

Response ID ANON-C274-Z49P-Q

Submitted to **Appeals to the Court of Appeal: proposed amendments to Civil Procedure Rules and Practice Direction**

Submitted on **2016-06-24 16:14:58**

About you

a) What is your name?

Name:

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c) What is your organisation?

Organisation:

The Chartered Institute of Patent Attorneys

Amendment of CPR Part 52.3(6)(a)

A Do you agree that the threshold for permission to appeal to the Court of Appeal should be raised to “a substantial prospect of success”? If not, why not?

Please type your response in the text box:

No. Whilst we understand that the Court of Appeal has an issue with the number of appeals which are being lodged or the state that they are in, and that this relates to funding, it has to be recognised that courts, even the High Court, can get their decisions wrong. Access to justice and an opportunity for review is fundamental to our system. Raising the standard of proof is not the way to address this issue.

Further, we have concerns about preventing appeals where an abbreviated procedure may have been followed, whether that is through the new shorter trials procedure or by the procedure in the Intellectual Property Enterprise Court. We do not see that different tests for different first instance fora would be workable.

Amending the test to a higher threshold is the wrong solution to the problem of inadequate funding.

B Do you think that amendment of CPR Part 52.3(6)(a) will assist in reducing delays in determination of appeals in the Court of Appeal?

Please type your response in the text:

We think the amendment would assist in reducing delays provided that the Court of Appeal applies the test stringently and that the judges in the High Court do not start applying a lower standard. But it will do so at the expense of the Court not hearing cases for which an appeal should be possible.

C Do you think that these changes will adversely or positively affect any appellants or respondents more than others and if so, why?

Please type your answer in the textbox:

We think that this will adversely affect those who are poorly represented or who are defended at public expense. In order to deal with the raised standard, more money would be required to prepare a more thorough appeal brief – almost on a par with the appeal brief itself. This exports the cost to the appellant.

D Do you have any other suggestions for assisting the Court of Appeal to reduce delays in the hearing of appeals?

Please type your response in the text box:

Amendment of CPR Part 52.3

E Do you agree that the right of oral renewal for an application for permission to appeal should be removed and replaced by a system allowing for determination of such an application by a single LJ on the documents coupled with a case-management power to call the application in for an oral hearing if it assessed to be appropriate to do so? If not, why not?

Please type your response in the text box:

Yes. We think that it would be a good idea for there to be a single application for leave to the Court of Appeal. The parties should already have had an opportunity to ask for leave at first instance.

F Do you think that amendment of CPR Part 52.3(4) and (4A) will assist in reducing delays in determination of appeals in the Court of Appeal?

Please type your response in the text box:

We think it would be helpful for the Court to be able to call in the parties to discuss the case within a short period of time. However, we would caution against a

"listing with days" where to do so might deprive a party of its chosen advocate. At this point, it would be important that the advocate was the person who had full familiarity with the case, not someone who is parachuted in for a hearing. That would help no-one. So we urge flexibility.

G Do you agree that CPR Part 52.15(1A) and Part 52.15A(2) should be amended as proposed? If not, why not?

Please type your response in the text box:

These amendments seem sensible, subject to the comment above regarding the availability of the party's chosen advocate.

H Do you think that these changes will adversely or positively affect any appellants or respondents more than others and if so, why?

Please type your response in the text box:

I Do you have any other proposals as to how the procedure for considering applications for permission to appeal could be made more efficient or effective?

Please type your response in the text box:

J Do you have any other proposals as to how the procedure for considering applications for permission to appeal could be changed so as to help reduce delays in the Court of Appeal?

Please type your response in the text box:

Amendment of CPR Part 52 rule 15.16

K Do you agree that CPR Part 52.16 should be amended as proposed? If not, why not?

Please type your response in the text box:

L Do you think that amendment of CPR Part 52.16 will assist in reducing delays in determination of appeals in the Court of Appeal?

Please type your response in the text box:

M Do you think that these changes will adversely or positively affect any appellants or respondents more than others and if so, why?

Please type your response in the text box:

N Do you have any other proposals for amending CPR Part 52.16 to make the procedure for consideration of ancillary applications more efficient and effective?

Please type your response in the text box:

O Do you have any other proposals how the procedure for considering ancillary applications in the Court of Appeal could be changed so as to help reduce delays in the Court of Appeal?

Please type your response in the text box:

Amendment of Practice Direction 52C

P Do you agree that Practice Direction 52C should be amended as proposed? If not, why not?

Please type your response in the text box:

Q Do you think that amendment of Practice Direction 52C as proposed will make it more user-friendly for litigants and assist in limiting the volume of documentation placed before the Court of Appeal in determining appeals?

Please type your response in the text box:

R Do you think that these changes will adversely or positively affect any appellants or respondents more than others and if so, why?

Please type your response in the text box:

S Do you have any other proposals for amending Practice Direction 52C to make it more user-friendly for litigants?

Please type your response in the text box:

T Do you have any other proposals for amending Practice Direction 52C to limit the documentation presented to the Court of Appeal for determination of appeals?

Please type your response in the text box: