

Court of Appeal Ref: CA-2025-002830

**IN THE COURT OF APPEAL (CIVIL
DIVISION)**

**ON APPEAL FROM THE HIGH COURT OF
JUSTICE**

**BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES**

INTELLECTUAL PROPERTY LIST (Ch D)

**Mr David Stone sitting as a Deputy High Court
Judge [2025] EWHC 2172 (Ch)**

BETWEEN:

**MRS MARIYA VASILYEVNA
LISH**

Appellant

-and-

**(1) THE NORTHERN BLOCK
LIMITED
(2) MR JONATHAN HILL**

Respondents

**RESPONDENTS' REPLACEMENT
SKELETON ARGUMENT
10 MARCH 2026**

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*References to the appeal bundles are in the following format where possible
[Volume/ Tab/ p.page/ §paragraph]. References to the Core Bundle and the Supplementary
Bundle are each referred to respectively as “CB” and “SB”.*

INTRODUCTION

1. This is the Respondents' skeleton for the Appeal which is listed to be heard on 15 April 2026. As set out below, the Respondents oppose the Appeal on the basis that the Judge's order striking out parts of the Appellants' claim as an abuse of process pursuant to CPR r.3.4(2)(b) should be upheld for the reasons set out in the Judgment or, alternatively,

for the additional or alternative reasons set out in the Respondents' Notice [CB/ Tab 9/ p.242-244]. The definitions and terms used here are those used in the Judgment below and paragraph references are to that Judgment unless stated otherwise.

NARRATIVE BACKGROUND

2. The Appellant worked for the First Respondent (“TNB”) from 2012 to 2022 as a typeface designer. In September 2012 the Appellant and TNB entered into a written agreement (the “**2012 Agreement**”) [CB/ Tab 7/ p.85-88]. Under the 2012 Agreement the Appellant was entitled to be paid a royalty fee for each finished typeface she designed and sent to TNB to license. The royalty fee was 60% of all sales received. The Second Respondent is a director of TNB.
3. The 2012 Agreement was varied between the parties in 2015 (the “**2015 Variation**”). There is a dispute between the parties about the terms of the 2015 Variation. The Respondents say (and have always said) that as part of the 2015 Variation, the Appellant agreed to forgo her entitlement to 60% royalty payments. She received the benefit of a (much) higher salary and bonus payments, where appropriate, but the latter was not tied to the 60% royalty payments. The Appellant does not agree with this interpretation, but that is not relevant for the purposes of the Appeal.
4. This claim is the second claim between the same partes arising in respect of the same subject matter. On 1 November 2022 the Appellant issued the Newcastle Claim [SB/ Tab 1/ p. 3-7]. The Newcastle Claim also made allegations of copyright infringement and unpaid fees under the 2012 Agreement. In particular, the Appellant sought declarations that she was the owner of copyright in various typefaces she claimed to have created whilst she worked for TNB, injunctive relief for the alleged infringement, financial relief for the alleged infringement, and an account of the sums allegedly owed by TNB to the Appellant in respect of sublicences [SB/ Tab 1/ p. 21-22].
5. Prior to the issue of the Newcastle Claim, the parties exchanged pre-action correspondence through their solicitors. This included the correspondence in July 2022 where solicitors then acting for the Respondents confirmed that the Appellant had not been paid royalties since the 2015 Variation and the Appellant's solicitors' replies referred to a “significant underpayment” [of royalties] [SB/ Tab 14/ p.225]. These

emails are important, and the relevant extracts are set out in full in the Judgment at §56-58 [CB/ Tab 5/ p.52].

6. TNB denied the Newcastle Claim [SB/ Tab 2]. In particular, TNB denied that the Appellant was the owner of the copyright in any of the typefaces or that she was entitled to any further payment. Accordingly, it further denied that there had been any copyright infringement or that the Appellant was entitled to the relief sought. The Respondents confirmed their position in respect of the effect of the 2015 Variation, namely that the Appellant was no longer entitled to the 60% royalty payments at §13(b) of their Defence [CB/ Tab 7/ p.98].
7. By a letter dated 12 May 2023 the Respondents sent to the Appellant a copy of their draft Amended Defence and Counterclaim [SB/ Tab 2]. Paragraph 13(b), which dealt with the 2015 Variation, was unchanged by the proposed amendments [SB/ Tab 2/ p.83].
8. On 13 June 2023 the Respondents accepted the Appellant's Part 36 offer dated 5 May 2023 (the "**Part 36 Offer**") [CB/ Tab 7/ p.236-7]. The terms of the Part 36 Offer are set out in full in the Judgment at [24].
9. In the Part 36 Offer the Appellant's solicitors confirmed their client's intention, saying "*our client simply wishes to move forward and progress with her own business rather than continue protracted litigation with your client*" and "[t]his offer is generous to your clients as it effectively allows them to retain the revenues they have made from the infringements up to the date of acceptance" [CB/ Tab 7/ p.236].
10. On 22 March 2024 the Appellant issued the present proceedings, involving the same parties and concerning the same subject matter. This claim included claims for an account and payment of unpaid royalties under the 2012 Agreement (the "**URC**") and claims for alleged infringements of copyright in various typefaces (the "**Infringements Claim**") [CB/ Tab 7/ p.61-83].
11. The Second Respondent, Mr Hill, has described his shock at receiving the Letter Before Action in respect of the second claim and the impact of the second claim on him and the business of TNB (at §22 of his First Witness Statement) [SB/ Tab 7/ p.176-177].

12. By an application notice dated 30 April 2024 the Respondents applied for strike out and summary judgment on the basis *inter alia* that the claim relates to matters which could have and should have been raised in the Newcastle Claim (the “**Application**”) [SB/ Tab 5/ p.135-141].
13. The Application was heard by the Judge, Mr David Stone sitting as a Deputy High Court Judge, on 15 July 2025. In the Judgment, the Judge struck out the URC and the Infringements Claim as an abuse of process pursuant to CPR 3.4(2)(b) [CB/ Tab 5/ p.57/ §86]. The Judge dismissed the Respondents’ application for summary judgment in respect of the Neusa Next claim, and this part of the Judgment (and the claim) does not form part of the Appeal.

LAW

Test for appeal

14. In order to be successful in its appeal, the Appellant must show that the Judge’s decision at first instance was (plainly) wrong. This court has previously cautioned against the risk of treating a first instance decision as “merely provisional” (see Sedley LJ at [76] in *Stuart v Goldberg Linde* [2008] 1 WLR 823) and will be reluctant to interfere where the decisions rests upon balancing such a number of factors (per LJ Thomas at [16]).

Henderson and Henderson Abuse

15. Subject to one point which is dealt with below, the parties were in an agreement as to the correct approach to be taken by the court when determining whether the second claim was abusive, as summarised in the Judgment at §42-43 [CB/ Tab 5/p. 47]. In particular, both sides rely on the summary of Clarke LJ in *Dexter v Vieland-Boddy* [2003] EWCA Civ 14 at [49] as approved by Thomas LJ in *Aldi Stores Ltd v WDP Group Plc* [2008] 1 WLR at [6].
16. At first instance, there was some difference between the parties’ positions on the question of what duty a claimant has to find out more about a potential second claim. The Respondents’ position is that a claimant who suspects that there may be another connected claim is required to take reasonable steps to find out more, or, in other words, join the dots. The Judgment at §79 [CB/ Tab 5/ p.55] appears to support this

submission. In particular, the Judge concluded that the comments of Lloyd LJ at [59] in *Stuart v Goldberg Linde* did rule out the court considering whether a claimant ought to have looked into the affairs.

17. There is no challenge to or criticism of the Judge's assessment of the law in respect of the court's ability to consider whether the Appellant knew enough to put her on inquiry to find out more. In particular, it is noted whilst there is a challenge to the dots referred to by the Judge when concluding "all the dots were there", the Appellant does not challenge the Judge's finding that she was required to join up the dots as a general principle.

18. Further, this approach, as the Judge notes at §79 [CB/ Tab 5/ p.55], is consistent with and enhances the objective of the *Henderson v Henderson* rule.

SUBMISSIONS

The Appeal

19. For the purposes of this skeleton, it is understood that the Appellant has been given permission to appeal on all four of its grounds of appeal and accordingly all are dealt with below.

20. As set out above, the Appellant does not say the Judge got the law wrong. Further, the Judge's finding that the URC is (and, by implication, the Infringements Claim is) unjustly harassing and oppressive at §82 [CB/ Tab 5/ p.56-57] is not appealed.

Ground 1

21. **Ground 1(a)**: The Judge was correct to conclude that the admissions about copyright made by accepting the Part 36 Offer adversely affected the Respondents' ability to defend the URC. The basis of this conclusion is found earlier in §81 [CB/ Tab 5/ p.56], where the Judge noted that these admissions ran contrary to the Respondents' pleaded case that the Appellant was an employee and that the Respondents might not have made these admissions "*had they known they were facing a further claim for unpaid royalties.*"

22. In the Newcastle Claim, the Respondents denied the Appellant's ownership of the copyright in various typefaces. A crucial part of the Newcastle Claim concerned the

ownership of the copyright in these typefaces. In settling the Newcastle Claim and admitting the Appellant's ownership of the copyright in various typefaces (despite this being contrary to their pleaded claim) the Respondents both gave up something of value and exposed themselves to liability in respect of acts in relation to those typefaces.

23. Accordingly, the Judge was correct to note that the Respondents are now bound by these admissions and therefore cannot defend the present claim on the basis of the Appellant not owning the copyright in these typefaces. In particular, the Appellant's assertion at §26.3-26.4 [CB/ Tab 2/ p.23-24] of its skeleton argument that copyright ownership is not relevant to the URC is unrealistic, if not wrong. In its draft Amended Defence and Counterclaim in the Newcastle Claim the Respondents denied the Appellant's entitlement to any payment of royalties on the basis that she had not produced any finished typeface [SB/ Tab 2/ p.74/ §5B]. Admitting that the Appellant owned the copyright in the typefaces impacts the Respondents' case that the Appellant did not produce a finished typeface and therefore was not entitled to the 60% royalty payments on that basis. The Respondents are also further disadvantaged in respect of their ability to negotiate with the Appellant, as they have already given up something of value (the copyright in the typefaces).

24. **Ground 1(b)**: The Judge was correct to conclude that this claim and the Newcastle claim *involved* the same parties, the same subject matter, the same agreement, the same issues and the same remedies [CB/ Tab 5/ p.56/ §81]. The Appellant's skeleton argument admits that this claim has the same parties, related to the same agreement (§28.1) and the same subject matter (§28.4) [CB/ Tab 2/ p.25]. The Judge was not considering whether this claim was *identical* to the Newcastle Claim, he was assessing whether this claim could and should have been brought as part of the Newcastle Claim (on a *Henderson v Henderson* basis). If the claims were identical, then the URC would have been compromised by the Respondents' acceptance of the Part 36 offer in the Newcastle Claim. The Appellant is attempting to split hairs. Further, both claims included claims for payment by the Respondents arising from the 2012 Agreement. The Newcastle Claim included an allegation about a failure to pay royalties under the 2012 Agreement (for sub-licences) (at §31 of the Amended Particulars of Claim) [SB/ Tab 1/ p.19-20] *and* an issue about whether the Appellant owned the copyright in the

typefaces. The fact that the Newcastle Claim also included other additional claims, does not undermine the Judge's conclusions.

25. **Ground 1(c):** The Judge was correct to find that the Appellant ought to have clarified that the URC was not included in the Part 36 offer, *that is*, that she no longer wished to settle the whole dispute [CB/ Tab 5/ p.56/ §81]. The Judge's phrase "that is" explains the finding. The Judge found that the Appellant ought to have clarified that she no longer wanted to settle the whole dispute to move forward with and progress with her own business. In fact, she intended to bring another claim, the URC, if the Part 36 offer was accepted.
26. The words the "whole dispute", particularly coupled with the Appellant's stated intention to move forward in the Part 36 Offer letter, are evidently broader than the four corners of the pleadings and referred to the wider dispute between the parties. The Part 36 Offer was said to enable the parties to resolve the "whole dispute" between them, and this was Mr Hill's motivation in accepting the offer.
27. **Ground 1(d):** The Appellant admitted that she could have withdrawn the Part 36 offer after receiving the Amended Defence and Counterclaim and prior to the offer being accepted by Ds. At §81 [CB/ Tab 5/ p.56] the Judge logically found that by either not withdrawing the Part 36 Offer or not clarifying that it no longer included the whole dispute between the parties, the Appellant *allowed* the claim to settle (on those terms). That finding is unimpeachable. Contrary to the Appellant's submission, there was a reason for her to withdraw the Part 36 Offer. By failing to do so, the Appellant settled a claim in the knowledge she intended to bring a further claim related to the same (or connected issues). The Judge was entitled, and correct, to consider this factor when assessing whether the URC was an abuse.

Ground 2

28. The Judge was correct to make the findings he did, and each is dealt with in turn.
 - a. At §79 [CB/ Tab 5/ p.55]: "*it seems to me unlikely on the face of it that Mrs Lish would not have noticed that her payments, for a period of 7 years, were in rounded number.*"

- (i) The point about rounded numbers was made in the Respondents’ skeleton argument. The Appellant did have the opportunity to file a second witness statement if she wished to do so, in the same way that her solicitor Ms Hudson filed a witness statement on behalf of the Appellant in response to (and after receiving) the Respondents’ skeleton argument [SB/ Tab 13].
 - (ii) Further, counsel for the Appellant made submissions on this issue at the hearing. The fact that the Judgment does not record the Appellant’s submissions on this point, is not a basis for concluding that the Judge did not take it into account.
 - (iii) Notably, there is no dispute between the parties that the royalty payments were in fact in rounded numbers.
- b. At §79 [CB/ Tab 2/ p.55]: *“having been caused to wonder in July 2022 whether she was being underpaid (as she admitted) an amount I am now told could be as high as £300.000...”*. This records the Appellant’s admission that she did wonder about a potential claim when the dispute began (in July 2022) (§13 of her First Witness Statement) [SB/ Tab 9/ p.185-186] and, separately, the Appellant’s confirmation (through counsel at the hearing) that she estimated the value of the claim could be as high as £300,000 at §17 [CB/ Tab 5/ p.39]. Both these things are unequivocally true and the Appellant’s own evidence. It is evident from the Judge’s phrasing that he is “now told” the amount could be up to £300,000 that he was not making a finding that the Appellant knew that she had been underpaid £300,000 in 2022. This interpretation is supported by and consistent with the Judge’s conclusion at §80, which is dealt with directly below.
- c. At §80 [CB/ Tab 5/ p.56]: *“It does seem to me likely that Mrs Lish was on notice from as early as 2022 that, since 2015, she had not been paid the 60% royalties under the 2012 Agreement.”* The Judge was considering whether the Appellant was “on notice” of the alleged underpayment from at least 2022 (i.e. following the pre-action correspondence referred to at §56-59 [CB/ Tab 5/ p.52]). Even if the Judge accepted the Appellant’s assertion that she was not (subjectively) aware of the URC

prior to receiving the Amended Defence and Counterclaim, he was entitled to conclude she had reasonably been put “on notice” of the underpayment and been given enough information to work it out. In particular, this must be viewed in the context of Ms Lish’s own evidence that she “wondered” whether she had been underpaid in 2022 and the pre-action correspondence exchanged at this time [SB/ Tab 9/ p.186/ §13].

- d. At §80 [CB/ Tab 2/ p.56]: *“It does seem to me that all the dots were there, and a reasonable person in Mrs Lish’s position would have taken steps to join them.”* The “dots” referred to are *all* the findings and evaluative judgments contained at §79-80 [CB/ Tab 5/ p.55-56]. The Respondents’ primary position is that the “dots” go beyond the matters referred to by the Appellant at paragraph 34 of its skeleton argument (and set out above) [CB/ Tab 2/ p.28-29], and include the other matters referred and alluded to in paragraphs 79 and 80, which are set out in the Respondents’ Notice and dealt with below. The “dots” include the 2022 pre-action correspondence and the contents of the Defence in the Newcastle Claim. These matters contributed to the Judge’s conclusion on abuse or were an alternative basis for that finding.

Ground 3

29. Save for its reliance on Grounds 1 and 2, the Appellant does not indicate why the Judge was wrong to conclude that the URC claim was abusive and instead simply re-argues its case on this point [CB/ Tab 2/ p.29-30]. The Judge’s decision was not merely provisional, and this court must conclude that it was wrong in order to interfere with it.
30. As to the specific matters relied upon by the Appellant at §35 of its skeleton argument [CB/ Tab 2/ p.29-30]:
- a. The Respondents’ draft Amended Defence and Counterclaim was not the first time that the Respondents had confirmed that TNB had stopped paying royalties following the 2015 Variation. This was confirmed in the July 2022 pre-action correspondence [CB/ Tab 5/ p.52] and in the original Defence in the Newcastle Claim [CB/ Tab 7/ p.98/ §13].

- b. The fact the solicitors acting for the Respondents at that time acknowledged that URC was not part of the Newcastle Claim and therefore denied that the Appellant was entitled to any disclosure in respect of this issue did not limit the Appellant's options in respect of the Part 36 Offer. She still could have, and should have, either clarified that this offer was no longer intended to resolve the whole dispute between the parties and allow them to move on, or withdrawn the offer.
- c. The Appellant may have referred to an intention to seek permission to amend her claim in the Newcastle Claim, but she did not put the Respondents on notice that she intended to bring a second claim if they accepted the Part 36 Offer.
- d. For the reasons set out in the Judgment and this skeleton argument the Judge was correct to find that bringing the URC was abusive. In particular, and without prejudice to the foregoing, the contemporaneous documents, including the Defence, unequivocally show that in July 2022 and both prior to the Part 36 offering being made or accepted, the Appellant was on notice of the URC. The Appellant has failed to give any credible explanation for why she says she was not on notice of the URC, in spite of those documents. The Judge was entitled to rely on the clear contemporaneous documentation. A finding that the Appellant was on notice of the claim is not inconsistent with her own evidence that she "wondered" whether she had been underpaid. However, even if a finding that she was "on notice" was contrary to her evidence, the Judge was entitled to prefer the evidence contained in the contemporaneous documentation, particularly in the absence of any credible explanation from the Appellant.
- e. There is no challenge to the Judge's finding that this second claim was unjustly harassing and oppressive.

Ground 4

31. The Infringements Claim does not simply rest or fall on the same facts as the URC. In respect of the Infringements Claim, the Appellant's evidence was that she knew about the Infringements Claim at the time of the Newcastle Claim but chose not to bring it at that time (§15 of her First Statement) [SB/ Tab 9/ p.186-197]. The only explanation for that decision was pragmatism, and her evidence in respect of this decision are set out in the Judgment at §84 [CB/ Tab 5/ p.57]. The Judge was right to conclude that the

decision not to include the Infringements Claim in the Newcastle Claim was abusive (at §83-85 [CB/ Tab 5/ p.57]).

32. It follows that most of the points made by the Appellant in respect of the URC in Grounds 1 to 3 do not apply to the Infringements Claim. In particular, there is no suggestion that the Judge made findings contrary to the Appellant's evidence and there is no evidence that the Appellant only became aware of the Infringements Claim after the Part 36 Offer was made and, specifically, after she received the draft Amended Defence and Counterclaim.
33. Alternatively, if, contrary to the above, this court believes that the Judge's conclusion on the Infringements Claim depends on his reasoning and conclusion in respect of the URC, the Respondents rely on the same points made in respect of Grounds 1 to 3 in this skeleton argument, including the points made in its Respondents' Notice, which are addressed below.

Respondents' Notice

34. The Respondents' primary position is that the Judge's decision was correct and should be upheld for the reasons set out in the Judgment, including the findings made in paragraphs 79 and 80 of the Judgment [CB/ Tab 5/ p.55-56]. In addition to the findings referred to by the Appellant, and dealt with above, the Judge relied on the matters set out in the Respondents' Notice and which are used as sub-headings below [CB/ Tab 9/ p.244].
35. However, if this court concludes that the Judge did not rely on these matters, the Respondents alternatively submit that the Judgment and consequential order should be upheld on the basis of the additional or alternative matters set out below. In particular, the Judgment should be upheld on the ground that the Appellant had sufficient information to bring the URC at the time the Newcastle Claim was issued and/or before the Part 36 offer was made. The Appellant was on notice of the URC or alternatively knew enough to be put "on inquiry to find out more".

(a) The Appellant had not been paid royalty payments since 2015

36. The Respondents have consistently stated that TNB has not paid the Appellant royalties since the 2015 Variation. The Appellant received a higher salary, and in exchange gave

up her right to the 60% payments (as confirmed at §13(b) of the Defence in the Newcastle Claim [CB/ Tab 7/ p.98]). The Appellant has never provided any evidence to suggest she was paid any royalties for the almost 7 year period between the 2015 Variation and the termination of her contract. Instead, the Appellant just says, that had no reason to believe she was not being paid the royalties until the correspondence in 2022. However, no real explanation was given for that alleged belief.

(b) The pre-action correspondence between the parties' legal representatives in 2022 expressly referred to and acknowledged the URC (as set out in Judgment at §56-58)

37. The fact that TNB had not paid the Appellant royalties since the 2015 Variation was both confirmed by solicitors then acting for the Respondents and acknowledged by the Appellant's solicitor in correspondence in July 2022, prior to the Newcastle Claim being issued. The Judgment sets out the relevant emails at §56-58 [CB/ Tab 5/ p.52]. The Appellant gave no credible explanation to these emails in its evidence in support of the Application. The email dated 29 July 2022 was specifically addressed in the Third Witness Statement of Miss Hudson [SB/ Tab 13/ p.222-223/ §4-6], but neither Ms Hudson or the Appellant herself give any detailed account of their understanding of the earlier emails in July 2022, what they did in response or why they chose to act (or not act) in the way they did. It is averred, as submitted at first instance, that these emails are unambiguous. In the absence of any credible account on behalf of the Appellant, the Judge was entitled to consider them at face value. The Appellant unequivocally understood the Respondents' position in respect of the royalty payments. She had more than sufficient information to bring a claim for the "significant underpayment" she alleged in correspondence in 2022 and now raises again in this claim.

(c) The early pleadings in the Newcastle Action confirmed that the Respondents had not paid the Royalty Payment since 2015.

38. At paragraph 13(b) of the Respondents' original Defence, which remained unchanged in the draft Amended Defence and Counterclaim, the Respondents confirmed that the 2015 Variation provided that:

"... the Claimant would forgo her right to the 60% Payments and would be recompensed for her work exclusively through her higher salary and periodic bonuses." [CB/ Tab 7 /p.98]

39. This sentence and the emails which were incorporated below at paragraphs 14 and 15 were not amended as part of the amendments made in the draft Amended Defence and Counterclaim [SB/ Tab 2/ p.82-83].

(d) The Appellant's admission that she "wondered" about the potential URC in July 2022¹ but, on her account, chose not to make any further enquiries.

40. In her first witness statement, the Appellant says that "once the dispute began [she] did wonder whether they might not have paid me the right amount, but no more than that." [SB/ Tab 9/ p.186/ §13].

41. The question of the Appellant's knowledge was also addressed in the First and Third Witness Statements of her solicitor. In Ms Hudson's first witness statement again refers to the Appellant "wondering" about an underpayment but "nothing more" (at §41) [SB/ Tab 10/ p.206].

42. Accordingly, on the Appellant's own evidence she was wondering about the URC in July 2022. The Respondents do not accept that the Appellant's understanding was limited to "wondering". The July 2022 correspondence demonstrates that the Appellant and her representatives had enough information to allege a "significant underpayment". However, even if the Appellant did only "wonder" that is sufficient to confirm that she was on notice of the URC and obliged her to make further enquiries.

(e) The size of the Appellant's potential claim as a factor for why she should have made further enquiries about the alleged underpayment.

43. As noted in the Judgment and dealt with above, the Appellant estimates the value of her claim to be up to £300,000. In July 2022 her solicitors raised the issue of a "significant underpayment". Whilst it is not suggested that the Appellant could have necessarily accurately estimate the value of her claim in July 2022, it is clear that she considered at that stage that this was potentially a significant claim, and not a trivial shortfall. As noted by the Judge at §79 [CB/ Tab 5/ p.55], in these circumstances, it is

¹ The Respondents' Notice incorrectly limits this to "early" July.

unconvincing that an objective person would not have taken further steps to ascertain the true position.

44. It is averred that these factors, individually or cumulatively, were some of the “dots” which the Judge found the Appellant could have and should have joined to bring the URC as part of the Newcastle Claim.
45. In the alternative, if the Judge did not rely on these matters, the Judgment should be upheld for these reasons, either alternatively or in addition to those reasons given by the Judge at §79-80 [CB/ Tab 5/ p.55-56].
46. If this court concludes that the Infringements Claim rests and falls on the basis of the Judge’s findings in respect of the URC, then these points apply equally to Ground 4 and the Infringements Claim should be upheld for these additional or alternative reasons.

CONCLUSION

47. Accordingly, the court is respectfully invited to dismiss the Appeal.

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