

The transfer of proceedings under the new Patents County Court regime

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As previously reported, the Patents County Court was re-launched on 1 October 2010 under the auspices of His Honour Judge Birss QC. The issue of transferring proceedings between the Patents Court of the High Court and Patents County Court was the subject of numerous disputes before the Patents County Court before it was re-launched and it is not surprising that this issue has been raised again in the first few weeks of HHJ Birss QC assuming his new position.

In *ALK-Abello Limited v. (1) Meridian Medical Technologies (2) Dey Pharma LP* [2010] EWPC 014, ALK commenced revocation proceedings in respect of Meridian's patent relating to an automatic injector for the subcutaneous delivery of drugs. Shortly after the proceedings commenced, Meridian assigned the patent to Dey and Dey subsequently applied to transfer the proceedings to the High Court.

HHJ Birss QC stated that the factors to consider on transfer were as follows:

- (1) The financial position of parties.
- (2) Whether the claim was appropriate to be determined by the Patents County Court. This involved considering:
 - (a) The value of the claim;
 - (b) The complexity of the issues; and
 - (c) The estimated length of the trial.
- (3) The importance of the outcome of the claim to the public in general

Once these factors were considered it was necessary to bear in mind what sort of cases the Patents County Court was established to handle. Its role was to provide cheaper, speedier and more informal procedures to ensure that small and medium sized enterprises, and private individuals, were not deterred from innovation by the potential cost of litigation to safeguard their rights.

In the present case, HHJ Birss QC noted that neither party was a SME and both sides could afford to litigate. The value of the claim (estimated as a substantial part of \$24m per year) was significant, the issues in dispute were eminently suitable to be tried in the Patents County Court and a trial of 3-4 days could be heard before the summer 2012 in both the Patents County Court and in the High Court. Finally, there was no reason why the Patents County Court was not a suitable forum for hearing the case.

Weighing up the facts, the Court held that the value of the case and the financial position of parties pointed to the transfer of the case to the High Court. The decisive factor was that neither party was a SME and one party wanted to transfer the proceedings to the High Court.

This decision indicates that attempts by large organizations to bring cases before the Patents County Court are likely to fail unless the other side consents. HHJ Birss QC stated that it was his intention to devote his energies to making the new procedures work in order to achieve the objective of providing a low cost forum for SMEs and private individuals to conduct intellectual property litigation. HHJ Birss QC is clearly of the view that this objective will be harmed if the Patents County Court lists are full of large organisations conducting cases which could just as easily be heard by the High Court.

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