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Case No: HP-2021-000036

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

Rolls Building, Royal Courts of Justice
Fetter Lane, London, EC4A 1NL

Date: 23 March 2022

Before :

LORD JUSTICE NUGEE

Between :

(1) **HAND HELD PRODUCTS, INC**
(2) **METROLOGIC INSTRUMENTS, INC** **Claimants**

- and -

(1) **ZEBRA TECHNOLOGIES EUROPE LTD**
(2) **ZEBRA TECHNOLOGIES CORPORATION** **Defendants**

Brian Nicholson QC and Christopher Hall (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **2nd Defendant**

James St Ville (instructed by **DLA Piper UK LLP**) for the **Claimants**

Hearing date: 9 March 2022

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
LORD JUSTICE NUGEE

Remote hand-down: This judgment was handed down remotely at 10.30am on 23 March 2022 by circulation to the parties or their representatives by email and by release to BAILII and the National Archives.

Lord Justice Nugee:

Introduction

1. In this patent action there has never been any dispute that the 1st Defendant, Zebra Technologies Europe Ltd (“ZTEL”), an English company with an office in Bourne End in Buckinghamshire, has been duly served. But the position is different with the 2nd Defendant, Zebra Technologies Corporation (“ZTC”), a Delaware corporation with a registered address in Illinois. The Claimants claim to have served it pursuant to CPR r 6.9(2) at ZTEL’s office in Bourne End on the basis that this is a place of business of ZTC, or a place where ZTC carries out its activities. ZTC disputes that that is so, and denies that it has been duly served.
2. ZTC brought an application to resolve the question. I heard it on 9 March 2022. ZTC’s application was in form an application under CPR r 7.7(3) for the Court to dismiss the action but the main substantive point argued was whether ZTC had been properly served at Bourne End, although there were also, as will appear, some further detailed arguments on the CPR raised by Mr James St Ville, who appeared for the Claimants. The argument took most of the day but, having reached the conclusion that ZTC’s arguments were to be preferred, I thought it in the interests of the parties to indicate that straightaway. I therefore gave a short oral judgment accepting ZTC’s contentions that it had not been duly served, and thereafter gave directions enabling the Claimants to bring an application for permission to serve ZTC out of the jurisdiction. I gave some brief reasons for my conclusions but indicated that I would give more detailed reasons in writing if either party wished. Mr St Ville indicated that he would indeed like a written judgment and this judgment therefore sets out my reasons for my decision on ZTC’s application in more detail than I was able to on the day.

Background

3. The Claimants are two US companies in the Honeywell group of companies. The Honeywell Group (among other things) designs, manufactures, supplies and supports items such as bar code scanners and mobile computers. The Claimants are, or at any rate claim to be, the owners of three European patents (two in the name of the 1st Claimant and one in the name of the 2nd Claimant) in the field of bar code reading devices.
4. ZTC is the parent of the Zebra group of companies. The Zebra Group’s business includes the design, manufacture and supply of products in similar fields. ZTC is listed on the NASDAQ stock market with the trading symbol ZBRA. It is the ultimate parent of ZTEL and a number of other subsidiaries.
5. ZTEL is responsible for sales and marketing of Zebra Group products in the EMEA (Europe, Middle East and Africa) region. Its registered office (and the head office for the EMEA sales region) is the office at Bourne End.
6. The evidence for ZTC is that ZTEL, although (indirectly) a wholly-owned subsidiary of ZTC, conducts its own business on its own behalf. It buys ZTC products from ZTC, stores them at a warehouse in the Netherlands operated by its direct wholly-owned subsidiary Zebra Technologies BV, enters into its own contracts, handles its

own banking, makes its own financial arrangements, and itself leases its Bourne End office from a third party. All the employees who work permanently at Bourne End are employed by ZTEL, not ZTC.

7. In this action the Claimants claim that ZTEL and ZTC have infringed their patents. The details of the claims do not matter for present purposes but in the pleaded particulars of infringement the Claimants rely on ZTEL and ZTC offering to dispose of, disposing of, keeping and/or using in the UK and/or importing into the UK image readers, bar code reading devices and terminals pursuant to a common design. Two specific examples are pleaded: DS108 digital scanners and TC75 hand held scanners (or touch computers).

Procedural history

8. The Claimants issued the claim form on 29 September 2021.
9. There had been no letter before action and on 30 September 2021 the Claimants' solicitors DLA Piper UK LLP ("**DLA Piper**") wrote to ZTEL and ZTC informing them that proceedings had been issued and inviting resolution of the issues before service. DLA Piper acknowledged that ZTC's principal place of business was in Illinois and said the Claimants were prepared to make an application for service out of the jurisdiction but invited ZTEL to agree to accept service on behalf of ZTC, or for both ZTEL and ZTC to instruct solicitors to accept service, to avoid time and expense being taken up unnecessarily.
10. On 5 November 2021 the Defendants' London solicitors, Quinn Emanuel Urquhart & Sullivan UK LLP ("**Quinn Emanuel**"), replied to the effect that they were instructed by both ZTEL and ZTC but had no instructions to accept service on behalf of ZTC. There followed further correspondence which it is not necessary to set out: the outcome was that Quinn Emanuel accepted service on behalf of ZTEL and it was duly served (with a deemed service date of 29 November 2021), but declined to accept service on behalf of ZTC, which refused to submit to the jurisdiction. The Claimants did not however apply for permission to serve out of the jurisdiction, taking the view that ZTC's insistence on this was unreasonable and that it should be possible for the parties to address the question as a matter of sensible case management.
11. By 17 December 2021 nothing had been resolved and Quinn Emanuel wrote a letter to DLA Piper which among other things included the following:

“For the avoidance of doubt, the Second Defendant ("**ZTC**") maintains its refusal to submit to the jurisdiction and nothing in this letter is or should be construed as a submission on its behalf to the jurisdiction....

... the position as to service on ZTC remains the same: (i) we do not have instructions to accept service on ZTC in this jurisdiction; (ii) your clients must obtain the Court's permission to serve the Claim Form on ZTC out of the jurisdiction..."

Then, after inquiring if the Claimants intended to discontinue against ZTC, it continued:

“In the event that your clients do not intend to discontinue, we hereby serve notice on behalf of ZTC pursuant to CPR 7.7(1) requiring your clients to serve the Claim Form on ZTC by 11 January 2022. Such service will need to be made outside the jurisdiction further to a successful application to serve out. If your clients do not seek permission to serve out, ZTC reserves its rights including under CPR 7.7(3) to have the claim against it dismissed.”

I give the text of CPR r 7.7(1) below but in essence it permits a defendant against whom a claim form has been issued but not served to serve a notice on the claimant requiring him either to serve the claim form within a limited time or discontinue it, and, if the claimant fails to comply, to apply to the Court for the claim to be dismissed.

12. The Claimants however did not apply for permission to serve ZTC out of the jurisdiction. Instead, they took the view that ZTC had a sufficient connection with the Bourne End office for it to be said that ZTC had a place of business in the UK, or a place where it carried on activities within the UK, so as to satisfy the requirements of CPR r 6.9(2). Again I give the text of this rule below but it enables a claim form to be served on a company which has a place of business, or a place where it carries on its activities, in the jurisdiction.
13. On 11 January 2022 the Claimants therefore purported to serve ZTC by leaving the claim form and other relevant documents at the Bourne End office. A certificate of service giving these details was signed by Ms Deborah Bould, the relevant partner in DLA Piper, on 17 January 2022 and presumably duly filed. (Her evidence is that service was effected “via a process server”, which I take to mean that she did not herself attend at the Bourne End office, and I have some doubts whether in those circumstances the certificate should have been completed by her rather than by the individual process server who personally left the documents; but no point was taken on this and nothing in any event turns on it.)
14. On 22 January 2022 ZTC issued an application pursuant to CPR r 7.7(3) for an order dismissing the claim against ZTC on the basis that the Claimants had failed to comply with ZTC’s notice of 17 December 2021 under CPR r 7.7(1).
15. The application sought in the alternative an order under CPR r 3.4(2) striking out the claim form on the basis that the Claimants’ refusal to serve it on ZTC was an abuse of process or failure to comply with the CPR. This was apparently designed to prevent judgment being entered in default (see CPR r 12.3(3)(a)(i) under which a claimant may not obtain a default judgment if the defendant has applied to have the claimant’s statement of case struck out under rule 3.4 and the application has not been disposed of). It is not obvious to me that a failure to serve a claim form is correctly characterised as an abuse of process; but I heard no argument on the point and it is unnecessary for me to address it. It was accepted that the application under CPR r 3.4, having served its purpose of preventing judgment in default being entered, now adds nothing to the application under CPR r 7.7(3) and does not require any separate consideration. I do not propose to say any more about it.
16. ZTC’s application came before me (sitting in the High Court) on 9 March 2022, and, as already referred to, I upheld ZTC’s contention that it had not been served, although I did not dismiss the claim against ZTC but gave the Claimants an opportunity to

apply for permission to serve it out of the jurisdiction. A number of other applications of a procedural nature were issued by the Claimants and these were also before me, but I do not propose to address them in this judgment: insofar as they had to be dealt with at all at the hearing, I did so at the time and I did not understand those which I determined to be particularly contentious or the parties to require any further reasons for the decisions I made.

17. This judgment is therefore confined to ZTC’s application under CPR r 7.7(3). The main question which I had to resolve was whether ZTC was duly served at the Bourne End office or not.

CPR r 6.9(2)

18. Part 6 of the CPR concerns service of documents. Section II of Part 6 (rules 6.3 to 6.19) concerns service of the claim form in the jurisdiction. Rule 6.3(1) provides that a claim form may be served by any of a number of methods, including, by r 6.3(1)(c), by leaving it at a place specified in rules 6.7 to 6.10. Rules 6.5, 6.7 and 6.8 deal respectively with personal service, service on a solicitor, and service where the defendant gives an address for service. Rule 6.9 then provides as follows:

“6.9— Service of the claim form where the defendant does not give an address at which the defendant may be served

- (1) This rule applies where—

- (a) rule 6.5(1) (personal service);
- (b) rule 6.7 (service of claim form on solicitor); and
- (c) rule 6.8 (defendant gives address at which the defendant may be served),

do not apply and the claimant does not wish to effect personal service under rule 6.5(2).

- (2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table.

<i>Nature of defendant to be served</i>	<i>Place of service</i>
1. Individual	Usual or last known residence.
2. Individual being sued in the name of a business	Usual or last known residence of the individual; or principal or last known place of business.
3. Individual being sued in the business name of a partnership	Usual or last known residence of the individual; or principal or last known place of business of the partnership.

4. Limited liability partnership	Principal office of the partnership; or any place of business of the partnership within the jurisdiction which has a real connection with the claim.
5. Corporation (other than a company) incorporated in England and Wales	Principal office of the corporation; or any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.
6. Company registered in England and Wales	Principal office of the company; or any place of business of the company within the jurisdiction which has a real connection with the claim.
7. Any other company or corporation	Any place within the jurisdiction where the corporation carries on its activities; or any place of business of the company within the jurisdiction.

[(3) to (6) – not applicable].”

19. I was referred to a number of authorities: *Adams v Cape Industries plc* [1990] 1 Ch 433 (“*Adams*”), *SSL International plc v TTK LIG Ltd* [2011] EWCA Civ 1170 (“*SSL*”), *Actavis Group HF v Eli Lilly and Company* [2012] EWHC 3316 (Pat) (“*Actavis*”), *Noble Caledonia Ltd v Air Nuigini Ltd* [2017] EWHC 1095 (QB) (“*Noble*”) and *Viegas v Cutrale* [2021] EWHC 2956 (Comm) (“*Viegas*”).
20. The onus of establishing that the defendant can be served under CPR r 6.9(2) lies on the claimant: *Viegas* at [91] per Henshaw J, referring to *SSL* at [68].
21. The leading authority remains the judgment of the Court of Appeal given by Slade LJ in *Adams*, aptly described as “impressive” by Stanley Burnton LJ in *SSL* at [44]: see *SSL* at [65], *Actavis* at [70], *Noble*, and *Viegas* at [94].
22. *Adams* pre-dates the introduction of the CPR, and was not in fact a decision on the then English rules of court (the RSC) at all. It was concerned with whether the English Court should recognise a Texan court as competent to give a judgment capable of enforcement in England. That turned on whether the defendants, two English companies, were to be regarded as being present in Illinois, and in answering that question the Court of Appeal drew on a large number of cases dating back many years as to what was required before a corporation incorporated in one country could be regarded as present in another country so as to be amenable to service there.

23. After a lengthy survey of the authorities Slade LJ gave the Court's conclusions on the principles to be derived from them at 530B to 531F. He there set out three propositions in relation to trading corporations. The first was that the English courts would be likely to treat such a corporation incorporated in one country (an "overseas corporation") as present within another only if it had either established a fixed place of its own there (a "branch office" case) or if a representative of the overseas corporation had been carrying on the corporation's business in the other country at or from some fixed place of business (a "representative" case). The second was that presence in either case could only be established:

"if it could fairly be said that the *overseas corporation's* business (whether or not together with the representative's own business) has been transacted at or from the fixed place of business."

(emphasis in original)

In a representative case this would require an investigation of the functions the representative had been performing and all aspects of the relationship between him and the overseas corporation. The third proposition identified certain questions which were likely to be relevant on such an investigation, although such a list of questions was not exhaustive and the answer to none of them necessarily conclusive: every case was likely to involve a nice examination of all the facts. But the Court agreed that in a representative or agency case the presence or absence of the agent's authority to enter into contracts on behalf of the corporation without submitting them for approval was of great importance; and the fact that a representative never makes contracts in the name of the overseas corporation or otherwise so as to bind it must be a powerful factor pointing against the presence of the overseas corporation.

24. Mr St Ville sought to weaken the assistance that could be derived from *Adams* by suggesting that there was a distinction between cases concerning agents on the one hand (such as *Adams* or *Noble*) and cases concerning integrated, global businesses on the other (such as *Actavis* and the present case). I do not think this suggested factual distinction is made out. *Adams* was itself a case of an integrated global business where Cape plc (the main defendant) was the parent of a global group of companies, and much of the argument was directed at the proposition that in effect Cape plc was either carrying on business through the activities of its subsidiary NAAC in the US, or should be treated as doing so: see the lengthy discussion of the "*single economic unit*" argument at 532D to 539C, and the "*corporate veil*" point at 539D to 544H. Having rejected those points, the Court then went on to consider what it regarded as the crucial question, namely:

"whether it can fairly be said that *Cape's* business has been transacted by N.A.A.C. at or from [the Illinois address]" (at 545C).

In these circumstances I do not think that *Adams* can really be said to be a different type of case from the present and accept that it remains the most useful and authoritative guidance when considering the question whether ZTC has a place of business at Bourne End. It is noticeable that in *Actavis* Arnold J considered the question whether the defendant Eli Lilly and Company (another case of a US parent with an English subsidiary in England) could be served in England by applying the *Adams* analysis.

25. That leaves one point of principle. This is that *Adams* concerns the question whether a defendant has a place of business in the jurisdiction. But CPR r 6.9(2) case 7 has two limbs, and this only answers the question which arises on the second limb, namely whether there is “any place of business of the company within the jurisdiction.” It does not directly address the first limb, namely whether there is “any place within the jurisdiction where the corporation carries on its activities”, an expression which has received less attention in the authorities. This is a point which I will come back to after considering the facts relied on.
26. These are identified under 7 heads in the evidence, although no reliance was in fact placed by Mr St Ville in his written or oral argument on the final head. This was that two of ZTEL’s directors are ZTC employees, one being Chief Accounting Officer of ZTC and the other Vice President Tax ZTC, and that they give the Bourne End address as their correspondence address as directors of ZTEL. I think Mr St Ville was well advised not to place any reliance on this point. It is a reasonable inference (although there is in fact no direct evidence) that these two individuals attend board meetings of ZTEL at Bourne End. But whether employed by ZTC or not, their duty when attending board meetings of ZTEL is to carry on the business of ZTEL, and there is nothing to suggest that they are, when acting as directors of ZTEL, also carrying on the business of ZTC. And I get no assistance from the fact that they give the Bourne End address as their correspondence address as directors of ZTEL: that is no doubt a convenient arrangement but tells one nothing about what they do at Bourne End as directors of ZTEL, nor does it suggest that they do anything else at Bourne End other than act as such directors.
27. I will consider the other 6 heads in turn, although not in the same order as they are dealt with in the evidence. The evidence comes from Ms Bould of DLA Piper for the Claimants, and Ms Caroline Plater, a US lawyer who works in-house for ZTC as Senior Director, Counsel, Litigation & Claims, for ZTC.
- (1) *Google Maps*
28. A search for “Zebra Technologies” in Google Maps brings up the Bourne End address with a pin for “Zebra Technologies Corporation”. Clicking on the pin brings up a “business listing” profile for ZTC with the Bourne End address, opening hours, website, telephone details and business reviews. Google Maps obtains its information from a number of sources including “crawled web content” and contributions from users, so the mere fact that it has a business listing for ZTC at Bourne End tells one very little; but Ms Bould’s evidence suggests that ZTC has “claimed” the business listing, in particular because of the absence of an invitation to claim the business in the listing, and a blue tick by ZTC in a covid-related update. This is disputed by Ms Plater who says that she has spoken to a senior manager in Digital Development and Marketing at ZTC who has confirmed that the team responsible for ZTC’s digital presence has no knowledge or information to suggest ZTC has advertised itself as having a place of business in the UK, and the covid-related update is not consistent with the approved messages issued by ZTC.
29. I accept that the evidence does leave matters rather unclear, and it is certainly a possibility that someone at ZTC – or perhaps at ZTEL – claimed the business as ZTC’s despite Ms Plater’s evidence. But I do not think I can resolve when or why that was, or who did it, or even be satisfied whether it happened at all. More

significantly, I do not think, even if it were the case, that this would be sufficient to show that ZTC in fact has a place of business at Bourne End in the sense that it carries on its own business (as distinct from that of ZTEL) there, or that Bourne End is a place where it carries on its own activities. It seems to me not at all unlikely, if it were claimed at all, that whoever did so meant to accept no more than that it was one of Zebra's premises without adverting to the fact that legally the premises were not ZTC's but ZTEL's and the business carried on there by ZTEL was not in law ZTC's business but ZTEL's.

30. This illustrates a point which applies to a number of the matters relied on by the Claimants. In economic terms, a global group of companies such as the Zebra Group is a single enterprise. It is natural for example for those in ZTC to think of the premises at Bourne End as "our English office", and the business that is transacted from there as "our EMEA business". In a very real sense, what is done at Bourne End *is* ZTC's, in the sense that that is how ZTC exploits the EMEA market, and ZTC, as parent of the group, is ultimately able to control what all its subsidiaries, including ZTEL, do. But global enterprises of this type very commonly operate through a structure of numerous subsidiaries, for perfectly understandable reasons. In economic terms it may make little difference to the Zebra Group whether it operates through subsidiaries at all, or if it does, how its business is distributed between them. But in legal terms the distinct identity of separate companies is fundamental. It affects such basic things as which company is liable on a contract, which company is liable for what tax in which country, and so on.
31. There is nothing new or surprising in this. It is dealt with at length in *Adams* under the heading "*The "single economic unit" argument*" at 532D to 539C. The Court there expressed some sympathy with the claimant's submissions, saying that to the layman at least the distinction between the case where a company itself trades in a foreign country and the case where it trades through a subsidiary whose activities it has full power to control may seem a slender one (536B). In law however the fundamental principle is that each company in a group of companies is a separate legal entity, even if they are subsidiaries that are in one sense the creatures of their parent (532D, 536G). If a company chooses to arrange the affairs of its group in such a way that the business carried on in a particular foreign country is the business of its subsidiary and not its own, it is entitled to do so, and the Court cannot disregard the separate legal entity of each company merely because it considers it just to do so (537B-C).
32. Thus there is nothing odd or inaccurate in regarding the sales and marketing that ZTEL carries out in the EMEA region as done for ZTC: this is how ZTC profits from the sale of its products in that region and everything done by ZTEL is for the ultimate benefit of ZTC and its shareholders. And it is easy to see therefore how a non-lawyer might regard the Bourne End office as ZTC's English office, and the business carried on from there as ZTC's EMEA business. But in a legal context such expressions are of course inaccurate: the Bourne End premises are ZTEL's not ZTC's, and the business that ZTEL carries on from there is ZTEL's business not ZTC's. The crucial question is whether it can fairly be said that ZTC's business has also been carried on from that office; and on that question I do not find the evidence from Google Maps, even assuming that someone claimed the business listing for ZTC, of any assistance.

(2) *The Zebra Experience Centre*

33. The Zebra Group operates a number of “Zebra Technologies Experience Centres” which are used to showcase Zebra products and solutions for prospective customers. One of these is at Bourne End. Ms Plater’s evidence, which I find entirely unsurprising, is that this is best located for customers in the UK or EMEA region; that it is owned and operated by ZTEL which is responsible for sales and marketing in the UK and EMEA; and that customers based in North America are likely to be better served by similar Experience Centres in Illinois and New York, which are owned and operated by ZTC.

34. Ms Bould relies on a press release announcing the reopening of the Bourne End Experience Centre. This is dated August 2021 from Bourne End, and commences:

“Zebra Technologies (NASDAQ: ZBRA) ... hosted hundreds of employees, partners and other special guests at the re-opening of its Experience Centre in Bourne End, United Kingdom. Nearly half of the attendees attended the July event in-person while the others joined Zebra’s first live broadcast from the centre...

The Zebra Experience Centre (ZEC) is a state-of-the-art space to showcase Zebra products and solutions for customers and other stakeholders. Following months of refurbishments, the ZEC now features the company’s entire product portfolio...”

Ms Bould also refers to a webpage for the Bourne End Experience Centre which contains a quotation from the CEO of ZTC which starts:

“As you tour our world-class facility...”

35. Mr St Ville says that only ZTC, not ZTEL, has a NASDAQ listing, and so the reference to Zebra Technologies must be to ZTC. This submission seems to me to fall into the error of construing a press release as if it were a legal text, and in any event (see below) I see nothing odd in ZTC announcing what its subsidiaries are doing. I also attach no weight, for reasons that I have already given above, to the description in the press release of the Experience Centre as “its” Experience Centre, or the statement from the CEO referring to “our” world-class facility. Mr St Ville also said that there is nothing to suggest that the live broadcast was limited to the UK and EMEA; and that what was being done was being done for ZTC. As to that, in one sense as I have already referred to, everything ZTEL does at Bourne End is for the benefit of ZTC. But that does not turn things done by ZTEL into things done by ZTC.

36. The way I expressed it in my oral judgment was as follows:

“The experience centre is an example of a press release, and there are a number of other press releases. These are press releases which refer to Zebra Technologies or Zebra Technologies Corporation, giving its NASDAQ label, and talk about activities being carried on in the UK at Bourne End. I do not find it at all surprising that those who draft press releases, for the benefit of investors, for the benefit of customers, and to enhance Zebra Group’s reputation generally, should fail to draw nice distinctions between the

particular corporate entities that do various things. I do not think the press releases I was shown show that there was anything inconsistent with the stated position that the Zebra Experience Centre is run by ZTEL, and that the activities carried on from Bourne End, in terms of selling products to customers and the like, were being carried on by ZTEL. It is, of course, the case that ZTC would want to promote the successful activities of its subsidiaries. That does not make the subsidiaries' business or anything done by the subsidiaries at their places of business ZTC's business or things done by ZTC."

That I think sufficiently explains why in my judgment the press release about the Experience Centre is not evidence that Bourne End is a place of business of ZTC's or a place where ZTC carries on its activities.

(3) *Other press releases*

37. Ms Bould refers to a number of other press releases. These all carry a byline of Bourne End and take the format of announcements by "Zebra Technologies Corporation (NASDAQ: ZBRA)". One of April 2017 announces that a UK customer has seen its customer satisfaction levels increase by 90% since deploying the Zebra TC75 touch computer; another of March 2020 announced the introduction of the ZQ10 mobile printer; and a third of June 2020 announced that a grocery chain in Ukraine had deployed a number of Zebra products and seen its productivity increase.
38. I have already in effect addressed these in the passage cited above from my oral judgment. For ZTC to issue press releases about the successful deployment of its products in the EMEA region and the resulting customer satisfaction does not seem to me to establish, or even suggest, that ZTC has a place of business at Bourne End or carries on its activities there. They are all entirely consistent with ZTEL running ZTEL's business, including marketing and selling ZTC products in the EMEA region, from Bourne End.

(4) *Shared services*

39. Ms Bould refers to an advertisement for a job vacancy at Bourne End for a senior trade compliance specialist. The advertisement refers to the Global Trade Compliance Team as being "responsible to support [sic] all business functions related to cross-border transactions". Ms Bould relies on this as showing that ZTC has a Global Trade Compliance Team that operates partly out of Bourne End.
40. Ms Plater explains that although ZTEL has control over its day-to-day activities it gets support from other Zebra Group services for shared services. These include a range of support functions such as facilities management, environmental, health and safety, and legal and compliance functions. Importantly she says that employees who perform support functions are employed locally although they will report globally, including to more senior employees who may be employed by ZTC. The Global Trade Compliance Team is one of these global support function teams, but the members of this team who work in the UK are employed by ZTEL. They work together with other members of the team in other Zebra Group offices around the world, and senior members may report up to senior executives in the USA who are employed by ZTC. The particular advert was placed by a recruiter employed by

ZTEL and does not mention ZTC; the reference to “cross-border” transactions is consistent with the fact that ZTEL is responsible for the EMEA region, a remit which inherently involves cross-border transactions.

41. I see no reason not to accept Ms Plater’s evidence at face value. I do not find it surprising that global corporate groups find that there are benefits for example in arranging their trade compliance functions on the basis of a group-wide team, with local employees reporting up ultimately to senior executives in the US. But this does not mean that everything that a trade compliance officer does while employed by ZTEL at Bourne End to support ZTEL’s business is part of ZTC’s business. The same applies with the other support functions. To take an example referred to in argument, one of the shared services referred to by Ms Plater is that of management and maintenance of offices and facilities. The evidence is that ZTEL leases the Bourne End office from a third party landlord. If ZTEL were to receive a notice of dilapidations from its landlord, it would no doubt fall to a premises manager or similar person employed by ZTEL at Bourne End to deal with it. Such a person might well report up to someone in ZTC, and might draw on support from other members of the facilities team based in the US. But that does not mean that when he or she arranges for ZTEL to respond to the dilapidations notice by having repairs carried out, they are acting for ZTC, or that their activities in doing so are ZTC’s activities.

(5) *Job advertisements*

42. Ms Bould refers to two examples of job advertisements for vacancies at Bourne End, one in January 2022 for a sales associate, and one in February 2022 for a sales operations administrator. Each refers to the vacancy as if it were being offered by ZTC.
43. Ms Plater says that although both advertisements referred to ZTC, both of the positions advertised were in fact with ZTEL not ZTC and the reference to ZTC was in each case a mistake. I do not think I can go behind this evidence. It is another example of those responsible for announcements (in this case the “Talent Acquisition team”) being imprecise, in this case with the identity of the specific employing company. It is not a reason to conclude that ZTC is carrying on business or activities at Bourne End.
44. That leaves one other matter which I will come to next, but pausing there, there is in my judgment nothing in any of the matters I have so far considered that would enable it to be fairly said that ZTC has or had a place of business at Bourne End, or carries on activities at Bourne End.

(6) *Declarations of conformity*

45. The remaining matter is this. It is a requirement of various UK regulations that the manufacturer of certain products draw up a declaration of conformity before placing them on the market. An example is the Electromagnetic Compatibility Regulations 2016 (SI 2016 No 1091). This applies to apparatus liable to cause electromagnetic disturbance. Where a manufacturer places such apparatus on the market it must carry out, or have carried out, a relevant conformity assessment procedure (reg 9); draw up a declaration of conformity (reg 10); and keep technical documentation and the declaration of conformity for a period of 10 years (reg 11). Where an importer places

such apparatus on the market, it must ensure that a relevant conformity assessment has been carried out by the manufacturer (reg 18), and keep technical documentation and the declaration of conformity for a period of 10 years (reg 24). A manufacturer may (but is not obliged to) appoint an authorised representative to perform specified tasks on the manufacturer's behalf (reg 38(1)). A manufacturer who has appointed such a representative remains responsible for the proper performance of that task (reg 38(4)); but the authorised representative must also comply with the relevant duties imposed on the manufacturer (reg 38(5)). I was told there are similar provisions in other regulations.

46. An example in the present case concerns the DS8108 scanner. This is liable to cause electromagnetic disturbance, and is therefore apparatus to which the Electromagnetic Regulations apply. The relevant declaration of compatibility is in evidence and is dated 8 April 2021. It gives the manufacturer as ZTC (with its address in New York). It is signed, expressly on behalf of ZTC, by a Mr Marco Belli, described as "Sr. Manager, Regulatory" and gives the place of signature as Bourne End. Ms Bould gives other examples, taken from Zebra's website, of UK declarations of conformity signed by Mr Belli at Bourne End on behalf of ZTC, and suggests that this is ZTC carrying on business activities at Bourne End.
47. Ms Plater's evidence is that Mr Belli is based at Bourne End and employed by ZTEL. She accepts that Mr Belli acted on ZTC's behalf when signing the declarations of conformity. She explains that adding the location where he signed the declaration is in accordance with a format required by the European Commission which also satisfies the requirements of Turkish customs, but I do not think this is of any significance. Whether the place where the declarations were signed was added to the declarations or not, there is no dispute that they were in fact signed at Bourne End.
48. I have set this out at some length, but the factual position seems to be relatively straightforward and can be summarised as follows: Mr Belli, an employee of ZTEL based at Bourne End, regularly signs there declarations of conformity on behalf of ZTC. It is a requirement of UK regulations that such declarations are signed by or on behalf of the manufacturer before it places the relevant products on the market, and that the importer (here ZTEL) keeps the declarations of conformity for 10 years.
49. Does this amount to the carrying on of ZTC's business at Bourne End? In my judgment it does not. It is ZTC as manufacturer which is obliged to sign the declarations of conformity but the reason it is doing so is so that its subsidiary ZTEL can sell the relevant products in the UK. That seems to me to be something done in support of ZTEL's business not something done in the course of ZTC's own business. The way I put it in my oral judgment was as follows:

"The second limb [viz of CPR r 6.9(2) case 7], the "any place of business of the company" [limb] does, I think, require asking the *Adams v Cape* questions as to whether, ultimately, it can fairly be said that ZTC's business has been transacted at or from Bourne End. I do not think that Mr Belli signing the certificates of conformity can fairly be said to be the transacting of ZTC's business at or from Bourne End. It is the carrying out of a limited regulatory function on behalf of ZTC (but not by an employee of ZTC, by an employee of ZTEL) for the purposes of marketing in the UK products which are placed on the market by ZTEL. I do not think it can fairly be said that

ZTC's business is thereby being transacted from Bourne End.”

That I think adequately explains why I consider that the second limb of CPR r 6.9(2) case 7 is not satisfied by Mr Belli signing the declarations on behalf of ZTC at Bourne End.

50. Mr St Ville also referred to the fact that Mr Belli will have had to retain both technical documentation and the declarations of conformity on ZTC's behalf and would have done that at Bourne End. But I do not think this takes matters any further. Retaining documents does not seem to me to be fairly regarded as the carrying on of business; and in any event as I read the regulations there is an obligation on ZTEL as importer to retain the documentation (under reg 19), so the mere fact that Mr Belli is retaining them is not, or not solely, attributable to his doing so on behalf of ZTC.
51. For the reasons given above I conclude that Bourne End is not “any place of business of the company [ZTC]” for the purposes of CPR r 6.9(2) case 7.

Carrying on of activities

52. The remaining question on this part of the case is whether Mr Belli's act of signing the declarations of conformity means that Bourne End is “any place within the jurisdiction where the corporation carries on its activities”.
53. In one sense the signing of the declarations is obviously an activity, and since it is admittedly being done by Mr Belli for ZTC, one can see the argument that ZTC is through him thereby carrying on an activity at Bourne End. But I do not think that can be what the rule envisages.
54. There is little authority on this limb. In *Noble* at [49] Gilbert J said that counsel told him there was no authority on it, but held that “the principles to be applied are much the same”. I agree and would go slightly further in that I think the first limb is primarily intended to be the counterpart for non-trading corporations of the second limb (place of business) for trading companies. First, the structure of the rule suggests this. It is noticeable that the two limbs of case 7 echo the two previous cases, 5 and 6. Case 6 applies to a company registered in England and Wales and permits service at a place of business; case 5 applies to a corporation, other than a company, incorporated in England and Wales and permits service at a place where the corporation carries on its activities. That tends to suggest that case 5 is the equivalent for non-trading corporations of case 6 for trading companies, and hence that “any place where the corporation carries on its activities” fulfils the same function for non-trading corporations as “any place of business” does for trading companies. If that is right, then on general principles the same interpretation should apply to the use of the same expression in case 7 as well. This does admittedly leave some potential untidiness as not all companies are trading companies – charitable companies for example may not trade at all – and not all trading corporations are companies – a corporation incorporated by charter may engage in trade. So it cannot simply be said that “place of business” applies to companies and “place where it carries on its activities” applies only to corporations that are not companies. Nevertheless it does quite strongly suggest that the primary purpose of the first limb in case 7 is to cater for corporations that for whatever reason are not trading companies and so do not have a place of business, and that “place where it carries on its activities” is the

counterpart of “place of business” and should be interpreted accordingly.

55. Second, there is a passage in *Adams* which gives strong support to this view. At 524G Slade LJ says this:

“(All the authorities cited to us have been directed, and all the statements later in this judgment will be directed, to trading corporations. In the case of non-trading corporations, the same principles would presumably apply, with the substitution of references to the carrying on of the corporation’s corporate activities for references to the carrying on of business.)”

I was not referred to this, and heard no argument on it, nor was I shown the history of what is now CPR r 6.9(2), but it seems to me that this passage is self-evidently the source, directly or indirectly, of what are now case 5 and the first limb of case 7 in that rule.

56. In those circumstances I conclude that the primary purpose of the first limb in case 7 is to cater for the case of a non-trading corporation, and that the phrase “place where the corporation carries on its activities” is the counterpart of, or analogous to, “place of business” in limb 2 for trading companies. I do not mean by that that a trading company such as ZTC cannot ever qualify under the first limb, but I do mean that in order to qualify under the first limb the corporation has to be doing things analogous to those that a company has to do for a place in the jurisdiction to be a place of business of the company, making due allowance for the fact that activities are not confined to trading activities. In other words the tests in *Adams* equally apply, *mutatis mutandis*.
57. If that is right, then I do not think that Mr Belli’s signing of the declarations of conformity means that Bourne End is a place where ZTC carries on its activities any more than Bourne End is a place of business of ZTC. It is clear from the authorities that not every act that an agent for a company does suffices to turn the place where he does it into a place of the company’s business, and the same applies in my judgment to the first limb of case 7: it is not every act that an agent of ZTC does on its behalf that turns the place where he does it into a place where ZTC carries on its activities. As Dr Brian Nicholson QC, who appeared for ZTC with Mr Christopher Hall, put it in argument, he as counsel has authority to act for ZTC, but if he were on ZTC’s behalf to submit to the jurisdiction that would not mean that the courtroom was a place where ZTC carries on its activities. In my judgment the acts of Mr Belli in signing the declarations on behalf of ZTC at Bourne End are not sufficient to enable it fairly to be said that Bourne End is a place where ZTC carries on its activities.
58. I have reached this conclusion without going through the checklist of matters in Slade LJ’s third proposition in *Adams* at 530F-531B, but in fact very few of them have any application at all to Mr Belli’s acts for ZTC: there is no evidence, or reason to suppose, that ZTC acquired the premises, reimburses ZTEL for the cost of them, finances the business, or remunerates Mr Belli (or ZTEL) for signing the declarations; nor that Mr Belli or ZTEL reserve any part of the accommodation or staff for ZTC or display ZTC’s name on the premises or stationery; nor that Mr Belli or ZTEL have any authority to make contracts for ZTC. The only matter in the list that might be open to question is whether ZTC exercises any control over the actions of Mr Belli – but on that too there is in fact no evidence one way or the other. What this exercise

really shows to my mind is that the checklist is of limited utility in a case like this. The real question, and the ultimate one, is whether it can fairly be said that ZTC has been carrying on its activities at Bourne End. As I have already said in my judgment the answer is that it cannot.

59. In those circumstances neither limb of CPR r 6.9(2) case 7 is satisfied: Bourne End is neither a place of business of ZTC nor a place where it carries on its activities.
60. Subject to two further arguments advanced by Mr St Ville, that is sufficient to entitle ZTC to a declaration that it was not duly served at Bourne End.

Submission to the jurisdiction

61. The first further argument is that by serving a notice under CPR r 7.7(1) ZTC has irrevocably submitted to the jurisdiction.
62. CPR r 7.7 provides as follows:

“7.7— Application by defendant for service of claim form

- (1) Where a claim form has been issued against a defendant, but has not yet been served on him, the defendant may serve a notice on the claimant requiring him to serve the claim form or discontinue the claim within a period specified in the notice.
 - (2) The period specified in a notice served under paragraph (1) must be at least 14 days after service of the notice.
 - (3) If the claimant fails to comply with the notice, the court may, on the application of the defendant—
 - (a) dismiss the claim; or
 - (b) make any other order it thinks just.”
63. In *Deutsche Bank AG London Branch v Petromena ASA* [2015] EWCA Civ 226 (“*Petromena*”) at [32]-[33], Floyd LJ identified two circumstances in which a defendant will be held to have submitted to the jurisdiction. One is what he called “statutory submission”, namely where the relevant rules of court so provide (as CPR r 11(5) does). That has no application here as CPR r 7.7 contains no such provision. The other is what Floyd LJ referred to as “common law waiver”.
 64. The test for such a waiver has been variously expressed. In *re Dulles’ Settlement (No 2)* [1951] Ch 842 Evershed MR said (at 847) that a man cannot fight the issue on the merits, or take any step unequivocally referable to the issue on the merits, and at the same time preserve the right to say that the court has no jurisdiction. Denning LJ (at 850) agreed that if he fights the case on the merits he must be taken to have submitted to the jurisdiction but not when he only appears with the sole object of protesting against the jurisdiction, saying that he did not see “how anyone can fairly say that a man has voluntarily submitted to the jurisdiction of a court, when he has all the time been vigorously protesting that it has no jurisdiction.” In *Astro Exito Navegacion SA v Hsu* [1984] 1 Ll Rep 266 Robert Goff LJ (at 270 col 2) said that a

person makes a voluntary submission to the jurisdiction if he takes a step in proceedings which in all the circumstances amounts to a recognition of the Court's jurisdiction in respect of the claim. In *Sage v Double A Hydraulics* [1992] Times Law Reports 175 Farquharson LJ said that a useful test was whether a disinterested bystander with knowledge of the case would have regarded the acts of the defendant, or his solicitors, as inconsistent with the making and maintaining of his challenge. In *Spargos Mining NL v Atlantic Capital Corporation* (Times, 11 December 1995), Colman J said that there would be an effective waiver or submission to the jurisdiction only where the step relied upon as a waiver or submission "cannot be explained except on the assumption that the party in question accepts that the court should be given jurisdiction. If the step relied upon, although consistent with the acceptance of the jurisdiction, is a step which can be explained because it was also necessary or useful for some purposes other than acceptance of the jurisdiction, there will, on the authorities, be no submission." In *Rubin v Eurofinance SA* [2012] UKSC 46 at [159] Lord Collins of Mapesbury identified the test as being whether the relevant party had "taken some step which is only necessary or only useful if" an objection to jurisdiction "has been actually waived, or if the objection has never been entertained at all." In *Petromena* at [32] Floyd LJ referred to common law waiver as "the doing of an act inconsistent with maintaining a challenge to the jurisdiction. Such a waiver must clearly convey to the claimant and the court that the defendant is unequivocally renouncing his right to challenge the jurisdiction."

65. I do not think it necessary in the present case to explore if there are any subtle differences between these various expressions of the test. On the facts of the present case it seems to me that there can be only one answer, which is that Quinn Emanuel's letter of 17 December 2021 containing ZTC's notice under CPR r 7.7(1) (paragraph 11 above) did not amount to a common law waiver or voluntary submission to the jurisdiction. Not only did the letter contain a statement that nothing in it was or should be construed as a submission, but the form of the notice contained in the letter itself indicated that although ZTC was calling on the claimant to serve or discontinue, such service would have to be out of the jurisdiction pursuant to a successful application for permission to serve out. That does not seem to me to be a step that is, or would appear to a disinterested bystander to be, "inconsistent with the making and maintaining of [ZTC's] challenge"; I would go further and say that it is in fact inconsistent with a waiver, as in that case there would be no need to require the Claimants to go to the trouble of seeking permission to serve out. Nor is it a step that was only necessary or useful if the objection had been waived; nor did it convey that ZTC was unequivocally renouncing its right to challenge the jurisdiction. On the contrary ZTC has continued at every opportunity vigorously to protest that it is not submitting to the jurisdiction. In my judgment ZTC did not, by serving a notice under CPR r 7.7(1), submit to the jurisdiction. I need not consider what the position would have been if ZTC had simply served a notice under CPR r 7.7(1) without at the same time making it clear that ZTC's position was that it needed to be served, if at all, out of the jurisdiction with permission to do so; I can see that the position then might have been different, but those are not the facts.
66. Mr St Ville raised a number of arguments to the contrary. First he said that the historical antecedent of the provision in CPR r 7.7 was the practice of entering an appearance *gratis* (see the note in *Civil Procedure (The White Book)* 2021 at §7.7.1), and he suggested that entering an appearance would have amounted to a recognition

of the jurisdiction of the Court. In 1979 entering an appearance was replaced under the RSC by the procedure of acknowledging service, and in *Abu Dhabi Helicopters v Aeradio plc* [1986] 1 WLR 312 the Court of Appeal held that there was no such thing as an acknowledgment of service *gratis*. That then led to the introduction into the RSC of RSC Ord 12 r 8A, in similar (but not identical) terms to the current CPR r 7.7. Mr St Ville pointed out that under RSC Ord 12 r 8A(3) a defendant who applied to have the action dismissed had to support the application with an affidavit stating that he intended to contest the proceedings. That would no doubt support an argument that a defendant who gave notice under that rule might have been regarded as taking a step indicating an intention to contest the case on the merits and as thereby effecting a waiver or submission; but the CPR are a new procedural code and nothing equivalent to those words appears in CPR r 7.7. And I do not think it necessary to consider whether Mr St Ville is right that the entry of an appearance *gratis*, a procedure that has long disappeared, would have amounted to a submission to the jurisdiction.

67. Second, Mr St Ville said that by using the CPR r 7.7 procedure ZTC was invoking the positive use by the Court of its powers to dismiss the claim, thereby requiring the Claimants to issue a second claim form. That might, he said, deprive the Claimants of the benefit of the limitation period applicable to the first claim form, and might also provide a platform for a possible (although he would say flawed) allegation that the second claim form would be an abuse. I accept that serving a notice under CPR r 7.7(1) is a precursor to bringing an application under CPR r 7.7(3) to have the claim form dismissed; and that by bringing such an application, ZTC is seeking to invoke the power of the Court to dismiss the action. But the ground for dismissal would be that the Claimant has failed to serve ZTC; and I do not see that seeking to have the Court dismiss the action for non-service is inconsistent with ZTC's position that it has not submitted to the jurisdiction and that if the Claimants *are* to serve ZTC they have to apply for and obtain leave to serve it out of the jurisdiction. The very foundation of the application under CPR r 7.7(3) is that ZTC has not been served at all, either in or out of the jurisdiction.
68. Third, in his written argument, although not I think orally, Mr St Ville referred to the judgment of Morritt C in *Global Multimedia International Ltd v ARA Media Services Ltd* [2006] EWHC 3612 (Ch) at [31] where he said:

“A defendant who intends to challenge the jurisdiction of the court does not ... threaten to strike-out the claim if the claimant refuses to discontinue it.”

But that was a case where the ground of threatened strike-out was that the defendant had been discharged from any potential liabilities, or in other words that it had an unanswerable defence on the merits (see at [18]). Taking such a step would be “unequivocally referable to the issue on the merits” (to use the language of Evershed MR in *Re Dulles' Settlement*) and it is not difficult to see why Morritt C thought that a threat to take that step was inconsistent with maintaining a challenge to the jurisdiction. I do not see that it has any relevance to the present case.

69. For the reasons I have given I reject the submission that ZTC has submitted to the jurisdiction.

Requirement to use CPR Part 11

70. Mr St Ville's final point on the application is that whenever a defendant wishes to dispute the Court's jurisdiction on the grounds that there has been non-service or defective service, it can only do so under CPR Part 11.
71. Part 11 of the CPR only contains one rule. It provides as follows:

"11— Procedure for disputing the court's jurisdiction

- (1) A defendant who wishes to—
- (a) dispute the court's jurisdiction to try the claim; or
 - (b) argue that the court should not exercise its jurisdiction,
- may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
- (2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.
- (3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.
- (4) An application under this rule must—
- (a) be made within 14 days after filing an acknowledgment of service; and
 - (b) be supported by evidence.
- (5) If the defendant—
- (a) files an acknowledgment of service; and
 - (b) does not make such an application within the period specified in paragraph (4),
- he is to be treated as having accepted that the court has jurisdiction to try the claim.
- (6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including—
- (a) setting aside the claim form;
 - (b) setting aside service of the claim form;
 - (c) discharging any order made before the claim was commenced or before the claim form was served; and

- (d) staying (GL) the proceedings.
- (7) If on an application under this rule the court does not make a declaration—
- (a) the acknowledgment of service shall cease to have effect;
 - (b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct; and
 - (c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed.
- (8) If the defendant files a further acknowledgment of service in accordance with paragraph (7)(b) he shall be treated as having accepted that the court has jurisdiction to try the claim.
- (9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file—
- (a) in a Part 7 claim, a defence; or
 - (b) in a Part 8 claim, any other written evidence.”
72. Mr St Ville’s submission obtains support from a note in *The White Book* at §11.1.3 which includes the statement that “Any challenge to jurisdiction (including those based on non-service or defective service) should proceed by way of the Pt 11 procedure”.
73. The foundation of the argument, however, is the decision of the Court of Appeal in *Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203 (“*Hoddinott*”). It is helpful to consider that case in a little detail. There was no foreign element to the claim at all: the claimants were farmers in Wiltshire and were claiming damages for the alleged failure by the defendant, presumably an English company (there is no suggestion otherwise), to reinstate their land after laying a sewer. The relevant chronology was as follows:
- (1) The claim form was issued on 22 May 2006. (All dates hereafter are 2006 unless otherwise specified). The time for service of the claim form therefore expired 4 months after issue on 22 September.
 - (2) On 13 September the claimants applied without notice for an order extending the time for service. That was granted by DJ Rowe on the same day, and time was extended to 22 November.
 - (3) On 14 September the claimants sent a copy of the claim form to the defendant but for information only, not by way of service.
 - (4) On 2 October the defendant issued an application to set aside the without

notice order extending time for service on the basis that there was no good ground for it.

- (5) On 21 November the claim form was served on the defendant.
 - (6) On 28 November the defendant's solicitors filed an acknowledgment of service. The relevant form has 3 boxes, which are respectively (i) "I intend to defend all of this claim"; (ii) "I intend to defend part of this claim"; and (iii) "I intend to contest jurisdiction". The defendant's solicitors ticked box (i) indicating that the defendant intended to defend all of the claim. They did not tick box (iii) indicating that the defendant intended to contest jurisdiction.
74. On these facts on 30 January 2007 DJ Daniel set aside the extension of time and struck out the claim. The Court of Appeal however allowed the claimants' appeal.
 75. The reasoning of Dyson LJ, giving the judgment of the Court, is as follows. First it was argued that Part 11 was not engaged at all as CPR r 11 only applies where the defendant wishes to dispute the Court's jurisdiction or argue that the Court should not exercise its jurisdiction, and the failure to serve proceedings in time did not raise an issue of the Court's "jurisdiction" at all. Dyson LJ rejected that (at [23]): in CPR r 11(1) "jurisdiction" does not denote territorial jurisdiction but the Court's power or authority to try a claim. Service of a claim form out of time might not deprive the Court of jurisdiction (ie in the sense of power to hear the claim) but it formed the basis of the defendant's argument that the Court should not exercise its jurisdiction. So CPR r 11(1)(b) was engaged.
 76. Second, it followed that the defendant in that case, despite having already, before acknowledging service, issued its application to set aside the order extending time for service, had to comply with the procedure in Part 11. CPR r 11(5) is clear and unqualified: if the conditions in sub-paragraphs (a) and (b) are satisfied, then the defendant is treated as having accepted that the Court has jurisdiction (at [27]). Since they were satisfied in the present case (as the defendant had (a) filed an acknowledgment of service and (b) not made an application under CPR r 11(1) within 14 days thereafter), the defendant was to be treated as having accepted that the Court had jurisdiction to try the claim. That was to be interpreted as meaning that the defendant had accepted that the Court should exercise its jurisdiction to try the claim (at [28]).
 77. Mr St Ville said that *Hoddinott* was authority for the proposition that any challenge to the ability of the Court to try the claim, including a challenge based on the fact that service had not been effective, must be made by way of Part 11. He referred me to *Caine v Advertiser and Times Ltd* [2019] EWHC 39 (QB) ("*Caine*") at [30] per Dingemans J where he said that *Hoddinott* was "clear authority ... that an application that the court should not exercise its jurisdiction to try a claim must be made by CPR Part 11."
 78. *Caine* was another case where the claim form had been served on the defendant, albeit service was both late and defective (in not including a response pack), and the defendant had acknowledged service: see at [7]-[8]. The decision of Dingemans J was that in those circumstances the defendant had to use an application under CPR r 11(4) if it wished to set aside service of the claim form on the grounds of late

service, rather than using an application under CPR r 3.4(2)(c) to strike out the claim form for failure to comply with the rules. I agree that that follows from the decision in *Hoddinott*, which is in my judgment authority for the proposition that if a defendant has been served and has acknowledged service, then the defendant must use an application under CPR r 11(4) to set aside the service (either on the ground, as in *Hoddinott*, that a without notice order extending time for service should be set aside, or on the ground, as in *Caine*, that service was out of time).

79. It is not obvious to me that *Hoddinott* stands as authority for the wider proposition that if the claimant claims to have served the defendant and the defendant denies that there has been any effective service, the defendant must still use Part 11 to challenge the effectiveness of the service. It is possible that that follows, but I do not think it necessarily follows. For example suppose a claimant serves not at the defendant's address but at his neighbour's. The defendant may be passed the claim form by his neighbour and may therefore be in a position to invoke Part 11 (although it is to be noted that before applying under CPR r 11(4) a defendant must by CPR r 11(2) first file an acknowledgment of service and it seems a bit odd for a defendant to acknowledge service when his contention is that there has been no service at all). But the neighbour may never tell the defendant, and the first the defendant may know of the proceedings is an attempt by the claimant to enforce a default judgment. Must the defendant then use Part 11 to challenge the default judgment? I do not regard that as obvious. The reasoning of Dyson LJ in *Hoddinott* is that where a defendant *has* acknowledged service and has not brought an application under CPR r 11(4) within 14 days thereafter, the consequences in CPR r 11(5) follow. But that does not necessarily apply where a defendant has *not* acknowledged service. The logic of Dyson LJ's judgment does not compel the conclusion that a defendant who has *not* acknowledged service can only raise the issue whether service has been effected at all by using Part 11.
80. But I do not propose to resolve the general question as I do not consider that I need to. The particular question before me is whether it is open to the defendant to challenge the validity of purported service by making an application under CPR r 7.7(3). Whatever the general position may be in the case of a defendant who wishes to raise the issue of the validity of service, in my judgment it must be open to a defendant who claims not to have been served at all to use CPR r 7.7(3). The structure of the rules does not make sense otherwise.
81. Take a simple case, not involving a foreign defendant. The defendant is aware that a claim form has been issued. The defendant has not been served. Under CPR r 7.7(1) he gives the claimant, as he is entitled to, notice requiring the claimant either to serve the claim form or discontinue the claim within 14 days. At the end of 14 days the claimant has neither discontinued nor, as far as the defendant is aware, has served the claim form. The defendant therefore applies under CPR r 7.7(3) to have the claim dismissed. The claimant responds by saying that he *has* served the claim form within 14 days. That raises an issue as to whether what the claimant has done amounts to effective service or not. That may be a very simple issue – did the claimant post the claim form to the defendant's address at No 10 or to his neighbour's at No 11? It may be a more complex issue such as whether the address at which an individual is served is his usual residence, or his last known residence (see CPR r 6.9(2) case 1); or whether the address at which an LLP is served is its principal place of business (case

4); or, as in this case, whether the address at which a company is served is a place of business of the company (case 6 or 7).

82. But whatever the issue is, it seems to me that it must be open to the Court to resolve it on the hearing of the application under CPR r 7.7(3). The whole question under that rule is whether the claimant has “fail[ed] to comply with the notice”, as that is what gives the Court discretion to dismiss the claim. So if there is a dispute whether the claimant has or has not served the defendant within the relevant period, the Court must resolve it. To my mind it follows that the Court must have power to resolve it *on that application*. It would be absurd if the only way that the defendant in such a case could have the issue determined were by filing an acknowledgment of service and then issuing another application, this time under CPR r 11(4), raising the very same issue. That cannot sensibly be what those responsible for drafting the rules envisaged.
83. And if this is right, I do not think that the ability of the defendant to ask the Court, on an application under CPR r 7.7(3), to determine whether there has been valid and effective service can depend on whether the defendant knows before issuing the application that the claimant is asserting that he has been served, or knows nothing about the claimant’s purported service (which may for example be at an address that he left years before). Either the Court has power to resolve the issue on such an application or it does not. That cannot turn on whether the defendant is, or ought to be, aware of the purported service. He must still in my judgment be able to argue that there has been no service in fact and hence that the claimant has failed to comply with the CPR r 7.7(1) notice.
84. For these reasons I reject the submission that ZTC here had to use the Part 11 procedure to challenge the service at Bourne End. In my judgment it was appropriate for it to raise the issue by bringing its application under CPR r 7.7(3).

Conclusion

85. For the reasons I have given I accept ZTC’s submission that it was not duly served at Bourne End, and hence that the Claimants failed to comply with the notice given by Quinn Emanuel under CPR r 7.7(1).
86. That means that the Court has a discretion to dismiss the claim. But I decided that it was more appropriate in the present case to give the Claimants a further opportunity to apply for permission to serve ZTC out of the jurisdiction. (That was not strenuously opposed by Dr Nicholson, and I did not understand him to require any more detailed account of the reasons in this judgment.) I therefore gave directions enabling that to happen. Although the usual procedure under CPR r 6.36 is, for obvious reasons, for the application to be made *ex parte* and without notice in the first instance, the defendant then very often applying to set aside any resulting order, it seemed to me more convenient, for all concerned, to fix a single hearing at which the issue could be heard *inter partes* (on the basis that by participating in such a hearing ZTC would not be taken as submitting to the jurisdiction). That not only avoids taking up the time of two judges rather than one, first on paper *ex parte* and then on an application *inter partes* to set aside, but has the added advantage of avoiding any argument whether the Claimants have complied with their duty of full and frank disclosure, something which frequently adds to the complexity and expense of

jurisdiction challenges but which can be avoided entirely if the application is heard *inter partes*.

87. I indicated to Mr St Ville, who wishes to apply for permission to appeal, that he will have an opportunity to do so in writing within 28 days after this judgment is formally handed down, and I will therefore formally adjourn any such application to be dealt with by myself on paper pursuant to paragraph 4.1(a) of Practice Direction 52A, and will extend time for filing any notice of appeal to 21 days after my decision on such application.
88. I have also directed that any such application for permission to appeal should be supported by properly drafted Grounds of Appeal. It is a consequence of the way the rules are drafted that whereas applications for permission to appeal that are considered by the Court of Appeal are always (or should always be) supported by Grounds of Appeal, there is no requirement for a party who seeks permission to appeal from the lower court at the hand-down (or at an adjourned continuation of the hand-down) to do so. That is understandable as judgments may be delivered orally and applications for permission to appeal made immediately without any opportunity to draft grounds. But where, as in the present case, a reserved judgment is circulated in draft and there will be ample opportunity for Grounds of Appeal to be formulated, there is much to be said for requiring that to be done. Properly drafted and suitably succinct and focused Grounds of Appeal are a very helpful tool for the determination of applications for permission to appeal: see the recent emphatic statement to this effect by the Court of Appeal in *Municipio de Mariana v BHP Group plc* [2021] EWCA Civ 1156 at [113]-[114].
89. I am very grateful to counsel for their lucid and comprehensive arguments which enabled the hearing to be conducted efficiently and judgment, albeit in attenuated form, to be delivered on the day. I hope that this fuller judgment, which is intended to amplify, but not alter, the reasons for my decision, provides sufficient explanation of why I reached the conclusions I did.