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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

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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

CPC'S SUBMISSIONS – SECURITY FOR COSTS

Introduction

- 1 These submissions respond to Apple's submissions in support of its application for security for costs dated 15 December 2025 (**AS**), and refer to the affidavit of Robynne Sanders dated 4 December 2025 (**Sanders**) and the affidavit of Michael Williams sworn 19 December 2025 (**Williams**). Terms defined in AS are adopted herein.
- 2 Consistently with the approach that CPC took in the proceeding below, CPC is prepared to pay an appropriate amount of security for costs in this appeal. However, the sum of security sought by Apple – \$1 million for a two day appeal – is excessive. By way of comparison, the total sum of security provided by CPC for the entire proceeding below, which involved evidence from 11 witnesses and a 16 day trial, was \$1.5 million.¹
- 3 In effect, Apple asks the Court for a full indemnity in respect of Apple's estimated costs, without regard to whether that sum is reasonable. Such an approach is not supported by the authorities and should be rejected.
- 4 CPC submits that an amount of \$150,000 is sufficient to fairly and adequately protect Apple's interests, without causing injustice to CPC.

Principles

- 5 Apple bears the onus of persuading the Full Court that the discretion to order security should

¹ AS [8]. Whilst AS [8] observes that Apple's total costs of the proceedings below were \$8.69 million, CPC has contended for a costs outcome that is estimated to result in Apple paying CPC approximately \$300,000, principally because Apple abandoned or was otherwise unsuccessful on almost the entirety of its cross-claim. Judgment is presently reserved: Williams [14]. In any event, the fact that Apple did not press for more security despite incurring costs far above that provided by CPC strongly supports the conclusion that Apple considered \$1.5m in security for the whole of the first instance proceeding to be adequate and fair protection.

be exercised.² The amount of security that may be ordered is within the discretion of the Court, and the discretion is a wide one the proper exercise of which depends upon the circumstances of the case.³

6 The process of assessing the amount of security is necessarily one which requires a broad-brush approach, taking into account the information available to the Court. In the exercise of the discretion the Court must weigh the objective of ensuring an adequate and fair protection for the parties seeking security against avoiding injustice to the applicant.⁴

7 As the Court held in *Jasmin Solar Pty Ltd v Trina Solar Australia Pty Ltd* [2020] FCA 1018 at [98]:

As to the quantum of security, in *Lynx Engineering Consultants Pty Ltd v ANI Corporation Ltd (t/as ANI Bradken Rail Transportation Group) (No 3)* [2010] FCA 32 [25], it was observed that the Court does not order security for a complete and certain indemnity of an applicant's costs but calculates that which is sufficient such that the security is neither illusory nor oppressive, neither too little nor too much, substantial but not in the nature of an indemnity.

8 In assessing these matters, it should also be kept in mind that a party may make a further application for more security at a later date. For example, as the Court held in *Farmitalia Carlo ERBA SrL v Delta West Pty Ltd* (1994) 28 IPR 336 at 346 “*if very little information is put before the court on which it can estimate the amount of costs, then again it might be reasonable to make a large discount, particularly since if security proves inadequate as the litigation progresses, a further application may be made for more security: Procon (GB) v Provincial Building Co [1984] 2 All ER 368 at 379h*”.

9 To the extent that some of the costs of the party seeking security will relate to a case that is not essentially defensive, a deduction should also be made.⁵

10 Whilst it is appreciated that the appropriate amount of security will differ on a case by case basis depending on the facts, examples of amounts paid as security in other recent intellectual property appeals include:⁶

² *Paton v Campbell Capital Ltd* (Fed C of A, Burchett J, NG 332/93, 1 July 1993, unreported).

³ *Reinsurance Australia Corp Ltd v HIH Casualty and General Insurance Ltd (in liq)* [2003] FCA 803 at [94]; see also *Asden Developments Pty Ltd (in liq) v Dinoris* [2017] FCA 37 at [9].

⁴ *Pathway Investments Pty Ltd v National Australia Bank Ltd* [2012] VSC 97 at [55]; see also *Asden Developments* at [9].

⁵ *Farmitalia* at 346.

⁶ Willaims [30].

- (a) \$60,000 in security was paid in NSD807/2020 - *Vehicle Monitoring Systems Pty Ltd v SARB Management Group Pty Ltd*, which was an appeal that considered whether the applicant was entitled to a grant of patent, which was heard over a single day;
- (b) \$50,000 in security was paid in NSD378/2023 - *Glass Hardware Australia Pty Ltd v TCT Group Pty Ltd*, which was an appeal that considered the construction and validity of the patents in suit, which was heard over a single day; and
- (c) \$25,000 in security was paid in WAD251/2018 – *Kevin Stephen Davies v Lazer Safe Pty Ltd*, which was an appeal that considered the construction infringement of the patent in suit, which was heard over a single day.

11 Whilst the nature of the appeal in *Asden* was different, the above-mentioned amounts are nevertheless consistent with the observations made by the Court in that case that “*a claim of \$155,000 for security represents the high water mark for a one day appeal*”.⁷

Application

12 The Court ought not require CPC to pay security in an amount of more than \$150,000, for the following reasons.

13 *First*, for the reasons outlined below, Apple’s estimate of its likely costs of the appeal must be treated with caution, but even on that estimate the sum of security sought by Apple is excessive. The absolute maximum that Apple could hope to obtain in any taxation of its costs of the appeal on a party-party basis is 65% to 85% of party-party bills of costs as drawn, not the solicitor-client starting point as per Sanders.⁸ Thus, Apple seeks a complete and certain indemnity to which it is not entitled: see paragraphs 6 to 7 above.

14 *Secondly*, requiring CPC to pay security of \$1 million would cause substantial injustice to CPC. CPC has already paid \$1.5m in security, and has been deprived of the benefit of those funds since September 2024. CPC’s ability to prosecute the present appeal will be prejudiced if CPC are required to pay \$1 million by way of security for costs as sought by Apple.⁹

15 *Thirdly*, a discount ought to be made to any sum of security to account for Apple’s cross-appeal and notice of contention, which is substantial and not purely defensive. Apple has brought a significant cross-appeal and raised a number of additional matters by way of notice of contention. This course was entirely unnecessary, Apple could have defended CPC’s appeal without adding further additional matters for the Court’s consideration. As a large

⁷ *Asden* at [17].

⁸ Williams [27].

⁹ Williams [31].

proportion of the appeal time will be taken up by the matters raised by Apple, this must be reflected in a discount to the security sought by Apple.

- 16 This is particularly the case where Apple lack a proper basis for raising a number of the appeal grounds, as these matters were abandoned by Apple during the first instance hearing: see Williams at [17].
- 17 *Fourthly*, the estimate provided by Ms Sanders lacks sufficient detail to enable the Court to assess the reasonableness, reliability and veracity of that estimate. In particular, the following information is necessary to test the cost estimate provided by Ms Sanders:¹⁰
- (a) the number of solicitors that will work on the appeal;
 - (b) the seniority and hourly rates of each solicitor and barrister (including the barrister daily rates) working on the appeal;
 - (c) an estimate of the hours of each solicitor and barrister working on the appeal, including the number of preparation days prior to the hearing;
 - (d) whether “Apple’s total legal costs of this appeal” is inclusive, or not, of disbursements, and if inclusive what those disbursements are; and
 - (e) any discretionary matters that ought to be considered in party-party matters as per the Federal Court Rules, for example, any special or unusual costs arrangements that would warrant further reductions.
- 18 As observed in paragraph 8 above, the Court has acknowledged that a large discount may be reasonable where very little information is put before the court on which it can estimate the amount of costs.
- 19 The Court has also previously acknowledged the difficulties associated with evidence of this nature being advanced by a solicitor for a party seeking security for costs.¹¹ As the Court acknowledged in *Jasmin* “[i]n an application for security for costs, it is in the interests of the respondents to obtain as much security as possible. That not only protects them if they are successful in the litigation against the possibility of not being able to recover the costs which they expend but, additionally, the higher the amount ordered to be secured the more likely it is that the applicant may capitulate and abandon their claim”.
- 20 *Fifthly*, even based on the evidence that is available, it is apparent that Apple’s assumption of a recovery rate of 80% of solicitor-client costs on taxation (AS [14]) is far too high. In Mr Williams’ experience, the recoverable costs will vary and the range can be as low as 65%

¹⁰ Williams at [19].

¹¹ See *Jasmin* at [106]; see also *Reinsurance Australia* at [99].

depending on the matter and the way that it is staffed by legal resources and their experience.¹² As Griffiths LJ held in *Procon (GB) v Provincial Building Co* [1984] 2 All ER 368 (cited with approval in *Farmitalia*) “[a]llowance will have to be made for the unquenchable fire of human optimism and the likelihood that the figure of taxed costs put forward would not emerge unscathed after taxation”.

- 21 There are several matters deposed by Ms Sanders which mean that Apple’s recoverable costs are likely to be far less than 80% of the solicitor-client costs. In particular: (a) Apple is proposing to be represented by three senior counsel, but no junior counsel; (b) whilst Ms Sanders has not provided the rates of the solicitors or senior counsel, it is reasonable to assume that those rates are likely to be higher than the National Guide provided by the Federal Court; (c) whilst Apple is entitled to a luxurious approach to its prosecution of the appeal, it is unlikely to recover more than realistic costs incurred; (d) Ms Sanders’ estimation of the costs to be incurred does not engage with the fact that CPC is the appellant in the proceeding, and, for example, is required to prepare the appeal book etc.

C Dimitriadis SC and M Evetts
Counsel for CPC

Gilbert + Tobin
Solicitors for CPC

Date: 19 December 2025

¹² Williams [27].