude the said documents from their ambit

Disclosure, Inspection and Provision of Documents under Rule 112

5. each party shall by 23 December 2002 furnish to the other a list of the documents in the categories below which are or have been in their possession custody or control and two copies of the documents listed:
 - (1) documents relating to discussions and communications with Reckitt & Colman and related or successor companies concerning the alleged use of magnetic particles to repel, trap and/or kill insects
 - (2) documents recording the regular technical review meetings between the Defendants and Reckitt & Colman in the autumn or summer of 1997
 - (3) documents relating to the coating aspects of the patent application in suit
 - (4) documents relating to the specific trap designs
 - (5) documents dating from 24 April 1998 until the end of [June or December]* 1999 relating to the understanding of the respective parties as to their entitlement to make and file the application for the patent in question and the respective parties' rights thereunder [and documents recording Roger Ashby's refusal to sign and/or excuses for not signing an agreement with the Claimants]*
 - (6) the original diaries of Roger Ashby, Karen Underwood, Colin Metcalfe, Allan Churchman and Ralph Brown for the period from 24 April 1998 up to and including 3 July 1998 and during the period referred to in the Second Witness Statement of Phillip Howse and the Witness Statement of X, Y (the identities of whom are set out in the Confidential Annex to the Order Regarding Witness Statements herein) and Ian Baxter;
 - (7) the original laboratory note books of Karen Underwood, and of anyone else that she or Philip Howse directed, insofar as they relate to the repelling, trapping and killing of insects using magnetic materials, for the period from 24 April 1998 up to and including 3 July 1998 and during the period referred to in the Second Witness Statement of Phillip Howse and the Witness Statement of X, Y and Ian Baxter
 - (8) in particular electronic documents and (in the case of the Defendants) documents in the possession of Dr Howse at Exosect Limited which fall within all the categories of disclosure ordered to date (including this order)

6. the parties shall at any reasonable time on reasonable notice make available for inspection the originals of such documents disclosed in these proceedings as may be requested by the other party
7. **[Order regarding provision of a copy of the Research Agreement between University of Southampton and Reckitt & Colman under rule 112 or the Comptroller's powers to order disclosure.]***

Evidence in Reply

8. if the Claimants wish to file evidence in reply to the Second Witness Statement of Phillip Howse and/or the Witness Statement of X, Y and Ian Baxter they shall furnish a copy of that evidence to the Patent Office together with an application to adduce that evidence in these proceedings on or before 15 January 2003

Time for Appeal

9. the time for appeal from paragraph 8 of the Third Preliminary Decision herein be extended to the same time as the time for appealing from this order and decision

Costs

10. **[Order as to costs]***

* Passages in square brackets are to be the subject of decision by the Patent Office. All other orders are agreed.