



Neutral Citation Number: [2017] EWHC 216 (Pat)

Case No: HP-2015-000049

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**PATENTS COURT**

Rolls Building  
Fetter Lane, London EC4A 1NL

Date: 13 February 2017

**Before :**

**MR JUSTICE ARNOLD**

**Between :**

**WARNER-LAMBERT COMPANY LLC**

**Claimant**

**- and -**

**(1) SANDOZ GMBH**

**Defendants**

**(2) SANDOZ LIMITED**

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**Richard Miller QC and Tim Austen** (instructed by **Allen & Overy LLP**) filed written submissions for the **Claimant**

**Andrew Lomas** (instructed by **Olswang LLP**) filed written submissions for the **Defendants**

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE ARNOLD

**MR JUSTICE ARNOLD :**

1. On 21 December 2016 I dismissed an application by Sandoz to vary an interim injunction which I had granted against Sandoz by order dated 17 November 2015 for the reasons given in my judgment dated 21 December 2016 [2016] EWHC 3317 (Pat). It has subsequently been agreed between the parties that the costs of the application should be dealt with on paper.
2. Warner-Lambert contends that costs should follow the event, and therefore Sandoz should be ordered to pay Warner-Lambert's costs of the application since Warner-Lambert was the successful party. Sandoz contend that costs should be reserved to the trial judge on the grounds that I accepted that there had been a material change circumstances since 17 November 2015, but upon reconsidering the balance of the risk of the injustice concluded that it favoured the continuation of the injunction without variation. In those circumstances Sandoz contend that there is no successful party and that it will only be possible to determine which is the successful party after trial. In support of this argument Sandoz rely upon the decision of the Court of Appeal in *Desquenne et Giral UK Ltd v Richardson* [2001] FSR 1.
3. I entirely accept that the normal order where an interim injunction is granted upon the basis of an assessment of the balance of the risk of injustice is to reserve the costs to the trial judge for the reasons given in *Desquenne et Giral*, although the court retains a discretion to make a different order if the particular circumstances of the case warrant doing so (see *Picnic at Ascot v Derigs* [2001] FSR 2).
4. I do not accept that it follows that the costs of Sandoz's application should be reserved. I made an assessment of the balance of the risk of injustice in my judgment in *Sandoz I*. In order to succeed in their application, Sandoz had to show both that there had been a material change in circumstances and that, given the new circumstances, there should be a different assessment of the balance of the risk of injustice. I accepted that there had been a material change in circumstances, but concluded that the balance of the risk of injustice was unaffected. As I stated at [107], "My reasons are essentially the same as I gave in *Sandoz I*". In circumstances where Sandoz tried to persuade me to make a different assessment of the balance of the risk of injustice, but failed, I consider that Sandoz are properly to be regarded as having been unsuccessful in their application. Accordingly, I consider that the right order is for Sandoz to pay Warner-Lambert's costs of the application.
5. I am asked to make a summary assessment of Warner-Lambert's costs. Warner-Lambert's statement of costs claims the total sum of £145,775. Sandoz have made a number of criticisms of the costs claimed, in particular the hourly rates charged by Warner-Lambert's solicitors, the use of two partners, the failure to delegate work from a senior associate to more junior staff and certain elements of counsel's fees. I consider that each of those criticisms has force. Furthermore, the overall total is very high. Taking all of those points into account, I consider that a reasonable and proportionate sum is £100,000. Accordingly, I shall summarily assess Warner-Lambert's costs in that amount.