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Fresenius v. Carefusion, Court of Appeal Civil Division, 8 November 2011

Brian Cordery (Bristows) · Monday, January 2nd, 2012

The general rule in UK litigation is that the successful party is entitled to its costs. One exception to this rule, peculiar to patent cases, is a so-called 'Earth Closet' order. If an alleged infringer introduces a new piece of prior art, after service of its original Grounds of Invalidity, an Earth Closet order enables the patentee to consent to the revocation of the patent on terms that the patentee pays the costs of the action up to the date of the original Grounds of Invalidity, but the overall successful party – the alleged infringer – has to pay the patentee's costs of the action from that date. However, in the case at hand the Court of Appeal held that Earth Closet Orders should no longer be made.

Click here for the full text of this case. A summary of this case will be posted on http://www.KluwerIPCases.com.

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