



Every case is interesting to someone and no case is interesting to everyone, and so we provide snapshots of each intellectual property decision reported by bailii.org (British and Irish Legal Information Institute) from the Patents Court (which deals with all registered rights), the Intellectual Property Enterprise Court (for smaller or simpler claims), and the appeal courts, and a contents table so that you can see quickly whether there is anything interesting to you.

Please get in touch with [tom.carver@wablegal.com](mailto:tom.carver@wablegal.com) for more detail on any of the cases, or for any other queries, questions or discussions.

Court of Appeal	
Patents; plausibility	<a href="#">Sandoz Ltd v Bristol-Myers Squibb Holdings Ireland Unlimited Company (Re Patent - Plausibility when determining validity)</a>
High Court	
Patents; waiver of litigation privilege in workup experiments	<a href="#">Safestand Ltd v Weston Homes Plc &amp; Ors</a>
Patents; issues not adjudicated at trial; liability stage v quantum stage	<a href="#">Lufthansa Technik AG v Astronics Advanced Electronic Systems &amp; Anor</a>
Intellectual Property Enterprise Court	
Trade marks; ownership of goodwill, passing off	<a href="#">Hayman-Joyce Property Ltd v Hayman-Joyce Broadway Llp Anor</a>

[Sandoz Ltd v Bristol-Myers Squibb Holdings Ireland Unlimited Company \(Re Patent - Plausibility when determining validity\)](#)

This is the decision in the appeal against the decision reported in our April 2022 Case Update. The Court of Appeal spent some time setting out the past case-law, including familiar cases such as *Agrevo*, *Johns Hopkins* and *Conor v Angiotech* as well as the first consideration by the UK courts of the decision in G 2/21 by the Enlarged Board of Appeal of the EPO (not yet reported), and then dismissed the appeal, finding no error by the judge at first instance.

[Safestand Ltd v Weston Homes Plc & Ors](#)

This was an application by the Claimant for specific disclosure of documents and data relating to underlying workup experiments relating to experiments relied on in the Amended Notice of Experiments ('ANOE'). The Defendant opposed the application on the basis that the documents are privileged and that the disclosure sought is not necessary for the just disposal of the claim and is not reasonable or proportionate.

The judge noted, on the question of litigation privilege, that *"Patent cases are no different to any other cases in that documents recording activity undertaken for the purpose of litigation attract privilege. Until they are deployed, they remain privileged. Once deployed, the question as to the extent to which, if at all, the effect of doing so is also to waive privilege in any other documents or material. .... In patent cases, as in any other, the opposite party and the court must have the opportunity of satisfying themselves that "what the party has chosen to release from privilege represents the whole of the material relevant to the issue in question"."*

*The problem is how to define the boundaries of the material that is relevant to the issue put in question."*

The bulk of the judgment is mainly concerned with analysing the ANOE and determining in which documents privilege had been waived by the reliance on the ANOE, the detail of which is beyond the scope of this snapshot.

#### [Lufthansa Technik AG v Astronics Advanced Electronic Systems & Anor](#)

The Claimant succeeded in the liability trial against each Defendant on at least one act of patent infringement. The Claimant had pleaded certain additional ways in which it said that infringement of the patent was established by acts done by the same Defendant in relation to the same product but it was not considered necessary by the Court to consider those additional ways for the purposes of the liability trial. The claimant elected for an account of profits.

This application concerns whether, when considering the quantum of damages, the Claimant can rely on the additional ways which were pleaded but not decided at the liability trial.

The Claimant was permitted to rely on all the additional allegations. The judge explained that *"It is not the law that detailed issues of liability not decided at the liability trial cannot be decided in the inquiry; the test is one of justice and convenience"*. It was clear that the Claimant had stripped out matters that did not need to be decided at the liability stage in order to streamline the case and it was never suggested that in doing so it would be prevented from raising such matters in the future.

If claimants had to raise such allegations at the liability trial or forever be prevented from raising them in relation to quantum the likely result would be an increase in costs for the liability phase of split trials and that would be an 'undesirable result'.

#### [Hayman-Joyce Property Ltd v Hayman-Joyce Broadway Llp Anor](#)

This was a dispute between two estate agents over the use of the name 'Hayman-Joyce'. James Hayman-Joyce founded both (the Claimant as sole proprietor and the First Defendant in partnership with the Second Defendant). However, relations between the two companies broke down after he retired.

The Claimant then registered 'Hayman-Joyce' as a trade mark and sued for passing off, trade mark and copyright infringement. The Defendant counterclaimed to invalidate the trade mark on the basis of its goodwill and also alleging bad faith registration.

The partnership agreement creating the precursor to the First Defendant had contained no express provisions related to goodwill. The judge held that the intention of the partnership agreement was that the partnership would own goodwill generated by its use of the 'Hayman-Joyce' and that the First Defendant now owned it. However, the situation was complicated by the difference in the types of services the parties offered and the facts that their 'patches' were so close geographically, with the result that some goodwill in some services was shared.

The passing off claim failed because there was either honest concurrent use, no proof of damage or no misrepresentation in relation to each of the sets of goodwill.

The counterclaim to invalidate the trade mark succeeded on the basis of the existing goodwill but the attack based on bad faith was rejected.

The copyright claim failed.