O/0543/26

REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN NO 6348460

IN THE NAME OF AVARTEK LTD

IN RESPECT OF THE FOLLOWING DESIGN

AND

AN APPLICATION FOR INVALIDATION (NO 235/24)

BY LIMARS LTD

BACKGROUND AND PLEADINGS

1. Registered design no. 6348460 stands in the name of Avartek Ltd ("the registered proprietor"). The design was applied for on 22 February 2024 ("the relevant date"). It was entered in the Register on 4 March 2024 and published on 5 March 2024. The design is registered as applying to a safety handle.

2. The design is depicted in the following representation:

3. It is registered as being in Class 08 (Tools and Hardware), Sub-Class 06 (Handles, Knobs and Hinges) and Class 23 (Fluid Distribution Equipment, Sanitary, Heating, Ventilation and Air Conditioning Equipment, Solid Fuel), Sub-Class 06 (Sanitary Appliances for Hygienic Purposes) of the Locarno Classification

4. On 22 September 2024, Limars Ltd ("the applicant") made an application for the registered design to be invalidated under section 11ZA(1)(b) of the Registered Designs Act 1949 ("the Act"), on the grounds that the design did not meet the requirements set out in section 1B of the Act that a design be new and have individual character. The applicant claims that an identical product has been sold on the Amazon.co.uk marketplace since 31 July 2018. The Amazon listing is reproduced in paragraph 16 below.

5. On 6 November 2024, the registered proprietor filed a counterstatement to the application for invalidation, denying the applicant's claims. In particular, it admits that

the two designs *"share some similarities"* but claims that there are significant differences between them. I shall say more about these in due course.

6. Neither side requested a hearing. I have taken this decision after a careful consideration of the papers before me. In these proceedings, both parties have represented themselves.

RELEVANCE OF EU LAW

7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE AND PROCEDURAL ISSUES

8. Rule 21 of the Registered Designs Rules 2006 states that evidence may be given by a statement of case provided that it contains a statement of truth. Both the DF19A (Request to invalidate a design registration) and the DF19B (Notice of counterstatement) contain such a statement which has been given in each case by an individual: Marius Liatukas for the applicant and Aneesa Akhtar for the registered proprietor. I therefore take the statement of case and the counterstatement respectively to be their evidence.

9. The applicant was given until 3 January 2025 to file evidence and/or submissions. On 15 January 2025, the Registry wrote to the applicant noting that no evidence had been filed and setting a deadline for the registered proprietor to file its evidence or submissions. No evidence or submissions were filed by the registered proprietor.

10. The applicant contacted the Registry on 12 March 2025 stating that the evidence filed with the statement of case had not been included on the list that is customarily sent to parties at the end of the evidence rounds. As well as the image reproduced in paragraph 16 below, the applicant had provided a web link to the full Amazon listing. The Registry wrote to the applicant advising it that the hearing officer would not follow

any web links and would only consider what could be seen in the documents provided. Should the applicant wish to file evidence of what was behind the link, a request to file further evidence would need to be made as, at this stage, the evidence rounds had closed.

11. The applicant filed a witness statement and exhibits on 24 March 2025. However, the witness statement contained several deficiencies, including the absence of the address of the witness and a signed statement of truth. The Registry gave the applicant a deadline of 7 April 2025 by which to file amended evidence to address the deficiencies. This was done, but having reviewed the whole file, it is clear that the applicant has not filed the information that could have been found by following the link, but rather has filed information on two different designs. I say this because the Amazon listing relied on in the pleaded case was made by a company called Newthinking and it shows that the product was first made available on 31 July 2018, while the designs referred to as the prior disclosure in the witness statement were sold under the name Budding Joy and were first available on 12 June 2020 and 3 April 2022 respectively.

12. The purpose of the pleadings in the DF19A is to set out clearly to the registered proprietor the case that they have to answer. In particular, it is imperative that the registered proprietor is informed of the prior design(s) that are alleged to defeat the contested design's claims to be new or to have individual character. If the applicant wishes to rely on different designs during the course of the proceedings, they must submit a request to amend the pleadings. Unfortunately, this change was not picked up until the time came to write the decision. In my view, this is an irregularity of procedure that is capable of being corrected under Rule 38 of the Registered Designs Rules 2006. I therefore wrote to the applicant on 19 May 2026, giving a period of 14 days in which it could file the material behind the link referred to in paragraph 10 above and/or make a request to amend the pleadings to rely on the designs from Budding Joy. I noted that in the absence of a response on either of these points I would proceed to write the decision using as my comparison the image of the Newthinking product that was supplied in the Form DF19A. The designs referred to in the witness statement dated 24 March 2025 would be taken into account as examples of other designs in the market but would not be used for the comparison.

13. The applicant replied on 2 June 2026 simply stating that all ASINs and photographs had been provided in the original filing. I shall therefore take the Newthinking product as the prior design and the image of the listing shown in paragraph 16 as the evidence of the disclosure.

DECISION

14. Section 11ZA(1)(b) of the Act states that:

> "The registration of a design may be declared invalid–
>
> …
>
> (b) On the ground that it does not fulfil the requirements of sections 1B to 1D of this Act".

15. Section 1B of the Act is as follows:

> "(1) A design shall be protected by a right in a registered design to the extent that the design is new and has individual character.
>
> (2) For the purposes of subsection (1) above, a design is new if no identical design or no design whose features differ only in immaterial details has been made available to the public before the relevant date.
>
> (3) For the purposes of subsection (1) above, a design has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the relevant date.
>
> (4) In determining the extent to which a design has individual character, the degree of freedom of the author in creating the design shall be taken into account.
>
> (5) For the purposes of this section, a design has been made available to the public before the relevant date if–

(a) it has been published (whether following registration or otherwise), exhibited, used in trade or otherwise disclosed before that date; and

(b) the disclosure does not fall within subsection (6) below.

(6) A disclosure falls within this subsection if–

(a) it could not reasonably have become known before the relevant date in the normal course of business to persons carrying on business in the geographical area comprising the United Kingdom and the European Economic Area and specialising in the sector concerned;

(b) it was made to a person other than the designer, or any successor in title of his, under conditions of confidentiality (whether express or implied);

(c) it was made by the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date;

(d) it was made by a person other than the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date in consequence of information provided or other action taken by the designer or any successor in title of his; or

(e) it was made during the period of 12 months immediately preceding the relevant date as a consequence of an abuse in relation to the designer or any successor in title of his.

(7) In subsections (2), (3), (5) and (6) above 'the relevant date' means the date on which the application for the registration of the design was made or is treated by virtue of section 3B(2), (3) or (5) or 14(2) of this Act as having been made.

(8) For the purposes of this section, a design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character –

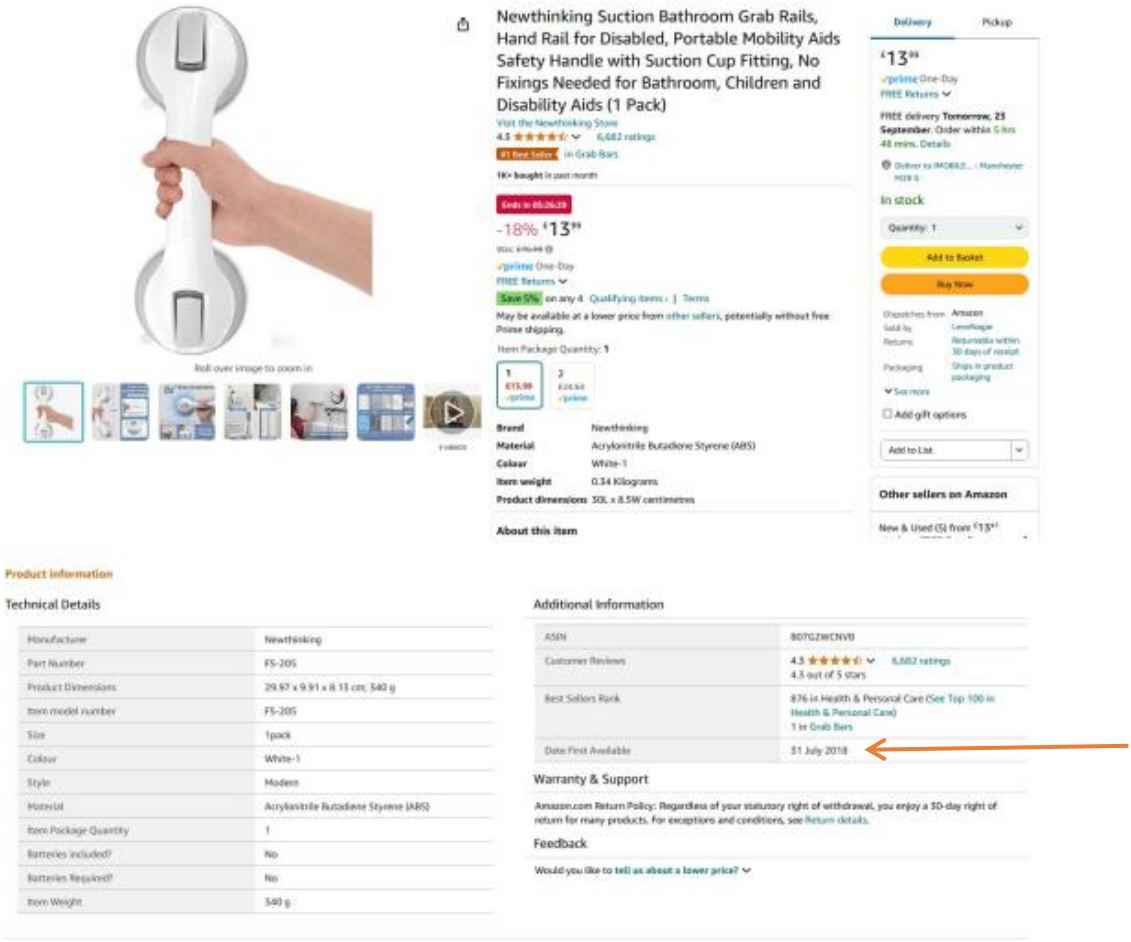
(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the complex product; and

(b) to the extent that those visible features of the component part are in themselves new and have individual character.

(9) In subsection (8) above 'normal use' means use by the end user; but does not include any maintenance, servicing or repair work in relation to the product."

The Prior Art

16. The Amazon listing for the Newthinking product (reproduced below) indicates that it was first made available to the public on 31 July 2018. I have marked this with an arrow.



17. This date is earlier than the date on which the registered proprietor filed its application to register the contested design. I consider that listing on the Amazon website constitutes publication. The registered proprietor has not questioned the reliance on this listing. Consequently, I find that it is acceptable prior art.

Novelty

18. Section 1B(2) of the Act states that a design has novelty if no identical design or no design differing only in immaterial details has been made available to the public before the relevant date. In *Shnuggle Limited v Munchkin, Inc & Anor* [2019] EWHC 3149 (IPEC), HHJ Melissa Clarke, sitting as a Judge of the High Court, said:

> "26. 'Immaterial details' means 'only minor and trivial in nature, not affecting overall appearance'. This is an objective test. The design must be considered as a whole. It will be new if some part of it differs from any earlier

design in some material respect, even if some or all of the design features, if considered individually, would not be."

Comparison of the designs

19. In the table below I show the registered design alongside the prior art upon which the applicant may rely:

The Contested Design	**The Prior Art**
	

20. The designs share the following features:

a) Front on, both consist of a long central section, the long sides of which are parallel, and the ends of which are rounded;

b) The side profiles of the handles show a gentle curve on the outside from the rounded ends to the central section; the inside of the handles show a greater degree of curvature at the same points;

c) The rounded ends lead into circular elements positioned at either side of the central section;

d) Each of these circular elements is surrounded by a narrow lip which gives the impression that they are suction-mounted;

e) Both designs show a contrast between the lighter upper part of the handle (central section and rounded ends) and the darker circular elements;

f) Each of the rounded ends contains a hollow, largely filled with a roughly rectangular piece in the same shade as the darker circular elements. I consider it is likely that is a fastening or locking mechanism; and

g) Both designs are symmetrical.

21. The registered proprietor claims that there are a number of differences between the designs. The first of these are marked in the image below. The representation of the registered design shows that the underside of the handle is the same colour as the suction cups and that there is a small dot or flap at the bottom of the handle.

22. The angle used for the main image in the listing that I have reproduced in the table in paragraph 19 means that it is not possible to say on the basis of that image alone whether these features are present in that design. It would have been helpful to have larger versions of the thumbnail images, some of which show a different angle. However, I can make out from the second thumbnail that the underside of the handle of the prior design is also the same colour as the suction cups.

23. There is nothing that allows me to see whether there is a dot or flap on the bottom of the handle.

24. The registered proprietor submits that the two designs are different in colour. The representation of the prior design is a photograph. The design therefore consists of the lines, contours, colours, shape, texture, materials and ornamentation that are visible in the photograph. Turning now to the registered design, I consider that it is possible that the representation may be a photograph showing the exact colours of the product, but it may equally be a CAD drawing, which would mean that the tonal contrast is part of the design, but the colours are not. It seems to me that, if the representation of the contested design is a CAD drawing, the lighter part may well be white, but it could equally be a very pale colour, such as light grey. There is, however, a difference in the tonal contrast, with that of the contested design being greater.

25. The final difference claimed by the registered proprietor is that the markings on the parts of the handle that are intended to be pressed, differ in terms of shape, size and placement compared to the markings shown in the prior design. Magnified images are shown below:

The Contested Design	**The Prior Art**
	

26. Both sets of markings consist of four curved lines. To my eye, the curve marked A in the prior art is more pointed than its equivalent (marked B) on the contested design. It also appears that the end of the curved pattern on the contested design positioned closer to the end of the locking or fastening component than in the prior art. Apart from that, I consider that the curves are placed equidistantly from each other on both designs.

27. I consider that the designs differ in the following ways:

a) The light part of the prior art is white and the darker part grey. There is, to my mind, a greater degree of contrast between the two shades used in the contested design than between those used in the prior art;

b) The locking components in the contested design are marked with a pattern of four curves. I have already set out what I see the differences to be;

c) At the bottom of the contested design there is marked a small circle. I have indicated this in the image below with an arrow.

As I have already noted, I am not able to see whether this is also a feature of the prior art; and

d) The prior art appears to show a small nodule or flap emerging from the circular element towards the bottom and top of the handle.

28. In my view, the differences highlighted in (b), (c) and (d) are minor and trivial and do not affect the overall appearance of the handle. However, the difference in degree of contrast is not immaterial. I find that the contested design is new in comparison to the prior art on which the applicant may rely.

Individual Character

29. A design may be "new", but still lack the necessary "individual character" compared to the prior art. This depends on whether the overall impression it produces on the informed user differs from the overall impression produced on such a user by the prior art. As HHJ Birss QC (as he then was) pointed out in *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat), "*The scope of protection of a Community registered design clearly can include products which can be distinguished to some degree from the registration."* The same applies to a comparison of the overall impression created by a registered design compared to the prior art.

30. The approach to carrying out an assessment of individual character was helpfully summarised by HHJ Hacon, sitting as a Judge of the High Court, in *Safestand Ltd v Weston Homes PLC & Ors* [2023] EWHC 3250 (Pat) at [237]:

> "(1) Decide the sector to which the products in which the designs are intended to be incorporated or to which they are intended to be applied belong;
>
> (2) Identify the informed user and having done so decide
>
> (a) the degree of the informed user's awareness of the prior art and
>
> (b) the level of attention paid by the informed user in the comparison, direct if possible, of the designs;
>
> (3) Decide the designer's degree of freedom in developing his design;
>
> (4) Assess the outcome of the comparison between the RCD and the contested design, taking into account
>
> (a) the sector in question,
>
> (b) the designer's degree of freedom,
>
> (c) the overall impressions produced by the designs on the informed user, who will have in mind any earlier design which has been made available to the public,

(d) that features of the design which are solely dictated by technical function are to be ignored in the comparison, and

(e) that the informed user may in some cases discriminate between elements of the respective designs, attaching different degrees of importance to similarities or differences; this can depend on the practical significance of the relevant part of the product, the extent to which it would be seen in use, or on other matters."

31. I also bear in mind the comments of HHJ Birss QC (as he then was), sitting as a Deputy Judge of the Patents Court, in *Samsung*:

"58. How similar does the alleged infringement have to be to infringe? Community design rights are not simply concerned with anti-counterfeiting. One could imagine a design registration system which was intended only to allow for protection against counterfeits. In that system only identical or nearly identical products would infringe. The test of 'different overall impression' is clearly wider than that. The scope of protection of a Community registered design clearly can include products which can be distinguished to some degree from the registration. On the other hand the fact that the informed user is particularly observant and the fact that designs will often be considered side by side are both clearly intended to narrow the scope of design protection. Although no doubt minute scrutiny by the informed user is not the right approach, attention to detail matters."

The sector concerned

32. The sector concerned is safety and mobility aids.

The informed user

33. Earlier in *Samsung*, the judge gave the following description of the informed user:

"33. ... The identity and attributes of the informed user have been discussed by the Court of Justice of the European Union in *PepsiCo v Grupo Promer* (C-281/10 P) [2012] FSR 5 at paragraphs 53 to 59 and also in *Grupo Promer*

v OHIM [2010] EDCR 7, (in the General Court from which *PepsiCo* was an appeal) and in *Shenzhen Taiden v OHIM*, case T-153/08, 22 June 2010.

34. Samsung submitted that the following summary characterises the informed user. I accept it and have added cross-references to the cases mentioned:

> i) he (or she) is a user of the product in which the design is intended to be incorporated, not a designer, technical expert, manufacturer or seller (*PepsiCo* paragraph 54 referring to *Grupo Promer* paragraph 62, *Shenzhen* paragraph 46);
>
> ii) however, unlike the average consumer of trade mark law, he is particularly observant (*PepsiCo* paragraph 53);
>
> iii) he has knowledge of the design corpus and of the design features normally included in the designs existing in the sector concerned (*PepsiCo* paragraph 59 and also paragraph 54 referring to *Grupo Promer* paragraph 62);
>
> iv) he is interested in the products concerned and shows a relatively high degree of attention when he uses them (*PepsiCo* paragraph 59);
>
> v) he conducts a direct comparison of the designs in issue unless there are specific circumstances or the devices have certain characteristics which make it impractical or uncommon to do so (*PepsiCo* paragraph 55).

35. I would add that the informed user neither (a) merely perceives the designs as a whole and does not analyse details, nor (b) observes in detail minimal differences which may exist (*PepsiCo* paragraph 59)."

34. The informed user is an individual who needs to use a safety handle, particularly in the bathroom, as a result of their impaired mobility and/or balance. I see no reason why they would not be able to conduct a direct comparison of the designs in issue.

The design corpus

35. At this point, I shall now refer to the designs cited by Mr Liatukas in his witness statement. They were both sold on Amazon by a business called Budding Joy and were first made available on that platform on 12 June 2020 and 3 April 2022 respectively.

12 June 2020

3 April 2022

36. These two designs are clearly highly similar to each other. They differ in colour, but have the same shape and configuration. I can see that there is a pattern on the locking components of the grey design, but cannot see whether the same pattern is present on the black design.

Design freedom

37. In *Whitby Specialist Vehicles Limited v Yorkshire Specialist Vehicles Limited* [2014] EWHC 4242 (Pat), Arnold J (as he then was) said:

> "24. … I considered the designer's degree of freedom in *Dyson Ltd v Vax Ltd* [2010] EWHC 1923 (Pat), [2010] FSR 39 at [32]-[37], where I concluded that design freedom may be constrained by (i) the technical function of the product or an element thereof, (ii) the need to incorporate features common to such products and/or (iii) economic considerations. I also concluded that both a departure from the existing design corpus and the production of a wide variety of subsequent designs were evidence of design freedom. Apart from emphasising that the degree of freedom to be considered was that of the designer of the registered design, the Court of Appeal appears to have agreed with this: [2011] EWCA Civ 1206, [2012] FSR 4 at [18]-[20]."

38. In order for the design to fulfil its function, it will need to be of a size and shape that can comfortably be grasped by the user's hand. Furthermore, the users of the product are more likely to be prone to stumbling. This leads me to the view that curved edges would be chosen over corners, to reduce the risk of the user hurting themself. It would also need to be securely fixed to a wall or other surface and to help the user maintain their balance. I consider that the technical function of the product would require the handle to be fixed to the wall at the top and the bottom. The designer has a choice over the method of fixing. The handle could be screwed into the wall or attached via a suction cup, as in the designs at issue here. It is my view that technical considerations will play a significant role here. Suction cups are likely to be less secure than screws or other more permanent fixtures. They will be used for handles that are intended for temporary use or that are marketed to people who are at less risk of falling, as in those circumstances they would be required to bear less weight. The inclusion of locking elements is dictated by the technical function of fastening the handle to the wall and then unfastening it. Within these constraints, the designer has freedom to choose the proportions of the handle (for example, length and width) and degree of curvature of the handle, colours and patterns, and shapes of the elements that are fixed to the wall.

Overall impression

39. The informed user will notice the similarities and differences that I have identified above. In particular, they will perceive that both designs are suction-mounted safety handles of the same general configuration, consisting of a long central grip with

rounded ends leading into circular suction elements on either side. They will also note that both designs are symmetrical.

40. When considering the novelty of the contested design, I found that the greater degree of contrast between its lighter and darker parts, was not an immaterial detail. However, I found the other differences to be trivial.

41. Standing back and considering the designs as a whole, I find that the overall impression of each of the designs is of a symmetrical suction-mounted safety handle with the same shape and proportions, with a tonal contrast. Importantly, in my view, the same parts of the handle are darker, although I acknowledge that the degree of tonal contrast is greater in the contested design than in the prior art. The designer has a degree of design freedom with regards to the length and the shape of the parts of the handle that are fixed to the wall, as well as in the choice of colour. The identified differences between the designs are, in my view, not sufficient to outweigh the similarities in shape and configuration.

42. I find that the contested design lacks individual character under section 1B(3) of the Act.

CONCLUSION

43. The application to invalidate Registered Design No. 6348460 is successful.

COSTS

44. As the applicant is a litigant in person, at the end of the evidence rounds it was invited to complete a proforma detailing the time spent on various activities associated with these proceedings. The time recorded by the applicant is as follows:

> *Form Types*
> *Completing the Notice of Cancellation: 18 hours*
>
> *Preparing evidence/written submissions and considering and commenting on the other side's evidence/written submissions*
> *Gathering evidence to show the product existed prior to being registered: 14 hours*

Gathering further evidence as opposition tried to say it was not enough: 16 hours

Preparing for a hearing

Gathering new evidence to support the case: 16 hours

45. The Registrar has the power to award such costs as he considers reasonable, pursuant to section 30(1) of the Act and Rule 22 of the Registered Designs Rules 2006, subject to the overriding requirement to act judicially. I will assess the time recorded in the proforma in the context of the forms and evidence that have been filed.

46. The applicant has claimed to have spent 18 hours on completing the Form DF19A. In addition to the details on the front page, the applicant ticked the box to indicate that it was making a claim under section 11ZA(1)(b) and section 1B. The text in the box reads: *"THE SAME PRODUCT HAS BEEN ON THE AMAZON.CO.UK MARKETPLACE SINCE 31 JULY 2018 ASIN: B07G2WCNVB"*. The link to the listing is provided. Also attached to the form is a printout of the listing. No further information or arguments were provided. While I accept that a litigant in person will need to spend some time researching the process of invalidation, the relevant principles of design law and find a prior design, I consider that 18 hours is not a reasonable amount of time to have spent to produce the form that was filed. In my view, 9 hours is a reasonable amount of time.

47. A period of 14 hours is claimed for gathering evidence to show the product existed prior to the relevant date. I have already taken account of identifying the Newthinking product in the 9 hours already allowed, so will make no further award for this activity. A period of 16 hours is claimed for gathering further evidence. Again, I consider that this is too long a period, particularly given that the further designs did not play a significant role in this decision. I shall allow a period of 4 hours for preparing the witness statement and exhibits.

48. The applicant then claims a further 16 hours for *"Gathering new evidence to support the case"* under the heading *"Preparing for a hearing"*. There was no hearing and the applicant did not file written submissions in lieu of the same. I have already allowed for some time to cover the filing of the witness statement and exhibits, so I do not consider that any further time is warranted. The total time I shall allow is therefore 13 hours.

49. The sum allowed to a litigant in person is £24 per hour. The applicant is also entitled to the official fees associated with filing the application. I therefore award the applicant the sum of £360, which has been calculated as follows:

13 hours x £24 = £312
£48 to cover official fees
£360 in total

50. I order Avartek Ltd to pay Limars Ltd the sum of £360. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings if the appeal is unsuccessful.

Dated this 27th day of June 2026

Clare Boucher
For the Registrar,
The Comptroller-General