Intellectual Property Office

BL O/543/22
22nd June 2022

PATENTS ACT 1977

CLAIMANT	Cygnet Texkimp Limited
DEFENDANT	Crompton Technology Group Limited
ISSUE	References under sections 12, 13 and rule 10 in respect of EP patent application EP18275106.5 and related applications
HEARING OFFICER	H Jones

Ms Kyra Nezami (instructed by Appleyard Lees IP LLP) for the Claimant
Mr Jeremy Heald (instructed by Dehns) for the Defendant

Hearing date: 31 March 2022

DECISION

Introduction

1 This decision is concerned with entitlement and inventorship of patent applications EP18275106.5, US201916517809, CA3049965 and BR 102019014850. It is common ground that these applications all relate to the same invention and that the claim can be decided on the basis of EP 18275106.5 ("the patent application") alone. The patent application relates to fibre coating apparatus and was filed by Crompton Technology Group Limited ("CTGL") with James William Bernard and William Pollitt as named inventors.

2 On 12 May 2021, the claimant, Cygnet Texkimp Limited ("Cygnet"), initiated proceedings by filing a statement of case before the comptroller under sections 12 and 13 of the Patents Act 1977 ("the Act") and rule 10(2) of the Patents Rules 2007 ("the Rules"). Cygnet asserts that it, rather than CTGL, should be registered as the applicant of the patent applications, and that Mr Andrew Jonathan Whitham and Mr Dhaval Jetavat of Cygnet are the true inventors rather than Mr James William Bernard and Mr William Pollitt of CTGL. Alternatively, Cygnet seeks determinations that it be included in addition to CTGL as an applicant and that Mr Whitham and Mr Jetavat be named as joint inventors along with Mr Bernard and Mr Pollitt. CTGL disputes these claims.

3 Following the normal evidence rounds, the issue came before me at a hearing held on 31 March 2022. The claimant was represented by Ms Kyra Nezami of 11 South Square, instructed by Appleyard Lees IP LLP. The defendant was represented by Mr Jeremy Heald of Three New Square, instructed by Dehns.

4 Prior to the hearing, a case management conference (CMC) was held on 23 March

2022 to discuss arrangements for the hearing. At the CMC, the claimant sought permission to amend its statement of case to reflect the evidence that had subsequently been filed. Even though two of the amendments proposed by the claimant raised new points at a very late stage in the proceedings, I decided to allow them to be made given that no further evidence was required in support; I considered this to be consistent with the overriding objective of dealing with cases justly and noted that the defendant could challenge the merits of the claimant's revised position at the hearing.

5 The hearing was held entirely remotely via Microsoft Teams®. I am grateful to the parties and their witnesses for their flexibility and willingness to make the arrangements work as well as I believe they did.

Background to the invention

6 Cygnet specialises in the development and production of aerospace grade "pre-preg" fibres (fibres that have been pre-impregnated with resin) and the machinery used for the production. CTGL produces fibre-reinforced composite products and production equipment for manufacturing such products.

7 Cygnet and CTGL worked together on a project called "Advanced Nacelle Systems" which sought to develop advanced engine actuation technologies to support the next generation of development programmes, specifically suited to the application of Ultra High Bypass turbofans. One aspect of the project was to develop a low-cost "wet-out systems" (WOS) for impregnating fibre with resin. Cygnet was tasked with developing this system. A Collaboration Agreement was signed on 25 July 2016 which included provisions regarding ownership of IP rights relating to the WOS.

8 One aspect of developing the WOS was identifying a suitable resin to use. Cygnet and CTGL approached a supplier, Park. A Non-Disclosure Agreement dated 14 October 2016 was entered into with Park ("the Park NDA") to protect Park's resin formulation and to protect the disclosure to Park of their resin's use.

9 Mr Jetavat was Cygnet's Research and Development Specialist until he left in December 2017. He worked on the development of the WOS with Mr Whitham, Cygnet's Technical Manager.

10 During the course of the development work, Cygnet produced project progress reports. The earliest report from January 2017 focused on analysis of different resins supplied by CTGL. The August 2017 report includes a process schematic for the WOS. This schematic illustrates the system upon which Cygnet is relying to show that Mr Whitham and Mr Jetavat devised the inventive concept of the invention. The March 2018 report raised concerns about the overall project costs and recorded that Mr Jetavat had left Cygnet. In the May 2018 report, Cygnet gave notice to the other parties of the Collaboration Agreement that they were withdrawing from the project at the end of July 2018. Cygnet withdrew from the project, effective on 31 July 2018.

11 Following the March 2018 report, CTGL state that they started to consider alternative ways in which the fibre could be impregnated with resin. CTGL subsequently filed the patent application on 23 July 2018.

The claimed invention

12 The patent application contains two independent claims, as follows:

> 1. An apparatus for applying a liquid matrix to a fibre tow, comprising:
>
> a belt press arranged to receive the fibre tow and compress it between two moving belts;
>
> a matrix application roller arranged to receive liquid matrix and transfer it to the fibre tow;
>
> a second matrix application component arranged adjacent to the matrix application roller so as to form a first gap between the component and the matrix application roller;
>
> wherein the matrix application roller is positioned adjacent to the belt press so as to form a second gap between the matrix application roller and a belt of the belt press; and
>
> wherein the second gap is larger than the first gap.
>
> 11. A method of applying a liquid matrix to a fibre tow, comprising:
>
> applying a liquid matrix to a matrix application roller;
>
> controlling the amount of matrix applied to the matrix application roller by passing the matrix on the matrix application roller through a first gap formed between the matrix application roller and a second matrix application component;
>
> transferring the liquid matrix from the matrix application roller to the fibre tow by passing the fibre through a second gap formed between the matrix application roller and a belt press; and
>
> receiving the fibre tow in the belt press and compressing the fibre tow between two belts of the belt press;
>
> wherein the second gap is larger than the first gap.

The witnesses and evidence

13 There have been three rounds of evidence. Witness evidence for Cygnet was given by Mr Whitham, who provided a witness statement and accompanying exhibits. Witness evidence for CTGL was given by Mr Bernard, who also provided a witness statement and accompanying exhibits. Mr Whitham and Mr Bernard were cross-examined at the hearing. I found both Mr Whitham and Mr Bernard to be fair witnesses whose answers were consistent with their witness statements. Mr Whitham and Mr Bernard answered all questions carefully and honestly.

The law

14 Section 13 of the Act and rule 10 of the Rules deal with the right of an inventor to be mentioned in a patent. The relevant parts read as follows:

> *13(1) The inventor or joint inventors of an invention shall have a right to be mentioned as such in any patent granted for the invention and shall also have a right to be so mentioned if possible in any published application for a patent for the invention and, if not so mentioned, a right to be so mentioned in accordance with rules in a prescribed document.*
>
> *(2) …*
>
> *(3) Where a person has been mentioned as sole or joint inventor in pursuance of this section, any other person who alleges that the former ought not to have been so mentioned may at any time apply to the comptroller for a certificate to that effect, and the comptroller may issue such a certificate; and if he does so, he shall accordingly rectify any undistributed copies of the patent and of any documents prescribed for the purposes of subsection (1) above.*
>
> *Rule 10(1) An inventor or joint inventor of an invention, if not mentioned in any published application for a patent, or in any patent granted, for the invention, must be mentioned in an addendum or an erratum to the application or patent.*
>
> *10(2) A person who alleges that any person ought to have been mentioned as the inventor or joint inventor of an invention may apply to the comptroller for that person to be so mentioned –*
>
> *(a) in any patent granted for the invention; and*
> *(b) if possible in any published application for a patent for the invention,*
>
> *and, if not so mentioned, in the manner prescribed by paragraph (1).*

15 Section 12 of the Act relates to questions about entitlement to patent applications under foreign or international law. The relevant part is:

> *12(1) At any time before a patent is granted for an invention in pursuance of an application made under the law of any country other than the United Kingdom or under any treaty or international convention (whether or not that application has been made) –*
>
> *(a) any person may refer to the comptroller the question whether he is entitled to be granted (alone or with any other persons) any such patent for that invention or has or would have any right in or under any such patent or an application for such a patent; or*
>
> *(b) any of two or more co-proprietors of an application for such a patent for that invention may so refer the question whether any right in or under the application should be transferred or granted to any other person;*
>
> *and the comptroller shall determine the question so far as he is able to and may make such order as he thinks fit to give effect to the determination.*

16 The leading authority on entitlement is the judgment of the House of Lords in *Yeda Research and Development Co Ltd v Rhone-Poulenc Rorer International Holdings Inc*[1]. I considered this case and other relevant caselaw on inventorship and entitlement in my recent decision in the case of *Close Brewery Rentals Limited v Geco Holdings Limited (BL O/264/21, paragraphs 30-46)*. As Ms Nezami notes, the correct approach to an entitlement and inventorship dispute involves determining three questions: i) what is the inventive concept, ii) who devised the inventive concept, and iii) is someone other than the inventor entitled to the invention by virtue of section 7(2)(b) or (c). I shall address these questions in turn and structure my decision accordingly.

17 One final point as to the law. The defendant notes that section 7(4) of the Act provides a rebuttable presumption that the applicant for a patent is entitled to be granted the patent. Thus, the claimant bears the burden of proving that a) Mr Witham and Mr Jetavat made a relevant contribution to the inventive concept of the application and b) Mr Bernard and Mr Pollitt contributed nothing of substance.

Arguments and analysis

What is the inventive concept?

18 Ms Nezami says that there are two legal principles that should be borne in mind when determining the inventive concept: the concept should be determined by reading the patent application through the eyes of the skilled person (*BDI Holding v Argent Energy Ltd [2019] EWHC 765 (IPEC)*, para. 37) and that the concept is synonymous with the inventive core of the claim, to be determined by focusing on "the problem underlying the invention" (*BDI Holding* at para. 18) or "the new technical insight conveyed by the invention – the clever bit" (*Regen Lab SA v Estar Medical Ltd [2019] EXHC 63 (Pat) at para 222)*.

19 Mr Heald says that that since I am considering a patent application rather than a granted patent in this instance, I should consider the specification as a whole in assessing the inventive concept, i.e. I may take the current wording of the claims into account but that their present form is not determinative. He referred to the Court of Appeal's judgment in *Markem v Zypher [2005] EWCA (Civ) 267* in which Jacob LJ said that the invention of an application should be determined in accordance with the information in the specification rather than the form of the claims.

20 Turning to the inventive concept set out in the application, the background section of the patent application identifies two existing methods for manufacturing impregnated fibres – the "solvent dip" process and the "hot melt" process. The shortcomings of both existing methods are also discussed. A major disadvantage with the solvent dip process is that some residual solvent may remain in the prepreg product which can cause a volatile problem during cure, leading to high void content in the end product. This makes it unsuitable for high end applications such as aerospace applications. The hot melt process is a multi-stage process, and the invention seeks to provide a process which reduces the number of steps compared with the usual hot melt process.

21 Paragraph [0006] of the patent application sets out the invention as "an apparatus for applying a liquid matrix to a fibre tow, comprising: a belt press arranged to receive

[1] House of Lords [2007] UKHL 43

the fibre tow and compress it between two moving belts; a matrix application roller arranged to receive liquid matrix and transfer it to the fibre tow; a second matrix application component arranged adjacent to the matrix application roller so as to form a first gap between the component and the matrix application roller; wherein the matrix application roller is positioned adjacent to the belt press so as to form a second gap between the matrix application roller and a belt of the belt press; and wherein the second gap is larger than the first gap.

22 Paragraph [0007] explains that positioning the matrix application roller adjacent to the belt press and carefully controlling the relative size of the first gap and the second gap controls the amount of liquid matrix material that is applied to the fibre and prevents excess matrix material from being transferred to the belt press.

23 Paragraph [0014] says that while the matrix application roller and the belt press could be rotated together by the same control, it is preferred that they are independently controlled so that the speed and/or direction of the matrix application roller and the speed of the belts of the belt press can be independently controlled. Preferably the speed and/or direction of rotation of the matrix application roller is controlled so as to control the amount of matrix entrained by the fibre, thereby controlling the volume fraction of the end product. Regardless of whether the control of these components is independent or dependent, in some examples the matrix application roller is controlled such that its surface speed is different to the speed of the adjacent belt. The fibre moves at the same speed as the belt press. Therefore, the difference in speeds (and more particularly the different adjacent surface speeds) causes a shear or drag force between the matrix material on the matrix application roller and the fibre. Control of this force can affect the transfer of the film of matrix material on the matrix application roller to the fibre tow.

24 Paragraph [0015] explains that the surface of the matrix application roller moves slower than the surface of the belt press in the second gap. Therefore, the fibre effectively wipes the matrix off the matrix application roller which also stops strings of matrix forming.

25 Figure 1 of the patent application (reproduced below) illustrates an example apparatus embodying the invention.

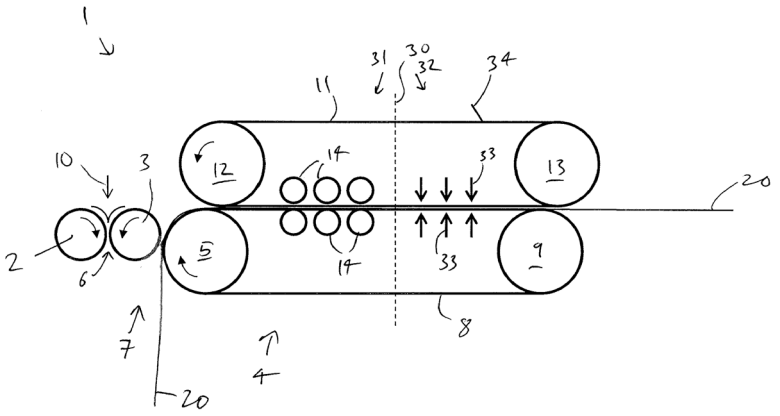


Fig. 1

26 Figure 1 shows an apparatus 1 which includes a first matrix application roller 2 and a second matrix application roller 3. The second matrix application roller 3 is provided adjacent to a belt press 4. A first gap 6 is formed between the first matrix application roller 2 and the second matrix application roller 3. A second gap 7 is formed between the second matrix application roller 3 and the belt press 4 (specifically the belt press roller 5).

27 The patent application explains that the first matrix application component may be a roller 2 or it could be a wiper blade that does not rotate, but still defines a gap between the blade and the matrix application roller.

28 Figure 5 of the patent application, reproduced below, shows the second gap between the matrix application roller 3 and the belt 8 and belt press roller 5 of the belt press 4. The fibre tow 20 is shown entering the second gap 7 from below and being pulled round into the belt press 4 on belt 8 by the clockwise rotation of belt press roller 5. The resin layer 50 is squeezed partially into the tow 20 in the gap 7 so as to partially impregnate the tow 20. This partially impregnated portion of the tow is labelled 51 in Figure 5, with the non-impregnated portion of tow 20 being labelled 53. The thickness of resin layer 50 is reduced on the other side of the gap 7 as it exits the gap 7 due to the amount of resin taken up by the fibre tow 20. The reduced thickness layer of resin on matrix application roller 3 is labelled 54 and the missing portion from the original thickness 50 is shown at 55 by dashed line. In addition to the tow 20 being partially impregnated with resin in layer 51, an additional layer of resin 52 is formed on top of the fibre tow 20. This resin layer 52 will be fully compressed into the tow 20 within the belt press.

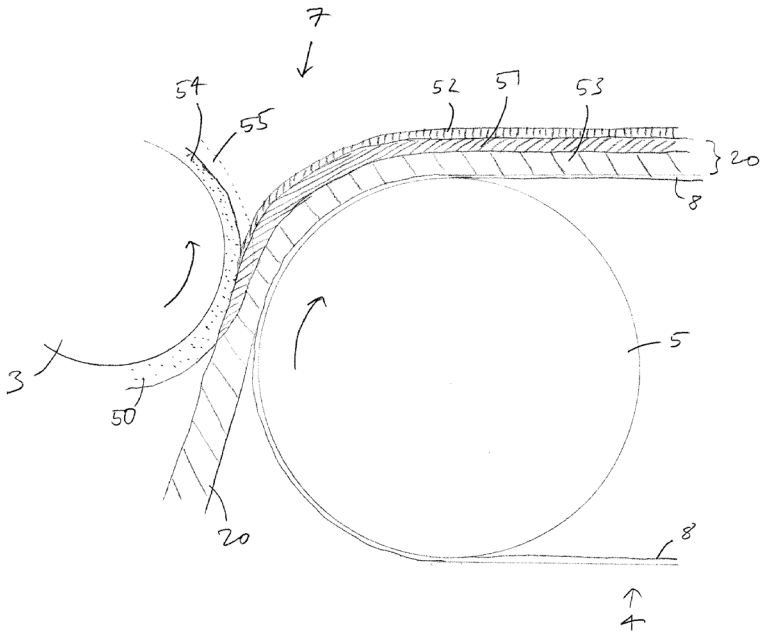


Fig. 5

29 The parties take different views of the inventive concept. CTGL contends that it is:

> *"the apparatus/process for making pre-preg fibre products with the coater described in the application. The belt press is part of the coater, and in that regard is part of the inventive concept."*

Cygnet, on the other hand, says that the inventive concept is:

"the use of a belt press and coating roller ("matrix application roller") in the same apparatus such that resin is applied to the coating roller (using a third component) and then transferred to the fibre prior to it entering the belt press. In this 'direct feed solution':

(a) a layer of resin at a controlled thickness is applied to the coating roller; and

(b) the resin on the coating roller is brought into contact with fibre, which entrains an amount of resin, before entering the belt press."

30 Ms Nezami explains that the inventive concept has the advantage over the systems described in paragraphs [0003] and [0004] of the patent application of not requiring multiple processing stages. I agree with Ms Nezami that while the patent application describes these functions as being performed by "gaps" between components of the apparatus, the patent application recognises that "gaps" would have been present in previous systems. For example, paragraph [0012] says:

"The first gap and the second gap provide improved control compared with the multi-stage traditional prepreg forming process as these two gaps would normally have been part of the separated stages."

Ms Nezami contends that the new technical insight is the ability to achieve the above functions without distinct processing stages.

31 Considering the specification as a whole, the inventive concept is clearly directed towards an apparatus for applying a liquid matrix to a fibre tow. The apparatus eliminates the distinct processing stages of the previous hot melt process by bringing together the coating of the matrix roller with resin and the transfer of the resin to the fibre into a single apparatus. This is achieved by the apparatus having first and second "gaps" between components to control the amount of resin applied to the fibre and prevents excess matrix material from being transferred to the belt press. While the application explains that the first gap can be formed between the matrix application roller and a component (which may be a roller or wiper blade), throughout the specification the second gap is defined as being formed between the matrix application roller and the belt of the belt press. Nowhere in the specification is it described that the second gap can be defined as formed between the matrix application roller and any other component apart from the belt of the belt press. Paragraph [0007] describes:

"Positioning the matrix application roller adjacent to the belt press and carefully controlling the relative size of the first gap and the second gap controls the amount of liquid matrix material that is applied to the fibre and prevents excess matrix material from being transferred to the belt press."

Paragraph [0009] refers to:

"The second gap between the matrix application roller and the belt of the belt press…"

Paragraph [0011] says that:

"In use, the fibre passes through the second gap between the matrix application roller and the belt press before entering the belt press."

And paragraph [0019] says:

> *"The matrix application roller could be positioned adjacent to the belt of the belt press at any suitable location on the travel path of the belt…"*

32 As explained in paragraph [0008], there are other factors that also affect the amount of material transferred to the fibre. One of these factors is the relative speeds of the matrix application roller and the belt. The speeds of the matrix application roller and the belt press can be independently controlled. The speed of the belt press is used to control the relative speed of the fibre to the matrix application roller. If the speed of the matrix application roller is slower than the belt press in the second gap, the fibre effectively wipes the matrix off the matrix application roller which also stops strings of matrix forming (see paragraph [0015]). None of this can be achieved if the second gap is not formed between the matrix application roller and the belt of the belt press. Furthermore, there is nothing in the specification to suggest that this can be achieved in any other way.

33 Upon considering the specification as a whole, I find that the skilled person would consider the inventive concept to lie in an apparatus for applying a liquid matrix to a fibre tow through the use of first and second "gaps" between components to control the amount of resin applied to the fibre and prevents excess matrix material from being transferred to the belt press. Furthermore, I find that the skilled person would consider it an essential part of the inventive concept that the second gap is formed between the matrix application roller and the belt of the belt press.

Who devised the inventive concept?

34 Having considered the relevant evidence in some detail, I can now proceed to determine who it was that devised the inventive concept.

35 Cygnet argues that they developed an apparatus which includes all of the features of the inventive concept of the patent application. The apparatus in question was detailed in their August 2017 report, which included the schematic reproduced below. It is not in question that the apparatus was devised before the filing date of the patent. The apparatus includes a belt press and coating roller. Liquid resin is applied to the coating roller using the "Damn-Blade" and then transferred from the roller to the fibre tow prior to the belt press.

36 The amount of liquid resin applied to the coating roller is controlled by the "Damn-Blade" and the "Doctor Blade", i.e. the equivalent of the first matrix application component arranged adjacent to the matrix application roller so as to form a first gap in the patent application.

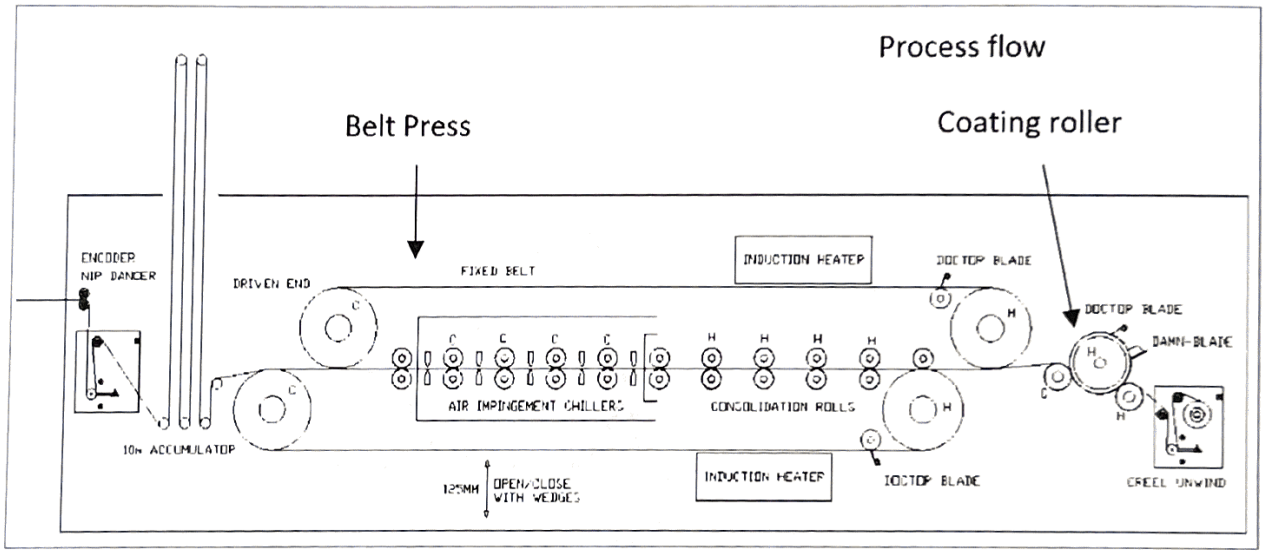
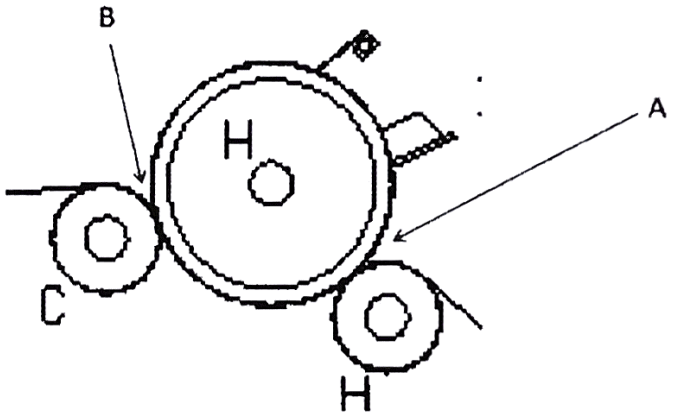


Fig. 1: Cygnet's schematic (red annotations added)

37 The resin is brought into contact with the fibre using the rollers below the coating roller, the fibre would then entrain an amount of resin before entering the belt press. The coating apparatus is separate to the belt press and is shown in more detail below:



38 Mr Heald identified a number of differences between the apparatus of the patent application and the Cygnet apparatus above. In the apparatus of the patent application the coating takes place at the belt press; the fibre tow only passes through one gap in the coater; the fibre tow is carried by the belt press only; the speeds of the rollers and belts can be controlled independently; and there is no cooling applied at any point during the coating process.

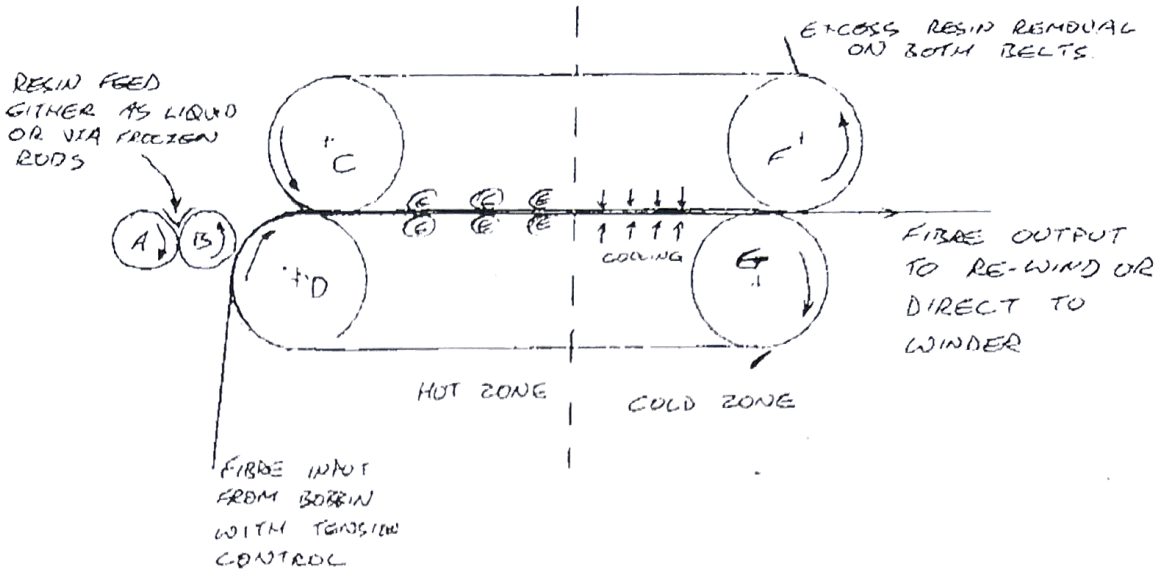
39 Under cross-examination, Mr Whitham explained that the formation of resin strings was a problem with the Cygnet apparatus and that active cooling had always been part of its coating process - the cooling solidifies the resin to provide a clean release of the fibre.

40 As explained by Mr Bernard, with the aid of the detailed drawing of the coating apparatus above, resin and fibre are introduced at point A at a high temperature to ensure it impregnates the fibre (heated by roller labelled H). The impregnated resin

would then be cooled (cooled by roller labelled C) and separated from the centre roller at point B. The output would then be sent to a belt press to fully impregnate the resin into the fibre.

41 Mr Bernard further explained that this design was proving difficult to implement and Cygnet had encountered significant problems in getting the impregnated fibre to cleanly release onto the small cooling roller C.

42 In his witness statement, Mr Bernard states that following the March 2018 report, CTGL had concerns over Cygnet's system and the ability of it to work as planned within the project timeframe. As a result, CTGL started to consider alternative ways in which the fibre could be impregnated with resin. Mr Bernard and Mr Pollitt started to consider a different approach in which the impregnated fibre didn't need to be released at all before it was fed into the belt press. Mr Pollitt sent the drawing below to Mr Bernard in an email dated 12 April 2018. As can be seen, this closely resembles figure 1 of the patent application.



43 The description of the drawing details that resin would be fed using roller B directly onto the fibre tow carried on the belt press D. The impregnated fibre would then only need to separate after being pressed and cooled in the belt press. The thickness of resin applied to the tow could also be controlled by the appropriate spacing of rollers A and B and the speed differential between the fibre speed (dictated by roller D) and roller B.

44 Comparing all of this development work with the inventive concept determined at paragraph 33 above, it is clear that Cygnet's system does not include the feature of the second gap being formed between the matrix application roller and the belt of the belt press. The second gap (gap B) is formed between the central coating roller and the cooling roller C. However, as shown in the drawing above, CTGL had started to develop their own system which includes the second gap being formed between the matrix application roller and the belt of the belt press, and it was this work that led to the eventual filing of the patent application

45 On the basis of the evidence before me, I find that the inventive concept was devised solely by developers at CTGL, namely Mr Bernard and Mr Pollitt.

Who is entitled to apply for and obtain a patent

46 The final question to address is whether someone other than the inventors is entitled to the invention because of the circumstances set out in sections 7(2)(b) or (c).

47 If, as I have found, the invention was made solely by Mr Bernard and Mr Pollitt then CTGL would ordinarily be entitled to a patent for the invention by virtue of their employment by CTGL at the relevant time. Cygnet does not dispute this. If I had found that Mr Whitham and Mr Jetavat of Cygnet were inventors, then CTGL argues that it is still entitled to a patent for the invention pursuant to the Collaboration Agreement under which Cygnet's work was conducted. Cygnet disputes this. While it is not strictly necessary for me to consider this separate claim to entitlement (given my finding as to inventorship), I shall set out the arguments in summary form below.

48 Cygnet points to clause 9 of the Collaboration Agreement which deals with IPR Ownership. The Agreement defines five categories of IPR: Background IPR, CTG Resulting IPR, IPR, Resulting IPR and WOS Resulting IPR. Resulting IPR is defined as any IPR arising from and developed in the course of the project by any of the parties, that is not CTG Resulting IPR or WOS Resulting IPR. WOS Resulting IPR is defined as all IPR related to the design, and manufacture of the wet out system using prepreg processing technology integrated into the filament winding process arising from, and developed in the course of the project by any of the parties. The relevant parts of clause 9 of the Agreement are set out below:

> 9.4 Subject to the terms of 9.5 below, CTG shall own all WOS Resulting IPR generated by any Party under this Agreement and each Party shall be responsible for securing ownership of such WOS Resulting IPR generated from a Party's employees, students or other agents.
>
> 9.5 CTG shall own all WOS Resulting IPR subject to the following conditions:
>
> > 9.5.1 CTG purchase from Texkimp Goods and/or Services for a minimum value of £1,200,000 ("Investment"); and
> >
> > 9.5.2 Such Investment shall be paid by CTG to Texkimp within a timeframe of four (4) years from completion of Milestone 2.4 from Annex 4, the project plan and milestone register Project Plan; and
> >
> > 9.5.3 CTG and Texkimp shall agree the Investment payment milestones when there is a clear understanding of the Goods and/or Services required to support this Agreement and any other CTG requirements; and
> >
> > 9.5.4 Any Goods and/or Services purchased by CTG shall be in accordance with the provisions of this Agreement and the relevant supporting agreement such as a machine and/or supply agreement issued by the relevant purchasing department.
>
> 9.9 CTG shall undertake and continue at its expense the timely prosecution and maintenance of all WOS Resulting IPR and protect such WOS Resulting IPR in a manner it deems fit and necessary considering the nature of the relevant WOS

> Resulting IPR.

49 It is common ground that the conditions in clause 9.5 were not satisfied. Cygnet says that as a result of this, ownership of the IP rights in the wet out system were never transferred to CTGL and that Cygnet's eventual withdrawal from the project does not alter the situation.

50 CTGL submits that it is clear from clause 9.9 that CTGL was to be the owner of the WOS Resulting IPR from the outset. Clause 9.9 ascribes both the costs and the control of the prosecution of the WOS IPR to CTGL and to protect the IPR in a manner it deems fit and necessary (e.g. by bringing actions for threatened or actual infringement, which it could only do as the proprietor of the patent or an exclusive licensee). CTGL adds that Cygnet's withdrawal from the project means that it was no longer entitled to the benefit of clause 9.5 and that the ownership of the WOS IPR remains as it stood at the point when Cygnet withdrew.

51 I agree with CTGL that the effect of the Collaboration Agreement was to transfer any IPR relating to the wet out system to CTGL. Clause 9.4 makes clear that CTGL should own all WOS Resulting IPR generated by Cygnet and places the responsibility for securing ownership of such IPR generated by its "employees, students or other agents" on Cygnet. Cygnet did not seek to secure ownership of the invention set out in the patent application. It did not do so because, as I have found, it was devised by Mr Bernard and Mr Pollitt. Had it been devised by Cygnet employees then it would have transferred to CTG under the intended terms of the Collaboration Agreement. Cygnet's withdrawal from the Agreement must mean that it is released from future obligations under the Agreement and that it ceases to be entitled to any future benefits. Cygnet says that no conditions were placed on its withdrawal from the project and so this should not alter the fact that entitlement to a patent relating to a wet out system does not transfer to CTGL. However, I agree with Mr Heald that an overall aim of the Collaboration Agreement was to ensure that CTGL should own all IPR relating to the wet out system, and the lack of any conditions relating to withdrawal should not undermine such an aim.

52 Ms Nezami says that if I find against Cygnet on the transfer of entitlement under the terms of the Collaboration Agreement then I should also consider the application of the Park NDA on entitlement. I shall do that for the sake of completeness.

53 Ms Nezami notes that the Park NDA post-dates the Collaboration Agreement but pre-dates the August 2017 Report which she says demonstrates that Cygnet employees contributed to the invention. Cygnet's position is that entitlement to the IP rights in any information in the August 2017 Report therefore falls to be determined by reference to the Park NDA. Clause 20 of the NDA says that:

> This Agreement constitutes the entire understanding between the Parties and supersedes all previous understandings, agreements, communications, and representations, whether written or oral, concerning the treatment of Proprietary Information".

54 Clause 3 of the NDA defines proprietary information as any information, knowledge, or data that is received by a receiving party from the disclosing party in furtherance of or pursuant to the purpose. The purpose is defined in the preamble of the Agreement, this being to investigate the suitability of various resin systems of Park for the development of Texkimp Limited manufacturing equipment and the

development and manufacture of CTGL composite components. The NDA makes clear that any IP embodied in proprietary information shall remain the property of the disclosing party.

55 It seems to me that the Park NDA does not more than to set out what every standard NDA is required to do – it establishes a legally-binding contract that allows the parties to share sensitive information without fear that it will end up being disclosed to third parties in a manner not envisaged or controlled by the disclosing party. The Park NDA does no more than to confirm that whatever IP exists in any proprietary information shared with the other side remains the property of the disclosing party. In other words, the act of sharing the information should not be taken as an implicit transfer or revocation of any IP rights. If any IP rights exists in the proprietary information shared by Cygnet in the August 2017 Report then those rights remain the property of Cygnet. However, I have already found that the August 2017 Report does not disclose the inventive concept set out in the patent application, so for present purposes the Park NDA does not help the claimant's case.

Summary

56 I have determined that Mr Bernard and Mr Pollitt are the inventors of the invention set out in EP18275106.5, US201916517809, CA3049965 and BR102019014850. It follows that CTGL is entitled to be granted a patent in relation to the invention and that it should remain as the sole applicant in the applications. I need make no orders to give effect to my findings.

Costs

57 CTGL has asked and is entitled to an award of costs in its favour. Given the manner in which the case proceeded from initiation to hearing, I do not expect to depart from the standard scale of costs set out at Annex A of Tribunal Practice Notice 2/2016[2], but I will allow a period of 14 days for parties to make any submissions they wish to make in this regard. I expect that CTGL will want to address the issue of costs incurred as a result of having to deal with the claimant's late request to amend its statement of case, although my initial impression is that this caused little inconvenience and was largely anticipated by Mr Heald.

Appeal

58 Any appeal must be lodged within 28 days after the date of this decision.

Huw Jones
Deputy Director, acting for the Comptroller

[2] https://www.gov.uk/government/publications/tribunal-practice-notice-22016/tribunal-practice-notice-22016-costs-in-proceedings-before-the-comptroller