

ENGLAND AND WALES / JUDGMENT

QMC Instruments Limited v Celtic Terahertz Technology Limited & Ors

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Ref. IL-2025-000137 Neutral Citation Number: [2025] EWHC 3485 (IPEC) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES INTELLECTUAL PROPERTY AND ENTERPRISE COURT (ChD) 7 Rolls Buildings Fetter Lane London Before THE RIGHT HONOURABLE SIR COLIN BIRSS CHANCELLOR OF THE HIGH COURT IN THE MATTER OF QMC INSTRUMENTS LIMITED (Claimant)

- v -

- (1) CELTIC TERAHERTZ TECHNOLOGY LIMITED
- (2) CARDIFF UNIVERSITY
- (3) CAROL TUCKER
- (4) KEN WOOD
- (5) PETER ADE (Defendants) MR GUY ADAMS appeared on behalf of the Claimant MR TOM ALKIN appeared on behalf of the First, Third, Fourth and Fifth Defendants MR TERENCE BERGIN KC appeared on behalf of the Second Defendant JUDGMENTS 26th NOVEMBER 2025 (AS APPROVED)

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice. Transcribed from the official recording by eScribers Ltd Ludgate House, 107-111 Fleet Street, London EC4A 2AB Tel: 0330 100 5223 | Email: uk.transcripts@escribers.net | uk.escribers.net This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved. SIR COLIN BIRSS C: 1. 2. 3. 4. 5. This application relates to the rights derived from what has been described in the evidence as the “life’s work” of

Professor Peter Ade. That work is focussed on far infrared technology. The work started in the early 1970s and has continued until relatively recently when Professor Ade retired. It was initially carried out at Queen Mary College, University of London, and then in 2001 Professor Ade's group moved to Cardiff University. The professor retired in 2021 although he kept working as a consultant until more recently. The core of Professor Ade's work, including his PhD thesis, relates to filters used in far infrared. The filters are called MMFs which stands either for multi-mesh filters or metal mesh filters but the distinction does not matter, as far as I understand it. These filters are essentially a metal grid where the spacing of the metal in the grid works to filter out unwanted radiation. The metal grid may be on a substrate which may be made of polypropylene or some other material. There may be more than one grid. The filter will be used with an infrared detector. Examples are a crystal of indium antimonide (InSb), or germanium or anything else which will detect the relevant infrared radiation. Many of the detectors, at least in the early days, were very cold and operated, for example in one case, at four degrees Kelvin. The expression "cooled detector technology" is used in some of the contracts in this dispute and I will come back to that. The purpose of the MMF is to filter out other electromagnetic radiation which the operator does not want to reach the detector. The broad sequence of events was as follows. Starting in the 1970s at Queen Mary Professor Ade did his initial work and came up with the concept of this kind of filter. A company called QMCIL was set up as part of Queen Mary to exploit Queen Mary's technology. At that time there is evidence that QMCIL was selling these detectors and also selling MMFs to go with them. These were standard MMFs and also other non-standard ones which were designed and tested, at least in part, by Professor Ade. Also at that time Professor Ade and his group were designing and making MMFs for research use and providing such things to the research community not via QMCIL. Then in 1991 QMCIL was sold by the university to investors in the form of the Churchwood Trust which is controlled by the Wylde family. The 1991 transaction includes an acquisition agreement whereby Churchwood buys QMCIL from the university and also a licence agreement between the university company QMUL, QMCIL and others. These contracts are both drafted by reference to the expression "cooled detector technology". The scope of that term is in dispute, the issue is whether it includes MMFs. Transcribed from the official recording by eScribers 6. The acquisition agreement contains a warranty from the university's company that QMCIL is the sole beneficial owner of all the IP relating to cooled detector technology. Then the licence agreement provides for a licence as follows. "The College hereby irrevocably grants to QMCIL an exclusive licence to use all know-how, designs, circuit diagrams, computer programmes and all other technical information relating to the cooled detector technology developed in the future by the College and the exclusive licence to use, sell or otherwise deal in products manufactured in accordance with the licence granted by this clause. Provided that if QMCIL does not itself wish to exploit any such technical information it agrees that the College may itself (without prejudice to other rights of QMCIL) exploit such information as QMCIL does not wish to exploit." 7. 8. 9. 10. 11. I should say that it is clear that the two agreements, that is the acquisition and the licence, would be read and understood together. So the acquisition agreement on its face means that QMCIL owns all the relevant intellectual property as at 1991 and the licence grants an exclusive licence – and note that the term exclusive appears twice in that clause – for further developments; and then there is

a proviso about information which QMCIL does not wish to exploit itself. After this, as I understand the evidence, the work continued more or less as before. QMCIL was selling cooled detectors into the commercial market and, at some point in the '90s a new form of MMF was developed by the group which used polypropylene as the substrate. MMFs were being designed and tested by the university and provided to QMCIL for them to be used and sold with the cooled detector technology which QMCIL was selling. Also there was some assembly of MMFs done by QMCIL. The fitting of rings is one example of that, but only an example. There was then an arrangement called APCONS, which was a profit share whereby, essentially, for MMFs supplied by the university's group to QMCIL there was a 50 per cent profit share which came back to the group. The university's group was called the APG, the astrophysics group. The next thing that happened was that in 2001 Professor Ade and his group moved to Cardiff and left Queen Mary. A new agreement was drawn up. The recitals to the new 2001 agreement are relevant: "(1) Through internally funded research and academic collaborations QMC IL has developed over the last 25 years a broad range of cooled detector technologies used in instrumentation which operate in the 30mm to 2 u range of the electromagnetic spectrum and require the use of cryogenics to give the sensitivities (sic) required (hereinafter called "Cooled Detector Transcribed from the official recording by eScribers Technologies"). QMC IL also has an interest in commercialising the filters that are used to control what radiation wavelengths are accepted by such detectors (hereinafter called "Filters").

- (2) The University through the appointment of Professor Peter Ade and Professor Matt Griffin and their research teams to posts in its Department of Physics and Astronomy ("the Department") will also shortly have a strong technical base in Cooled Detector Technologies and Filters and QMC IL wishes to have access to and exploit the technical advances that will be made in these specialisms within the Department
- (3) The purpose of this Agreement is to formalise collaboration between QMC IL and the Department and for the University to license to QMC IL technological advances in Cooled Detector Technologies and Filters made by the research group(s) of Professors Ade and Griffin in the Department" 12. 13. Two points to note arising from these recitals are: the reference to formalising the collaboration which already exists, and also the fact that the agreement now explicitly refers not only to Cooled Detector Technologies but also to Filters. Term 1 of the 2001 agreement provides that subject to a formal lease being entered into the university will provide space in the department for QMCIL's use. Clause 2 is the licence clause, as follows: "2. THE University further agrees that it will
 - (a) allow staff of QMC IL such access as is comparable to that of staff of the Department and similar use of equipment and instruments of the Department
 - (b) provide access to use of technician staff and facilities of the Department and
 - (c) during the term of this Agreement and where it is free to do so, subject to the rights (only in the research they sponsor) of any third parties that sponsor research in Professors Ade and Griffin's research groups grant to QMC IL a non-exclusive licence to use all know how

designs circuit diagrams computer programs and all other technical information relating to the Cooled Detector Technologies and/or Filters acquired or developed by the research groups of Professors Ade and Griffin at the University and an exclusive licence to market manufacture use or sell (but not to sub-license to any third party the rights to market manufacture or sell) products manufactured in accordance with the licence granted by this clause. Provided that if QMC IL does not itself wish to exploit any such technical information QMC IL agrees that the University may itself (without Transcribed from the official recording by eScribers prejudice to the other rights of QMC IL herein) exploit such information as QMC IL does not wish to exploit” 14. At Clause 5(b) a 12.5 per cent royalty is to be paid on the sale of cooled detector technology instrumentation and then Clause 5(e) is as follows: “5. [...]

- (e) QMC IL will also pay to the University 50% of the net sales income arising from the sale by QMC IL of Filters based on any know how designs circuit diagrams computer programs or other technical information made available by the University under clause 2(c) above and/or built and/or tested at the University but only during the period when University has the expertise to design build and test such Filters. "Net sales income" for the purposes of this clause 5(e) means the gross income less all refunds, costs of rectification and all costs incurred by QMC IL and the Department in the manufacture marketing and sale of Filters. Payment to the University will be made within 30 days of receipt by QMC IL of income from the sale of Filters.” 15. 16. 17. 18. There is an obvious relationship between the terms of Clause 5(e) and the APCONS arrangement. That, of course, does not mean that the clause precisely reflects whatever the APCONS arrangement was, but it clearly relates to it. Clause 9(a) provides that the 2001 agreement is for three years and after that is terminable on one year's notice. As far as I am aware no notice of termination has ever been given. Then Clause 9(b) effectively provides that the provisions of Clause 2(c), that is the licence clause, and certain other terms, will remain in force after termination. That has the effect, as it is submitted and I think that must be right, that any licence that exists under that clause will continue after termination. The 2001 agreement was signed by Mr Jones for the university and Mr Ken Wood for QMCIL. Mr Wood was at that time, I believe, a director of QMCIL. The true interpretation of that agreement is at the heart of this case. I should also mention Professor, now I think Emerita Professor, Carol Tucker. She was involved not from the very earliest time but for a significant period of time in this work as well as Mr Wood and Professor Ade. As I understand the evidence, after 2001, albeit that the focus moved to Cardiff, the practical relations continued essentially as before. If I just focus on filters, filters were being made up in the physical area of the Department involving people at the university such as Professor Ade in the design and testing, and also filters were made and used by the astronomy group in Cardiff for academic use and provided to the research community. There is evidence by defendants in this case that 85 per cent of the MMFs made in that period went from Cardiff out via the academic or research community route rather than via QMCIL. Transcribed from the official recording by eScribers 19. 20. 21. 22. 23. 24. 25. Professor Ade, as I said, retired in 2021. It is clear that that retirement triggered

consideration of the future relationships and how things would work once he had retired. Professor Tucker and others at Cardiff started to think about setting up a technology spin out company, inter alia, to exploit the filters and Mr Wood resigned as a director of QMCIL on 31 August 2024. The first defendant company, Celtic Terahertz Technology Limited, is that spin out company. (Terahertz is a reference to the frequency of the far infrared radiation.) Tripartite negotiations took place and by tripartite I mean involving the university, QMCIL and the academics, as I will call them, but no agreement was reached. I think CTT, Celtic Terahertz Technology, was formed in about 2022 but actually started in operation in about 2024 or even later. The correspondence leading to this dispute started in February 2025. The claim form was issued by QMCIL on 8 August 2025 with Particulars of Claim. The defendants are CTT, Cardiff University, Professor Tucker, Professor Ade and Mr Wood. The case is essentially that QMCIL owns all the intellectual property relating to MMFs extant at 1991 by dint of the 1991 agreements and has an exclusive licence to all IP relating to MMFs which arose after that between 1991 and 2001, again by dint of the 1991 agreement. Then there is another exclusive licence, if I can put it that way, under the 2001 agreement for all IP arising after that. The exclusivity is QMCIL's, the owner of the IP is Cardiff University. QMCIL contends that it is entitled as against Cardiff University to require the university to give it access to all the material which embodies that intellectual property. It claims to be entitled to an account from Cardiff for the previous sales of MMFs which were not through QMCIL which it contends were a breach of the 2001 agreement. The claimant also relies on section 101 of the Copyright, Designs and Patents Act 1988 to bring, as an exclusive licensee, a claim for copyright infringement against the other defendants for infringing any copyright within the intellectual property, and seeks an injunction to stop them from making and selling MMFs. In relation to know-how QMCIL contends that, in equity, it can bring what is essentially a derivative claim on the basis that what CTT et al are doing and will do is a breach of the exclusive rights granted to QMCIL by Cardiff University, and it would be unconscionable for Cardiff University, as the licensor, to allow its former employees to behave this way in breach of the exclusive licence. QMCIL also contends that the true construction of the 2001 contract means that Cardiff university owes a duty of fidelity in these circumstances given the nature of the relationship between Cardiff and QMCIL over the years which can be enforced in equity to require Cardiff to account and to take the steps required which QMCIL requires it to take on this derivative basis. Transcribed from the official recording by eScribers 26. 27. 28. 29. 30. In support of the derivative claim as a basis for enforcing what QMCIL contends are its rights Mr Adams relies on *Verrall v Great Yarmouth* [1981] QBD 202 (for the proposition that a licence could be enforced in equity) and on cases dealing with derivative claims: *Roberts v Gill* [2010] UKSC 22 as well as other authorities referred to in Mr Adams's skeleton at paragraph 44(ii), which are *McGaughey v Universities Superannuation Scheme* [2024] 1 All ER 962 and *Waddington v Chan* [2009] 2 BCLC 82. There are also two further claims brought by QMCIL, one relating to the supply by Cardiff university of a device called the FSS2 and, secondly, a claim against Mr Wood as a former director of QMCIL. It is alleged that while he was a director in 2023 he diverted business which was for QMCIL to Professor Tucker. An application notice was issued on 19

August seeking summary judgment or directions for a speedy trial. In the application notice, in the box marked “What order are you asking the court to make and why?”, QMCIL states as follows: “Insofar as is necessary, the claimant seeks permission under CPR 24.4(1) to apply for summary judgment and for summary judgment under CPR 24 against each of the defendants and/or directions for a speedy trial. Further or alternatively, the claimant seeks interim injunctive relief against the first, third and fifth defendants preventing them, without the consent of the claimant, from carrying on business using, marketing, manufacturing or selling Multi-Mesh Filters and/or such other interim injunctive relief as the court shall think fit. This application notice attaches a statement made by Lucy Wylde dated 11 August 2025 which sets out the grounds upon which the application is made. The claimant believes that the defendants have no real prospect of defending the claim and know of no reason why the disposal of the claim should await trial.” Now before me in the evidence I have witness statements from Mrs Lucy Wylde of QMCIL, Mr Hargrave of Cardiff University, Professor Tucker, Mr Wood and Professor Ade. I should say at this outset that although the application notice refers to interim injunctive relief there is, in my judgment, no basis for such a claim in the material before me, and Mr Adams who appeared for QMCIL did not put his case on that basis. He put his case firmly on the basis as a claim for summary judgment, contending there is no defence to his client’s claim. Transcribed from the official recording by eScribers 31. The principles on which summary judgment is considered and granted are well established. CPR rule 24.3 provides as follows: Grounds for summary judgment 24.3 The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—

- (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial. 32. The well known decision of Lewison J, as he then was, in *Easyair v Opal Telecom*

[2009] EWHC 339 (Ch) set out seven applicable principles at [15]. “[15] As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows: i) ii) iii) iv) v) vi) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: *Swain v Hillman* [2001] 2 All ER 91; A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8] In reaching its conclusion the court must not conduct a “mini-trial”: *Swain v Hillman* This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10] However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be

expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550; Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a Transcribed from the official recording by eScribers vii) final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63; On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725.” 33. 34. These were approved in the Court of Appeal in AC Ward v Catlin [2009] EWCA Civ 1098 at [24]. I start my consideration with the 1991 agreement. Critical to this is the scope of the expression “cooled detector technology”. The question is whether it includes MMFs or not. I cannot but sympathise with QMCIL’s desire to resolve this question speedily but I am not convinced that this is suitable for summary judgment. There is no definition of that term in the agreement and it is not possible to interpret it without getting into the factual background. In my judgment, each side’s rival contention is properly arguable. On the face of it the term refers to the cooled detectors rather than other parts, of which there may be many other things as well as multi/metal mesh filters. However the context may show that it had a wider meaning as QMCIL contends, and there is at least a little correspondence which might support that. The fact that, as Mr Adams showed me, it is undisputed that QMCIL was selling filters with some detectors at that time is not determinative of the true construction of the agreement. Another relevant point is that if QMCIL’s interpretation of the agreement is right then it could be said to give away the whole of the IP completely to QMCIL, which might be surprising but which Mr Adams submits might well have made sense at the time. It is another factor to take into account. Transcribed from the official recording by eScribers 35. 36. 37. 38. 39. One question is whether QMCIL needed any licence or ownership of the IP relating to the

filters which were being produced by Professor Ade at the time, in order for QMCIL to have them and sell them. On the face of it the answer is no because the filters were being supplied to QMCIL by Professor Ade's group. In such circumstances ownership or a licence of IP for what was a component of what QMCIL was selling is not necessary. Nor is it clear to me what intellectual property would be covered by this agreement even if cooled detector technology did include filters. There has been no attempt to identify in the pleadings or the evidence, although Mr Adams had a creditable effort in his oral submissions, what specific material is actually claimed. There have been clear warnings in previous cases, which I do not need to cite, about unparticularised claims of copyright and confidential information. Now again I sympathise with QMCIL because they say they do not have access to see what is there, but nevertheless it is a striking thing that, despite all these years of this relationship, QMCIL does not appear to have had actual possession of what it now claims is information and materials which it owns and has exclusive rights to. Turning to the 2001 agreement, the first issue is the scope of the licence under Clause 2(c). Mr Adams contends that this licence, or this clause rather, draws a clear line, albeit that line may not jump off the page, that the commercial exploitation of the IP is the exclusive territory of QMCI. The defendants do not accept this. Turning to the words themselves there are a number of points to make. The first is that Clause 2 starts with the words "The university further agrees that it will..." The word is "will" and I will come back to that. Second, in 2(c) itself in the early part of the clause, starting with the words "subject to", there is what Mr Bergin, who appeared for Cardiff University, called a carve-out for what I will call academic use. Next is the reference to a non-exclusive licence to use all the know-how etc.. At this point it is clear that this clause certainly refers to cooled detector technology and/or filters. Filters are expressly referred to. But notably the next words which appear are "acquired or developed" which on the face of it are forward looking. Following those words is the beginning of the reference to an exclusive licence - which is an exclusive licence to market, manufacture, use or sell, ignoring the brackets, products manufactured in accordance with the licence granted by this clause. And then finally there is the proviso similar to the one in the 1991 agreement about information if QMCIL does not wish to exploit. In my judgment this clause, on the face of it, is prospective in nature. The words "acquired" or "developed" make that clear. Now, given the lack of detail in the claimant's case about what intellectual property or know-how or materials is actually relied on, that presents a serious problem. There is no evidence that I have been shown that any of what is currently now involved was generated after 2001. It may be or it may not, but that is a problem if, as I have already held, one cannot decide on summary judgment that the 1991 agreement does or does not cover filters at all. Transcribed from the official recording by eScribers 40. 41. 42. Now, turning to the word "will", this agreement has been treated by QMCIL as if it is a licence in force now rather than an agreement to licence developed products in future. If the issue was only about the word "will" itself then I would have significant sympathy with the argument on behalf of QMCIL that, although drafted strictly speaking as something prospective, it might not really be what the draftsman intended. However the words "during the term" at sub-

paragraph (c) and “subject to rights (only in the research they sponsor) of any third parties” and the words “where it is free to do so” are also forward looking. Taking all that in context supports the idea that this clause was not intended to be an extant exclusive licence to everything but, rather, was an agreement that QMCIL could, if it wanted, require Cardiff University to grant such a licence if QMCIL thought it wanted one, but it was not automatic. And what is clear is that QMCIL has never sought any such thing. Now again the important point, in my judgment, is that such a licence does not need to be in place over the period when the arrangements which did occur were underway

- with MMFs being made, designed and tested by Professor Ade and his group, with the involvement of QMCIL. The university employees do not need a licence from QMCIL to use the university’s intellectual property. I also note the words “the licence granted by this clause”. These clearly refer to the non-exclusive licence and so, in turn, do the words “products manufactured in accordance with this licence”. Mr Adams submitted to the contrary but it seems to me that this does not refer necessarily to the work that was under way involving Professor Ade designing or testing MMFs. Rather, it appears to refer to the idea that QMCIL would take over the manufacturing itself altogether, which I believe never happened. As I say, at the risk of repetition, neither Professor Ade nor any university employee needed QMCIL’s non-exclusive licence to do anything that they were doing. In other words, the fact of the supply to QMCIL of MMFs, which certainly did take place after 2001, does not shed useful light on the construction of this clause. 43. I also note Clause 5(e), which involves paying a 50 per cent share on sales of filters, does not only refer to filters made available under Clause 2(c) but also to filters built or tested by the university. In my judgment, that also reflects the point that from the point of view of employees of the university, they did not need QMCIL’s licence to do those things.
- 44. Mr Adams cites *Globe Motors v TRW Lucas Varity* [2016] EWCA Civ 396 and submits that insofar as there is any ambiguity in the language used then the court should strive to give effect to the provisions in a manner consistent with the overall purpose of the contract, and the parties’ reasonable expectations that they were establishing a workable relationship. He submits that the contract was intended to establish a collaborative relationship for the parties’ mutual benefit which they anticipated might last indefinitely and it should therefore be construed as a long term and continuing contract, making the point that it has lasted more than 24 years. This would be in contrast to a single transaction where the parties’ obligations can be specified precisely in advance. He therefore invites me, if appropriate, to take a more flexible approach to interpretation to give effect to the parties’ intentions. Transcribed from the official recording by eScribers 45. 46. 47. 48. 49. I understand the point of that submission but I am not satisfied that it works in this case to resolve the matter in QMCIL’s favour. There is a lot to be said for the defendants’ construction of this clause and the factual background will almost certainly shed light on the issues, but by no means will that necessarily be favourable to QMCIL. I am not in a position to find in QMCIL’s favour and to give summary judgment on the basis of their proposed interpretation of Clause 2(c). Before leaving this I should note that the defendants (excluding Cardiff university) also

contend that if the contracts do bear the meaning contended for by QMCIL then they would seek to rely on an estoppel by convention since, they say, it was the common assumption of all concerned that QMCIL had no exclusive rights. It is not necessary to deal with that, and I do note that Professor Tucker at one stage appears to have contemplated that the resolution of the dispute would be tripartite in nature, in other words including QMCIL, which QMCIL would say might undermine the argument about common assumption. A striking aspect of the facts is that, while QMCIL has not satisfied me to the standard necessary for summary judgment that it holds the intellectual property (or rights to it) which it claims. Nevertheless what always seem to have been in place was an arrangement whereby QMCIL was able to source filters from the university. I can understand that they might be concerned if that is under threat in future. I turn to the other important part of QMCIL's submission, that is the issue of collaboration and the equitable duties alleged to be owed by Cardiff University. Simply put, I am not satisfied that the 2001 contract and the relationship it creates can be read as importing the kinds of duties QMCIL contended for. Whether it is called a duty of good faith, or trust and confidence, or fidelity, in any event for the purposes of summary judgment, the relationship is properly arguably a purely commercial one. I appreciate there was a lot of work which can be described as collaboration; that is true, but that does not mean that the contract governing the legal relationship was relational in nature. That is the short answer to this aspect of QMCIL's case. Finally, in relation to Cardiff University I should record that part of Cardiff University's defence in answer to the QMCIL claim for an account is that everything it has done, in other words the other sales of MMFs, have been in the carve-out under paragraph 2(c) and, whatever else paragraph 2(c) means, that carve-out is clearly part of it. I appreciate that QMCIL does not agree with this or, more accurately, does not feel in a position to know whether that is the right characterisation of all of the dealings by Cardiff University, but that does not mean that QMCIL is entitled to an account in equity today. 50. Subject to two final points, I am not satisfied I should give summary judgment in favour of the claimant on any of the claims for equitable relief brought against the defendants. 51. That leaves two issues. First is the contract whereby Cardiff university supplied a filter known as FSS2 to QMCIL. It is clear that problems arose. Cardiff's case is Transcribed from the official recording by eScribers they were not Cardiff's fault and, as a gesture of goodwill, Cardiff made another one and offered it to QMCIL. QMCIL says that Cardiff is in breach of its contracts with Cardiff for not supplying that to it. It, QMCIL, is ready, willing and able to pay for it, Cardiff says it is not obliged to provide it but will do so if it is paid up front. 52. 53. 54. 55. In terms of the parties' legal rights it is quite plain that this is unsuitable for summary judgment. There is a whole series of contested facts about what happened in relation to FSS2. In terms of pragmatics one might think the sensible thing to do was to treat this as distinct from all the other issues, not impose any conditions or anything else, put the money in escrow if necessary, and supply the product if payment can be guaranteed. However to be clear, I am not making any order about this. I am not satisfied that I can do so to the standard necessary for summary judgment. Finally, Mr Wood. It does appear that Mr Wood directed a sales lead for QMCIL away from QMCIL and to CTT while he was still a director of QMCIL. He may have a defence, given all the previous dealings, but I

am bound to say this is the weakest part of the defendants' overall defence to this claim. However, I decline to give summary judgment against Mr Wood. It is a minor part of this dispute and, as I say, he might have a defence. Finally, in terms of the sheet of questions Mr Adams helpfully produced, I find the answer is no to questions 1, 6, 7, 11, 14, 16 and 17 and, I think, yes to question 13. I will end with this. In my judgment this dispute is plainly crying out for professional mediation and I would like to hear the parties about that. 56. That is my decision. (Following further submissions) 57. 58. It now falls for me to deal with the costs of the matters I have dealt with today. The position is that I have refused the application for summary judgment and directed that the parties should mediate this case with a stay for mediation running until the end of February. Taking the position of the defendants first, Mr Alkin for the first, third, fourth and fifth defendants contends that I should make an order for a payment on account of his clients' costs both in relation to the summary judgment application which has failed and also in relation to the interim injunction application which in the end was not pressed. When Mr Adams, if I can put it politely, attempted to resurrect it after I had refused summary judgment, I refused to entertain that. 59. The total claimed in the statement in the N260 form for the interim injunction application is £36,700 odd. Mr Alkin invites me to, as I say, make a payment for an Transcribed from the official recording by eScribers interim payment rather than a summary assessment and he submits that that sum should be paid. In relation to the costs of summary judgment, which I am told and have no reason to doubt, do not overlap with the interim injunction costs, they come to a grand total of £134,900 odd.

60. Mr Alkin points me to the witness statement of Mr Pearce in which he explains that in his estimation approximately 70% of those costs relate to the application for summary judgment itself rather than to the underlying merits of the case (that is my word not his). The point being that in dealing with the costs of summary judgment applications there is always a difficulty that costs incurred on summary judgment can often involve to some extent matters which will be gone through in the proceedings as a whole. I am quite sure that this is an example. As I say, Mr Pearce gives evidence in his witness statement that 70% of the costs relate to the summary judgment aspect and therefore 30% relates to the underlying merits. Therefore Mr Alkin asks for 70% of that sum. Mr Alkin also points out that Mr Pearce explains he has taken into account all the work that needed to be done and in particular has drawn attention to matters listed in paragraph 11 of the witness statement in which Mr Pearce set out matters which he regards as not related to the underlying merits. 61. 62. I am struck by the reference in paragraph 11(e) to the drafting of the witness statements of Carol Tucker, Ken Wood and Professor Ade. This is put forward as being something which related only to the application for summary judgment. I recognise that Mr Pearce at paragraph 13 acknowledges that, as he puts it, it cannot safely be assumed that a significant proportion of the drafting work relating to the witness statements can be directly reused. I am sure he is right about that. But nevertheless I am doubtful, I must say, from my experience that 70% is really the right figure to use to estimate the amount of the costs incurred so far on this application which ought to be taken as costs of summary judgment rather than costs of the

action on these defendants' side. My sense of the evidence I read is that a fairly significant part of that evidence is material which, having been gathered and put into a formal witness statement, is the product of work which will not have to be repeated in future if the litigation continues. Then I have Mr Bergin's application on behalf of Cardiff University. He also asks for an interim payment and also submits that the costs should be assessed on an indemnity basis, pointing to correspondence in August of this year which makes the point that the claimants had not complied with pre-action protocols and that they went ahead and served the proceedings without engaging in pre-action protocol type discussions to attempt to settle this matter. He submitted that this brings this matter out of the norm, it was inadequately pleaded, he submits, and the evidence was inadequate to make a case for summary judgment. 63. I am not satisfied that I should award indemnity costs in this application. There is something in Mr Bergin's submission but the way in which the claimants have conducted themselves falls just on the right side of the line to avoid an order for indemnity costs. Transcribed from the official recording by eScribers

64. Mr Adams submits that I should reserve the costs. One reason put forward is because no more evidence may turn up, in which case the refusal of summary judgment on the basis that there may be more evidence to give which bears on construction may turn out not to have been necessary. The second reason is because his clients have been pressing for mediation from the outset and I have now directed mediation. 65. 66. 67. 68. I am not prepared to reserve the costs over to trial. Apart from anything else, the reason I refused summary judgment was not only for the reason Mr Adams relies on. Moreover I would be very surprised from what I have seen so far if further evidence did not become available if this matter ever does go to trial. And I would like to repeat that I think this case can and should be mediated. Also in principle the court should make orders for costs now if it can and I will do so. I will direct a detailed assessment on the standard basis and I will make an order for an interim payment. I will, however, order that the payment is not to be made until after the date of the mediation. That seems to me to be the best way to encourage the parties and to facilitate the orderly resolution of this dispute. The sums I will award are as follows. For Cardiff University on a grand total of £127,973 including Mr Bergin's fees and his solicitors' fees; his submission for a payment on account was £100,000, that was on an indemnity basis. I will award £85,000. On the first, third, fourth and fifth defendants' total of £134,900 where 70% was said to be specific to this application, doing the maths broadly in my head that is about 70 plus 20 something, call it £94,000. As I say, to repeat, these sums will be due to be paid after, I will say 14 days after the end of February.

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