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

Before: Mr Justice Mellor

CRYPTO OPEN PATENT ALLIANCE v WRIGHT (IL-2021-000019)

("the COPA Claim")

WRIGHT AND ORS. v BTC CORE and ors. (IL-2022-000069)

("the BTC Core Claim")

SKELETON ARGUMENT OF THE CLAIMANT IN THE COPA CLAIM FOR HEARING ON 19 & 22 SEPTEMBER 2023

JONATHAN HOUGH KC

JONATHAN MOSS

14 September 2023

Instructed by Bird & Bird LLP

References to the hearing bundles take the following form: ***[Volume/Tab/Page]***
The Volume number refers to the electronic volumes, as when printed Volume 2 is split across two hard copy files with volume 2.2 starting at Tab 60.

Introduction

1. The purpose of this hearing is to address a number of applications that arise as the parties approach the close of evidence and the upcoming PTR (listed floating over 27-29 November 2023). Appended to this skeleton are (a) a pre-reading list and (b) a one-page note on "matters on the horizon" which the Court may need to consider after the hearing.

2. The applications are as follows (in the order COPA has suggested they be heard):

   (1) COPA's Consolidated RFI application **[1/22/234]**: COPA served a comprehensive RFI on 23 June 2023. Dr Wright at first refused to commit to providing a response at all, so COPA issued an application. Dr Wright finally provided a response on 11 September 2023, but has refused to answer almost all questions. COPA takes issue with that approach and asks the Court to order that substantive answers are given.

   (2) COPA's chain of custody application **[2/39/1001]**: The CCMC order provides for Dr Wright to supply chain of custody information in relation to Dr Wright's principal reliance documents. COPA was not satisfied with the information supplied, so it issued an application (as the order required). Very recently, Dr Wright has agreed to provide further information and has proposed to do so by 20 October 2023. COPA asks for a deadline of 6 October 2023 to be set.

   (3) Dr Wright's ASD expert evidence application **[2/42/1043]**: Dr Wright seeks permission to adduce expert evidence on autism spectrum disorder ("**ASD**") with a view to arguing for substantial limits on his cross-examination. COPA resists the application, which has been delayed by two years and which would generate a satellite dispute, cause unfair prejudice and be very disruptive of trial preparations. If Dr Wright suffers from ASD, he can provide a letter and notes from treating clinicians and the Court can form its own view on what, if any, measures to take at trial.

   (4) Dr Wright's RFI application on COPA's draft primer **[2/61/1637]**: The parties were not able to agree a technical primer on cryptocurrency technology relating to Bitcoin. COPA maintains that that is because Dr Wright insisted on including

contentious material, but that dispute is over and the parties are now preparing expert evidence. Dr Wright has applied for COPA to answer an RFI about whether its draft primer related to the technology at its inception or taking account of later developments. COPA's position is that it would be a pointless exercise to revisit the draft primer, and that the answer is for the experts to address this topic in their reports.

(5) Dr Wright's application to exclude hearsay evidence **[2/72/1864]**: COPA served a CEA notice in relation to expert reports served in previous proceedings involving Dr Wright. He has now applied to exclude the material from evidence. COPA maintains that the material is admissible, relevant and ought not to be excluded, while accepting that Dr Wright may make any points he wishes at trial as arguments as to weight.

Background

3. The full factual background to the dispute is set out in COPA's Re-Re-Amended Particulars of Claim ("**POC**") **[1/2/8]**, but a summary is provided here as context for submissions. As the Court is familiar with the case, this section may be skim-read if no reminder is needed.

4. Bitcoin is a type of cryptocurrency developed in 2008 which was based on concepts first set out in the Bitcoin White Paper (the "**White Paper**"), the full title of which was: "*Bitcoin: A Peer-to-Peer Electronic Cash System.*" The White Paper is the foundational text not only for Bitcoin but for many cryptocurrencies which followed it. It was released on 31 October 2008 by a person (or persons) working under the pseudonym Satoshi Nakamoto ("**Satoshi**"). From November / December 2008 it was hosted on a document repository, SourceForge, where (at least on COPA's case) it was published under the MIT License.

5. In early January 2009, Satoshi created the first block of the Bitcoin blockchain, on the basis of the framework set out in the White Paper (Block 0 or the "Genesis Block"). On 8 January 2009, Satoshi published a link to the first release of the Bitcoin executable file and the related source code on SourceForge (the "**Bitcoin Code**"). Further releases of the Bitcoin Code were issued by Satoshi, and later by others. Since early 2009, both the

White Paper and the Bitcoin Code have been published and disseminated around the world.

6. In 2011, Satoshi withdrew from further developing the Bitcoin system and ceased public communications. There has been considerable speculation about Satoshi's identity among those interested in and involved with the development of cryptocurrency. As the Court is aware, there have also been developments in the Bitcoin system and the blockchain. Some of these have involved "soft forks" and "hard forks", the latter of which have resulted in distinct cryptocurrencies coming into circulation.

7. On 8 December 2015, WIRED magazine published an article suggesting that Dr Wright may be Satoshi. Shortly afterwards, it issued a further article backtracking on that suggestion. On 2 May 2016, Dr Wright publicly proclaimed through a number of press outlets that he was Satoshi and had created Bitcoin. He also claimed to have proved his access to private keys of Satoshi by digitally signing messages in several technical proof sessions. Before 2016, he had never publicly made the claim to be Satoshi. In the months before making his claim, he had entered into an agreement with a company called EITC Holdings Ltd ("**EITC**") which allowed that company commercially to exploit his life story on the express basis that he was Satoshi in return for a payment of AUS$1 million.

8. Since mid-2016, Dr Wright has asserted his claim to be Satoshi and his authorship of the White Paper repeatedly, including in numerous posts on blogs and social media and in public appearances (some recorded and available on-line). Based on that claim, he has threatened litigation, including for copyright and database infringement (as well as for defamation), against numerous individuals and companies, including members of COPA. Of particular relevance to the COPA Claim, he has asserted ownership of the copyright in the White Paper and demanded its removal from websites on which it is hosted. COPA brought the COPA Claim in order to resolve the underlying issue of whether Dr Wright was the author of the White Paper and so to dispose of his threats.

9. On various occasions, Dr Wright has put forward material supposedly supporting his claim to be Satoshi, including: on his own websites; on social media; in media interviews; by disclosure in litigation; and in evidence under oath in three jurisdictions. COPA maintains that his evidence has repeatedly been shown to be inauthentic or at least of questionable authenticity or provenance. In addition, as set out below, Dr Wright's

other litigation has involved experts finding numerous instances of documents he has put forward having been manipulated (e.g. by backdating and altering content) in such a way as to support his claim. COPA has pleaded some examples of forgery and mis-presentation of important documents and (as set out below) has produced expert evidence of many more examples.

Brief Procedural History

10. COPA is a US-based non-profit mutual benefit corporation which was formed to encourage adoption and advancement of cryptocurrency technologies and to reduce barriers to growth and innovation in the field. The history of the COPA Claim can be summarised as follows:

    (a) In April 2021, COPA issued the COPA Claim (both for itself and as representative claimant for four corporate members of COPA). It seeks to resolve the issue whether Dr Wright is Satoshi (the "**Identity Issue**") and, if he is not, to put an end to his diffuse threats of litigation. To that end, COPA claims a declaration that Dr Wright is not Satoshi and injunctive relief.

    (b) Pleadings in the COPA Claim closed in July 2021 (subject to amendments). There was then an application by Dr Wright to strike out parts of COPA's case, which was rejected by HH Judge Matthews in December 2021. In his judgment **[1/18/191]**, Judge Matthews recognised that the case raised substantial issues about alleged forgery and dishonesty on the part of Dr Wright.

    (c) A CCMC took place before Master Clark in September 2022 and which provided a carefully structured procedural timetable leading to trial in January / February 2024: see order at **[1/12/164]**. The timetable included provision for Dr Wright to list the documents he primarily relied upon for his claim to be Satoshi and for forensic document examination by experts.

    (d) After an application hearing of 3 March 2023, the timetable was subject to modest extensions: **[1/13/174]**. Disclosure then took place, and Dr Wright supplied a list of over 100 primary reliance documents.

    (e) On 15 June 2023, a joint CMC took place before Mellor J in the COPA Claim and three other sets of proceedings which Dr Wright has brought to assert IP rights based on his claim to be Satoshi. The Court ordered that two of the cases should be stayed and the third (the BTC Core Claim) should be stayed against some defendants: see

order at **[1/16/183]** and judgment at **[1/19/215]**.[1] Meanwhile, the main trial of the COPA Claim is to serve as a preliminary issue trial of the Identity Issue in the BTC Core Claim. The Court also gave some extensions of time for procedural steps.

(f) Since the June 2023 hearing, witness statements were exchanged (most on 28 July 2023), with Dr Wright serving eight statements and COPA serving thirteen. Hearsay notices were also issued on both sides. COPA has also served its expert report on forensic document examination from Patrick Madden (the "**Madden Report**"), which concludes that a large proportion of Dr Wright's reliance documents and many other documents in his disclosure set have been altered, often with the apparent purpose of supporting his claims. This report is over 900 pages long (including 40 appendices). In the bundle for this hearing is the appendix from the Madden Report (PM3) concerning versions of the White Paper **[2/75/1964]**. It shows some examples of the alterations and tampering which the expert has found.

Dr Wright's Other Litigation

11. It is relevant to consider some of Dr Wright's other litigation briefly. In summary:

(a) *Kleiman v Wright* (US District Court, Southern District of Florida) was a piece of litigation in which allegations were made of Dr Wright fraudulently appropriating rights of the deceased Mr Kleiman to Bitcoin and IP assets.[2] In a judgment of August 2019 concerning evidence Dr Wright had provided about his Bitcoin holdings, Judge Reinhart concluded that Dr Wright had "*engaged in a wilful and bad faith pattern of obstructive behavior, including submitting incomplete and deceptive pleadings, filing a false declaration, knowingly producing a fraudulent trust document and giving perjurious testimony at the evidentiary hearing*" **[2/77/2104]**. The Judge found "*substantial credible evidence that documents produced by Dr Wright to support his position in this litigation are fraudulent"* and "*a strong, and unrebutted, inference that he had been responsible for creating the fraudulent documents*" **[2/77/2098]**.

(b) *Wright v McCormack* was a defamation claim which Dr Wright brought in the High Court against a person who had disputed his claim to be Satoshi. The case went to trial before Chamberlain J in August 2022. Mr McCormack initially raised a

[1] The BTC Core claim is now stayed against all defendants save for the Developers.

[2] The Kleiman litigation was peculiar in that the claim was put on the basis that Dr Wright and Mr Kleiman had both been involved in developing Bitcoin. Nobody in any of the current sets of proceedings suggests that that version of events is correct.

defence of truth, but later dropped it because he could not afford the cost of maintaining it, instead relying on the argument that the relevant tweets had caused no serious harm to reputation. Dr Wright sought to establish serious harm, principally by claiming that he had been invited to a series of academic conferences and that the invitations had later been withdrawn. In his main judgment,[3] Chamberlain J found that Dr Wright had advanced a deliberately false case in respect of these various conferences; abandoned aspects of that case when confronted with clear evidence debunking them; and then given a dishonest explanation of supposed errors. The Judge found that his original account had been "*straightforwardly false in almost every material respect.*"[4]

(c) *Granath v Wright* (Oslo District Court) was a negative declaration claim in defamation brought in Norway by a blogger who had denied Dr Wright's claim to be Satoshi. In a first instance judgment of 20 October 2022, the Court found that Mr Granath had "*ample factual basis to claim that Wright had lied and cheated in his attempt to prove that he is Satoshi Nakamoto*".[5] Those proceedings involved a large number of documents on which Dr Wright relied for his claims being examined by experts at KPMG (for Mr Granath) and BDO (for Dr Wright), notably documents which he had claimed were early versions of the White Paper and Bitcoin Code. The Court found that both parties' experts had found these documents to "*contain at best unexplained changes which are likely to have been made after the date the documents are claimed to be from*": **[2/59/1615]**.

12. Dr Wright gave evidence for almost a full day in the *McCormack* trial (in which the issues were of very limited scope). His evidence for the motion to compel in the Kleiman proceedings occupied nearly 1,000 pages of deposition and court transcript. In each case, Dr Wright handled complex questions without apparent difficulty and showed himself capable of direct answers, although he sometimes gave long and digressive responses. In *McCormack,* Dr Wright did not seek to have ASD evidence adduced and he had no obvious difficulty giving evidence before Chamberlain J.

---

[3] [2022] EWHC 2068 (QB), [2023] EMLR 2 **[2/76/2045]**.

[4] See judgment, para. 109 **[2/76/2068]**. In a later judgment, the Judge said: "*Anyone fairly reporting the terms of my [first] judgment would be entitled to say that Dr Wright had advanced a deliberately false case and given deliberately false evidence as part of his claim to have suffered serious harm*": [2022] EWHC 3343 (KB), para. 40.

[5] See the quotation from the *Granath* judgment in the consequential orders judgment of Chamberlain J in the *McCormack* case: [2022] EWHC 3343 (KB) at para. 5.

13. Judge Reinhart found him in the *Kleiman* case to be a "*belligerent and evasive*" witness who "*did not directly and clearly respond to questions*", but "*quibbled about irrelevant technicalities*" and "*tried to sidestep questioning*" about evidence of alteration and fabrication of documents. Chamberlain J in his second judgment described Dr Wright as an unreliable witness[6] and referred to a similar finding by Butcher J in unrelated proceedings, where Dr Wright was found to be "*belligerent, argumentative and deliberately provocative*", evading questions and seeking to "*blind with (computer) science*": *Ang v Reliantco Investments Ltd* [2020] EWHC 3242 (Comm) at para. 49 **[2/58/1578]**.

14. It will of course be for this Court to form its own assessment of Dr Wright's credibility. However, the experience of other litigation summarised above is relevant to some of the procedural issues to be considered at this hearing.

(1) COPA's Consolidated RFI Application (Bundle 1 / Section E)

Introduction

15. COPA has served three RFIs in the course of these proceedings.[7] COPA has also sought answers in correspondence about Dr Wright's pleaded case. Dr Wright has consistently failed properly to answer those RFIs and questions. In that context, on 23 June 2023, COPA served a Consolidated RFI **[1/9/118]** including matters which Dr Wright had failed properly to address and other questions important to understanding and meeting his case.

16. When COPA served the RFI, it reasonably gave Dr Wright until 28 July 2023 to answer, which was the date on which he was due to serve his fact evidence. COPA also said that he could answer any question in the RFI by referring to one or more paragraphs of his evidence which dealt with it (provided that it did so properly).

17. Dr Wright refused to agree to serve a response to the Consolidated RFI, either by the deadline suggested or any later time. Instead, he sought to put the matter off, by saying that COPA should wait to see his evidence before deciding whether to press its requests. This struck COPA as a delaying tactic, since there was no reason why Dr Wright could

[6] See: [2022] EWHC 3343 (KB) at para. 5.
[7] See: **[1/6/102]**; **[1/7/110]**; **[1/8/114]**.

not respond in the way it had suggested. COPA therefore issued an application on 14 July 2023 **[1/20/227]** asking simply for a time order for Dr Wright to serve a response.

18. As noted above, the bulk of the parties' witness statements were exchanged on 28 July 2023. After reviewing Dr Wright's statements, COPA realised that they answered no more than one or two of the questions in the RFI. Since the application was still to be heard, Bird & Bird informed Travers Smith that COPA was going to seek an order that he provide substantive answers to the questions in the RFI. At the request of Dr Wright, COPA issued a fresh application on 8 September 2023 **[1/22/234]** seeking a direction to that effect. The statement in support of the application is Sherrell 12 **[1/27/313]**.

19. On 11 September 2023, Travers Smith served a response to the RFI on behalf of Dr Wright: **[1/38/973]**. In that document, Dr Wright has refused to respond to practically all the questions asked. Accordingly, the Court is now asked to determine whether and to what extent COPA is entitled to further answers.

Legal principles

20. The relevant rules and legal principles may be summarised as follows:

(a) CPR 18.1(1) enables the Court to order a party to clarify any matter in dispute or give additional information in relation to any such matter, whether or not it is contained or referenced in a statement of case. RFIs thus serve the functions previously served by requests for further and better particulars and by interrogatories. PD18, para. 1.2 provides that a request should be limited to "*matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet*." The concept of a matter in question which an RFI may address is a broad one: *Disclosure (ed. Matthews and Malek)* at paras. 20.34 to 20.35.

(b) The power is "*one of the court's case management powers, and its exercise should be considered in the context of the case management of [the] action*", powers which are "*capable of being used flexibly to meet the precise needs of the individual case*": *Toussaint v Mattis* [2001] CP Rep 61, para. 16 (Schiemann LJ).

(c) "*A Part 18 request is not like the old request for particulars under the [RSC]. It is to be interpreted in the light of the overriding objective and is part of the more open approach to litigation which the CPR seeks to establish and promote. Information sought must of course relate to 'any matter in dispute'. But if it does, then the rule*

precisely covers a situation where there is potentially relevant information relating to the matter which is solely within the knowledge of one side. In modern litigation, it is not the position that a party can hold back on relevant information and leave its opponent to take a chance to see if it chooses to put forward a witness from whom that information might be elicited by way of cross-examination at trial." (*National Grid Electricity Transmission plc v ABB Ltd* [2014] EWHC 1555 (Ch), para. 39 (Roth J).)

The application of the requirements of proportionality and necessity "*will have regard to the nature of the particular case*": *National Grid*, para. 40.

(d) It is legitimate for an RFI to raise questions about documents, so long as they relate to matters in dispute. Accordingly, a request can properly ask if a document was written by a particular person, whether a document was prepared or sent with the person's consent, whether it is in his handwriting or whether a particular document had been received: see *Disclosure* (cited above) at para. 20.41.

(e) A person responding to an RFI can be expected to exercise reasonable diligence in responding, including by making reasonable enquiries of others. The person may also be expected to examine documents in his/her control or that of servants or agents. See *Disclosure* (cited above) at paras. 20.96 to 20.101.

The requests in the RFI

21. The nature of the questions in the RFI, and the reasons why they are proper questions, are set out in detail in Sherrell 12 at paragraphs 12-72 **[1/27/315-330]**. This skeleton does not repeat the full detail in Sherrell 12, but explains in brief why each category of questions is legitimate under the CPR and why Dr Wright's objections are unjustified.

22. At the outset, the following points should be made. First, these are questions of fact on matters which should be within the knowledge of Dr Wright. Secondly, they go directly to pleaded issues and many of the most important documents in the case. Thirdly, when considering proportionality, the Court should bear in mind that (a) these are questions which Dr Wright has had for at least three months (and in many cases for much longer); (b) the trial will determine the identity issue for a case which Dr Wright's previous lawyers boasted (on their own website) was the most valuable ever launched in the English Courts; and (c) as the Court is aware from the other claims before it, Dr Wright is seeking to establish wide-reaching IP rights based on his claim to be Satoshi. COPA

must be allowed to test Dr Wright's case by pinning him down on key issues, in circumstances where his own statement is strikingly vague in many important respects.

23. Requests 1-14, 16-18 and 36 re Drafts and Versions of the White Paper **[1/9/120-124]** (Sherrell 12, paras. 12-20, 23-24 and 43-46 **[1/27/315-319]**): These questions relate to Dr Wright's case on the different versions of the White Paper which he claims to have produced (including versions allegedly uploaded to SSRN). He has disclosed at least nine documents which appear to be drafts of the White Paper. In his witness statement, he has given an account of drafting the White Paper in an "*iterative*" process,[8] but he has not identified what each document is or the order in which the drafts came. He has referred to sharing early versions of the document (i.e. versions before it was issued to a wider public) with various others, but has not identified which versions were supposedly shared with others, nor when, nor how.

24. Dr Wright's evidence on these topics will need to be carefully explored, since (as set out in the Consolidated RFI and in Sherrell 12), he has given inconsistent accounts on these matters in the past. Furthermore, these drafts and their metadata have been analysed by COPA's expert, who has found many indicia of tampering, alterations and inconsistencies in these various versions: see his Appendix PM3 at **[2/75/1964]**. The requests therefore seek information (in summary) about (a) which documents in Dr Wright's disclosure are drafts of the White Paper; (b) when these were created; (c) whether they are said to be authentic; (d) which versions were shared with others and when; and (e) which version (if any) corresponds to specific drafts which in his evidence in the Kleiman case he claimed to have created at particular points in time.

25. Dr Wright objects to answering these questions on the basis that answers are not necessary and proportionate and/or that they ask questions about disclosure. Answering those points:

(a) This case is a copyright dispute and centrally about the authorship of a document. As Judge Matthews recognised, it also has at its heart allegations of forgery. It is essential that Dr Wright should be specific about the drafts of the document which he produced and shared. Otherwise, the ability of COPA to test his claim and the ability of the Court to assess it will be seriously impaired. Indeed, it is remarkable in a

[8] See paras. 86-99 **[1/29/469-472]**.

copyright dispute that a supposed author should refuse to identify and date supposed drafts of the work.

(b) There is nothing disproportionate about the requests. They ask Dr Wright to consider and address a limited number of documents, which are central to a dispute which he says is of enormous value. If he is Satoshi, he should be able to answer the questions with ease. If and to the extent that his memory and records do not allow him to answer, he can say so.

(c) At the CCMC, Master Clark devised her procedural approach on the *express* basis that COPA would identify the documents it challenged and Dr Wright would in his statement explain the drafting history of each challenged document, so enabling the forensic documents experts to assess the documents: see transcript, p162, l. 4-13 **[1/30/610]**. In the event, Dr Wright has not identified or dealt with the drafting history of *any* documents.

(d) As set out above, there is no objection to an RFI asking a party to provide information by reference to documents in the party's disclosure.

26. Request 36 **[1/9/129]** seeks particulars of Dr Wright's pleaded claim to have (in the guise of Satoshi) "*sent a draft of the White Paper by email to Dr Wei Dai by email and to other individuals*". In his response, Dr Wright says that he is unable to provide more information than is in his witness statement and the contemporaneous disclosed documents. Rather than leave COPA to try to stitch together any references in his statement with any clues residing in over 4,000 disclosed documents, COPA asks that Dr Wright answers the straightforward questions in request 36.

27. Request 15 re Dr Wright's Work Underlying the White Paper **[1/9/122-123]** (Sherrell 12, paras. 21-22 **[1/27/319]**): Dr Wright has pleaded that the White Paper is based on concepts on which he had been working for some time. In response to a previous RFI, Dr Wright said that he would identify these concepts and provide evidence for trial later, listing five concepts. COPA has now asked Dr Wright to identify any documents produced in his work on each concept, to say how each related to the White Paper and to identify parts of the White Paper based on each concept. Contrary to Dr Wright's arguments, this is a legitimate form of request. He has said that he was working on specified concepts and COPA has asked him if that work was reduced to writing and (if

so) where. He has said that these concepts fed into the White Paper (the key document at the heart of this case) and COPA has asked how.

28. Requests 19-22 re "Signing Sessions" and Private Keys **[1/9/124-125]** (Sherrell 12, paras. 25-31 **[1/27/320-321]**): These questions relate to Dr Wright's claim that he provided proof of his ownership of private keys to blocks in the Bitcoin blockchain which are associated with Satoshi. In mid-2016, he conducted a number of "signing sessions", including with journalists (e.g. Rory Cellan-Jones of the BBC and Ludwig Siegele of the Economist) and others (e.g. Jon Matonis and Gavin Andresen). These demonstrations were undertaken by Dr Wright in accordance with the EITC Agreement.

29. These signing sessions are squarely raised by the pleadings: see POC, paras. 19-23 **[1/2/14-16]**; Defence, paras 37-40 **[1/3/44-45]**. Dr Wright says in his evidence that there were "*[a]round half a dozen private demonstrations*" (para. 185 **[1/29/485]**). Furthermore, the Court has specifically permitted the cryptocurrency technology experts to address these "signing sessions": see CCMC order, para. 18(ii)(b) **[1/12/167]**.

30. It is important to assessing what these sessions really proved - and whether they could have been "gamed" - to know precisely what technical steps were taken at each one, such as: whose laptop was used; whether software was uploaded and by whom; how keys were used to sign messages; and how the key use was verified. COPA has repeatedly asked Dr Wright to state the technical means by which he says he proved he was Satoshi in these sessions. Absent this information, it is hard for COPA and its expert to engage fully with the topic of the signing sessions, other than to say that they simply cannot be relied upon if Dr Wright is not willing to reveal what took place.

31. Although Dr Wright knew that these questions would be asked, and although he has addressed some specifics of the signing sessions in his evidence in the Kleiman and Granath proceedings, his statement in these proceedings gives some very limited details on the session with Mr Andresen (paras. 204 to 207 **[1/29/558]**) and virtually no information on the sessions with Mr Matonis (para. 193 **[1/29/557]**) and with the journalists (paras. 211-212 **[1/29/559]**). In his recent response to the RFI, Dr Wright says that providing further information is not necessary and proportionate.

32. Dr Wright should now be required to give the best particulars he can of the technical steps taken at each session, so that COPA can compare his accounts to what he and

others have said previously and so that its expert can consider how reliable the demonstrations were. He should not be permitted to hold back this important information until cross-examined. It is necessary for COPA to understand and meet Dr Wright's case on demonstrations which he insists support his claim to be Satoshi. It is necessary for the expert evidence which the Court has permitted to be properly informed. It will not require Dr Wright to go to disproportionate effort, but simply to describe demonstrations which he undertook as part of the managed "revelation" of his claim to be Satoshi and which were presumably prepared with some care.

33. Requests 23-28 re Alleged Loss of Access to Private Keys **[1/9/124-125]** (Sherrell 12, paras. 32-36 **[1/27/321-322]**): These requests relate to Dr Wright's claim that he allegedly obtained a hard drive which gave him access to (at least some) private keys used for the "signing sessions" before they took place but then bizarrely decided to destroy the hard drive afterwards. COPA has asked when and how he obtained the keys; which blocks' private keys were contained on the hard drive; when, why and how he destroyed the hard drive; and whether he did so alone or in front of witnesses.

34. These are simple factual questions relating directly to Dr Wright's pleaded assertion that he had access to the private keys but no longer has such access.[9] Having definitive answers to these questions will enable COPA to understand and answer his case on the critical question of why he supposedly could not now give reliable proof of ownership of keys which would have been generated by Satoshi. Dr Wright suggests that these questions are disproportionate and are an attempt at cross-examination on paper. Both objections are nonsensical. The questions are open, factual questions aimed at understanding his case and he should be able to answer them with no real effort.

35. Requests 29-33 re the Tulip Trust and its Deed of Trust [**1/9/126-127]** (Sherrell 12, paras. 37-39 **[1/27/322-323]**): These questions relate to pleaded issues concerning the Tulip Trust and its Deed of Trust. COPA has pleaded that its case that Dr Wright is not Satoshi is supported (and Dr Wright's credibility is undermined) , by the fact that he has previously claimed to have placed Bitcoin assets from his early work in a trust and the Deed of Trust was established in the Kleiman litigation to have been backdated.[10] Dr Wright pleaded in response that the copy of the Deed of Trust proffered in the Kleiman

[9] See para. 83(3) of the Defence **[1/3/64]**.
[10] See POC, para. 66A **[1/2/27]**. COPA relies on the backdating to say it was therefore forged.

case was a later copy of an original which had been lost.[11] COPA served an RFI asking about the circumstances of the loss, and Dr Wright reacted by amending his pleading to say that he had not seen the original and did not know where it was.

36. COPA has posed requests 29-33 to understand the case Dr Wright has now advanced: who made the copy of the Deed of Trust; how Dr Wright came into possession of it; what did he rely upon it to prove; whether he accepts that the copy he relied upon was backdated; and how he knows that the original was executed on the date he has pleaded (since he now says that he has never seen the original). Again, these are simple, factual questions designed to understand the case now pleaded. Contrary to Dr Wright's objections, they are not disproportionate or an attempt to cross-examine in writing.

37. Requests 34-35 re the Bitcoin Software and Source Code **[1/9/127-129]** (Sherrell 12, paras. 40-42 **[1/27/323]**): Just as the initial questions in the RFI asked Dr Wright to identify and date the versions of the White Paper in his disclosure, these requests ask him to identify and date the versions of the Bitcoin Software and Source Code in his disclosure. As explained in Sherrell 12, Dr Wright has disclosed multiple versions of the code which he claims to have written and revised in the name of Satoshi but the evidence in his statement does not deal with the code versions and their releases in any detail.[12] The questions asked are necessary for COPA to understand and meet Dr Wright's case about how the software and source code developed. Knowing how the files in his disclosure relate to his case (e.g. where each is said to stand in the order of versions) is critical to addressing that case.

38. Dr Wright's answers to these requests are that they are (a) outside the scope of matters in dispute on the pleadings; (b) not necessary or proportionate; (c) matters for cross-examination and/or premature; (d) related to parts of the pleadings which simply describe Bitcoin; and/or (e) addressed in Dr Wright's statement. None of these objections has any merit. Whether Dr Wright wrote the Bitcoin source code is a matter in dispute. The development of the versions of the code and what each version in disclosure actually represents are not matters covered by Dr Wright's statement and are necessary to understand and meet his case. The suggestion that COPA should cross-examine Dr Wright "blind" about the identification and ordering of sections of code is absurd.

[11] See Defence, para. 85A **[1/3/66-67]**.
[12] See his statement at paras. 72-79 and 112-114 **[1/29/467-468; 474]**.

39. Requests 37-46 re the EITC Agreement **[1/9/129-131]** (Sherrell 12, paras. 47-54 **[1/27/324-326]**): The EITC Agreement is the agreement which paved the way to the public "revelation" of Dr Wright's claim to be Satoshi. The questions ask in summary (a) what other agreements were in the "*series of agreements*" of which Dr Wright says the EITC Agreement was a part; (b) whether, how and to whom the payment promised Dr Wright under the agreement was actually made (given that his Defence says that he cannot recall receiving the AUD 1 million personally); and (c) what documents he supplied to EITC in accordance with his contractual promise to provide materials relating to his authorship of the White Paper.

40. These questions directly relate to pleaded contentions about the EITC Agreement, which is an important matter in the case. They concern the central disputed issue of whether Dr Wright is Satoshi. COPA needs to know Dr Wright's case on what obligations he undertook as part of the arranged "revelation" of his claim to be Satoshi, whether he was remunerated (directly or indirectly) and what he supplied in support of his claim (e.g. whether it corresponds to the key elements of "proof" on which he now relies).

41. Requests 47-49 re the BlackNet Abstract **[1/9/131-132]** (Sherrell 12, paras. 55-57 **[1/27/326]**): In 2019, Dr Wright made a Twitter post showing an image of a "Blacknet" research paper abstract, apparently suggesting that it had been filed in 2001 and contained material which later appeared in the White Paper. In fact, as COPA has pleaded, it could not have been filed in 2001, because it contained amendments made to the White Paper in late 2008. Dr Wright has pleaded in response that he submitted a series of BlackNet research papers in applications to AUSIndustry over the years, seeking funding and tax rebates. By these questions, COPA has asked him to identify by date the versions of the application and abstract, referring to any which appear in his disclosure. In order to understand and answer Dr Wright's case about submitting a series of applications and research papers over the years, COPA needs to know what documents he submitted over the years and whether he claims that any feature in his disclosure.

42. Requests 50-53 re the Kleiman Email **[1/9/132-133]** (Sherrell 12, paras. 58-63 **[1/27/327-328]**): Another example which COPA has pleaded of Dr Wright putting forward doctored "proof" of his claim to be Satoshi is an email supposedly from himself to Dave Kleiman in March 2008 referring to work on Bitcoin. COPA's case is that the email is forged, notably because the domain name from which it was supposedly sent did

not exist at the time. Dr Wright has pleaded in response that the body of the email is as sent but that the header is different, the difference having arisen because the email was moved from one exchange server to another. The Madden Report says this explanation is not plausible. COPA has dropped request 50. The remaining requests concern (a) when and how the move of server took place; (b) how the header is said to be different as a result of the move; and (c) how Dr Wright discovered the difference. Contrary to Dr Wright's arguments, these are not pre-emptive cross-examination but straightforward requests for further information on matters squarely in dispute.

43. Requests 54-56 re Bitcoin as a Cryptocurrency **[1/9/133-134]** (Sherrell 12, paras. 64-66 **[1/27/328]**): Dr Wright has pleaded that Bitcoin is not properly to be described as a cryptocurrency. In light of that assertion, COPA has asked whether Dr Wright claims to have posted a well-known 2010 announcement attributed to Satoshi describing Bitcoin as a cryptocurrency and, if so, why his position on this matter has changed since 2010. COPA has asked these questions to understand whether Dr Wright's case is that (a) he was not responsible for a key announcement attributed to Satoshi or that (b) his view on whether Bitcoin is a cryptocurrency has changed. These are simple questions which go directly to his claim to be Satoshi.

44. Requests 57-61 re Satoshi's Private Key **[1/9/134-135]** (Sherrell 12, paras. 67-69 **[1/27/329]**): COPA's pleaded case is that Dr Wright has in the past claimed to have control over Satoshi's private key. Dr Wright has pleaded in response that there has been public discussion of a key created in 2011, but that that key was created by person(s) unknown. COPA's requests are (a) for him to say whether the key he is referring to corresponds to a specific one publicly available and linked to Satoshi; (b) to say whether he currently has a private PGP key that belonged to Satoshi before 2011 and, if not, what has happened to it.

45. Dr Wright argues that, in light of an answer by COPA to an RFI, the key to which he has referred in his pleading is unrelated to the key described by COPA, so that the questions now asked do not go to a matter in dispute. This argument should be rejected. Dr Wright has pleaded that there is a key associated with Satoshi which has been discussed in public but was not actually created by Satoshi. COPA is entitled to ask what key he means and whether he claims to have Satoshi's actual private keys. The questions relate

to the issue whether he is Satoshi, because he is here claiming knowledge which Satoshi would supposedly have.

46. Requests 62-65 re Activities of Satoshi **[1/9/135]**: These requests concern Dr Wright's supposed communications with others in the person of Satoshi. They are unusual, in that Dr Wright has answered most of them in his recent response. The remaining one (request 65) is not pressed.

47. Request 66 re Operating Systems used for Sources of Documents **[1/9/136]** (Sherrell 12, para. 72 **[1/27/329]**): This request asks what operating system was used in respect of the document sources listed by Dr Wright in his DRD. This information would be very valuable to further work of forensic document analysis.

(2) COPA's Chain of Custody Application (Bundle 2 / Section F)

48. The CCMC Order required Dr Wright to identify the documents primarily relied upon for his claim to be Satoshi, and gave a facility for COPA to seek chain of custody information in relation to these documents. The order provided for COPA to make an application within a set time if proper information was not provided.[13] Dr Wright duly identified 100 documents (to which he has since added a further seven), and COPA wrote to request chain of custody information. Dr Wright responded, but only to describe the creation of each document and identify its current custodian, based on the metadata. Dr Wright did not identify the chain of custody for each document, including any intermediate custodians. This information is required under the order and is important in light of COPA's expert report showing that many of the electronic "reliance documents" have been altered. Who had access to each document in the chain of custody is therefore important. Dr Wright's response is insufficient, in that (a) it does not provide a full list of custodians from source to disclosure and (b) it does not clearly state the origin of each document (as opposed to describing the circumstances of its creation). COPA accordingly made its application.

49. As recently as 2 August 2023,[14] Travers Smith were insisting that Dr Wright had met his obligations and did not need to do anything more. However, on 11 September 2023, they changed tack, agreeing to provide the requested information but asking for an extension to 20 October 2023.[15] COPA considers that that is too long for compliance with an

[13] See paras. 8-11 of the CCMC Order at **[1/12/165-166]**.
[14] See letter at **[2/74/1945]**.
[15] See letter at **[2/74/1959]**.

obligation which should have been satisfied by late April 2023. It therefore asks for an order that the information be provided by 6 October 2023.

(3) Dr Wright's ASD Expert Evidence Application (Bundle 2 / Section F)

Background and application

50. Dr Wright claims to suffer from ASD and says that it affects the way in which he answers questions. However, he has given evidence without any evident difficulty in at least three previous trials and without anything like the level of adjustments now sought (in *McCormack* he just had a pen and paper in the witness box). In all three of those cases, he had experienced representation. Dr Wright is now making an application which, to COPA's knowledge, is unprecedented in English commercial litigation. He is a serial and aggressive litigant who seeks to "*destroy*" and "*bankrupt*" his opponents. He is now seeking to introduce ASD evidence very late in order to obtain extreme adjustments which would neuter cross-examination and seriously impair proper testing of his claims.

51. In the Kleiman litigation, he served a report on his condition from Dr Klin, a clinical psychologist whose evidence was subject to objection and large parts of which were excluded on the basis that they improperly sought to provide evidence on Dr Wright's credibility.[16] In this case, Dr Wright raised the prospect that he would seek ASD evidence in July 2021. COPA then asked about the relevance of the intended evidence. Dr Wright replied that it would assist the Court in assessing his evidence. In answer, COPA indicated that it would resist the application, and Dr Wright said that he would apply at the CCMC.[17]

52. In advance of the CCMC, Dr Wright's solicitors filed a statement (Cohen 3) saying that he had been assessed by Prof Baron-Cohen in September 2021 and that this was the expert Dr Wright wished to call. COPA requested a copy of the expert's assessment and details of the expert issues.[18] Dr Wright's solicitors wrote to say that they would be using the evidence to justify adjustments for his evidence at trial but did not say what those adjustments might be.[19] At the CCMC, Dr Wright sought the Court's permission.

[16] See Dr Klin's report (at **[2/48/1189]**) and the judgment excluding large parts of it (at **[2/46/1109]**). Note that the English Courts would similarly exclude an expert's "oath helping" evidence on the credibility of a witness: see *R v Mulindwa* [2017] 4 WLR 157 at para. 34.
[17] See correspondence at **[2/52/1325]** to **[2/52/1353]**.
[18] See letter of 13 June 2022 **[2/52/1354**].
[19] See letter of 24 August 2022 **[2/52/1357]**.

Master Clark said that the proper course would have been to identify the precise questions posed to the expert and provide a draft report, while leaving it open for Dr Wright to make an application in future.[20]

53. Dr Wright did not raise this topic again until May 2023, when he made an application seeking permission to adduce evidence from Dr Klin **[2/42/1043]**, but the application was internally inconsistent on the question whether he was seeking to rely upon Dr Klin's report for the Kleiman proceedings or a new report for these proceedings. At the hearing on 15 June 2023, Dr Wright's representatives accepted that the existing report of Dr Klin was not appropriate for an English court and agreed to obtain a new report from him. In the aftermath of that hearing, Travers Smith initially pressed COPA to agree to the application to adduce a new report from Dr Klin.[21] However, after COPA had repeatedly made the point that it could not be expected to address the application properly without knowing the nature of the evidence and the adjustments it was to be used to support, Travers Smith eventually agreed to provide Dr Klin's report before the application could be considered further.[22] They repeatedly refused to say what adjustments they might be asking the Court to make to trial procedures.

54. On 8 September 2023, Travers Smith served a report of Prof Fazel **[2/49/1245]**, a psychiatrist, based on assessments of Dr Wright carried out in late August 2023. In summary, Prof Fazel has concluded that Dr Wright has a diagnosis of ASD, exhibiting the two core symptoms of (a) persistent deficits in social communication and interaction and (b) restricted patterns of behaviour and interests. As to the effects of the condition in the Court setting, the expert suggests that the condition can cause Dr Wright to come across as rude and obstructive and that he may misunderstand questions. Prof Fazel suggests a remarkable series of changes to the trial process, notably: (i) that Dr Wright is given cross-examination questions in writing; (ii) that follow-up questions are short, without conditionality; and (iii) that there should be breaks every 30 minutes. He also suggests considering Dr Wright being provided with cross-examination topics in advance.

Objections to the application

[20] See COPA's skeleton for the CCMC at paras. 63-72 **[2/53/1404]** and see the full extracts of the CCMC transcript quoted in Sherrell 10 from para. 14 **[2/51/1314]** (original transcript at **[1/30/604-606]**).
[21] See letters of 22 June 2023 **[2/52/1372]**, 30 June 2023 **[2/52/138]** and 6 July 2023 **[2/52/13868]**.
[22] See letter of 24 July 2023 (to be added).

55. COPA resists the application, for four reasons: (a) that it is being advanced far too late and in a different form from that of the May 2023 application; (b) that, in light of the evidence being put forward, it would prejudice COPA and it would seriously disrupt the timetable and the preparations for trial by the parties and the Court; (c) that Prof Fazel has been instructed on a partial basis without reference to any real world examples of Dr Wright willingly subjecting himself to questioning; and (d) that there is a simpler and far preferable course which would allow the Court to consider and take account of Dr Wright's claimed condition, namely to permit him to adduce a diagnostic letter and notes from a treating clinician and for the Court to decide what (if any) adjustments are required. These points are developed below.

56. First, this application is being advanced far too late in the day. It was first mooted two years ago and raised again before the CCMC. Despite requests for the proposed assessment of the expert (Prof Baron-Cohen) or even the expert issues, Dr Wright provided neither before the CCMC. Contrary to the recommendation of Master Clark at the CCMC, he did not thereafter provide a report, but issued an application in May 2023 which related to Dr Klin and was unclear in effect. Dr Wright then delayed another four months before obtaining a report from a third expert and serving that. This is obvious expert-shopping.

57. Secondly (and most seriously), the effect of the delay is that the introduction of the proposed evidence in the way suggested would be prejudicial to COPA and seriously disruptive. For COPA to properly respond it would have to: (a) instruct an expert of its own; (b) have the expert examine Dr Wright and speak to his family members (as Dr Fazel did); and (c) then write up a report. Based on the enquiries COPA has made (detailed in Sherrell 15), it probably cannot obtain a report in proper time before trial (even if Dr Wright made himself and his family members available without restriction). Even if COPA could obtain a report in time, then the Court would probably need to hear the experts if there is any difference between them which might affect the adjustments proposed (which must be a very real possibility, given the absence of such adjustments in Dr Wright's previous cases). It is difficult to see how such a hearing could be accommodated after COPA's expert had reported and before trial. Even if it could, it would take both parties' legal teams away from trial preparation at a critical time (probably mid-December) and the decision on adjustments would be taken shortly before trial, which would seriously impair preparation for cross-examination. All these

difficulties would be entirely the fault of Dr Wright, but the prejudice would be almost entirely to COPA. In a case of this size and importance, it would be unfair for Dr Wright to seek to neuter the process of cross-examination by a late intervention of this kind.

58. Thirdly, as is being explained in a further witness statement for COPA (Sherrell 15), Prof Fazel's report is unsatisfactory, since the expert was instructed to provide an opinion on how Dr Wright can cope in the Court setting and what adjustments might be justified without being supplied with any materials recording either (a) his evidence in previous proceedings (which include publicly accessible video recordings of his evidence in Granath) or (b) his other confident performances in public interviews and conferences. The expert also appears not to have seen any clinical notes at all.

59. Fourthly, there is a much more straightforward approach to this topic which corresponds to the way in which the courts often address medical problems of parties and witnesses. Dr Wright has long claimed to have ASD, so it stands to reason that he must have been subject to clinical assessment other than for the purposes of litigation. If so, he should provide his clinician's diagnostic letter or assessment and associated medical notes. The Court can then form its own view of any adjustments required at trial, considering not only whether specific adjustments might assist him but also whether they might impair the proper process of testing evidence in a civil trial focussed on allegations of fraud and forgery. In doing so, the Court could also consider transcripts showing how Dr Wright has not apparently had difficulty in answering complex questions in previous litigation (material which Prof Fazel has not considered). As Chamberlain J put it in the main McCormack judgment at para. 109, he had "*borne in mind what Dr Wright said about his autism and its effects on the way he explains things to others*", but his key evidence "*was not merely inadequately or infelicitously explained. The vice was not that it omitted explanatory background, but rather that what it did say was straightforwardly false in almost every material respect*" (emphasis as in original).

Fall-back submissions

60. If the Court were not minded to refuse the application now, COPA would ask that the Court should not grant it but should (a) give time for COPA to try to obtain a report in response and (b) review the matter again in November 2023 (one hopes, with the benefit of knowing to what extent the opinions expressed by Prof Fazel are controversial). Such

an approach might allow the parties to discuss with their experts and (if appropriate) seek to agree adjustments which would not hobble proper cross-examination.

61. If, contrary to all those arguments, the Court were to allow Dr Wright's application (while also allowing him to amend it to relate to Prof Fazel rather than Dr Klin), COPA would make the following fall-back submissions. First, it should be given at least eight weeks to try to serve a report in response, rather than the inadequate period of four weeks allowed in Dr Wright's draft order. COPA also would need liberty to apply for more time if the search for an expert proves difficult. Secondly, the following direction should be for a meeting of experts and a joint statement (without the intermediate step of a reply report from Prof Fazel). Thirdly, the permission should be conditional upon Dr Wright making himself available at short notice for COPA's expert and giving the expert access to his family members who spoke to Prof Fazel. Fourthly, the permission should be conditional upon Dr Wright providing any previous notes, reports or communications expressing the views of other experts instructed (including Prof Baron-Cohen and Dr Klin). Such a condition ought to be imposed where a party seeks permission for expert evidence in circumstances which are indicative of possible expert-shopping. See: *Beck v Ministry of Defence* [2005] 1 WLR 2206; *Edwards-Tubb v JD Wetherspoon plc* [2011] 1 WLR 1373.

(4) Dr Wright's RFI Application on COPA's Draft Primer (Bundle 2 / Section G)

62. Dr Wright has applied for an order that COPA answer a request for further information in relation to the draft technical primer served on behalf of the Claimant (the "**Draft Primer**"): see application at **[2/61/1637]**. This RFI asks COPA to say whether the Draft Primer (and/or presumably parts of it) describe cryptocurrency technology (a) in relation to Bitcoin between its invention and April 2011; (b) in relation to BTC Core from August 2017 to the present day; or (c) to Bitcoin and/or BTC Core during any other period. COPA resists this main part of the application for reasons given in Sherrell 13 **[2/64/1705]** (but COPA does not resist an unrelated request in the application for an extension of time for reply expert evidence on cryptocurrency technology).

63. First, the RFI does not meet the standard of requesting information which is reasonably necessary and proportionate for Dr Wright to prepare his case or understand the case he must meet. The order which provided for the preparation of a technical primer envisaged a general account of cryptocurrency technology relevant to Bitcoin and did not impose

further specifications. Furthermore, COPA is not aware of what forensic issues in this case will or may turn on aspects of the technology having been developed over time. Neither side has pleaded reliance on any such changes for the purposes of the Identity Issue.[23] COPA wrote on 9 August 2023 asking Dr Wright's solicitors to indicate what such issues might be, but they have refused to answer that question.[24]

64. Secondly, it would on any view be a waste of time and costs for COPA to answer this RFI. As explained in Sherrell 13, the parties sought to agree a technical primer, but it was not possible to reach agreement. COPA considered that many of the amendments on which Dr Wright was insisting were controversial and/or were seeking to introduce contentious fact evidence into the primer: see the examples in Bird & Bird's letter of 4 August 2023. In any event, the Court is not asked to adjudicate on who was at fault for the primer not being agreed. The fact is that a primer was not agreed and that the basic technology will be addressed in the parties' expert reports on cryptocurrency technology. In those circumstances, the competing draft primers have fallen away and it is not a good use of time and money to revisit them and elaborate on whether particular parts described the technology as developed since 2008/9. In an effort to resolve this issue, COPA has suggested that that the proper approach is for its cryptocurrency expert to specify in the report whether and how particular parts of the technology described have varied since the inception of Bitcoin. COPA genuinely does not understand why that proposal has not been accepted. This is a pragmatic solution which would not involve COPA's expert being distracted at an important time by revisiting a document which is not going to feature at trial.

65. Thirdly, Dr Wright's RFI application as advanced is based on two mistaken premises (as set out from para. 13 of Sherrell 13 **[2/64/1708]**): (a) that the Court will not be concerned to consider any developments in the technology since April 2011 (when Satoshi ceased active work on Bitcoin); and (b) that important issues in the case are likely to turn on developments in Bitcoin since its release. As explained in Sherrell 13, there may be aspects of the technology which have developed since 2011 which the Court will need to understand, but the key issues in the case are unlikely to be materially influenced by a

[23] The changes over time do form part of Dr Wright's case in the stayed parts of some of his other cases, but those issues are not for consideration or determination at the January / February trial.
[24] See correspondence at **[2/63/1699]**; **[2/63/1701]**; **[2/63/1703]**.

view about whether current features of the technology are true to its original conception (a matter of significance for the stayed cases but not for this trial).

(5) Dr Wright's Application to Exclude Hearsay Evidence (Bundle 2 / Section I)

66. Dr Wright has applied to exclude two documents served as hearsay evidence by COPA under a CEA notice, namely the forensic document reports of Dr Edman from the Kleiman proceedings and KPMG from the Granath proceedings: see **[2/72/1684]**. COPA resists this application and submits that the Court should not take the exceptional step of excluding the documents. Its position is fully set out in Sherrell 14 **[2/78/2107]**.

67. The relevant legal principles are set out in the cases of *Rogers v Hoyle* [2015] QB 265, *Mondial Assistance (UK) Ltd v Bridgewater Properties Ltd* [2016] EWHC 3494 (Ch), *Illumina, Inc v TD Genetics Ltd* [2019] FSR 35; and *MAD Atelier International BV v Manes* [2021] 1 WLR 5294 (the last of which relates the principles to fact witness statements). First, a party is entitled to serve under a hearsay notice a report or other document providing expert or other opinion evidence, and the Court will give appropriate weight to it (applying s.4 of the Civil Evidence Act 1995). Secondly, the admissibility of pre-existing expert reports served in this way is not (as Dr Wright suggests) governed by CPR Part 35, since that Part only governs reports commissioned for the proceedings in question. Thirdly, although the Court has a discretion under CPR 32.1 to exclude hearsay evidence (e.g. on the basis that it would be duplicative or give rise to disproportionate cost), the starting-point is that hearsay evidence is admissible and "the Court should be slow to exclude evidence that is admissible, leaving objections to the evidence to be given effect by affecting the weight to be given to the evidence": *Mondial* at para. 22.

68. Dr Wright seeks to have this evidence excluded, arguing that (a) COPA is using the a hearsay notice to override the Court's control of expert evidence; (b) it would disrupt the procedural timetable and be unfair to him, in that his document forensics expert would need to address further documents; (c) insofar as the KPMG and Edman reports cover the same ground as COPA's forensic report they are duplicative, while insofar as they cover different ground it would be unfair to allow COPA to rely upon them; and (d) if they are not excluded, Wright may have to apply to cross-examine the authors.

69. COPA's case is that Dr Wright has presented, in support of his claim to be Satoshi, a series of documents which have been altered or tampered with. COPA says that he has been doing this for some time and as part of a wider campaign. Given the nature of the documents and the alterations, COPA will say that it is to be inferred that Dr Wright is responsible for, or at least knew of, the alterations, and that he is dishonestly presenting the documents in support of his claim.

70. In various proceedings across the world, including Kleiman (US), Granath (Norway) and McCormack (England), Dr Wright has identified documents on which he relies in support of his claim to be Satoshi. In Kleiman and Granath, a number of those documents were subject to forensic document examination by experts instructed by the opposing parties and by experts instructed for Dr Wright. In many cases, the opposing parties' experts found the documents to have been altered or tampered with, often apparently altered with a view to supporting Dr Wright's claims. Dr Wright's own experts did not dispute many of those findings. In these proceedings, Dr Wright has disclosed many of the same documents, including in his set of principal reliance documents. As noted above, the Court has given permission for expert evidence on document forensics, and COPA's expert evidence has recently been served, concluding that many of Dr Wright's key documents have been altered.

71. In some cases, including of some important reliance documents, the findings in the Madden Report directly accord with those of the experts in the Kleiman and Granath cases. Three significant examples are given in Sherrell 14 at para. 8 **[2/78/2109]**.

72. In those circumstances, COPA has served the KPMG and Edman reports under a hearsay notice. As Sherrell 14 makes clear, COPA relies upon those reports only in relation to documents addressed by Mr Madden and it does so for two purposes:
    (a) First, to prove the fact that these documents have previously been found to be manipulated. So, if Dr Wright were to say in evidence that, if he had been aware of a particular allegation of manipulation sooner, he could have provided more information or supporting material to justify these documents, it can be put to him that the matter has arisen in the previous proceedings.
    (b) Secondly, to demonstrate that other skilled forensic document examiners have reached conclusions in line with those of Mr Madden. Thus, for example, if it were said against Mr Madden that he had not adopted proper methods or had not handled

the documents correctly could be met with the answer that other competent experts had used equivalent methods and reached equivalent conclusions.

73. None of the objections from Dr Wright lead to the exclusion of these two reports. First, there is nothing improper in using the CEA Notice to adduce such reports. A party can serve under a hearsay notice a relevant paper or report of an expert, including an expert instructed in previous proceedings on the same subject-matter. Secondly, there is no unfairness to Dr Wright, since his expert will still only need to address the documents which Mr Madden has considered. Furthermore, as COPA has made clear in correspondence, it is quite content for Dr Wright to serve under hearsay notices his own expert reports from previous proceedings to show any respects in which his experts disputed the conclusions of KPMG and Dr Edman. Thirdly, the Edman and KPMG reports are highly relevant, and the introduction of these reports will not give rise to disproportionate expense (especially in light of Dr Wright's extraordinary claims). They will not require the Court to consider additional challenged documents. They will only require the Court to read some limited additional material in relation to documents which are being challenged by Mr Madden in any event. If they merely duplicate Mr Madden's evidence and do not have any of the other effects (e.g. in corroborating his handling / methods or in proving that the issue has been raised before and not addressed), then Dr Wright may well have a proper argument that they should be given limited weight at trial.

74. Finally, the suggestion by Dr Wright that he might apply to cross-examine the experts is one which could be raised to any deployment of hearsay evidence from experts or report authors. In any event, in this case it is less plausible than in many, because Wright's experts in Granath (BDO) did not dispute the KPMG findings and Wright chose to adduce no countervailing evidence against Dr Edman in Kleiman.