

NOTICE OF FILING

Details of Filing

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File Title:	CPC PATENT TECHNOLOGIES PTY LTD (ACN 615 736 028) v APPLE PTY LIMITED & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



No. NSD 1288 of 2025

Federal Court of Australia
District Registry: New South Wales
Division: General

CPC PATENT TECHNOLOGIES PTY LTD (ACN 615 736 028)

Appellant

APPLE PTY LIMITED (ACN 002 510 054) and another

Respondents

Apple's submissions on security for costs of the appeal

- 1 These are Apple's¹ submissions in support of its application dated 4 December 2025 seeking security for their costs of this appeal. Apple relies on an affidavit of Robynne Sanders dated 4 December 2025 (**Sanders**).
- 2 There is a difference in the applicable principles relating to security for costs of an appeal when compared to first instance proceedings. Whereas impecuniosity and the inability to pay a required amount of security required may be a relevant factor when considering security for a first instance proceeding, this consideration loses force in the context of an appeal. As explained in *Tait v Bindal People* [2002] FCA 322 at [3]:
The difference is that, at the appellant level, there has already been a determination adverse to the person against whom security for costs is sought and, if it be shown that there is a substantial risk that even if successful the respondent to the application for leave to appeal, or to an appeal, will be deprived of his costs, such an outcome would clearly be unjust.
- 3 Consistently with this, Apple understands that the Appellant (**CPC**) does not contest its liability to pay security for costs, and that the only issue in dispute is the quantum. These submissions are provided on that basis.

¹ The Respondents are referred to in these submissions collectively as Apple.

Quantum of Security

4 These are large scale patent infringement proceedings. As far as Apple is aware, CPC has no business other than the conduct of patent infringement proceedings of this kind and licensing its patents. The first instance proceeding was funded by litigation funders.

5 At the trial, CPC alleged infringement of 11 claims of two separate patents (the 168 Patent and the 293 Patent), each related to biometric access technology. A total of 70 Apple Devices and 48 accessories were alleged to infringe the patents, which were considered by reference to five exemplar categories of devices.²

6 Both parties were represented at trial by two senior counsel and one junior counsel. The hearing occupied 16 days (11 days of opening submissions and evidence, and five days of closing submissions). The full unredacted judgement of Burley J is 176 pages and 676 paragraphs. Apple's total costs of those proceedings were \$8.69 million.³

7 The primary judge found that none of the Apple devices infringed any asserted claim, and that claims 1, 2 and 5 of the 168 Patent were invalid.

8 CPC paid \$1.5 million by way of security for costs in relation to the first instance proceedings. That is plainly considerably less than Apple's overall costs. Apple has sought costs orders against CPC as well as its third-party funders. Those are issues on which the primary judge is presently reserved.

9 In the course of the debate concerning third party costs orders, CPC criticised Apple for seeking recourse against the third parties instead of seeking a greater amount by way of security for costs in the first place.⁴ That criticism was unjustified, but relevantly, it may be assumed that if Apple did not seek an appropriately full amount of security on the appeal, CPC would again seek to raise that criticism.

10 The Notice of Appeal filed by CPC is wide-ranging, and challenges:

- (a) each of the five key construction findings of the primary judge;
- (b) the non-infringement findings that flow from those construction findings;

² Sanders [22].

³ Sanders [23], [24].

⁴ See e.g. CPC Submissions – Application to set aside subpoena for funding agreements dated 19 September 2025 at [17](a).

(c) the finding that the asserted claims are not entitled to their earliest priority date;
and

(d) the finding that claims 1, 2 and 5 of the 168 Patent lacked novelty.⁵

11 Apple has filed a Notice of Cross-Appeal and a Notice of Contention. Apple's Notice of Appeal is expressly pressed only to the extent that the Full Court holds that any of the Apple Devices fall within any of the asserted claims. Apple's Notice of Contention is primarily concerned with construction and non-infringement issues which overlap with, and are raised by grounds 1, 6 and 7 of CPC's Notice of Appeal.⁶

12 In the appeal, Apple will be represented by three senior counsel (the junior counsel representing Apple in the first instance hearing, Peter Creighton-Selvay, now having been appointed senior counsel).

13 As at 19 November 2025, Apple had incurred costs of \$34,928 in relation to the appeal. Having regard to the scope of the appeal, Ms Sanders provides the following estimates of costs she expects to be incurred by Apple until the hearing of the appeal:⁷

Timing	Work performed	Solicitor fees	Counsel fees	Total
August to November (costs already incurred)	Considering Notice of Appeal, preparation and settling of Notice of Cross-Appeal and Notice of Contention, case management	\$20,854	\$14,074	\$34,928
December 2025/January 2026	Review of first instance materials, drafting submissions, settling appeal book index	\$391,590	\$274,063	\$665,653
February 2026	Review CPC Submissions, prepare submissions in answer,	\$67,871	\$205,991	\$273,862

⁵ Sanders [25].

⁶ Sanders [26].

⁷ Sanders [28], [29].

	preparation of authorities and Part C Appeal Book, preparation for hearing			
March 2026	Preparation for hearing, appearance at hearing	\$149,040	\$78,709	\$227,749
TOTAL		\$629,355	\$572,837	\$1,202,192

14 A recovery rate of 80% on taxation would yield a sum of approximately \$1 million.

15 Accordingly, Apple seeks that amount, or alternatively such other amount as the Court determines, by way of security for costs of the appeal.

A R Lang

15 December 2025