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5 **IN THE COMPETITION**

Case No. : 1595/7/7/23 & 1644/7/7/24

6 **APPEAL**

7 **TRIBUNAL**

8
9 Salisbury Square House
10 8 Salisbury Square
11 London EC4Y 8AP

12 Tuesday 4th February 2025

13
14 Before:

15 The Honourable Mr Justice Roth
16 Keith Derbyshire
17 Charles Bankes
18 (Sitting as a Tribunal in England and Wales)

19
20 BETWEEN:

21 **Between**

22 Robert Hammond

23 **Proposed Class Representative**

24 -and-

25
26 Amazon Inc and Others.

27 **Proposed Defendants**

28
29 **And Between**

30 Professor Andreas Stephan

31 **Proposed Class Representative**

32
33 -and-

34
35 Amazon Inc and Others.

36 **Proposed Defendants**

37
38 **A P P E A R A N C E S**

39 Ben Rayment On behalf of Robert Hammond (Instructed by Charles Lyndon Limited and
40 Hagens Berman EMEA LLP)

41 Mark Brealey KC On behalf Professor Andreas Stephan (Instructed by Geradin Partners
42 Limited)

43 Conall Patton KC On behalf Amazon Inc and Others. (Instructed by Herbert Smith Freehills
44 LLP & Covington & Burling LLP)

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47
48 Digital Transcription by Epiq Europe Ltd
49 Lower Ground 46 Chancery Lane WC2A 1JE

50 Tel No: 020 7404 1400

51 Email: ukclient@epiqglobal.co.uk

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(10.30 am)

(Delayed start)

(10.44 am)

Case Management Conference

MR JUSTICE ROTH: Good morning. I apologise for the delay in starting, we had some technical issues joining up all three members of the tribunal.

This is a remote hearing but of course it's just as much a tribunal hearing as if you were all present here in Salisbury Square House where I am sitting. There is an official recording of the proceedings being made and the transcript will be provided. It's strictly prohibited for anyone to make any unauthorised recording or take any visual image of the proceedings and to do so is punishable as a contempt of court.

Thank you for your skeleton arguments, draft agenda and draft order, which we found very helpful. I think it may in fact be helpful to take matters from the draft order. It's a bit more detailed than the agenda we have at our CMC bundle A, page 85. The first matter there is that the parties shall agree or seek to agree the terms of the confidentiality ring order and I wanted to know at the outset where are we on that? Has that been resolved? I don't know who wants to take --

MR BREALEY: Maybe I can just explain where we are: Professor Stephan communicated in January about agreeing the confidentiality ring order. There's been correspondence which I don't think we need to trouble you with, sir. Yesterday, Amazon stated that it was, in principle, content to use the Hammond confidentiality ring order -- so that was Amazon who wrote to us yesterday as a starting point -- and have asked us to prepare the draft, not them, and which we shall do and we shall do it this week. I don't believe it's going to be contentious because in principle everybody agrees to use the Hammond confidentiality ring. So, there may be some --

1 MR JUSTICE ROTH: Yes, go on.

2 MR BREALEY: I don't think it's going to be contentious. It was a question of who was
3 going to draft it, and Amazon asked us yesterday to draft it on the basis of the
4 Hammond confidentiality ring document.

5 MR JUSTICE ROTH: Is it Mr Turner for Amazon dealing with this aspect, or
6 Mr Patton? I don't know who it is.

7 MR BREALEY: It's Mr Rayment, I think. Mr Turner is not with us - sorry,
8 yes. - Mr Patton sorry.

9 MR PATTON: Mr Turner sends his apologies, so I am here instead.

10 MR JUSTICE ROTH: We wouldn't expect -- just to say we were a bit concerned to
11 see that two leading counsel were on the list to attend the CMC. So, it's all to the good
12 that there is only one.

13 So, yes, is that fair, Mr Patton, that you don't see any problem with this being agreed?

14 MR PATTON: No, we don't. What Mr Brealey has said is correct. As you know,
15 you've already made an order in the Hammond case, the tribunal has already made
16 a confidentiality order in the Hammond case, which is at page 895 of the bundle for
17 this hearing. And given that that has been agreed as between Mr Hammond and
18 Amazon, it's agreed that should be the starting point for drafting a confidentiality ring
19 that all three parties can be subject to, and there's no reason to suppose at the moment
20 there will be any difficulty in agreeing that.

21 MR JUSTICE ROTH: Good. Well, I think it is important it should be agreed if at all
22 possible by Friday of this week. That shouldn't cause a problem, Mr Brealey, for the
23 drafting because you have a draft to work off.

24 MR BREALEY: Correct, yes.

25 MR JUSTICE ROTH: So, I think we will say in the order: the parties shall seek to
26 agree the terms of the confidentiality ring order by whatever Friday is - I - think

1 7 February -- to be determined on the papers if not agreed. We can put that in, but it
2 doesn't look as though there is a problem.

3 MR BREALEY: We shall endeavour to send a draft to Amazon by close of business
4 today, if not first thing tomorrow.

5 MR JUSTICE ROTH: Yes. Well, I think Friday is then quite ample time.

6 MR BREALEY: It gives them time to ... yes.

7 MR JUSTICE ROTH: Good. Then I think we go to joint case management. I think
8 paragraphs 2 and 3 of this draft order are agreed by all the parties and --

9 MR RAYMENT: Sorry, sir, it's Ben Rayment for Mr Hammond. I just wanted to clarify
10 on paragraph 3 of the order, the last four words of paragraph 3 say, "So far as
11 relevant". I am sure nobody wants to be provided with material that is irrelevant, but
12 it just does raise a slight issue about how all of the parties know what is passing
13 between the other parties. So, it seems to me just for clarification, it would be sensible
14 that the covering letters to material that is being provided between the parties should
15 be copied to all parties so people can take a view on potential relevance because
16 relevance is always in the eye of the beholder, to some extent.

17 MR JUSTICE ROTH: Yes. This is dealing with admissibility of evidence, so it's not
18 about sharing information as between the parties, but whether they are admissible to
19 the tribunal, as I understood it. But otherwise, am not quite sure what the words at the
20 end, the last four words, really add.

21 MR RAYMENT: Maybe the easiest thing is they are deleted.

22 MR JUSTICE ROTH: I don't think we really need them, do we? Obviously if
23 a submission goes to a particular point raised by Mr Hammond, it's not going to be
24 relevant to a point raised by Mr Stephan, but it will all be heard together. So, any
25 objection to deleting the last four words?

26 MR BREALEY: Not from our perspective. I am just trying to work out what it reads

1 | now.

2 | MR JUSTICE ROTH: To be heard together with evidence and submissions in one to
3 | be admissible as evidence and submissions in the other.

4 | MR BREALEY: Yes. "Full stop", yes.

5 | MR JUSTICE ROTH: Full stop?

6 | MR BREALEY: Yes.

7 | MR JUSTICE ROTH: Mr Patton, obviously if you say it's irrelevant, then that's
8 | something one can go into at the hearing. But I think it's better to have it open in the
9 | order and preclude any correspondence and argument in advance.

10 | MR PATTON: Sorry, sir, I am just awaiting instructions on the point. May I just have
11 | one moment?

12 | MR JUSTICE ROTH: Yes, of course.

13 | MR PATTON: Sir, that's understood, and we are content for it not to be in the order
14 | on the basis that it's established that obviously evidence is only ever admissible if it's
15 | relevant to an issue in the case, so it would remain open to any party to make the point
16 | that one piece of evidence is just not relevant to the other's application.

17 | MR JUSTICE ROTH: Yes, absolutely, thank you. So that's that. The next thing is
18 | publicity for Mr Hammond. We take the point, Mr Rayment, that you have publicised
19 | already, you've given notice such that any potential class member should object or
20 | make representations. There was a date, it passed. It was a date set by the tribunal.
21 | There were no objections, and we accept that it's really not necessary for you to re-
22 | publicise a notice with a further date for objections to exactly the same application.
23 | I think it is, however, important that you do publicise the hearing dates, which are being
24 | settled of course today. I don't know what form of publicity you were using to
25 | communicate. You would have had originally something about hearing dates,
26 | I expect, but people need to be told what the new hearing date is. So, is that

1 something you have had in mind?

2 MR RAYMENT: I think the suggestion -- I think our suggestion was that we would re-

3 publicise the new hearing date once known on our claim's website for the sake of good

4 order and as part of Mr Hammond's general responsibility to keep potential class

5 members updated.

6 On the other hand, to the extent that there was anybody who had submitted any

7 representations or a desire to attend the hearing, they would have been in touch with

8 the tribunal and presumably would be also updated by the tribunal. But as I say, we

9 have already volunteered that we will ensure our claims website is updated with the

10 new hearing date once available.

11 MR JUSTICE ROTH: Yes. I think that should go in the order.

12 MR RAYMENT: Could it go in as an undertaking, maybe?

13 MR JUSTICE ROTH: Does it matter?

14 MR RAYMENT: If you want to, it's fine.

15 MR JUSTICE ROTH: I think -- yes, otherwise, equally, why should Professor Stephan

16 not have it as an undertaking? It's just management. I think you will re-publicise the

17 new hearing date on your website and --

18 MR RAYMENT: That's fine.

19 MR JUSTICE ROTH: Then we have Professor Stephan -- and this is paragraph 4 of

20 the order -- publicise the Stephan CPO. I think we have a draft notice, do we not,

21 Mr Brealey?

22 MR BREALEY: We do. That's in volume A, tab 6, page 90. That is a draft notice of

23 application. You will see there some dates to be put in, in yellow.

24 MR JUSTICE ROTH: Yes, so we need to look at that.

25 MR BREALEY: On page 90, the first page, there is a date in yellow, and that's

26 six years from the filing, 26 June 2018.

1 MR JUSTICE ROTH: Yes.

2 MR BREALEY: Then the same on page 91, there's a ... then on page 92 --

3 MR JUSTICE ROTH: Sorry. Starting six years and ending when the case was - so

4 it's - 26 June 2018 to 25 June 2024, is that it, the two dates on page 91?

5 MR BREALEY: Yes, yes.

6 MR JUSTICE ROTH: Yes, and then --

7 MR BREALEY: Then on page 92, is that right?

8 MR JUSTICE ROTH: Then we are on page 92 ...

9 MR BREALEY: That would be dependent on what the tribunal determines the hearing

10 date, whether it is starting on the 29th.

11 MR JUSTICE ROTH: Yes, and then there is all the dates for objections and --

12 MR BREALEY: They are all the same, and those are the dates we have in

13 paragraphs 8 and 9 of the draft order. Those dates would be 4 April 2025.

14 MR JUSTICE ROTH: Yes. We will perhaps then come back to those dates when

15 we've - there are only three dates, I think. One is the date of the hearing, the second

16 is the date for objections to be given. - Is there a third date or are they all the same?

17 MR BREALEY: Those are the only two types of dates that we need to go firm on.

18 MR JUSTICE ROTH: Yes, right. We'll come back to those, otherwise I think we are

19 satisfied, unless either of my colleagues raise any point with the notice and the form

20 of notice.

21 MR BREALEY: We certainly haven't had any objection but ...

22 MR JUSTICE ROTH: Yes, good. Then the next question is probably about the hearing

23 itself, and then we can consider other dates and what has to happen before.

24 I think one of you says three days, one of you says three days with a fourth in reserve,

25 and Amazon says four days. So, I think rather than wasting time on that and in our

26 state of relative ignorance of what arguments will be advanced, we will say three days

1 with a fourth in reserve, therefore Amazon may end up with its four days or not as the
2 case develops.

3 Then the question is when it can be heard? We had proposed that it will be heard in
4 the week of 28 April, but to begin not on the Monday but on Tuesday 29th, so the three
5 days being Tuesday, Wednesday, Thursday, and Friday 2 May is the day in reserve.

6 If that is the hearing date, then it seems to us, taking account of Amazon saying it
7 wants seven weeks to respond, Amazon can put in its response to the Stephan
8 proceedings by 10 March. That is seven weeks from 20 January when you knew that
9 this was going ahead. Of course, you have looked at evidence of Stephan before that
10 and obviously had considered Dr Houpis' report with some care because you'd sent
11 a detailed request for further information well before 20 January. But we are taking it,
12 giving you the indulgence of saying 20 January and the seven weeks.

13 So, is there any good reason, Mr Patton, why you cannot put in your response by
14 10 March?

15 MR PATTON: Well, sir, obviously when we said seven weeks, what we meant was
16 seven weeks from today. We could have used a different number if we'd been
17 counting it from 20 January, but seven weeks from today was our assessment as to
18 the amount of time --

19 MR JUSTICE ROTH: You have been working on it since 20 January.

20 MR PATTON: Of course, of course. So, if it would have been more helpful for us to
21 present the figure running from the date of the carriage judgment, then the figure would
22 be nine weeks.

23 MR JUSTICE ROTH: Why isn't seven weeks enough? It's quite a long time, and you
24 have looked at some of this. As I say, you've looked at - as I understand it, but you
25 will tell me if I am wrong, you are not seeking - to strike out the allegations or reverse
26 summary judgment of the allegations in the Stephan claim.

1 MR PATTON: No decisions have been made until now as to what points will or will
2 not be taken when we put in our response and any strike out of a summary judgment
3 application, so we are still very much in the early days. We've had two weeks since
4 you handed down your judgment deciding which of the two rival PCRs would be
5 allowed to proceed.

6 MR JUSTICE ROTH: Yes.

7 MR PATTON: We do say - and I think it's implicit in what the tribunal
8 has - said - that - you accept that the judgment on the carriage dispute is the correct
9 time from which we should be expected to be preparing in earnest our response and
10 any strike out applications and any evidence.

11 If that is not accepted, then it's something the tribunal - the - then president said at the
12 CMC in the Hunter Hammond CMC, and if I can draw that to your attention, it's in --

13 MR JUSTICE ROTH: No, you don't need to draw it to our attention. Of course, we
14 accept that, but we also note that in practice in this case, you clearly have been looking
15 carefully at Dr Houpis' report already in November.

16 MR PATTON: Well, obviously we reviewed the report. The first point we needed to
17 do was to identify any overlap with the Hammond case, and the tribunal knows that
18 Herbert Smith Freehills wrote to the tribunal about that, because that was the priority
19 point to be identified, given that the Hammond hearing was coming up in September.
20 So, we did that.

21 Obviously, we didn't leave the materials to one side and ignore them, and you know
22 we wrote a letter in November, as you say, asking for certain information, which on the
23 face of Dr Houpis' expert report must exist. I am sure the tribunal will also know that
24 the response we received to that request on 5 December was a refusal to provide any
25 of those data on the basis it was premature because the outcome of the carriage
26 dispute wasn't known. That's page 1072 of the bundle.

1 MR JUSTICE ROTH: You obviously looked with great care through Dr Houpis' report,
2 not simply to see if there's any overlap, but actually to look in some detail at his
3 methodology.

4 MR PATTON: It's evident on the face of his report that he's carried out certain
5 analysis, the data for which wasn't enclosed with the report. One simply has to read
6 the report -- I can take you to examples of it --

7 MR JUSTICE ROTH: You, obviously -- sorry to interrupt you. All I am saying is those
8 instructing you obviously read it with great care, so they wrote a letter referring to
9 various footnotes in the report. So, they clearly pored over it.

10 MR PATTON: Well, I don't accept that - I am not suggesting they read it negligently,
11 that would be an absurd submission to make. But the question is: what was the
12 purpose of the review at that stage? The purpose was to identify things that were
13 missing from the report which would be needed to understand what the expert had
14 done. It's true they refer to footnotes, but it's clear from the body of the text that he
15 had performed certain analyses, he hadn't explained the detail of how that analysis
16 had been done, and those workings must exist. - So, a letter was written saying please
17 can you provide us with those workings so we can understand what he's saying in the
18 report? That's it.

19 That's obviously something which can be done actually as a rather mechanical
20 exercise: what are the points in the expert report where the supporting document has
21 not been provided? It's not the same exercise as, once you know this is the PCR
22 whose application is going to be allowed to proceed, then how does that line up against
23 the certification criteria? That's a different and much bigger exercise; that's an
24 exercise which is going to involve detailed legal analysis; it's an exercise that's going
25 to involve detailed expert input from our own expert. It may well involve the preparation
26 of an expert report which is going to be put into evidence. It's going to require input to

1 be taken from various teams within Amazon and instructions taken. That's an exercise
2 which the tribunal made clear in the Hunter Hammond certification it did not expect to
3 be undertaken in parallel with the carriage dispute. If we were doing that for
4 Professor Stephan's application, we would have had to do exactly the same thing for
5 the BIRA application because we didn't know which of them was going to be favoured
6 by the tribunal.

7 In my submission, there's nothing in the rules, and all the guidance given to date
8 suggests that's not something a party is expected to do, to prepare shadow response
9 documents. And if they did that, for example, there's no mechanism by which the
10 costs of doing a shadow response to the PCR, whose application doesn't prevail on
11 the carriage dispute, there's no mechanism for that to be recovered either.

12 So, the exercise now being undertaken under considerable pressure of time is
13 a different exercise from going through the report and seeing what is missing, what
14 hasn't been provided, and requesting it.

15 The point I was about to make was that, as you know, what we were told by
16 Professor Stephan was it was premature to make even that very mechanical request
17 made in November. The data has not been provided; the skeleton has indicated they
18 are now content in principle to provide the data; they wanted more of an explanation
19 as to why we wanted it. We've sent a further letter about that yesterday afternoon,
20 and as at today's hearing, we still don't have that data. So that's something we've not
21 yet got in circumstances where the tribunal is setting a timetable today for our
22 response.

23 So, sir, the fact that someone was able to see on the face of the report in November
24 there's something missing is not, in my submission, a basis for saying Amazon has
25 done all the work needed to prepare a proper response with the supporting evidence
26 of the kind the tribunal would expect to be provided in the response to the CPO

1 application.

2 As you know, the scope of the Stephan application is considerably wider than the
3 Hammond application which Amazon has previously put in a response to. It alleges
4 two abuses which form no part of the Hammond application - that's the non-public
5 seller data alleged abuse, and the anti-discounting alleged abuse. So those are points
6 which have never been needed to be looked at.

7 There is also the point that now we know Professor Stephan is the PCR who has
8 prevailed on carriage, the question of the overlap between that and Mr Hammond's
9 application will need to be looked at carefully in advance of certification. That's in itself
10 a complicating factor because one has to carefully compare the two claims to
11 understand what is the interrelationship between them; what are the possible tensions
12 between them. That's an exercise that can now be done in the light of the tribunal's
13 carriage judgment which couldn't have been done before we knew which of the two
14 PCRs prevailed.

15 As you know, the expert evidence which has been submitted with the Stephan
16 application is very substantial, Dr Houppis' report runs to 278 pages. The fact it's been
17 read, and there's been an identification of things which are missing, is not the same
18 as getting expert input on it knowing that is the application going forward and preparing
19 an expert response which deals appropriately with any points suitable for certification
20 in relation to that.

21 Those are the reasons why we submit - we - have made the point in our skeleton that
22 seven weeks from today, or nine weeks if you prefer to count it in that way, is a limited
23 period of time. It's much less time than has generally been permitted for responses in
24 complex cases, where in general the amount of time allowed to defend it has been
25 counted in months, rather than weeks. Even in the Hammond application, Amazon
26 was allowed four months to prepare its response from the date of the carriage

1 judgment, and that was absolutely necessary in the Hammond application, that period
2 of time.

3 So, we do say that the very minimum from today is seven weeks, and we are very
4 concerned that even that is going to be very challenging and difficult for us. But if the
5 tribunal is proposing to cut it short from that as you have suggested, that's going to be
6 an impossible task, in my submission.

7 MR JUSTICE ROTH: Yes. It would be unusual to put in an expert report in response
8 to an application for certification.

9 MR PATTON: I am not sure why you say that, sir. That's what happened in the
10 Hammond application: an expert report from Mr Holt was put in, and a response to
11 that was served by Dr Pike, he submitted a fourth report in the reply. That itself ran to
12 26 pages, Dr Pike's fourth report in reply. Certainly, in other cases I have done, expert
13 evidence has been submitted in relation to - in the response document. It can go to
14 the question of whether the expert has identified a clear blueprint to trial. That's
15 something on which the tribunal might well be assisted - by expert evidence, analysing
16 whether the necessary blueprint is fair.

17 MR JUSTICE ROTH: Yes. I don't think we particularly wish to encourage expert
18 evidence from respondents. We don't exclude it, and certainly it's not a mini trial of
19 expert evidence. We are a bit concerned by the scope of some of the material
20 requested in the letter, which seems to go to looking at the underlying data used in
21 analysis. What we are concerned with is whether the approach of the analysis is
22 a plausible one.

23 So, for example, asking for the full data set underlying - and coding econometrics
24 analysis, that request could be made in every case where econometrics analysis is
25 used, and that is simply not relevant to the certification exercise. If it's - a well -
26 established method of econometric approach, we don't go into the robustness of the

1 application of the method. That's a matter for trial.

2 MR PATTON: All that has been requested at the moment is information, and it's been
3 agreed that that information will be provided. So, that is information which enables
4 Amazon and (inaudible) to understand more fully what Dr Houpis has done. What that
5 gives rise to in terms of the certification response is obviously something we will
6 consider carefully, but the mere fact that the information has been requested doesn't
7 mean that is going to lead to a particular point being made in response. It may or may
8 not do, it's simply a first step in understanding what Dr Houpis has done. As I say, if
9 that information is going to be provided and obviously we'd want to look at it and take
10 it into account in formulating what our response is.

11 MR JUSTICE ROTH: Yes. I think we should hear from first - let's take it in order - first
12 from Mr Rayment. We appreciate it's - not about responding to your application, but
13 they are going to be heard together, so it obviously has an effect on you and your
14 client. So, what do you want to say, if anything, Mr Rayment? Or would you rather
15 Mr Brealey goes first?

16 MR RAYMENT: I think it probably makes more sense if Mr Brealey goes first. We do
17 have one point about paragraph 7 of the order, but I think --

18 MR JUSTICE ROTH: Yes, I think that's --

19 MR RAYMENT: In fact, I can summarise our position very, very shortly, which is that
20 we support the date the tribunal has identified. That's the right sort of time frame. The
21 crucial issue is the one you've already identified, sir, which is that in terms of assessing
22 the amount of work required prior to the hearing, one needs to have firmly in mind
23 what the issue at the hearing is going to be. We are not talking about trials, we are
24 talking about the question of certifiability, the question of plausibility, and insofar as
25 the respondents have submissions to make, we are looking for clean knock-out blows
26 as to why the applications advanced by the PCRs are not even plausible.

1 In my respectful submission, once you focus on the relative narrowness of the issue,
2 that unlocks the answer, as it were, in terms of what is necessary in terms of preparing
3 for such a hearing.

4 So that is the key point from our point of view, and obviously from Mr Hammond's point
5 of view, it's now over 18 months since his application was lodged, and that delay is
6 what it is - it was unavoidable, to some extent, in the circumstances. But now matters
7 are clarified as to who can bring these claims, we strongly urge the tribunal to move
8 forward as fast as reasonably practicable.

9 MR JUSTICE ROTH: Yes, thank you. Mr Brealey, the objections are substantially
10 directed at the work needed to respond to your broader claims.

11 MR BREALEY: Can I just answer that? On the nature of the claims, Amazon has had
12 the Houpis report since July of last year, and they have clearly, as you have indicated,
13 interrogated the report because they've asked questions about the report in
14 November. And I think we are in a position to provide the data they have requested
15 by close of play tomorrow, it may be Thursday. So, we are in the process of providing
16 the data to them. They gave us the reasons yesterday, I believe we will be in a position
17 tomorrow, if not Thursday, to respond to that request. If we do, that gives them over
18 four weeks to interrogate that data because they have an extension until 10 March.

19 In a nutshell, they've had the report since July of last year. They've clearly had a look
20 at the report because they've asked for the data set. They will have over four weeks
21 to interrogate the data. We do share the tribunal's concern, your concern, that we are
22 slightly in the dark as to what they are going to do with this, and we are concerned it
23 could turn into a mini trial about the robustness of the methodology.

24 As Mr Rayment says, with the narrowness of the certification hearing, it being
25 a Microsoft test, over four weeks for this data is clearly sufficient for them to respond.

26 So, we would respectfully ask that we keep the 28th, 29th - the week commencing the

1 28th date, and there is no prejudice whatsoever to Amazon if it keeps in mind the
2 purpose of the CPO hearing. - But they will have over four weeks to look at this data.
3 MR JUSTICE ROTH: Yes.
4 MR PATTON: May I just reply briefly?
5 MR JUSTICE ROTH: Mr Patton, do you want to respond briefly?
6 MR PATTON: Yes. The point that we've had the expert report since July, in my
7 submission, that would drive coach and horses through the point Sir Marcus made at
8 the Hunter Hammond CMC. You are not expected to prepare your response until the
9 carriage dispute has been provided. As I have said, that was the guidance Amazon
10 was given. In that case, Sir Marcus said if we took a low-key approach to the carriage
11 dispute and didn't seek to involve ourselves in it, then he would have been minded to
12 give us 12 weeks in Hunter Hammond for our response, which is what he did, which
13 I say is a necessary period of time.
14 To say now we've had it since July, that's implicitly saying we should have been
15 preparing two shadow responses in parallel to both the BIRA application -- which
16 would have been a complete waste of time and money -- and to the Stephan
17 application, with no actual means as far as we can see in the tribunal rules for us to
18 recover the costs of that wasted exercise had we done it. That is not the guidance the
19 respondents to the CPO applications were given, so it's wrong to say that because
20 we've had it since July, that is a material factor.
21 What Mr Brealey didn't deal with is that when we did ask for the information which
22 underlay the expert report, they refused on the basis that it was premature pending
23 the outcome of the carriage dispute. So, their own position in December was we need
24 not be advancing our analysis of the expert report until after the carriage dispute had
25 been resolved, and that's the basis on which we have been proceeding, that we would
26 be able to revisit that. That's reflected in the fact that now the carriage dispute has

1 | been resolved, they've agreed to provide the material promptly, which we welcome.

2 | But we must recognise that's happening only now.

3 | In relation to why this material may be relevant to certification, you have seen that
4 | a number of the categories of data that we've sought had to deal with the preliminary
5 | damages estimate and how that's been calculated. Obviously, that is a matter which
6 | is totally relevant on certification to questions of the cost benefit analysis. So, it is
7 | a matter which potentially goes to certification, at least in that respect.

8 | As regards the point you put to me, sir, that respondents don't generally adduce expert
9 | evidence in CP applications, there is a lot of expertise in the room with me about how
10 | many different CPO applications have been addressed. I am told there was
11 | permission for expert evidence to be adduced in Riefa, in the Apple Power
12 | Management case, in the Royal Mail CPO, and in McLaren, and indeed there may be
13 | others.

14 | So, the practice to date at least has been that expert evidence has been adduced. As
15 | I say, that is what we've done in the Hammond case, and it would be odd if this should
16 | be different, given that the two are going to be case managed together if we were
17 | given an opportunity to prepare expert evidence in Hammond, but we were not going
18 | to be given time to do that properly in the Stephan case.

19 | That is why we do say, sir, that allowing us the effectively extra two weeks we have
20 | asked for in order to allow us fairly to respond to a CPO application, which is already
21 | a truly massive amount on the face of it, is reasonable and proportionate in the
22 | circumstances of this case.

23 | MR JUSTICE ROTH: So, do I understand that your position is you wouldn't have
24 | a problem if the hearing were in the second half of May?

25 | MR PATTON: In terms of the hearing date, I was really addressing you on the timing
26 | of the response. As we've made very clear about that --

1 MR JUSTICE ROTH: It all works --

2 MR PATTON: It does all work back from that, it does.

3 MR JUSTICE ROTH: What you are saying is a further two weeks for response. So

4 instead of 10 March, it would be 24 March.

5 MR PATTON: Yes, 24th and 25 March.

6 MR JUSTICE ROTH: Yes.

7 MR PATTON: As we've made clear --

8 MR JUSTICE ROTH: There will be one date for the response.

9 MR PATTON: Yes, 24 March. We had suggested 25 March. If you went to the 24th,

10 that would be something we'd understand.

11 As we've made clear in our skeleton, paragraph 20, we are certainly not in the

12 business of seeking to delay the hearing for its own sake in this case, we've made that

13 very clear. It's simply a matter of ensuring there's time for us to fairly to do everything

14 which needs to be done. As you see in paragraph 20, we identified a number of other

15 dates we could do, even 5 May 2025. Although that would be highly challenging, that

16 would give some further time for the preparatory steps. And we're also content, as

17 we've said, with 26 May and 2 June, so those two weeks.

18 We've identified new dates when our team is available. I think we've previously been

19 told that Mr Hammond's team is also available I think in the week of 5 May. So, we

20 have been seeking to find near dates, but dates that take some of the pressure out of

21 the timetable which would otherwise arise if it's in the week of 28 April.

22 MR JUSTICE ROTH: Yes, I see. Thank you. I think we will withdraw metaphorically

23 to the retiring room - we have a virtual retiring room to discuss this amongst ourselves.

24 We will come back to you. - Before I do that --

25 MR BREALEY: Could I just make a point?

26 MR JUSTICE ROTH: Yes, Mr Brealey.

1 MR BREALEY: I am sorry to interrupt. If one is looking at paragraph 5 of the draft
2 order and Mr Patton gets, for sake of argument, his 24 March date ...

3 MR JUSTICE ROTH: Yes.

4 MR BREALEY: I would have to discuss it, but I believe there would still be some time
5 for Amazon to put in a short expert response which would preserve the integrity of
6 28/29 April. So, to accommodate Mr Patton and Amazon, one could go to 24 March.
7 It does not necessarily mean that we have to go to May. It just means that maybe
8 Dr Houpis has less time to put an expert response in, because it will be a responsive
9 report.

10 MR JUSTICE ROTH: Well, if we - just let's think about that. If it's 24 March, you may
11 want to file a reply. - How much time would you envisage needing for that?

12 MR BREALEY: Maybe three weeks, then. So, we could go to 21st to 28 March,
13 whatever date that is, and that is still --

14 MR JUSTICE ROTH: Hang on. Three weeks from --

15 MR BREALEY: Yes, 28 March. So, 17 April ...

16 MR JUSTICE ROTH: Three weeks is 14 April.

17 MR BREALEY: Yes.

18 MR JUSTICE ROTH: We then have - bear in mind that the 18th to the 21st is Easter.
19 We would then - need - if - we kept our date, we would need skeleton arguments by,
20 I think, 23 April.

21 MR BREALEY: Yes.

22 MR JUSTICE ROTH: I think that would be - we can consider whether it's - possible to
23 get on 24 April, but that would be the absolute deadline for us to read those and
24 consider them, with the hearing starting the following Tuesday.

25 MR BREALEY: Yes. It could be, sir - I - mean, clearly, you'll have Houpis by --

26 MR JUSTICE ROTH: 14 April.

1 MR BREALEY: You'll have had all the evidence, and then it will be a question of the
2 skeletons, maybe a page length limit for the skeletons.

3 MR JUSTICE ROTH: Yes, that is clear, there will be - and you've made various points
4 about what it should be. - Yes, 24 March, and Mr Hammond - we'll come to his
5 response, but that's much more limited, and the Amazon response in Hammond could
6 clearly be - by - that's something that doesn't - need so much work from Amazon, and
7 we just have to get our bundles. Yes.

8 Yes. Mr Patton, is there a problem - looking at what Mr Brealey is proposing: you get
9 your 24 March, Mr Brealey says his client is content with 14 April for response, and
10 then we'd - have skeletons on the 23rd or 24 April.

11 MR PATTON: Well, we would certainly much prefer that to the original suggestion
12 that we should aim for 10 March.

13 I just want to make sure you have drawn to your attention that that does create quite
14 a difficult period in terms of the preparation of the skeletons. If one starts from
15 Monday, 14 April, as you've pointed out, one has the bank holiday weekend at
16 Easter - and maybe lawyers don't get to enjoy a bank holiday, but there will be people
17 who will be unavailable during that period, I am sure. - So, you have something like
18 three or four working days between the delivery of the reply and the need to serve the
19 skeletons, and that's obviously a very tight position, given the reply is going to be the
20 document that really crystallises what's left in dispute for the tribunal to decide.

21 We'll want our skeleton to be as responsive as possible, you won't want us to have
22 prepared a skeleton which ignores the reply and doesn't take it into account; you'll
23 want it to be focused and crystallised as to what's being in issue, and indeed we will
24 have received an expert report. I don't know how long it will be from Dr Houpis on
25 14 April, which will have to be digested and understood.

26 So, it is tight in terms of the skeletons, but we certainly see it as a more realistic

1 timetable than the one we have previously seen. I don't know whether Mr Brealey
2 could live with 11 April, the Friday.

3 MR JUSTICE ROTH: Can I stop you for a minute because it's not actually hugely
4 different. You have suggested the week of 5 May, and Mr Hammond is available in
5 the week of 5 May, as I understand it, and Mr Rayment will correct me if that's wrong,
6 but that's what we are told.

7 Mr Brealey, if we were to put it to 5 May, which is actually only putting it back by
8 a week, I think 5 May itself, is it a bank holiday? Perhaps someone can check.

9 MR PATTON: It is.

10 MR JUSTICE ROTH: It is, is it?

11 MR PATTON: Yes.

12 MR JUSTICE ROTH: So, we start on the 6th, but we have our three plus one days.
13 Is Professor Stephan's counsel available that week?

14 MR BREALEY: We can check, sir. I know I am because I looked at 5 May because
15 that was a possibility. I don't know about other counsel, Mr Beal, but we can check.

16 MR JUSTICE ROTH: Yes, if you would like to check that. We can't always
17 accommodate, particularly when you have three counsel, all counsel. As you will
18 understand, it's important clearly that Professor Stephan's leading counsel is
19 available.

20 MR BREALEY: Sorry to interrupt, sir. The beauty of technology, I am told he is
21 available, so we are not prejudiced.

22 MR JUSTICE ROTH: Yes. Well, I think we'll withdraw for a moment, and we'll come
23 back to you.

24 (11.37 am)

25 (A short break)

26 (11.44 am)

1 MR JUSTICE ROTH: Yes, thank you very much. We are not wholly persuaded that
2 Amazon does need seven weeks from today, but we do not think it's desirable to
3 impose a timetable that causes considerable complaint. So, we will give Amazon its
4 seven weeks till 24 March.

5 We are more persuaded that it's oppressive to get everyone working frantically over
6 the Easter weekend just for the sake of one week advancing the hearing. Therefore,
7 we will list it for - put it back to the week beginning 5 May, therefore, to start on
8 6 May - to run from the 6th to the 8th with the 9th in reserve. On that basis, Amazon
9 will get its seven weeks to 24 March from today; and working on from that, then, for
10 Professor Stephan's reply, you wanted three weeks I think you said, Mr Brealey? - Are
11 you content with 14 April?

12 MR BREALEY: Yes.

13 MR JUSTICE ROTH: Then we'll come back to the issue in the Hammond proceedings,
14 which is paragraph 7 on the draft order. But if that is then our date and allowing people
15 their Easter, I think we would like skeleton arguments then by 29 April. Is that
16 reasonable? There are nods.

17 MR BREALEY: Yes, sir. Thank you.

18 MR JUSTICE ROTH: Close of business 4 pm on the 29th. We'll come back to page
19 limits.

20 As far as bundles are concerned, I would have thought the answer is that you should
21 then file an electronic bundle by - and the real point is we want the skeletons to be
22 cross-referenced to the bundles. All too often, we get skeletons which are not
23 cross-referenced and having worked through them and marked them up, then two
24 days later we get a cross-referenced skeleton, which is really not helpful. So, if we
25 are going to get our skeleton on the 29th, it's really a question of what is practicable in
26 terms of preparing bundles.

1 I would like to order that electronic bundles are served by 25 April; and we will then
2 indicate what bundles we need in hard copy because we won't need them all in hard
3 copy. We can say we will want the statements, the responses and the expert reports
4 excluding annexes in hard copy, but authorities we may well not need in hard copy at
5 all. So, if we say electronic bundles by the 25th, that will enable you to cross reference;
6 and if we say any hard copy bundles to come with the skeletons on the 29th.
7 Does that work in terms of those who are doing the heavy lifting on bundling, which is
8 not the people we see on screen, but the people who are instructing them?
9 MR BREALEY: I have had some nods, sir, so ...
10 MR RAYMENT: Sir, may I just raise the point about the authorities bundle because
11 as you will have seen from the draft order, the PCRs have agreed to share the
12 preparation of the bundles with Professor Stephan's team doing the hearing bundle
13 and the Hammond team doing the authorities bundle. I was just wondering, would it
14 be possible to provide the authorities bundle the day after skeletons because ...
15 MR JUSTICE ROTH: Yes, I think that will be fine.
16 MR RAYMENT: Thank you.
17 MR JUSTICE ROTH: Yes, the 30th.
18 MR RAYMENT: Yes.
19 MR PATTON: Sir, on that basis, is the tribunal content for there not to be cross
20 referencing to the authorities bundle? Often there isn't.
21 MR JUSTICE ROTH: Yes, I think that is - I mean, if it's possible to have the -- well,
22 no, we are not really content with that. I don't think we necessarily need the page of
23 the case, but it is very helpful to have what tab it is in the authorities bundle so we can
24 find it, and obviously the bundles will be bookmarked. It should be - no -, I think really
25 you should cross reference to the authorities bundle, and then it's - just a question of
26 liaising to achieve that.

1 | What you are saying, as I am reading between the lines, as it were, is that until you
2 | get the skeletons, you don't actually know what all the authorities are which are going
3 | to be referred to.

4 | MR RAYMENT: Not totally definitively, but obviously we can cooperate in order to
5 | create an authorities bundle prior to the lodging of skeletons. But sometimes things
6 | are added late to the skeleton.

7 | MR JUSTICE ROTH: Yes. It's unlike ... if the case is going to be - let me start
8 | again. - Unless Amazon are really going to seek to strike out parts of the Stephan
9 | claim or seek reverse summary judgment -- which I would find surprising in these
10 | circumstances where every one of Professor Stephan's allegations reflects a matter
11 | at least which has been raised -- if not formally decided by a competition authority,
12 | unless that were to happen, I would not have thought this will be a case with a vast
13 | number of authorities.

14 | So, on that basis, I think we can live with the authorities bundle coming afterwards,
15 | namely on the 30th, without cross referencing, if you are going to take what as I have
16 | said I would find a surprising course, but it's obviously a course open to you if you
17 | wish. Then I think there may be substantially more authorities because then you are
18 | getting really into questions of competition law.

19 | But I think have said enough to indicate what I think the position should be. So, I think
20 | if you can cross reference authorities, if not, I think we can live with that. We'll - get
21 | them on --

22 | MR RAYMENT: -- (inaudible due to over speaking).

23 | MR JUSTICE ROTH: Okay. As far as page limits on skeletons, unlike trial, it's not
24 | a case with a lot of evidence, and we have your statements. Do you really need
25 | 25 pages, Mr Brealey?

26 | MR BREALEY: We can live with 20. We just cut it ...

1 MR JUSTICE ROTH: I mean, we will read your statement --

2 MR BREALEY: Yes.

3 MR JUSTICE ROTH: - as we already of course have once in detail for the carriage
4 dispute, we shall read Mr Hammond's. Do you need - if - the Stephan skeleton is 20
5 with your more limited claim, Mr Rayment, can you do it in 20?

6 MR RAYMENT: Sir, we would certainly try to do it in 20. I assume you are not at this
7 time shutting us out from the possibility of applying for a short extension, even if you
8 are not encouraging it at this stage. My slight hesitation is that as you will have seen,
9 Amazon is threatening to raise a number of issues, I think, about funding, and I don't
10 know to what extent that will -- hopefully there won't be any issues about it by the time
11 we get to the hearing, but we have to take up space rather than dealing with the merits
12 of the certification issue. That's my one concern, but we will certainly endeavour to be
13 concise and contain our skeleton within 20 pages. I suppose I am just putting down
14 a marker that we might need a bit more.

15 MR JUSTICE ROTH: Yes. Mr Patton, there is an element of overlap, as you pointed
16 out earlier. So, I don't think just a straight doubling is necessarily appropriate, and
17 I would have thought you can manage in -- if we allowed -- let's say we give them a bit
18 of leeway and gave them 23 pages each, you could do your response in 40 pages,
19 could you not, your skeleton? I say response, they are simultaneous, so your skeleton
20 in 40 pages, I think.

21 MR PATTON: Sir, I do have a number of points to make. The first is if you could just
22 bear in mind when it comes to our skeleton, we are in a somewhat different position
23 from the PCRs because they will each have had the last word in the statements, so
24 they will shortly beforehand have put in their statement of reply where there is no page
25 limit and they will have been able to say everything they want to say about our
26 response.

1 For us, the skeleton is therefore the only opportunity we have to address the points
2 they have made in their reply. That's why, in my submission, it's likely to take us a little
3 longer. They will be able to say "see what we said in our reply, which we won't repeat".
4 We won't have that luxury, we'll have to make the submission from the ground up in
5 the skeleton. That's the first point.

6 The second point is that although there are areas of overlap, that doesn't necessarily
7 involve a reduction in what we have to say. It may be that addressing the overlap is
8 itself a positive point which needs to be made and explained to the tribunal. So, I do
9 suggest it's unduly simplistic to say that because there's some overlap, that cuts down
10 what we need to say. It may actually increase what we need to say; we may need to
11 draw attention between the two cases and the way in which they overlap, or an
12 inconsistency.

13 So, I certainly would ask, given we are faced with two substantial applications, we
14 should have at the very least the same amount of pages to respond to that. But as
15 I have said, because of the fact they've already had the last word on an unlimited
16 basis, it may be slightly more to properly deal with the points they've raised in their
17 reply.

18 MR JUSTICE ROTH: Yes, thank you.

19 MR RAYMENT: Sir, can I just raise a point of clarification because Mr Patton was
20 referring to the PCRs, plural, when he was talking about responses, and so on. But
21 the order as currently drafted doesn't provide for any further submission documents
22 by Hammond because there is already a fairly extensive suite of documents in relation
23 to his application.

24 The only additional document we understood to be coming which was relevant to the
25 Hammond application was the application to put in a document, which we understand
26 from Mr Patton's skeleton, paragraph 23, to relate to potential funding issues if those

1 have not been resolved prior to the hearing.

2 MR PATTON: I wasn't intending to suggest otherwise. I am not suggesting that we -
3 Mr - Hammond has already had the last word, in a sense, in the Hammond application
4 because he has put in his reply, which I made a note is something like 40 pages,
5 I think, plus the 23 page expert report. - So, that's something we will have the
6 opportunity to address in our skeleton, but our skeleton will be the first chance we
7 have to respond to that reply.

8 MR JUSTICE ROTH: Yes. We will withdraw. I hope - we have been having slight
9 technical issues since you may have gathered in switching to our virtual retiring room,
10 which is why we've had these delays. But I hope it will go smoothly because we'll just
11 take a very short - break so we can confer.

12 (12.01 pm)

13 (A short break)

14 (12.05 pm)

15 MR JUSTICE ROTH: Can you hear me, counsel?

16 MR BREALEY: Yes, we can, sir.

17 MR JUSTICE ROTH: Yes, we are going to compromise. The class representatives
18 each will have skeletons limited to 23 pages, and Amazon's skeleton in response to
19 both limited to 45 pages.

20 The next point is I think the supplementary response in Hammond that Amazon wishes
21 to serve. That's paragraph 7 in the draft order. The question of - that - would be
22 limited, is that right, to addressing matters in - is it Mr Hammond's amended witness
23 statement? - Is that the area you wish to deal with, Mr Patton?

24 MR PATTON: So, it arises out of that. It's essentially a point about funding. First of
25 all, it's arising out of the correction to the witness statement in relation to what the
26 funding arrangements are. As you know, the case law has continued to develop in

1 relation to funding points, and there the recent (audio distortion). So, we have some
2 questions we are going to raise in correspondence; then depending on how those are
3 answered or what steps are taken in response to those, there may be a point we need
4 to draw to your attention. Rather than simply raising it in this hearing, we thought we'd
5 put in a supplemental or amended response which deals with that.

6 Can I just say to clear up something I may have said earlier: funding is the only point
7 to deal with because funding is the thing which is specific to Mr Hammond's case. As
8 you have already said, sir, there are points potentially about overlap between these
9 two claims. But those we don't need to serve anything new in Hammond for because
10 if there are points about overlap, we'd simply make those in our response to
11 Professor Stephan's claims, since that is the later of the two.

12 I am not seeking to shut us out from making points about overlap or tensions or
13 inconsistencies, but those we'll make in our Stephan response, which will be served
14 on Mr Hammond as well.

15 But the only point that might be Hammond only is a funding point. First of all, we need
16 to raise it in correspondence and then, depending on where we get to, if there is a point
17 we need to draw to your attention, we will serve a supplemental or amended response
18 on the same date as our response to Professor Stephan.

19 MR JUSTICE ROTH: If we say then for paragraph 7, the proposed defendants in the
20 Hammond proceedings shall, if so advised, serve any supplementary or amended
21 response to the Hammond CPO application by - we'll have
22 a - date - concerning - Mr Hammond's funding arrangements.

23 MR PATTON: That would be fine.

24 MR JUSTICE ROTH: Yes. And then the date, can you not serve that earlier than
25 24 March?

26 MR PATTON: It may be we could serve it - sorry, can I just explain why we've - asked

1 | for the time that we have? It's only because the point - there's going to need to be
2 | correspondence with Mr Hammond's team about it. We'll get into that straight away.
3 | What we can't control is how quickly they respond -.

4 | Can I just make an observation, and it's probably obvious, but it's always possible that
5 | in response to points we make in correspondence they may wish to speak to the funder
6 | about it, and indeed they may recognise that a point we've made has force and they
7 | may seek to agree some sort of variation or arrangement with the funder to address
8 | that point. We are conscious that if they do see it in that way, which is a matter for
9 | them, that may take time.

10 | So, it's simply that the correspondence has not crystallised yet. It's not the drafting up
11 | the document that is -- I am not making the sort of points I made at the start of this
12 | hearing, that drafting up the document is going to take a long time, that's not the case;
13 | it's just that the correspondence needs to have crystallised before then.

14 | We thought having a deadline would encourage everyone to get along with the
15 | correspondence promptly. The question is does it really assist anyone to have an
16 | earlier deadline? This is not going to be on the critical path for the hearing. It is a point
17 | about funding which you would want to consider at the hearing anyway. Does getting
18 | this response earlier help anyone? Perhaps not. Perhaps it's more helpful to allow
19 | the time for the correspondence to be properly considered and Mr Hammond, if so
20 | advised, to speak to his funders about the points we make and then for us to serve as
21 | short a document as we can.

22 | MR JUSTICE ROTH: I can stop you. I understand your point completely.

23 | Are you content with that, Mr Rayment? I think that is a fair observation, that there
24 | might be some toing and froing. I don't know what the points are that are going to be
25 | raised.

26 | MR RAYMENT: We don't know them all yet ourselves.

1 MR JUSTICE ROTH: Would it in any way inconvenience you if it's the same date,
2 24 March?

3 MR RAYMENT: Well, it seems to - we strongly agree with the notion that there should
4 be some time for interactions. If anything, I was going to - suggest - well, my primary
5 position was that, strictly speaking, it wasn't necessary for Amazon to put in a formal
6 document because the issues would be aired in correspondence and would be clear
7 to both Amazon and Mr Hammond in advance of putting in skeletons. - So, to the
8 extent that there are any issues remaining at that stage, they can be canvassed in the
9 skeletons, so we don't need a potentially additional and costly step of putting in a sort
10 of formal document sooner than that.

11 But obviously the issues do have to be -- you know, if there are remaining issues about
12 funding, then they do need to have sort of crystallised sufficiently in good time so that
13 they can be addressed in skeletons. But, if anything, it seems to me that
14 24 March -- that could even be a bit early.

15 Would there be any objection to the same time as the Stephan reply? If, at that stage,
16 Amazon has any issues with the Hammond funding, they can make those clear at that
17 stage.

18 MR JUSTICE ROTH: First of all, I think that Amazon is right in saying there should be
19 a response if there is going to be an objection to authorisation now of Mr Hammond
20 because of funding arrangements. I don't think that is something that should be raised
21 only in skeletons, I think it should be set out in the response, and then you also would
22 be expected to address it in your skeleton on the basis of that response. So, I think
23 they are right in saying that, if that is the line they choose to take, there should be
24 a formal response.

25 If you think it might all take a bit longer, we can put it back to 4 April, I am sure
26 Mr Patton won't object, and give that extra week for exchanges. Then we will leave it

1 | there and say 4 April.

2 | MR RAYMENT: I would be grateful for that.

3 | MR JUSTICE ROTH: Yes. I mean that is from Amazon, and then you will address it,
4 | if there is one, in your skeleton and so will they.

5 | There is one other matter that Mr Bankes helpfully raised when we withdrew on your
6 | proceedings, which is not merely to publicise the date of the hearing but also there
7 | has been a substantial increase in your claim estimate, a very substantial increase.
8 | I don't pretend to have looked into how that came about, but I think the original notice
9 | will have indicated something about the value of the claim. I think when you publicise
10 | the hearing date you should also publicise the change in the claim, insofar as your
11 | original notice, which I have not looked at, would have said something about the value
12 | of the claim.

13 | MR RAYMENT: Our notice is at tab 11 of the bundle.

14 | MR JUSTICE ROTH: Yes. Does it say anything about the ...

15 | MR RAYMENT: I can't see anything in it about the value of the claim.

16 | MR JUSTICE ROTH: No. No, it's fairly brief, isn't it?

17 | MR RAYMENT: That, I understand, was approved by the tribunal, that document.

18 | MR JUSTICE ROTH: Well, you are right. That may not be worth pursuing then. So,
19 | then I think it's simply a case of, fine, just telling them about the revised hearing date.

20 | MR RAYMENT: I am grateful.

21 | MR JUSTICE ROTH: Yes. As far as the Stephan notice, Mr Brealey, the draft order
22 | says by 4 pm on 14 February, but if the notice is finalised today, can it not be publicised
23 | by this Friday, the 7th?

24 | MR BREALEY: Yes, that's perfectly fine.

25 | MR JUSTICE ROTH: So, if we say by 4 pm on 7 February. Then if we look at the
26 | notice it's a question of how long a class member should be given to object, if it goes

1 out on 7 February, if we say 4 April that will give good time for any objection to be
2 considered, if any objection comes.

3 MR BREALEY: Yes, sir.

4 MR RAYMENT: Sir, I wonder if I might just clarify one further matter with you, if I may.

5 MR JUSTICE ROTH: Yes. Go ahead.

6 MR RAYMENT: It concerns Mr Patton's submission just now about (audio distortion)
7 Amazon's intention to --

8 MR JUSTICE ROTH: Mr Rayment, your voice was being distorted. Can you try that
9 again.

10 MR RAYMENT: Let me try again. As I understand it, Mr Patton indicated that Amazon
11 would address, in its response to Professor Stephan's application, matters relating to
12 the Hammond application.

13 As I understood it, if Amazon are putting in expert evidence in their response to
14 Professor Stephan's application, is that expert evidence potentially going to raise
15 issues in relation to the Hammond application? If so, I am concerned that my client
16 has an opportunity to deal with those expert issues properly, should they be raised.

17 MR JUSTICE ROTH: But my understanding is that expert evidence regarding your
18 application has already been put in by Amazon --

19 MR RAYMENT: Yes, that's right.

20 MR JUSTICE ROTH: -- and the expert aspect has been dealt with and addressed.
21 What I understood Mr Patton to say is that Amazon may want to say something about
22 the overlap between the two, not in terms of the expert evidence but just in the way
23 the allegations overlap. That was my understanding. Whether that is --

24 MR RAYMENT: Well, that's what I wanted to clarify really.

25 MR JUSTICE ROTH: And that it's not going to be by way of expert criticism of your
26 application. It may be, for example, saying that there are certain allegations that are

1 being - there are similar allegations but with different expert methodologies and this is
2 confusing, or something like that -.

3 But I did not understand - and, Mr Patton, please correct me if I am - wrong - that you
4 are proposing, if you put in expert evidence, to be then going back to challenging the
5 methodology - of Dr Pike, because you have done that.

6 MR PATTON: I think, sir, you have understood it correctly. We have, as you say,
7 already served expert evidence in the Hammond application and so we have said what
8 we have chosen to say about Dr Pike's methodology. There may be submissions to
9 be made about overlap, tension and consistency and so we will simply deal with those
10 once in our response to the Stephan application.

11 I can't exclude, because we are simply not there at the moment, the possibility that the
12 expert - there may be something appropriate for the expert to say about overlap. If
13 that is the case, I think what we can do is make sure we've drawn that to
14 Mr Hammond's attention. - In other words, when we serve this, we say: please, we
15 draw your attention to paragraphs X and Y of the expert report. We could do that.

16 So far as we are concerned, if Mr Hammond considers that Dr Pike has anything
17 further he wants to say simply in response to that, we don't have an issue with that, if
18 that is where Mr Rayment was going. I am sorry I can't be more complete about that
19 at the moment, it's because we simply aren't there yet in our preparations, but, as
20 I say, we have already served our expert evidence in response to Dr Pike. What I had
21 in mind here was the question of overlap between the two different claims.

22 MR JUSTICE ROTH: Yes.

23 MR PATTON: It's possible that might be a matter addressed in the expert evidence.

24 MR JUSTICE ROTH: Well, I can understand that. What we really don't want is that
25 your expert then comes along and says: no, I've basically thought of a further objection
26 to Dr Pike's methodology --

1 MR PATTON: That we understand.

2 MR JUSTICE ROTH: - (- inaudible due to over speaking) the report that he's put in
3 many months ago.

4 But, equally, I appreciate there may be things that arise from the fact that you now
5 have two methodologies to some extent on one allegation, perhaps addressing similar
6 things.

7 I think it's difficult to be more prescriptive at the moment, Mr Rayment. If there is
8 something there that you think your expert could usefully say and respond to, you can
9 ask the tribunal for permission to do that and I think we'll just have to play it by ear as
10 matters develop. I don't think we can go further at the moment. You have put down
11 your marker.

12 MR RAYMENT: Thank you, sir. Very good, sir. Thank you.

13 MR JUSTICE ROTH: Now is there anything else that we have not addressed that
14 needs to be addressed in preparation for the hearing, or by way of order, that any of
15 you want to draw to our attention now?

16 MR BREALEY: I don't believe so, sir, from our part.

17 MR PATTON: Nor from our part, sir, thank you.

18 MR JUSTICE ROTH: Mr Rayment?

19 MR RAYMENT: None from us either, sir, thank you.

20 MR JUSTICE ROTH: Thank you for your cooperation. Sorry about the slight technical
21 hitches we've had but, nonetheless, we've completed all we have to do, and we have
22 a timetable and clear directions going forward.

23 So that concludes this hearing, thank you.

24 MR BREALEY: Thank you.

25 **(12.22 pm)**

26 **(The hearing concluded)**