

# **The Patents Court and Patents County Court Guide**

Issued 7 July 2008

By authority of the Chancellor of the High Court

## **Contents**

### GENERAL

1. Introduction
2. Allocation
3. The judges of the Patents Court
4. Patents County Court
5. Judges able and willing to sit out of London
6. Intellectual Property Court Users' Committee

### PROCEDURE IN THE PATENTS COURT

7. Statements of Case
8. Active case management and streamlined procedure
9. Admissions
10. Alternative Dispute Resolution
11. Disclosure

### GENERAL MATTERS RELATING TO HEARINGS OF APPLICATIONS AND TRIALS

12. Arrangements for listing
13. Time estimates
14. Documents and timetable
15. Telephone applications

### MISCELLANEOUS

16. Jurisdiction of Masters
17. Consent orders
18. Draft judgments
19. Orders following judgment

SPECIMEN MINUTE OF ORDER FOR DIRECTIONS

## **General**

### **1. Introduction**

This guide applies to both the Patents Court and the Patents County Court.

The general guidance applicable to matters in the Chancery Division, as set out in the Chancery Guide also applies to patent actions unless specifically mentioned below. “63PD” refers to the Practice Direction - Patents and Other Intellectual Property Claims which supplements CPR Part 63. Thus practitioners should consult this guide together with the Chancery Guide.

### **2. Allocation**

Actions proceeding in the Patents Court and the Patents County Court are allocated to the multi-track (Part 63.1(3)). Attention is drawn to Part 63.7 and 63PD.4 (case management).

### **3. The judges of the Patents Court**

The judges of the Patents Court and their clerks are set out below.

Kitchin J (Clerk: Gillian Tarleton - tel 020 7947 6518, fax 020 7947 6439, ([Gillian.Tarleton@hmcourts-service.gsi.gov.uk](mailto:Gillian.Tarleton@hmcourts-service.gsi.gov.uk)) – Senior Patents judge

Patten J (Clerk: Carol Stevens - tel 020 7947 7617, fax 020 7947 6650, ([Carol.Stevens@hmcourts-service.gsi.gov.uk](mailto:Carol.Stevens@hmcourts-service.gsi.gov.uk)))

Lewison J (Clerk: Donald Bennett - tel 020 7947 6039, fax 020 7947 6894, ([Donald.Bennett@hmcourts-service.gsi.gov.uk](mailto:Donald.Bennett@hmcourts-service.gsi.gov.uk)))

Mann J (Clerk: Patricia Swales - tel 020 7947 7964, fax 020 7947 6739, ([Patricia.Swales@hmcourts-service.gsi.gov.uk](mailto:Patricia.Swales@hmcourts-service.gsi.gov.uk)))

Warren J (Clerk: Elizabeth Collum - tel 020 7947 7260, fax 020 7947 7740, ([Elizabeth.Collum2@hmcourts-service.gsi.gov.uk](mailto:Elizabeth.Collum2@hmcourts-service.gsi.gov.uk)))

Floyd J (Clerk: Alison Hall - tel 020 7073 1740, fax 020 7947 6593, ([Alison.Hall@hmcourts-service.gsi.gov.uk](mailto:Alison.Hall@hmcourts-service.gsi.gov.uk)))

Arnold J (Clerk: Alison Lee – tel 020 7073 1789, fax 020 7947 6719, ([Alison.Lee2@hmcourts-service.gsi.gov.uk](mailto:Alison.Lee2@hmcourts-service.gsi.gov.uk)))

Trials of cases with a technical difficulty rating of 4 or 5 will normally be heard by Kitchin J, Floyd J or Arnold J.

### **4. Patents County Court**

- 4.1 The Patents County Court judge is His Honour Judge Fysh QC (Clerk: Kav Rekhi - tel 020 7073 4251, fax 020 7073 4253, ([Kav.rekhi@hmcourts-service.gsi.gov.uk](mailto:Kav.rekhi@hmcourts-service.gsi.gov.uk))). The Patents County Court is situated at:

Field House  
15-25 Breems Buildings  
London  
EC4A 1DZ

- 4.2 The issue of claim forms for the Patents County Court and general inquiries relating to procedure, may be addressed to:

The Specialist Section  
Central London Civil Justice Centre (“CLCC”)  
26 Park Crescent  
London  
W1N 4HT  
DX 97325 REGENTS PARK 2

Tel: 020 7917 7821  
Fax: 020 7917 7935

Enquiries relating to listing and existing patent cases should be addressed to the Chancery Listing Office (see para.12 below)

- 4.3 The issue of all interlocutory processes will continue to be dealt with as at present by the clerk of HHJ Fysh QC at Field House either by post or personal attendance. The payment of the fee will continue to be made at the Fees Office Room E01 in the Royal Courts of Justice.

- 4.4 All proceedings when issued are sent by CLCC to the Clerk of HH Judge Fysh QC. Enquiries relating to an existing case in the Patents County Court after the claim form has been issued (except for enforcement) may be addressed to

The Clerk to His Honour Judge Fysh QC  
Field House  
15-25 Breems Buildings  
London  
EC4A 1DZ  
Tel: 020 7073 4251  
Fax: 020 7073 4253

- 4.5 Any document (other than a claim form or one relating to enforcement) on which a fee is payable should be sent to:

Room E01  
Royal Courts of Justice  
Strand  
London  
WC2A 2LL  
DX 44450 STRAND

## **5. Judges able and willing to sit out of London**

If the parties so desire, for the purpose of saving time or costs, the Patents Court and Patents County Court will sit out of London. Before any approach is made to the Chancery Listing Officer, the parties should discuss between themselves the desirability of such a course. If there is a dispute as to venue, the court will resolve the matter on an application. Where there is no dispute, the Chancery Listing Officer should be contacted as soon as possible so that arrangements can be put in place well before the date of the proposed hearing.

## **6. Intellectual Property Court Users' Committee**

This committee (the "IPCUC") considers the problems and concerns of intellectual property litigators. Membership of the committee includes the judges of the Patents Court and the Patents County Court, a representative of each of the Intellectual Property Bar Association, the Intellectual Property Lawyers Association, the Chartered Institute of Patent Attorneys, the Institute of Trade Mark Attorneys and the Trade Marks Patents and Designs Federation. Anyone having views concerning the improvement of intellectual property litigation is invited to make his or her views known to the committee, preferably through the relevant professional representative on the committee. They may also be communicated to the secretary (Philip Westmacott, Bristows, 100 Victoria Embankment, London EC4Y 0DH Tel: 020 7400 8000 Fax: 020 7400 8050).

The Patents County Court also has a Users' Committee which has a membership and general remit similar to the IPCUC. Matters of specific interest to the Patents County Court do arise and are considered by this committee. Its secretary is Alan Johnson, Bristows (100 Victoria Embankment, London EC4Y 0DH Tel: 020 7400 8000 Fax: 020 7400 8050).

## **Procedure in the Patents Court and Patents County Court**

### **7. Statements of Case**

#### *Time Limits*

- 7.1 In general, the time limits set out in Part 15 apply to litigation of patents and registered designs. However, Part 63.6 and 63.9 modify Part 15 in respect of the time limits for filing defences and replies.

#### *Content of statements of case*

- 7.2 In general, statements of case (i.e. the pleadings of all parties) must comply with the requirements of Part 16. Furthermore, they should comply with Part 63.9 and 63PD.11. Copies of important documents referred to in a statement of case (e.g. an advertisement referred to in a claim of infringement form or documents cited in Grounds of Invalidity) should be served with the statement of case. Where any such document requires translation, a translation should be served at the same time.

#### *Independent validity of claims*

- 7.3 Where one party raises the issue of validity of a patent, the patentee (or other relevant party) should identify which of the claims of the patent are alleged to have independent validity as early as possible.

## **8. Active case management and streamlined procedure**

- 8.1 The claimants should apply for a case management conference (“CMC”) within 14 days of the date when all defendants who intend to file and serve a defence have done so (63PD.4.3). If the claimants fail to do so, then any other party may apply for a CMC (63PD.4.6). Any party may apply in writing for a CMC prior to the above periods. Where a case has been transferred from another division or from another court, the claimants must file for a CMC within 14 days of the transfer (63PD.4.4).
- 8.2 Almost invariably CMCs in the Patents Court will be conducted by a judge. However, in the limited circumstances set out in 63PD.8.1 (see also para. 16 below), a Master may conduct a CMC. Bundles in accordance with 63PD.4.9 should be filed with the court. In the Patents County Court, all CMCs are conducted by the judge of the Patents County Court and not by a district judge.
- 8.3 In general, parties should endeavour to agree directions prior to the date fixed for the CMC. Although the court has the right to amend directions which have been agreed, this will only happen where there is manifest reason for doing so.
- 8.4 In accordance with the overriding objective, the court will actively manage the case. In making any order for directions, the court will consider all relevant matters and have regard to the overriding objective with particular emphasis on proportionality, the financial position of the parties, the degree of complexity of the case, the importance of the case and the amount of money at stake.
- 8.5 The parties are reminded of their continuing obligation to assist the court to further the overriding objective. Moreover, it is the duty of the parties’ advisors to remind litigants of the existence of mediation or other forms of alternative dispute resolution as a possible means to resolve disputes. In particular, the parties should consider:
- (a) The need for and/or scope of any oral testimony from factual or expert witnesses. The court may confine cross-examination to particular issues and to time limits. The parties should consider whether oral testimony of witnesses should be given by video facility.
  - (b) The need for, and scope of, any disclosure of documents.
  - (c) The need for any experiments, process or product descriptions.
  - (d) The need for an oral hearing or whether a decision can be made on the papers. If an oral hearing is considered to be appropriate, the court may order that the hearing be of a fixed duration.
  - (e) Whether there is a need for a document setting out the basic undisputed technology (“technical primer”), and if so, its scope and the steps to be taken to achieve agreement of it.
  - (f) Whether a scientific adviser should be appointed.
  - (g) Whether a costs-capping order should be made.
  - (h) Whether there should be a stay of proceedings for mediation or other form of alternative dispute resolution.

### ***Streamlined procedure***

- 8.6 Any party may at any time apply to the court for a streamlined procedure in which:
- (a) all factual and expert evidence is in writing;
  - (b) there is no requirement to give disclosure of documents;
  - (c) there are no experiments;
  - (d) cross-examination is only permitted on any topic or topics where it is necessary and is confined to those topics;
- or for any variant on the above.
- 8.7 Prior to applying for a streamlined procedure, the party seeking it should put its proposal to other parties in the proceedings and should endeavour to agree a form of order.
- 8.8 If the parties agree to a streamlined procedure, the proposed form of order should be put to the judge for approval as a paper application.

## **9. Admissions**

- 9.1 With a view to early elimination of non-issues, practitioners are reminded of the necessity of making admissions as soon as possible. This should be done as early as possible, for instance, in a defence or reply. Thus, in a defence, a party may admit the acts complained of or that his article/process has certain of the features of a claim. In a reply a patentee may be able to admit prior publication of cited documents. For the effect of admissions, see Part 14.
- 9.2 Parties should also consider serving a notice to admit facts in accordance with Part 32.18 for the purpose of identification of points not in dispute. By asking whether or not the defendant disputes that his article/process has certain features of the claim the real dispute can be narrowed. Thus the ambit of disclosure and of witness and expert statements will be narrowed.
- 9.3 Parties are reminded that when deciding the issue of costs, a court can take into account the conduct of the parties, including whether it was reasonable for a party to contest a particular issue – Part 44.3(5)(b).
- 9.4 The position should be kept under constant review. If there is any alteration in the admissions that can be made, the identity of the claims said to have independent validity, or the claims alleged to be infringed, that information should be communicated forthwith to the other parties.

## **10. Alternative Dispute Resolution (“ADR”)**

- 10.1 While emphasising its primary role as a forum for deciding patent and registered design cases, the Patents Court and Patents County Court encourage parties to consider the use of ADR (such as, but not confined to, mediation and conciliation) as an alternative means of resolving disputes or particular issues within disputes.

- 10.2 Settlement of dispute by ADR has many advantages including significant saving of costs and providing parties with a wider range of solutions than can be offered by litigation. Legal representatives should consider and advise their clients as to the possibility of attempting to resolve the dispute via ADR. In an appropriate case, the Patents Court and Patents County Court may adjourn a case for a specified period of time to encourage and enable the parties to use ADR.
- 10.3 The clerk to the Patents County Court judge has a list of mediation service providers which is available on request.

## **11. Disclosure**

- 11.1 Parties are obliged to provide disclosure in accordance with Part 31 as modified by Part 63.8 and 63PD.5

### ***Process and Product Descriptions***

- 11.2 Where appropriate, parties are encouraged to provide a Process and/or Product Description (“PPD”) instead of standard disclosure relating to processes or products which are alleged to infringe or are otherwise relevant to proceedings.
- 11.3 PPDs must be adequate to deal with the nature of the allegation that has been advanced by the other party or parties. The parties have joint responsibility at an early stage to determine the nature of the case advanced so that the PPD is adequate to deal with that case.
- 11.4 Parties should bear in mind when preparing a PPD that they may be called on to prove it at trial. Any material omission or inaccuracy could result in a costly adjournment with consequential adverse orders, including as to costs.

### ***Descriptions and drawings of processes or products***

- 11.5 Parties are encouraged to agree descriptions and drawings of processes and/or products which are the subject of infringement proceedings or are alleged to constitute relevant prior art.

### ***Models or apparatus of processes or products***

- 11.6 If a party wishes to adduce a model or apparatus at trial, it should, if practicable, ensure that directions for such are given at the first CMC (63PD.10). Parties should endeavour to view and agree the accuracy of such models or apparatus where possible well in advance of the date of trial.

## **General matters relating to hearings of applications and Trials**

## **12. Arrangements for listing**

- 12.1 The Chancery Listing Officer is responsible for the listing of all work of the Patents Court and the Patents County Court.
- 12.2 The Chancery Listing Officer and his staff are located in Room WG04 in the Royal Courts of Justice. The office is open to the public from 10.00 am to 4.30 pm each day. The telephone numbers are 020 7947 6778/6690 and the fax number is 020 7947 7345.
- 12.3 Appointments to fix trials and interim applications are dealt with on Tuesdays and Thursdays between 11.00 am and 12.00 noon. The applicant should first obtain an appointment from the Chancery Listing Officer and give 3 clear days' notice to all interested parties of the date and time fixed.
- 12.4 A party should not seek to list an application or cause the opposing advocate or counsel's clerk to "pencil in" a date for hearing prior to raising with the proposed respondent the subject-matter of the application so that, where possible, agreement may be reached on the subject-matter of the application. Applicants who fail properly to consult with the respondents prior to listing an application may be met with an adverse costs order.

#### ***Short applications***

- 12.5 Short applications (i.e. those estimated to last no more than 1 hour) will usually be heard before the normal court day starts at 10.30 am e.g. 9.30 or 10 am. These can be issued and the hearing date arranged at any time by attendance at the Chancery Listing Office. Attention is drawn to 63PD.6 about the filing of documents and skeleton arguments.

#### ***Urgent applications and Without Notice applications***

- 12.6 A party wishing to apply without notice to the respondent(s) should contact the Chancery Listing Office. In cases of emergency in vacation or out of normal court hours, the application should be made to the duty Chancery judge.

#### ***September sittings***

- 12.7 The Patents Court and Patents County Court will endeavour, if the parties so desire and the case is urgent, to sit in September.

#### ***Interim injunction hearings and expedited trials***

- 12.8 Applicants for interim remedies (in particular, interim injunctions) and respondents are encouraged to consider whether an expedited (speedy) trial would better meet the interests of justice. Applications for expedited trials may be made at any time but should be made as soon as possible and notice given to all parties.
- 12.9 When an application for an interim injunction is made the applicant should, where practicable, make prior investigations with the Chancery Listing Officer about trial dates on an unexpedited and expedited basis having regard to the estimated length of trial.

## 13. Time estimates

- 13.1 In providing appropriate time estimates, parties must appreciate the need to give realistic and accurate time estimates and ensure that the time estimate includes a discrete reading time for the court to read the papers prior to the hearing of the application or trial. In general, the court will wish to read the skeleton arguments, the patent (where relevant), the prior art (where relevant), expert reports and other key documents (e.g. important witness statements). Advisors should bear in mind the technical difficulty of the case when considering the reading time estimate. The court will consider the imposition of guillotines where time estimates are exceeded.

### *Revised time estimates*

- 13.2 Where parties and their legal advisors consider that a time estimate that has been provided (e.g. at the CMC) is unrealistic, they have a duty to notify the new time estimate to the Chancery Listing Office or, where appropriate, the judge's clerk as soon as possible.

## 14. Documents and timetable

- 14.1 Bundling for the hearing of applications and trials is of considerable importance and should be approached intelligently. The general guidance given in Appendix 6 of the Chancery Guide should be followed. Solicitors or patent attorneys who fail to do so may be required to explain why and may be penalised personally in costs.
- 14.2 If it is known which judge will be taking the hearing, papers for the hearing should be lodged directly with that judge's clerk. If there is insufficient time to lodge hard copies before the deadline, faxed documents of significance (and particularly skeleton arguments) should be supplied, followed up by clean hard copies. Alternatively to faxing documents, by agreement, documents may be sent by e-mail to the clerk of the judge concerned.
- 14.3 It is the responsibility of both parties to ensure that all relevant documents are lodged with the clerk of the judge who will be taking the hearing by noon two days before the date fixed for hearing unless some longer or shorter period has been ordered by the judge or is prescribed by this guide.
- 14.4 The judges request that all important documents also be supplied to them on disk or via e-mail in a format convenient for the judge's use (normally the current or a recent version of Microsoft Word 2003 for Windows or as a text searchable pdf). These will usually include skeleton arguments, important patents and drawings, the witness statements and expert reports.
- 14.5 Prior to trial, parties should ensure that they comply with the requirements of 63PD.7 concerning the provision of a trial timetable, trial bundle and reading guide for the judge. The trial timetable should be detailed and set out the times and dates that witnesses will be required to give evidence.

- 14.6 Where a technical primer has been produced, the parties should identify those parts which are agreed to form part of the common general knowledge. Usually, this should be done shortly after exchange of experts reports but a reasonable time prior to trial.
- 14.7 Skeleton arguments should be lodged in time for the judge to read them before an application or trial.
- (a) In the case of applications, this should normally be 10:30am the previous working day (or, in the case of short applications, 3pm)
- (b) In the case of trials, this should normally be at least two working days before commencement of the trial. In substantial cases, a longer period (to be discussed with the clerk to the judge concerned) may be needed.
- 14.8 Following the evidence in a substantial trial, a short adjournment may be granted to enable the parties to summarise their arguments in writing before oral argument.

### *Transcripts*

- 14.9 In trials where a transcript of evidence is being made and supplied to the judge, the transcript should be supplied by e-mail and in hard copy.

## **15. Telephone applications**

- 15.1 For short (20 minutes or less) matters, the judges of the Patents Court and Patents County Court are willing to hear applications by telephone conference in accordance with the Practice Direction under Part 23. The party making the application is responsible for setting up the telephone application and informing the parties, Counsels' clerks and Chancery Listing of the time of the conference call.
- 15.2 It is possible for the application to be recorded, and if recording by the court rather than by British Telecom (or other service provider) is requested, arrangements should be made with the Chancery Listing Officer. The recording will not be transcribed. The tape will be kept by the clerk to the judge hearing the application for a period of six months. Arrangements for transcription, if needed, must be made by the parties.
- 15.3 This procedure should be used where it will save costs.

## **Miscellaneous**

### **16. Jurisdiction of Masters**

- 16.1 Masters have only a limited jurisdiction in patent matters (see 63PD.8). Generally it is more convenient for consent orders (on paper or in court) to be made by a judge even where a Master has jurisdiction to do so.
- 16.2 Where a Master makes a consent order disposing of an action which has been fixed, it is the duty of all the parties' representatives to inform the Chancery Listing Officer that the case has settled. Where the validity of the patent was in issue, the United Kingdom Intellectual Property Office ("UKIPO") should also be informed.

- 16.3 In the Patents County Court, all matters go to the appointed judge and not to a district judge. In many cases, such matters may be dealt with on paper.

## **17. Consent orders**

- 17.1 The court is normally willing to make consent orders without the need for the attendance of any parties. A draft of the agreed order and the written consent of all the parties' respective solicitors or counsel should be supplied to the Chancery Listing Office. Unless the judge considers a hearing is needed, he will make the order in the agreed terms by initialling it. It will be drawn up accordingly and sent to the parties.
- 17.2 In the Patents County Court, consent orders should be sent to the judge's clerk or to the Chancery Listing Office.

## **18. Draft judgments**

- 18.1 Many judgments, particularly after a full trial, will be reserved and handed down at a later date, as advised by the Chancery Listing Office. Prior to that, the practice has arisen to provide the parties' legal representatives (or litigants in person) with a copy of the draft judgment for advocates to notify the court of typographical and obvious errors (if any). The text may be shown, in confidence, to the parties, but only for the purpose of obtaining instructions and on the strict understanding that the judgment, or its effect, is not to be disclosed to any other person, or used in the public domain, and that no action is taken (other than internally) in response to the judgment. Reference is invited to 40EPD.1.

## **19. Orders following judgment**

- 19.1 Where a judgment is made available in draft before being given in open court the parties should, in advance of that occasion, exchange drafts of the desired consequential order. It is highly undesirable that one party should spring a proposal on the other for the first time when judgment is handed down. Where the parties are agreed as to the consequential order and have supplied to the judge a copy of the same signed by all parties or their representatives, attendance at the handing down of the judgment is not necessary.

## **20. Appeals from the Comptroller-General of Patents, Designs and Trade Marks (“the Comptroller”)**

### *Patents*

- 20.1 By virtue of statute, these lie only to the High Court and not the Patents County Court. They are now governed by Part 52 (see Part 63.17). Permission to appeal is not required. Note that the Comptroller must be served with a Notice of Appeal (Part 63.17(3)). The appellant has the conduct of the appeal and he or his representative should, within 2 weeks of lodging the appeal, contact the Chancery Listing Officer with a view to arranging a hearing date. The appellant must ensure that the appeal is set down as soon as is reasonably practicable after service of the notice of appeal. Parties are reminded that the provisions about the service of skeleton arguments apply to appeals from the Comptroller.

### ***Registered Designs***

20.2 Appeals in registered designs cases go to the Registered Designs Appeal Tribunal. This consists of one of the patent judges sitting as a tribunal. The CPR and PD do not apply to such appeals. Where such an appeal is desired, contact should be made direct with the Chancery Listing Officer.

### ***Trade Marks***

20.3 These are assigned to the Chancery Division as a whole, not the Patents Court (Part 63.17(2)). Permission to appeal is not required.

### ***Appeals on paper only***

20.4 The court will hear appeals on paper only if that is what the parties desire. If the appellant is willing for the appeal to be heard on paper only, he should contact the respondent and UKIPO at the earliest opportunity to discover whether such a way of proceeding is agreed. If it is, the Chancery Listing Office should be informed as soon as possible. The parties (and the Chancery Listing Officer if he/she desires) should liaise amongst themselves for early preparation of written submissions and bundles and provide the court with all necessary materials.

## **Specimen minute of order for directions**

A draft order is annexed below covering most normal eventualities. The directions are intended only as a guide and are not “standard directions”. Not all paragraphs will be applicable in every case.

## Form of order for directions

[Recitals as necessary including the following, where appropriate]

AND UPON the parties' legal advisors having advised the litigants of the existence of mediation as a possible means of resolving this claim and counterclaim

### *Transfer*

1. [This claim and counterclaim be transferred to the Patents County Court.] (If this order is made, no other order will generally be necessary, though it will generally be desirable for procedural orders to be made at this time to save the costs of a further conference in the Patents County Court.)

### *Amendments to statements of case*

2. The claimants have permission to amend their claim form shown in red on the copy [annexed to the application notice/as signed by the solicitors for the parties/annexed hereto] and [to re-serve the same on or before [date]/and that re-service be dispensed with] and that the defendants have permission to serve a consequentially amended defence within [number] days [thereafter/hereafter] and that the claimants have permission to serve a consequentially amended reply (if so advised) within [number] days thereafter.

3. (a) The defendants have permission to amend their defence and counterclaim [and grounds of invalidity] as shown in red on the copy [annexed to the application notice/as signed by the solicitors for the parties/annexed hereto] and [to re-serve the same within [number] days/on or before[date]] [and that re-service be dispensed with] and that the claimants have permission to serve a consequentially amended reply (if so advised) within [number] days thereafter.

[(b) The claimants do on or before [date] elect whether they will discontinue this claim and withdraw their defence to the amended counterclaim and consent to an order for the revocation of Patent No. .... ("the Patent") AND IF the claimants shall so elect and give notice thereof in the time aforesaid:

(i) the Patent be revoked;

(ii) the claimants shall pay the defendant's costs of the claim and counterclaim incurred up to and including [.....] (*date of service of original defence and counterclaim*) which shall include the costs of obtaining and giving effect to the order for revocation; and

(iii) the defendants shall pay the claimants' costs of the claim and counterclaim incurred thereafter.]

(c) The defendants' [claimants'] costs of and caused by the amendments to the claim form [particulars of claim] [defence and counterclaim] [reply] be the defendants [claimants] in any event.

### *Further Information and Clarification*

5. (a) The [claimants/defendants] do on or before [date] serve on the [defendants/claimants] the further information or clarification of the [specify statement of case] as requested by the [claimants/defendants] by their request served on the [defendants/claimants] on [date] [and/or]

(b) The [claimants/defendants] do on or before [date] serve on the [defendants/claimants] [a response to their request for further information] [do answer the requests in their request for further information] or clarification of the [identify statement of case] served on the [defendants/claimants] on [date].

### ***Admissions***

6. The [claimants/defendants] do on or before [date] state in writing whether or not they admit the facts specified in the [defendants'/claimants'] notice to admit facts dated [date].

### ***Security***

7. The claimants/defendants do provide security for the defendants'/claimants' costs for its claim/counterclaim in the sum of £[state sum] by [paying such sums into court] [specify manner in which security to be given] and that:

(i) in the meantime the claim [counterclaim] be stayed [and/or];

(ii) unless security is given as ordered by the above date, the claim [counterclaim] be struck out without further order with the defendants'/claimants' costs of the claim [counterclaim] to be the subject of detailed assessment if not agreed.

### ***Lists of Documents***

8. (a) The claimants and the defendants respectively do on or before [state date] make and serve on the other of them a list in accordance with form N265 of the documents in their possession custody or control which they are required to disclose in accordance with the obligation of standard disclosure in accordance with Part 31 as modified by paragraph 5 of the Practice Direction - Patents etc. supplementing Part 63.

(b) In respect of those issues identified in Schedule [number] hereto disclosure shall be limited to those [documents/categories of documents] listed in Schedule [number].

### ***Inspection***

9. If any party wishes to inspect or have copies of such documents as are in another party's control, it shall give notice in writing that it wishes to do so and such inspection shall be allowed at all reasonable times upon reasonable notice and any copies shall be provided within [number] working days of the request upon the undertaking of the party requesting the copies to pay the reasonable copying charges.

### ***Experiments***

10. (a) Where a party desires to establish any fact by experimental proof, including an experiment conducted for the purposes of litigation or otherwise not being an experiment conducted in the normal course of research, that party shall on or before [date] serve on all the other parties a notice stating the facts which it desires to establish and giving full particulars of the experiments proposed to establish them.

(b) A party upon whom a notice is served under the preceding sub-paragraph shall within [number] days, serve on the party serving the notice a notice stating in respect of each fact whether or not that party admits it.

(c) Where any fact which a party wishes to establish by experimental proof is not admitted that party shall apply to the court for further directions in respect of such experiments.

[Or where paragraph 9 of the Practice Direction - Patents etc. supplementing CPR Part 63 has been complied with.]

11. (a) The claimants/defendants are to afford to the other parties an opportunity, if so requested, of inspecting a repetition of the experiments identified in paragraphs [specify them] of the notice[s] of experiments served on [date]. Any such inspection must be requested within [number] days of the date of this order and shall take place within [number] days of the date of the request.

(b) If any party shall wish to establish any fact in reply to experimental proof that party shall on or before [date] serve on all the other parties a notice stating the facts which it desires to establish and giving full particulars of the experiments proposed to establish them.

(c) A party upon whom a notice is served under the preceding sub-paragraph shall within [number] days serve on the party serving the notice a notice stating in respect of each fact whether or not that party admits it.

(d) Where any fact which a party wishes to establish by experimental proof in reply is not admitted the party may apply to the court for further directions in respect of such experiments.

***Notice of Models, etc.***

12. (a) If any party wishes to rely at the trial of this claim and counterclaim upon any model or apparatus, that party shall on or before [date] give notice thereof to all the other parties; shall afford the other parties an opportunity within [number] days of the service of such notice of inspecting the same and shall, if so requested, furnish the other party with copies or illustrations of such model or apparatus.

(b) No further or other model or apparatus shall be relied upon in evidence by either party save with consent or by permission of the court.

***Product or Process Description***

13. (a) The defendants/claimants do provide a written description together with relevant drawings of the following [product(s)] [process(es)] to the claimants/defendants by [....].

(i) [description of product or process];

(ii) [description of product or process];

etc.

(b) The description served under paragraph (a) shall be accompanied by a signed written statement which shall:

- (i) state that the person making the statement is personally acquainted with the facts to which the description relates;
- (ii) verify that the description is a true and complete description of the product or process; and
- (iii) contain an acknowledgement by the person making the statement that he may be required to attend court in order to be cross-examined on the contents of the description.

### ***Technical Primer***

14. The parties shall use their best endeavours to agree on or before [date] a single technical primer setting out the basic undisputed technology and shall on or before [date] indicate which parts of the technical primer are agreed to form part of the common general knowledge.

### **Scientific Adviser**

15. A.B is appointed a scientific adviser to assist the court in this claim and counterclaim, his/her costs to be met in the first instance in equal shares by the parties and to be costs in the claim and counterclaim, subject to any other order of the trial judge.

### ***Written Evidence***

16. (a) Each party shall on or before [date] serve on the other parties [signed] written statements of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial, such statements to stand as the evidence in chief of the witness unless the court otherwise directs;

(b) Each party shall on or before [date] serve on the other parties [signed] written statements of the oral evidence which it intends to lead at trial in answer to facts and matters raised in the witness statements served on it under paragraph (a) and (b) above;

(c) Each party may call up to [number] expert witnesses in this claim and counterclaim provided that the said party:

- (i) supplies the name of such expert to the other parties and to the court on or before [date]; and

- (ii) no later than [date/[number days] before the date set for the hearing of this claim and counterclaim] serve upon the other parties a report of each such expert comprising the evidence which that expert intends to give at trial.

[(d)The claimant shall, with the cooperation of the other parties, arrange for the experts to meet on or before [date] to determine on what issues they agree and on what they disagree and the experts shall before [date ] file a report stating where they agree and where they disagree and in the latter case, their reasons for disagreeing].

### ***Admissibility of Evidence***

17. A party who objects to any statements of any witness being read by the judge prior to the hearing of the trial, shall serve upon each other party a notice in writing to that effect setting out the grounds of the objection.

### ***Non-Compliance***

18. Where either party fails to comply with the directions relating to experiments and written evidence it shall not be entitled to adduce evidence to which such directions relate without the permission of the court.

### ***Trial Bundles***

19. Each party shall no later than [28] days before the date fixed for the trial of this claim and counterclaim serve upon the other parties a list of all the documents to be included in the trial bundles. The claimants shall no later than [21] days before the date fixed for trial serve upon the defendants .... sets of the bundles for use at trial.

20. The claimants must file with the court no later than [4] days before the date fixed for the trial:

- (i) the trial bundle; and
- (ii) a reading guide for the judge.

### ***Trial***

21. The trial of these proceedings shall be before an assigned judge alone in [London], estimated length [number] days which shall include a pre-trial reading estimate for the judge of [number] days. The technical difficulty rating is [ ].

### ***Liberty to Apply***

22. The parties are to be at liberty on two days' notice to apply for further directions and generally.

### ***Costs***

23. The costs of this application are to be costs in the claim and counterclaim.