PTA Template 269C1 - First Appeal

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2024-001771, -001771-A/C/E/F -001994** [redacted]

CRYPTO OPEN PATENT ALLIANCE –v– WRIGHT

CA-2024-001771

ORDER made by the Rt. Hon. Lord Justice Arnold

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision:

1. Extension of time for filing appellant's notice in CA-2024-001994 granted.

2. Applications for permission to adduce fresh evidence in CA-001771-A, -C, -E and -F all refused.

3. Permission to appeal in CA-001771 and CA-001994 both refused as being totally without merit.

Reasons

Extension of time: Technically Dr Wright requires an extension of time for filing his appellant's notice in CA-2024-001994 because his in-time appellant's notice in CA-2024-001771 only specified the judge's consequential order dated 16 July 2024 as being appealed, while his appellant's notice in 001994 appealing the judge's decision announced orally on 14 March 2024 for the reasons given in his judgment dated 20 May 2024 was out of time even though the judge had extended time until 21 days from the form of order hearing. Since it was perfectly clear from Dr Wright's grounds of appeal in 001771 that in substance he was challenging the decision and not merely the consequential order, however, this is a trivial and excusable breach of the rules which cannot have prejudiced the Respondents. It is therefore appropriate to grant the necessary extension of time.

Permission to adduce fresh evidence: Permission to adduce fresh evidence on appeal will not generally be granted unless it satisfies the *Ladd v Marshall* criteria. None of this evidence satisfies those criteria:

Dr Jones' affidavit (A): Dr Jones gave evidence at trial and so this evidence could have been adduced then. In any event it would have made no difference to the judge's reasoning.

Mr Mayaka's affidavit (A): Dr Wright admits that his lawyers interviewed Mr Mayaka before the trial and decided not to adduce evidence from him. Furthermore this evidence is not apparently credible both for that reason and given the judge's findings.

Dr Savanah's affidavit (A): This evidence could have been obtained before trial given that Dr Wright served evidence in relation to his claimed patents. In any event it would have made no material difference.

Expert evidence re DKIM (A): This evidence could and should have been obtained before trial. In any event it would not make any material difference given the clear evidence that the MYOB Ontier Email was a forgery.

Judgment in [2024] EWHC 1230 (Comm) (A): This is not evidence at all: *Hollington v Hewthorn*. In any event Mr Ager-Hanssen did not give evidence in this case. Thus the judgment would make no difference to the judge's reasoning.

Mr Cohen's draft witness statement and related documents (C): Dr Wright admits that his legal team decided not to adduce this evidence at trial. Furthermore the draft statement is unsigned and described in the covering email as "very much a working draft" with "some of the details" still being confirmed. That being the case the evidence lacks credibility in this form. As the covering email also notes, admission of this evidence would also give rise to issues as to waiver of privilege. It would not have made any material difference anyway.

Draft fourth witness statement of Dr Wright and related documents (E): In so far as this evidence was not adduced at trial it plainly could have been. Given that the draft statement is unsigned and riddled with comments raising unanswered questions it is not credible on its face, and even less so given the judge's findings as Dr Wright's credibility. Again admission of this evidence would give rise to issues as to waiver of privilege. It would not make any material difference anyway.

Materials concerning David Pearce (F): All this evidence shows is that (i) the judge discussed the time when he hoped to be in position to hand down the judgment with Mr Pearce at a social event some time before 9 May 2024 and (ii) the judge has had other conversations with Mr Pearce about other topics. Given that the judge had already announced his decision on 14 March 2024, (i) does not begin to demonstrate an appearance of bias, let alone actual bias. Nor would it have done so even if the judge had not already not announced his decision. As for (ii) this is wholly irrelevant, particularly given that Mr Pearce was not a witness.

Permission to appeal: The judge had to decide a single question: is Dr Wright, as he claims to be, the person who adopted the pseudonym Satoshi Nakamoto, who wrote and published the first version of the Bitcoin White Paper

on 31 October 2008, who wrote and released the first version of the Bitcoin Source Code and who created the Bitcoin system? This is a pure question of fact. The judge found that the answer to the question was no. He arrived at that decision after a 22 day trial involving a mass of factual and expert evidence which the judge painstakingly analysed in great detail in a judgment running to 945 paragraphs together with an annex running to a further 799 paragraphs (neither figure includes the many sub-paragraphs). Among the key reasons for his decision were that his conclusions that (i) Dr Wright had lied repeatedly and extensively to the court in his evidence and (ii) Dr Wright had forged a large number of documents which he relied upon in support of his claim. Overall, the judge concluded that the evidence that Dr Wright was not Satoshi Nakamoto was overwhelming. In reaching these conclusions the judge had the advantage of seeing and hearing Dr Wright cross-examined for over 8 days on 15 witness statements. It is also important to note that (a) Dr Wright had the benefit of being represented at trial by two leading KCs and three juniors instructed by a substantial team of solicitors and (b) adjustments were made for Dr Wright when giving evidence which were agreed by the parties' experts in ASD and no suggestion was made at trial that these adjustments were inadequate or ineffective.

The judge's decision can only be overturned or set aside if it is either wrong or unjust because of a serious procedural or other irregularity in the proceedings in the High Court: CPR r. 52.21(3). In order to establish that a finding of fact is wrong, an appellant must demonstrate that it is rationally insupportable: *Volpi v Volpi* [2022] EWCA Civ 464 at [2(v)]. Dr Wright challenges the judge's decision on no less than 59 grounds which attack almost every aspect of his reasoning. Upon analysis these grounds amount to a primary case that the Court of Appeal should in substance itself re-try the case on appeal and conclude that the judge was wrong, and a secondary case that the Court of Appeal should order a new trial of the identity issue because the judge's decision was unjust due to a serious procedural or other irregularity such that Dr Wight was denied a fair trial. The primary case that the Court of Appeal should itself re-try the case on appeal and conclude that the judge is wrong is totally without merit since it involves a complete misconception of the Court of Appeal's function and approach in a case such as this. Furthermore, none of Dr Wright's grounds comes anywhere near demonstrating that the judge's decision is rationally insupportable. As for the secondary case, this could in principle be a proper basis for an appeal in a case such as this, but again it is totally without merit since none of the grounds comes anywhere near demonstrating that the judge's decision is tainted by irregularity, particularly bearing in mind points (a) and (b) identified above. On the contrary, Dr Wright's grounds of appeal, skeleton argument and summary of skeleton argument themselves contain multiple falsehoods, including reliance upon fictitious authorities such as "*Anderson v the Queen* [2013] UKPC 2" which appear to be AI-generated hallucinations.

It is neither necessary nor proportionate to address each of the 59 grounds individually, but I will briefly consider each of the 10 main themes identified by Dr Wright in his summary of his skeleton argument.

1. *Misinterpretation and misattribution of evidence*. Dr Wright claims that the judge misinterpreted various items of evidence and incorrectly attributed documents. His assertions are either new points not raised at trial or contrary to the evidence or fail to engage with the judge's reasons for rejecting them.

2. *Judicial bias and procedural unfairness*. Dr Wright accuses the judge of bias, but this accusation is baseless. No credible allegation of either actual basis or apparent bias is made by Dr Wright, but only a series of disagreements with the judge's reasoning. In fact the judge leant over backwards to ensure that Dr Wright received a fair trial. The same goes for the accusation of procedural unfairness.

3. *Improper rejection of expert testimony*. Dr Wright makes a number of challenges to the judge's treatment of the expert evidence, but as the judge explained Dr Wright's own experts agreed with COPA's experts on most issues. Having chosen those experts to give evidence, it does not lie in Dr Wright's mouth now to say that they were not appropriately qualified. Nor can Dr Wright complain about decisions taken by his legal team with his authority such as the decisions not to call some witnesses and not to cross-examine others. Dr Wright argues that the judge should have treated himself as an expert, but given that (i) Dr Wright was the principal factual witness and (ii) he had appropriately qualified experts, the judge was plainly right not to treat him as a surrogate expert witness. Dr Wright alleges that the judge wrongly excluded Mr Bryant's evidence, but this is false: Dr Wright did not pursue a late application to adduce this evidence. Dr Wright claims that Mr Madden was not properly qualified, but the judge explained why he was.

4. *Reliance on unauthenticated documents*. Dr Wright argues that the judge improperly relied on documents that were not properly authenticated. This is misconceived. The true position is that a document is assumed to be authentic unless its authenticity is properly challenged. Dr Wright's real complaint concerns a number of the judge's findings of forgery, but without engaging with the reasons given by the judge for those findings which were largely based on uncontested expert evidence.

5. *Inadequate consideration of Dr Wright's ASD*. Dr Wright complains that the judge did not make reasonable adjustments for his ASD. This complaint is baseless. As noted above, the judge made the adjustments which were agreed between the parties' experts on ASD and no complaint was made at trial that they were inadequate or ineffective. At the end of the cross-examination Dr Wright commented positively on the experience. A number of Dr Wright's allegations under this head are simply false. Dr Wright even complains that his own counsel intervened on occasion to ensure that Dr Wright did not unintentionally waive privilege, when they would have been open to criticism if they had failed to do this.

6. *Improper handling of cross-examination*. Dr Wright complains that his cross-examination was improperly handled by the judge. This is largely a repetition of theme 5.

7. *Misapplication of legal standards*. Dr Wright alleges that the judge failed correctly to apply a number of legal principles. These allegations are without merit. For example, Dr Wright claims that the judge wrongly applied the

burden of proof but in fact the incidence of the burden of proof was common ground at trial and in any event the judge's self-direction was impeccable. Dr Wright also claims the judge wrongly did not require COPA to present clear and convincing evidence for its allegations of forgery, but in fact the judge did recognise that cogent evidence in support of these allegations was required and he found the evidence was cogent (and indeed, in many cases, unchallenged by Dr Wright's own experts). Dr Wright also claims that the judge wrongly rejected evidence which corroborated Dr Wright's claims. As the judge explained, however, few of Dr Wright's witnesses gave evidence which actually supported those claims, and he gave cogent reasons for rejecting the evidence of the few that did. The final example I shall address is Dr Wright's claim that the judge wrongly accepted hearsay evidence: in fact COPA gave proper notice and the judge accepted the evidence for good reasons.

8. *Failure to scrutinise COPA witnesses' credibility*. Dr Wright alleges that the judge failed to scrutinise the credibility of COPA's witnesses. This again is a baseless allegation. In many instances Dr Wright repeats criticisms which the judge carefully considered and rejected or which were not even put to the relevant witness because Dr Wright's legal team appreciated that they were without foundation. Dr Wright even complains about the judge admitting evidence from James Lopp when Mr Lopp was not a witness at all.

9. *Inconsistent application of legal principles*. This is a largely repetition of other themes, in particular theme 7.

10. *Procedural irregularities and denial of fair trial*. This is a largely repetition of themes 2, 3 and 5. Dr Wright even goes so far as to say that his own legal team's failures to adduce evidence and/or challenge evidence adduced by COPA breached his Article 6 ECHR rights. This is an impossible contention: Dr Wright had the benefit of a large, highly expert and well-resourced legal team who acted with his authority and presented his case as well as it could possibly be presented.

For the reasons given above the appeals have no prospect of success whatever and there is no other reason to hear them.

Information for or directions to the parties

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? Yes/No (delete as appropriate)

Pilot categories:

- All cases involving a litigant in person (other than immigration and family appeals)
- Personal injury and clinical negligence cases;
- All other professional negligence cases;
- Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;
- Boundary disputes;
- Inheritance disputes.
- EAT Appeals
- Residential landlord and tenant appeals

If yes, is there any reason not to refer to CAMS mediation under the pilot? Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation? Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

a) time estimate (excluding judgment)
b) any expedition

Signed: BY THE COURT
Date: 28 November 2024

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).