

Kluwer Patent Blog

Time for a change – appointment of new judge to the English Patents County Court

Brian Cordery (Bristows) · Tuesday, June 15th, 2010

The English Patents County Court is to appoint a new judge on the retirement of His Honour Judge Fysh QC in July of this year. The Patents County Court was originally established in 1990 under the Copyright, Designs and Patents Act 1988. It was designed to offer an alternative forum from the High Court (including the Patents Court) to make litigation cheaper and more accessible for more straightforward disputes involving patents and registered designs (and, more recently, other IP rights). The Judicial Appointments Commission, which is conducting the appointment process, describes the function of the Court as follows:

“to cater for the litigation needs of, among others, small and medium-sized enterprises and litigants in person in patent, design and related cases. More recently it has assumed the same role in relation to registered trade mark matters and it is an EU-designated court for those purposes. In addition, in recent years, it has taken over the adjudication of all kinds of Intellectual Property cases referred to it from County Courts in England and Wales. Its primary mission is to provide for the speedy, uncomplicated and inexpensive resolution of disputes in these areas of law.”

Under the stewardship of Judge Fysh, the Court has, for the last dozen years or so, flourished as a venue for the conduct of small-value claims, although cases in the Patents County Court have often been beset by satellite litigation regarding transfer of cases to the High Court. Recent notable judgments from the Court include *Qual-Chem v Corus*, *LG Philips v Tatung*, the *Unilin v Berry* cases and *Weatherford v BJ Tubular Services* (all patents), as well as *Landor & Hawa v Azure* and *Fulton v Totes* (registered and unregistered design rights). It is, however, fair to say that despite the heroic efforts of Judge Fysh, the cost of litigation in the Patents County Court has often not been much lower than a High Court case because the procedural rules were broadly similar, thus allowing parties the opportunity to add to the complexity of cases by relying on experiments, seeking extensive disclosure and so on.

In parallel to the appointment of a new judge, the issue of the Patents County Court as a low-cost litigation venue has been part of the recent debate regarding costs in English litigation, which culminated in the publication of Lord Justice Jackson’s Review of Civil Litigation Costs earlier this year. The Review included a number of recommendations in relation to the Patents County Court, and it promises to be an interesting future for both this alternative forum for patent litigation and its new judge. It is to be hoped that procedures can be implemented that will truly reduce complexity and cost. These might include fuller pleadings, no disclosure, a very limited opportunity for experiments and time-limits on cross-examination, for example. However, those

who might have been interested in a change of career have missed the boat, with the deadline for applications having expired on 25 March 2010. Interviews for the post are scheduled for next week and an announcement is expected over the summer.

Qual-Chem v Corus UK [2008] EWPC (1)

LG Philips LCD Co v Tatung (UK) & ors PAT 04022

Unilin Beheer v Berry Floor & ors [2006] EWPC (50), [2004] F.S.R. 14 and PAT 02010/02014

Weatherford UK & or v BJ Tubular Services & or [2006] EWPC (49)

Landor & Hawa International v Azure Designs [2005] EWPC (45)

A Fulton Company v Totes Isotoner (UK) (2003) RPC 27

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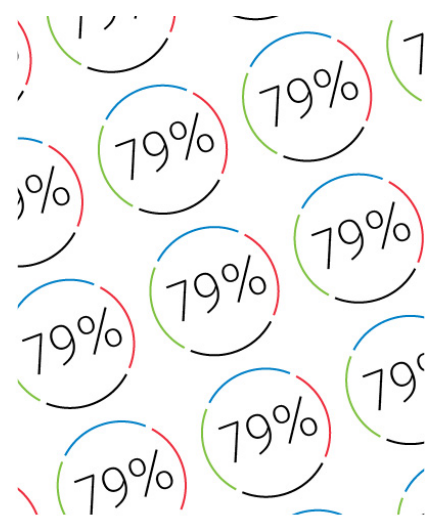
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