

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

B E T W E E N:

HESCO BASTION LIMITED

Claimant

-and-

- (1) DIRICKX SYSTEMS LIMITED**
- (2) KEVIN LYONS**
- (3) MICHAEL PICKUP**
- (4) SHAUN ELLIS**
- (5) BENJAMIN JENKINS**

Defendants

DEFENCE AND COUNTERCLAIM

1. References hereunder to paragraph numbers and to annexes are references to the respective paragraphs and annexes of the Particulars of Claim unless expressed to be otherwise. The Defendants adopt the definitions in the Particulars of Claim without any admission.
2. Save insofar as it consists of admissions or is admitted below, the Defendants join issue with the Claimant upon each and every allegation in the Particulars of Claim.
3. In 2016, Hesco Holdings Ltd was sold to Betafence NV by the family of its founder, James (Jimi) Heselden. Praesidiad Limited, incorporated in July 2017, subsequently became the holding company of all Betafence and Hesco group companies. Following the sale of Praesidiad to Carlyle Group in

October 2017, the new management has run down the UK business, including that of Hesco, closed its UK manufacturing sites and let go its experienced employees. Hesco now employs only about 4 people, having moved its manufacturing to another group company in Poland. The business of DIRICKX Systems has been set up to meet the demand in the market for a UK supplier of expeditionary / military gabions and gabion related products, with substantial industry experience.

4. Below, the Defendants admit some limited breaches of confidence, copyright infringement and breaches of the employment contracts of Mr Ellis and Mr Jenkins. Below, the Defendants offer to remedy those breaches and submit to various limited forms of relief. If Hesco has suffered any loss as a result, which is denied, it is negligible. In particular:
 - (a) It is admitted that Mr Ellis sent documents containing Hesco's confidential information to some of the other Personal Defendants. He did so in order ingratiate himself with the other Personal Defendants at a time of acute professional insecurity. None of the other Personal Defendants asked him to do so and neither they nor DIRICKX Systems used any of the information that he sent. That is because, inter alia, the information he sent was not of any actual use.
 - (b) It is admitted that Mr Jenkins breached his contract of employment by sending the Mensah Message. However, no loss was caused to Hesco as a result because no business was diverted from Hesco to DIRICKX Systems.
 - (c) It is admitted that Mr Pickup and DIRICKX Systems infringed Hesco's copyright in the XS Fence Photograph by reproducing it in the ERDC Presentation. Again, no loss was caused to Hesco and at most Hesco are entitled to a token licence fee for such use.
5. The business of DIRICKX Systems has not been built on wrongdoing, but on the substantial industrial experience and military backgrounds of the Personal Defendants, and Mr Lyons in particular. The Defendants infer in such circumstances that Hesco's real objection to DIRICKX Systems is that it now has to face competition in the UK from a company which legitimately benefits from the considerable experience of its own former employees, which it itself decided to dispense with.

DEFENCE

6. The first sentence of paragraph 1 is admitted.
7. It is denied that Hesco currently carries on business as a designer or manufacturer of the products referred to. To the best of the Defendants' knowledge, Hesco's previous design and manufacturing capability was moved to a different company based in Poland in or around November 2020. Further, the gabions and gabion-related products sold by Hesco are expeditionary or military gabions. Save as aforesaid, the second sentence of paragraph 1 is admitted.
8. The third sentence of paragraph 1 is denied. Praesidiad was incorporated on 3 July 2017, so did not exist in March 2016. Further, according to the information on Companies House:
 - (a) From March 2016 to 14 September 2016, Hesco was a wholly owned subsidiary of Hesco Group Limited (company number 07726794);
 - (b) From 14 September 2016 to 11 December 2019, Hesco was a wholly owned subsidiary of Hesco UK Holdings Limited, which was initially a wholly owned subsidiary of Betafence Corporate Services NV, which then subsequently changed its name to Praesidiad NV; and
 - (c) Since 11 December 2019, Hesco has been a wholly owned subsidiary of Praesidiad Holding Bvba, a Belgian company.
9. The fourth sentence of paragraph 1 is not admitted.
10. Save that DIRICKX Systems has not to date supplied any perimeter fencing incorporating gabion baskets, the first two sentences of paragraph 2 are admitted.
11. As to the third and fourth sentences of paragraph 2:
 - (a) It is admitted that Mr Deblauwe is the President of PICOT SAS, which is a French company carrying on business as a manufacturer of fences, gates and access control products. The Defendants refer to that company as "PICOT".
 - (b) It is further admitted that PICOT is the holding company of the PICOT Group of companies.

- (c) It is denied that Mr Deblauwe controls DIRICKX Systems. Hereunder, the Defendants rely on the following:
- (i) Mr Deblauwe was one of three statutory directors of DIRICKX Systems between 10 May and 24 October 2022. He has not been a director of DIRICKX Systems since he resigned that role on 24 October 2022.
 - (ii) The organisation chart for DIRICKX Systems at Annex 1 hereto.
 - (iii) While PICOT owns 80% of the shares in DIRICKX Systems, DIRICKX Systems has four ultimate parent companies and 10 individual shareholders.
 - (iv) Mr Deblauwe owns 10% of the shares in Robur Capital and less than 0.01% of the shares in GIMV, which are two of the ultimate parent companies of DIRICKX Systems, but does not own any shares in any of the other ultimate parent companies or in DIRICKX Systems itself.

12. The first sentence of paragraph 3 is admitted.

13. As to the second and third sentences of paragraph 3:

- (a) Mr Lyons was employed by Hesco between November 2011 and January 2020, and then by Praesidiad Limited until 30 April 2021.
- (b) Mr Lyons' job title was Chief Operations Officer of Hesco from September 2015 to January 2020.
- (c) Mr Lyons' job title was Group Manufacturing Director of Praesidiad Limited from January 2020 to 30 April 2021.
- (d) On 28 August 2020, Mr Lyons and Hesco entered into a Settlement Agreement. Pursuant to clause 11 of that Settlement Agreement, Mr Lyons was placed on garden leave from 28 August 2020 to 30 April 2021, at which point his employment ended.

Save as aforesaid, the second and third sentences of paragraph 3 are admitted.

14. The first sentence of paragraph 4 is admitted. For the avoidance of doubt, Mr Pickup is not a statutory director of DIRICKX Systems.
15. The second sentence of paragraph 4 is admitted, save that:
 - (a) Mr Pickup's employment with Hesco started on 10 January 2012;
 - (b) Mr Pickup was never a statutory director of Hesco;
 - (c) Mr Pickup's job title between 10 January 2012 and in or around 2017 was Product Manager;
 - (d) In or around 2017, Mr Pickup's job title changed to Engineering Director; and
 - (e) Mr Pickup's employment with Hesco terminated in May 2020, at which point he began working for Hesco two days a week as a consultant. That consultancy ended in around May 2021.
16. The first sentence of paragraph 5 is admitted. For the avoidance of doubt, Mr Ellis is not a statutory director of DIRICKX Systems. At DIRICKX Systems, Mr Ellis is not involved in setting price levels or influencing the strategic direction of the company.
17. Save that from August 2008 to December 2011, Mr Ellis's role at Hesco was in Field Customer Support, the second sentence of paragraph 5 is admitted.
18. Paragraph 6 is admitted. For the avoidance of doubt, Mr Jenkins is not a statutory director of DIRICKX Systems.
19. Paragraph 7 is noted.
20. Save that it is admitted that each of the Personal Defendants worked, within their respective roles, on the design, manufacture, sale and delivery of Hesco products, paragraph 8 is denied. In particular:
 - (a) The Personal Defendants did not work in the same team or in the same location.

- (b) None of the Personal Defendants worked regularly with any of the other Personal Defendants on the design or development of any Hesco products.
- (c) Save that Mr Lyons introduced Hesco to CRH Fencing / Geoquip for the purposes of developing the XS Fence, none of the Personal Defendants was involved in the development of XS Fence, although Mr Pickup did attend later testing of this product.
- (d) Mr Pickup never worked on the development of any MIL Gabions.
- (e) Hesco did not historically manufacture or sell Floodline Gabions. These were manufactured and sold by US affiliates of Hesco, namely Hesco Bastion Environmental Inc, then later, Hesco Bastion (USA) Inc. After 2017, when the US factory was closed, the Floodline Gabions were manufactured by Hesco.

21. Paragraph 9 is denied. The true factual position is as follows:

- (a) When Mr Lyons' employment ended on 30 April 2021, he considered that he had retired.
- (b) From on or about 6 June 2021, James Blackwell, Director of Defence and Government at Hesco, shared his calendar with Mr Ellis and Mr Jenkins for the purposes of the regular meetings that they had. One unintended consequence of the sharing of Mr Blackwell's calendar was that, in around 7 September 2021, Mr Ellis became aware that he had been selected for "at risk as to redundancy".
- (c) The internal redundancy process for Mr Ellis started on 4 October 2021.
- (d) On 22 January 2022, Mr Lyons, Mr Pickup, Mr Jenkins, Michael Rodenburg, Gene Wegener and Paul Bryan met at the Marriott hotel in Leeds. The meeting was arranged primarily by Mr Pickup, following an unsolicited approach to him by Mr Rodenburg. The purpose of the meeting was to discuss starting up a new company, the funding for which was to be arranged by Mr Rodenburg, whose business would be the design, manufacture and supply of, *inter alia*, gabion baskets, perimeter fencing incorporating gabion baskets and 'sangar' structures incorporating gabion baskets.

- (e) Mr Ellis was told about the meeting shortly after it happened by Mr Jenkins but was not invited and did not attend it.
- (f) On 17 March 2022, a meeting took place in Belgium attended by Mr Lyons, Mr Deblauwe, Mr Rodenburg and Mr Francois Hardy. The matters discussed by the attendees included the name of the proposed new company, its shareholding and the composition of its board. The design of products to be manufactured and supplied was not discussed.
- (g) In or around March 2022, Mr Rodenburg had lunch with a former colleague at Praesidiad, Timothy Messelis, in Belgium and informed that former colleague about the discussions he had been having as described above. In the premises, those discussions were not ‘secret’ from Praesidiad or Hesco from at least the date of that meeting.
- (h) By late March 2022, Mr Rodenburg was no longer involved in the project and it had been decided that PICOT would be the sole investor.
- (i) DIRICKX Systems was incorporated on 10 May 2022.
- (j) It was understood by those involved in forming the business that the gabion basket products that the new company would produce would be made (i) in accordance with the published Defense Logistics Agency (“DLA”) and US Army Corps of Engineers (USACE) specifications and (ii) only using the considerable skill, experience and knowledge of those to be involved in the new venture, which they were free to lawfully use.
- (k) It is denied that any of the Defendants ever intended to, or in fact now do, manufacture or market facsimiles of Hesco’s products. DIRICKX Systems manufactures its products in accordance with the aforementioned specifications in the paragraph above. Further, the fence system which DIRICKX Systems manufactures and markets is materially different to XS Fence.

22. As to paragraph 10:

- (a) It is denied that there was a secret plan as alleged for the reasons set out in the preceding paragraph.
 - (b) It is denied that Mr Deblauwe controls DIRICKX Systems for the reasons set out in paragraph 11(c) above.
 - (c) To the extent that it is inferred that Mr Deblauwe has invested, provided assistance and/or support to set up and launch DIRICKX Systems in his personal capacity, that is denied.
 - (d) If the reference to “Dirickx France” is a reference to PICOT, it is admitted that it provided investment, assistance and support to set up and launch DIRICKX Systems as it was entitled lawfully to do. If it is a reference to anything else, then it is denied that “Dirickx France” provided investment, assistance and support to set up and launch DIRICKX Systems.
23. It is admitted that Mr Lyons and Mr Pickup took up their positions at DIRICKX Systems in May 2022 and that Mr Jenkins took up his position at DIRICKX Systems in January 2023. Save as aforesaid, the first sentence of paragraph 11 is denied. Mr Ellis took up his position at DIRICKX System on 23 November 2022, which is after the date (20 November 2022) on which the post-termination restrictions in the Schedule to the Settlement Agreement dated 20 May 2022 between him and Praesidiad Limited had expired.
24. It is admitted that DIRICKX Systems now markets gabion baskets (‘EB Units’), fencing systems incorporating gabion baskets (‘PS Systems’), ‘sangar’ structures (‘OHP Systems’) and flood barriers (‘FB Units’). Save as aforesaid, the last sentence of paragraph 11 is denied for the reason set out in paragraph 21(k) above.
25. Paragraph 12 is admitted. The Patent is and always has been invalid for the reasons set out in the Grounds of Invalidity served herewith.
26. As to paragraph 13:
- (a) It is admitted that the Ellis Documents were and contained information confidential to Hesco, save for the Hesco Sales Briefing (which Hesco admits was not confidential in paragraph 23).

- (b) It is denied that all of the Jenkins Documents were and contained information confidential to Hesco. For example, the documents included Mr Jenkins' holiday application forms, his wife's 1995 GCSE results and an image of Mr Jenkins' signature.
- (c) It is denied that any of the Hesco Test Data that has actually been identified in the Particulars of Claim was and/or contained information confidential to Hesco for the reasons set out in paragraph 57 below.
- (d) It is denied that the Advantica Test Data was and contained information confidential to Hesco for the reasons set out in paragraph 68 below.

27. As to paragraph 14:

- (a) It is denied that Hesco is the owner of any copyrights subsisting in the document listed at paragraph 23(8). The email was sent by Sarah de Guzman, an employee of RA, a customer of Hesco in Dubai.
- (b) It is denied that Hesco is the owner of copyright subsisting in the GCSE results of Mr Jenkin's wife, Susannah Edgar, and Mr Jenkins' signature, which are included on the list of Jenkins Documents.
- (c) Save as aforesaid, it is not admitted that Hesco is the owner of copyright in the Ellis Documents and the Jenkins Documents.
- (d) It is denied that Hesco is the owner of copyright in the Sangar Artwork for the reasons set out in paragraph 69 below.
- (e) It is admitted that Hesco is the owner of copyright in the XS Fence Photograph.

28. Paragraph 15 is noted. In the premises, of paragraph 27 above, the Defendants require Hesco to provide further particulars of subsistence and title in relation to the Ellis Documents, the Jenkins Documents and the Sangar Artwork.

29. As to paragraph 16:

- (a) It is admitted that Hesco owns goodwill in its business, as described in paragraph 1 and to the extent admitted in paragraph 7 above. Such goodwill is attached to the Hesco name, when used in relation to that business (as opposed to a specific product).
- (b) It is denied that such goodwill is attached to the products themselves or any photographs thereof.
- (c) Further, the terms a “Hesco”, “MIL” and/or “MIL Gabion”, when used in relation to specific products, are signs or indications which had become, by the time of the acts complained of in the Particulars of Claim, customary in the current language and established practices of the trade to describe gabion baskets. In the premises, those terms were at that time not capable of distinguishing the Claimant’s gabion baskets from those of other undertakings.

Save as aforesaid, paragraph 16 is not admitted.

- 30. Paragraph 17 is admitted, save that the relevant clause in Mr Ellis’s contract of employment is clause 15.
- 31. Paragraph 18 is admitted. It is denied, if it be alleged, that such implied duty survived the termination of Mr Ellis’s and Mr Jenkins’ contracts of employment.
- 32. Paragraph 19 is noted.
- 33. Paragraphs 20 and 21 are denied. Hereunder, the Defendants rely on the following:
 - (a) Paragraph 25 above.
 - (b) Paragraph 1 of the Particulars of Infringement is admitted. It is further admitted that the gabion barrier assembly line employed by DIRICKX Systems falls within the scope of claim 1 of the Patent. The floor for the assembly line was laid down on 17 July 2022. DIRICKX Systems first employed such gabion assembly line on 29 July 2022. DIRICKX Systems laid down the floor of its assembly line and began employing it without any knowledge of the Patent or Hesco’s intention to file an application for the Patent. In the premises, pursuant to

s. 64(1) Patents Act 1994, DIRICKX Systems has the right to do and/or to continue to do the acts complained of in the Particulars of Infringement.

34. Save that Mr Ellis learned that he had been provisionally selected for redundancy on or around 7 September 2021, as set out in paragraph 21(b) above, the first sentence of paragraph 22 is admitted.
35. The second sentence of paragraph 22 is admitted.
36. Save that it is admitted that Mr Ellis spoke to Mr Lyons regularly during the period of his redundancy process, the third sentence of paragraph 22 is denied. Mr Ellis had not been offered, or even promised, a role at DIRICKX Systems by the time he signed the Settlement Agreement on 20 May 2022.
37. Paragraph 23 and the first sentence of paragraph 24 are admitted. Mr Ellis sent further documents to his personal email address without Hesco's consent. Attached at Annex 2 is a schedule of all such documents that the Defendants have been able to identify before the service of the Defence and Counterclaim. The documents are labelled by one of four categories: Category A, B, C or D:
 - (a) The documents assigned to Category A of Annex 2 are those which Mr Ellis sent to himself following legal advice on the redundancy process and any claims Mr Ellis was entitled to bring against Hesco for breach of his employment contract, including Hesco's implied duties towards Mr Ellis. As such, Mr Ellis was entitled to send those documents to himself for the purposes of seeking and receiving legal advice and potentially bringing a claim for unfair and/or wrongful dismissal and other claims.
 - (b) The documents assigned to Category B of Annex 2 are those in respect of which Mr Ellis admits that the documents were and/or contained Hesco confidential information and/or in which Hesco owns copyright and/or were sent in breach of contractual or other obligations Mr Ellis owed to Hesco.
 - (c) In respect of the documents assigned to Category C of Annex 2, it is not admitted that such documents were or contained Hesco confidential information and/or in were documents in

which Hesco owns copyright and/or were sent in breach of contractual or other obligations Mr Ellis owed to Hesco.

- (d) Regarding the documents allocated Category D of Annex 2, it is denied that any of those documents were or contained Hesco confidential information and/or were documents in which Hesco owns copyright and/or were sent in breach of contractual or other obligations Mr Ellis owed to Hesco.

38. Further in relation to paragraph 23, Hesco has unlawfully published Mr Ellis' personal email address on its website at <https://www.praesidiad.com/highcourtaction>. As such, Hesco has unlawfully used and disseminated Mr Ellis' personal data in breach of Articles 5.1(a), (c) and (d) and Article 6.1 of the General Data Protection Regulation as incorporated into English law and the Data Protection Act 2018 (the "UK GDPR"), since such use and dissemination falls outside the exemption for use in legal proceedings under paragraph 5, Schedule 2, Part 1 of the UK GDPR. Mr Ellis reserves the right to make a formal complaint to the Information Commissioner's Office in respect of such infringement of his rights and reserves the right to bring a counterclaim in these proceedings for the same.
39. As to the second sentence of paragraph 24 and paragraph 25, it is admitted that Mr Ellis did not send the documents to his personal email address for the purposes of his employment with Hesco. He did so for the following two purposes:
- (a) He sent the Ellis Documents in Category A in Annex 2 to gather evidence for a potential claim that Mr Ellis was considering bringing against Hesco for constructive dismissal and/or breach of his contract of employment (including the implied term of mutual trust and confidence).
 - (b) He sent the Ellis Documents in Category B in Annex 2 because he thought that such documents could be useful to him, including for potential use in potential future employment by DIRICKX Systems, or another company.
40. As to paragraph 26, it is admitted that Mr Ellis's acts of sending the documents in Category B of Annex 2 constituted breaches of his contractual and equitable obligations of confidence. Save as aforesaid, in the premises of paragraph 27 above, paragraph 26 is not admitted.

41. Save that DIRICKX Systems was only one of Mr Ellis's potential future employers, in the premises of paragraph 39(b) above, paragraph 27 is admitted in respect of the Ellis Documents in Category B of Annex 2. In the premises of paragraph 39(a) above, paragraph 27 is denied in respect of the Ellis Documents in Category A of Annex 2.
42. As to paragraph 28, it is admitted that Mr Ellis sent a number of documents to Mr Lyons, Mr Pickup, Mr Jenkins and/or Mr Adam Robinson. Attached at Annex 3 is a further Schedule of all documents that the Defendants have been able to identify before the service of the Defence and Counterclaim that Mr Ellis sent to any of the other Defendants and which it is admitted contain Hesco confidential information or in which copyright subsists which is likely owned by Hesco or the sending of which was in breach of Mr Ellis's contract of employment. Mr Ellis's motive in sending such documents was to ingratiate himself with the other Personal Defendants at a time when he was in his mid-fifties and facing unemployment, having been made redundant from the only job he had had since leaving the army.
43. Save as aforesaid, paragraph 28 is denied. Hereunder, the Defendants rely on the following:
- (a) Mr Ellis was not asked by any of the other Defendants to gather, retain, disclose or use any of the documents in Annex 3, or any other information which is confidential to Hesco, for the purpose of DIRICKX Systems' business. Mr Francois Hardy and Mr Deblauwe of PICOT made it clear in May 2022 in conversations with Mr Lyons, Mr Pickup and Mr Robinson that they should not retain or use, and that DIRICKX Systems should not use, any information confidential to Hesco.
 - (b) Neither DIRICKX Systems nor any of the Personal Defendants, other than Mr Ellis, used any of the documents in Annex 3 or any of the information obtained from those documents for the benefit of DIRICKX Systems. The information contained in the documents sent by Mr Ellis was of no use to DIRICKX Systems nor to any of the Personal Defendants.
 - (c) Mr Lyons deleted, prior to his receipt of Hesco's solicitors' letter before action to DIRICKX Systems of 8 November 2023, all of the documents in Annex 3 which had been sent to him and did not use them nor any of their contents.

44. Paragraph 29 is specifically denied. Hereunder, the Defendants rely on the following facts and matters:

- (a) DIRICKX Systems made no use of Hesco's price list in preparing its own price list or pricing jobs. Adam Robinson created DIRICKX Systems' price list in July 2022 based on its own business plan developed in March 2022, which was then approved by the PICOT board on 6 April 2022. None of Mr Pickup, Mr Ellis or Mr Jenkins had in any involvement in its creation or use.
- (b) Hesco's price list is and was not, in any event, materially useful, as it does not show the actual prices that Hesco would charge. Rather, it only showed the maximum headline prices that Hesco would charge. In practice, Hesco would offer discounts to the headline prices on a case-by-case basis. Unless DIRICKX Systems knew (which it did not) what those discounts were in advance of submitting its own pricing to potential customers, it could not (and in fact did not) marginally undercut Hesco in the manner alleged.
- (c) In the premises, it is denied that Annex 1 shows "undercutting" by DIRICKX Systems.
- (d) The prices at which Hesco has supplied its products to the US Army are made publicly available by such customer when the DLA publish tender results. Such prices are made available through the DLA's Internet Bid Board System ("**DIBBS**") available at <https://www.dibbs.bsm.dla.mil//awards/> and where the notice for entry to that platform states "*Communications using, or data stored on, this IS are not private*". An example of such a price list is attached at Annex 4.
- (e) Any confidentiality in Annex 1, and the prices contained in it, was destroyed by the publication of the Particulars of Claim, including the annexes, by Hesco, or with its consent, on the website at preasidiad.com on or around 29 March 2024. Attached at Annex 5 is a copy of the webpage at the following url, which contains a link to download the Particulars of Claim: <https://www.praesidiad.com/highcourtaction>.
- (f) The Particulars of Claim were also published on or around 7 May 2024 on the PR Newswire and the Yahoo! Finance websites. Attached at Annexes 6 and 7 are copies of the said articles

available at the following urls: (i) <https://www.prnewswire.co.uk/news-releases/praesidiad-takes-high-court-action-against-competitor-and-ex-employees-for-alleged-wrongdoing-302134886.html>; and (ii) <https://finance.yahoo.com/news/praesidiad-takes-high-court-action-070000037.html>, which contain a link to download the Particulars of Claim.

(g) In the premises, the Defendants, and any other party, have been free in law and equity to use the information contained in Annexes 5 to 7 since their publication.

45. The first and third sentences of paragraph 30 are admitted.

46. In the premises of paragraph 21(b) above, it is admitted that Mr Jenkins had discussions with Mr Lyons and Mr Ellis before he resigned his employment with Hesco. Save as aforesaid, the second sentence of paragraph 30 is denied. In particular:

(a) Mr Jenkins resigned his employment because, as a result of the atmosphere, the increased workload on him following Mr Ellis' departure and the unbearable pressure on him, he felt he could not continue to work at Hesco without seriously damaging his mental health and family life. He did not resign in order to join DIRICKX Systems as he had not received a job offer (nor even a promise of a job offer) at that time.

(b) Mr Jenkins was offered a role at DIRICKX Systems on 29 September 2022 and he began working for DIRICKX Systems on 3 January 2023.

47. Paragraph 31 and the first sentence of paragraph 32 are admitted.

48. The second and third sentences of paragraph 32 and paragraph 33 are denied. In support of that denial, the Defendants rely on the following facts and matters:

(a) Mr Jenkins used the Bluetooth folder in the course of his employment with Hesco and the matters complained of amounted to normal use by him of Hesco's IT system.

(b) The Bluetooth folder already existed on Mr Jenkins' work laptop when it was issued to him, so he continued to use it. To the best of Mr Jenkins' knowledge, the folder synchronised with Hesco's server.

(c) As a Hesco employee, Mr Jenkins often visited places for long periods of time where there was either no or only very limited wi-fi connection, so he needed all his work materials to be stored locally on his laptop.

49. In the premises, paragraphs 34 and 35 are denied.
50. Paragraph 36 is also denied. The Jenkins Documents were not received by any of the other Defendants. Further, Mr Jenkins did not have access to, nor did he retain, any of the Jenkins Documents after he returned his work laptop to Hesco, which he did shortly after handing in his notice on 29 June 2022.
51. Paragraph 37 is admitted. However, for the reasons noted at paragraph 37 above, Hesco has unlawfully published and disseminated Mr Lyons' personal email address in breach of the UK GDPR. Mr Lyons reserves the right to make a formal complaint to the Information Commissioner regarding the publication of the Particulars of Claim as described in paragraph 44(e) above in circumstances where it contains Mr Lyons' personal email address.
52. Paragraph 38 is admitted. However, no business intended for Hesco was in fact diverted to DIRICKX Systems. In the premises, no loss was caused to Hesco by Mr Jenkins' breach.
53. Paragraph 39 is denied. Mr Lyons did not know about the Mensah Message and did not assent to Mr Jenkins sending it.
54. Paragraph 40 is admitted. It is, however, denied that the second paragraph of the email quoted in paragraph 40 is correct. The true history of the genesis of DIRICKX Systems, and the nature of its business and products, is set out in paragraph 21 above.
55. Paragraph 41 is admitted, save that Mr Ellis was not copied on Mr Jenkins' email.
56. Paragraphs 42 and 43 are admitted.
57. Paragraph 44 is denied. In support of that denial, the Defendants rely on the following facts and matters:

- (a) The XS product (also known as the “Geoquip HVM fence” and the “Zenith XS Sensor fence”) was developed by Hesco and by Heras Perimeter Protection Ltd (formerly known as CRH Fencing & Security Group (UK) Ltd (company No. 02840742), which trades as Geoquip Worldwide and is known to those in the trade, and is referred to herein, simply as “**Geoquip**”).
 - (b) The testing of the XS product was carried out by Geoquip.
 - (c) The data relating to such testing are available on the UK government’s website at <https://www.npsa.gov.uk/hvm-impact-rated/zenith-xs-sensorfence>, an example of which is available at Annex 8.
 - (d) In the premises, it is denied that the testing data and certificates relating to the XS product are, or contain, information confidential to Hesco.
58. Further, the sending of the emails quoted in paragraphs 40 and 43 has not to date generated any business for DIRICKX Systems. In the premises, Hesco has suffered no loss as a result.
59. The Defendants are not able to plead back to paragraph 45 because the definition of Hesco Test Data is unclear. However, the Defendants volunteer the following:
- (a) After the termination of his employment and his period of consultancy, Mr Pickup retained a number of technical papers written by various academics in the field of blast, ballistics and HVM. He kept those as he is a chartered engineer and has CPD requirements. Such papers are not confidential to Hesco.
 - (b) Save as admitted herein, no test data was taken or retained by Mr Lyons, Mr Ellis or Mr Jenkins.
60. Paragraph 46 is noted. The allegation of joint tortfeasance is denied for the reasons set out below.
61. The first sentence of paragraph 47 is denied. DIRICKX Systems’ website was launched on 11 or 12 January 2023. Prior to that date, there was a basic landing page with very limited information about DIRICKX Systems.

62. As to the second sentence of paragraph 47, it is admitted that instructions for the development of the website came predominantly from Mr Pickup and that Mr Lyons also contributed to its development. Mr Ellis did not contribute to the development of the website.
63. As to paragraph 48, it is admitted that the DIRICKX Systems website featured the combination of text and images displayed in the sub-paragraphs thereto. Without admission of liability, all the photos complained of were removed from the website shortly after service on the Defendants of the claim form and Particulars of Claim herein.
64. Paragraphs 49 to 51 are denied. Hereunder the Defendants rely on the following facts and matters:
- (a) Paragraph 29 above is repeated.
 - (b) It is not admitted, if it be alleged, that each, or any, of the photographs complained of are of Hesco products.
 - (c) Even if each, or any, of the photographs complained of are of Hesco products, it is denied that any goodwill was generated in the photographs that were shown on DIRICKX Systems' website.
 - (d) The products in question are expensive, and sales of them are few and far between. The process of purchasing such products is therefore a highly considered one. In the premises, it is denied that a customer, or potential customer, of Hesco and/or DIRICKX Systems would be materially influenced by images of products on a website, as opposed to the company supplying them and/or the technical specifications of the products and/or their price.
 - (e) Further, or in the alternative, if, which is denied, the use of the combinations of text and photographs complained of did amount to a misrepresentation, the same did not cause any damage to any goodwill owned by Hesco. The Defendants rely on the absence of any particulars of damage relied on by Hesco in the Particulars of Claim.
65. The first sentence of paragraph 52 is admitted. ERDC is not a potential customer of DIRICKX Systems and does not buy product. Following an approach to DIRICKX Systems by ERDC,

DIRICKX Systems prepared the presentation for a meeting, the purpose of which was to discuss commercial licensing opportunities for ERDC's innovations.

66. As to the second sentence of paragraph 52, Mr Pickup prepared the presentation on behalf of DIRICKX Systems. Mr Lyons was not involved in its preparation.
67. Paragraph 53 is admitted.
68. As to paragraph 54, it is admitted that Image 1 is a reproduction of data generated from blast testing commissioned by Hesco and performed by Advantica. It is denied that Image I, or the data shown in it, is confidential. Mr Pickup obtained Image 1 from a thumb drive ("the **Hesco Thumb Drive**") which was widely distributed by Hesco as a marketing promotion to third parties at the Defence and Security Equipment International trade show held at the Excel Exhibition Centre in London in September 2019.
69. Paragraph 55 is denied. In particular:
 - (a) The image numbered '02' in Image 2 is of a bunker kit showing a configuration typical to all militaries. The original arrangement of this configuration was designed by ERDC back in 2003 and is called the MILVAN bunker, as shown on page 1 of the ERDC Construction Guide at Annex 9.
 - (b) The images numbered '03' and '04' in Image 2 and Image 3 are drawings created by Harsco Corporation as shown in the presentation at Annex 10.
 - (c) In the premises, it is denied that copyright subsists in Images 2 and 3.
70. Save that Image 4 is a photograph of an XS Fence installation in Algeria, not South Africa, paragraph 56 is admitted.
71. Paragraph 57 is not admitted.
72. In the premises of paragraph 68 above, paragraph 58 is denied.

73. It is admitted that Mr Pickup and DIRICKX Systems infringed Hesco's copyright in the XS Fence Photograph by reproducing it in the ERDC Presentation, without Hesco's consent.
74. It is further admitted that Mr Pickup and Mr Lyons may have inadvertently retained electronic copies of other photographs taken by them during the course of their employment with Hesco, and therefore in which Hesco may own the copyright, as a result of their icloud accounts syncing with their phones. Mr Lyons purchased a new personal phone in around October 2020 to which such photographs synchronised. Mr Pickup's personal phone synchronised with the icloud account of his former work phone when he took out a contract at the end of his consultancy in around May 2021 referred to at paragraph 15(e) above. Save as aforesaid, paragraph 59 is denied.
75. Paragraph 60 is denied. Mr Jenkins did not retain the Jenkins Documents and did not provide them to any of the other Defendants.
76. Paragraphs 61 to 63 are denied. ERDC were told expressly, and therefore understood, that the images used were not concerned with and did not depict DIRICKX Systems' products or testing of the same.
77. Save as already admitted above and in Annex 2 and Annex 3, paragraphs 64 and 65 are denied.
78. Paragraphs 66 and 67 are denied. The basis for Hesco's inference is a false one for the reasons set out above. The reference in paragraph 66 to the ERDC website is not understood. The Defendants have not used that website.
79. Paragraph 68 is denied. Hereunder the Defendants rely on the following facts and matters:
- (a) There was no secret plan for the reasons set out in paragraph 21 above.
 - (b) Save as admitted above, it is denied that the Defendants have committed any acts of breach of confidence, copyright infringement, passing off or patent infringement.
 - (c) Mr Ellis committed the acts of breach of a contractual and equitable obligation of confidence admitted above by himself and without the consent of the other Defendants. There was no common design with any of the other Defendants.

(d) DIRICKX Systems and Mr Pickup committed the acts of copyright infringement admitted above without the knowledge of Mr Jenkins or Mr Ellis. There was no common design between Mr Pickup and any of the other Personal Defendants

80. The first sentence of paragraph 69 is not admitted. The Defendants submit to the relief sought at paragraphs (2) and (6) of the prayer for relief in the Particulars of Claim in respect of the acts of breach of confidence, breach of contract and copyright infringement which have been admitted above, but not otherwise.

81. As to the second sentence of paragraph 69:

(a) the Defendants hereby offer to undertake to Court in relation to: (i) the documents listed in Annex 2, which are in categories A, B and C; (ii) the documents listed in Annex 3; (iii) the iCloud photographs referred to in paragraph 74 above; and (iv) the XS Fence Photograph (the “**Contested Documents**”):

(i) to delete permanently, or procure the permanent deletion of, any copies of the Contested Documents in their possession or control, save for copies which they are required to retain pursuant to their obligations under the CPR or need to retain and use for the purposes of this action;

(ii) not in the future to use or disclose any of the Contested Documents, or any of the information contained therein, other than for the purposes of this action; and

(iii) once this action has been finally concluded, to delete permanently all copies of the Contested Documents in their possession and to confirm the fact of their deletion in affidavits signed by each of the Personal Defendants and an officer of DIRICKX Systems.

(b) Paragraph 63 is repeated in relation to the DIRICKX Systems website.

(c) It is admitted that DIRICKX Systems intends to continue the acts complained of in the Particulars of Infringement, as it is lawfully entitled to do.

(d) Save as aforesaid, it is denied that the Defendants threaten and continue the acts complained of. It is denied that Hesco will suffer any loss or damage as a result for which the Defendants or any of them are liable.

82. In the premises, save as admitted above, the Claimant is not entitled to the relief, interest and costs claimed or any other relief, interest and costs.

COUNTERCLAIM OF THE FIRST DEFENDANT

83. Paragraph 25 above is repeated.

84. By this counterclaim, the First Defendant seeks a declaration that the Patent is invalid and an order that the Patent be revoked.

AND THE FIRST DEFENDANT COUNTERCLAIMS FOR:

- (1) A declaration that UK Patent GB 2608722B is and always has been invalid.
- (2) An order that UK Patent GB 2608722B be revoked.
- (3) Further or other relief.
- (4) Costs.

CHRIS AIKENS

STATEMENT OF TRUTH

The Defendants believe that the facts stated in this Defence and Counterclaim are true. The Defendants understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by statement of truth without an honest belief in its truth.

I am duly authorised to sign this statement of truth on behalf of the First Defendant.

Full name: Kevin Lyons

Position: Chief Executive Officer

Signed: 


Dated: 24 May 2024

Full name: Kevin Lyons

Signed: 


Dated: 24 May 2024

Full name: Michael Pickup

Signed: 

Dated: 24 May 2024

Full name: Shaun Ellis

Signed: 

Dated: 24 May 2024

Full name: Benjamin Jenkins

Signed: *B Jenkins*

Dated: 24 May 2024

Served this 24th day of May 2024 by Squire Patton Boggs (UK) LLP, 60 London Wall, London, EC2M 5TQ, solicitors for the Defendants.

(Ref: CD1/DIR.075-0001)

Claim No.: HP-2024- 000006

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY
COURTS OF ENGLAND AND
WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

B E T W E E N:

HESCO BASTION LIMITED

Claimant

and

(1) DIRICKX SYSTEMS LIMITED

(2) KEVIN LYONS

(3) MIKE PICKUP

(4) SHAUN ELLIS

(5) BEN JENKINS

Defendants

DEFENCE AND COUNTERCLAIM

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Ref: CD1/DIR.075-0001

Solicitors for the Defendants