

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Innovation, Industry, Science and Research Portfolio
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AGENCY/DEPARTMENT: COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION

TOPIC: LAN Network – Legal Costs

REFERENCE: Question on Notice (Hansard 1 June 2009, E21)

QUESTION No.: BI-36

Senator ABETZ—In relation to the settlements with the various companies, can I ask whether or not, without specifying, they included legal costs?

Dr Clark—The proceeds have exceeded our legal costs substantially.

Senator ABETZ—Even as a lawyer I would have anticipated that, Dr Clark. All I want to know in rough terms is whether the legal costs represented five per cent, 10 per cent, 20 per cent of the pursuit of that figure of about \$220 million? I could imagine it was in the millions, indeed tens of millions of dollars, but I would be interested to know that figure.

Dr Clark—Senator, I am sure that you can appreciate we are in discussion for licence agreements directly with the parties. It is really commercially sensitive to discuss the legal costs while we are still in discussions with licence agreements with other parties with whom we have not undertaken litigation.

Senator ABETZ—Let us go back to basics, then. Is the \$220 million in rough terms the net or gross figure from these litigation and other legal activities.

Mr Whelan—It is the gross figure, Senator.

Senator ABETZ—If we could have a breakdown, please, of what the total legal costs were, accepting that the total legal costs will not at this stage identify the wireless issue; is that correct?

Mr Whelan—Senator, it would be very difficult for us to do so. If we were to provide you with total legal costs for the organisation, a very substantial proportion would be associated with the wireless LAN litigation, and given, as Dr Clark has indicated, we have a number of discussions underway with other potential licensees, the value and the investment we make in legal costs is a major commercial strategy issue, and we would very much prefer not to disclose that figure at this point in time.

Senator ABETZ—I would not have thought for those issues or for those matters that have been settled and licence agreements are in place, without specifying which ones but saying, ‘Look, we have settled 10 cases and everything has been put to bed, and for those 10 cases in aggregate the legal costs were...’ would jeopardise any of your ongoing matters, given the commercial confidence that attracts around the amount paid.

Senator Carr—Senator, these matters are, and it has been indicated now on several occasions, highly sensitive. As a lawyer, you understand the sensitivity of lawyers’ fees, and in the United States I would have thought that would be even more a question. The officers cannot answer any further questions on this matter given the answers they have already given.

Dr Clark—Let me explain, Senator, why it is sensitive. We would certainly like to undertake further discussions for commercial licences with parties directly and not have to go through the route of litigation to be successful in those licence agreements. Of course, the parties that we are speaking to have the option of saying, ‘We will enter into a licence agreement with you in commercial terms’ or ‘No, you can take us to court to achieve that licence.’ We would much prefer

to achieve those licence agreements without having to go through four years of commercial and legal activity, and in terms of not jeopardising us to be able to do that in the cheapest and most expedient way directly and commercially with those parties, I am sure you can understand why it is particularly sensitive, because they do actually have a choice.

Senator ABETZ—Thank you very much for that. That does assist me considerably because I was under the misapprehension that for some cases the litigation had now ended with settlements agreed. I would have thought that if litigation had ended and settlements agreed—

Dr Clark—Yes, Senator, recently we have had settlements agreed with 14 of the players, representing around half of the market for the particular segment we were going to, and it does not include other devices such as telephony that use this form of technology. We would want to consider entering into licence agreements for the use of CSIRO intellectual property.

Senator ABETZ—With those 14 parties?

Dr Clark—No, with other parties, Senator.

Senator ABETZ—That is where I do not understand; if we have ended litigation and we have settled, for those that we have ended litigation and settled in aggregate, not individually, because that might give the game away for others who might see themselves in a comparable situation—

Dr Clark—Yes, it could.

Senator ABETZ—But if you have an aggregate of 14, I would have thought that would be fairly difficult then for—take it on notice and see what you can provide to me. Because, I must say on the face of it, I cannot see any commercial sensitivity given that you tell us it has ended. I do not want to prejudice anything with the CSIRO, and the more you can get from those miscreant companies, the better; all the best with that.

ANSWER

CSIRO advises that the costs associated with the litigation is information that is very sensitive for both commercial and legal reasons and could prejudice ongoing legal proceedings, and is therefore not in a position to provide a detailed answer in relation to the costs of the litigation.