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A new era for low cost patent litigation in England and Wales

Brian Cordery (Bristows) · Tuesday, September 21st, 2010

On 1 October 2010 the Patents County Court is due to be re-launched with a new set of procedural rules. The aim of the reforms is to provide a cheaper and quicker forum than the High Court for litigating relatively straightforward and low-value IP disputes. Hand-in-hand with the changes in procedure comes the appointment of a new judge – [Colin Birss, QC](#). As a barrister, Colin Birss was known for adopting a dynamic and rigorous approach to his cases and his appointment as the new judge, combined with the procedural rules, is likely to make the PCC, or the Intellectual Property County Court (as it will soon be known) an attractive forum for litigants in smaller IP disputes.

The Patents County Court was established in 1990 with the aim of providing an alternative forum to the High Court for less complex IP litigation. However, efforts to provide a distinct and less costly choice for litigants, in particular SMEs, were effectively hamstrung by both the High Court and the Patents County Court sharing broadly the same procedural rules. As part of Lord Justice Jackson's Review of Civil Litigation Costs, proposals were put forward last year for a separate procedural framework for cases before the Patents County Court.

Some of the new procedures were published earlier this month and include the following provisions:

- Caps on the award of costs of £50,000 for liability and £25,000 for an inquiry as to damages or an account of profits
- A requirement for Statements of Case to set out concisely all facts and arguments a party seeks to rely on
- No automatic disclosure of documents
- The transfer of cases from the Patents County Court to the High Court to be considered only at beginning of the proceedings unless there are exceptional circumstances

Further developments expected to come into force in due course include a damages limit of £500,000, the renaming of the Patents County Court as the Intellectual Property County Court, limits on cross-examination, restricting the length of trials to two days or less and the provision of a dedicated court guide.

The re-launch of the Patents County Court is an exciting development for patent litigation in England and Wales. The introduction of a bespoke procedural framework for the court should go a long way in helping to differentiate it from the High Court. Furthermore, the introduction of a cap on costs should encourage more SMEs to enforce their rights as they will no longer be faced with unlimited exposure to paying the other party's costs if they are ultimately unsuccessful. Only time

will tell if the re-launched court will meet its aim of providing a quick, low cost alternative to the High Court and so the conduct of the first few cases will be followed with great interest. However, the authors feel optimistic that the new rules will help the court to flourish.

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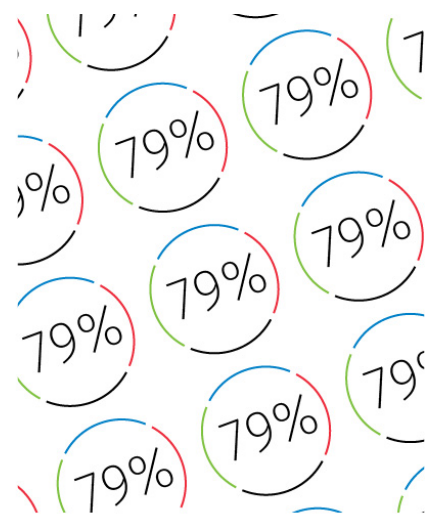
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