



Neutral Citation Number: [2017] EWHC 2658 (IPEC)

Case No: IP-2017-000048

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
INTELLECTUAL PROPERTY ENTERPRISE COURT

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

Date: 27th October 2017

Before :

Mr RECORDER DOUGLAS CAMPBELL QC

BETWEEN

(1) SCOMADI LIMITED
(2) SCOMADI WORLDWIDE LIMITED

Claimants

- and -

(1) RA ENGINEERING CO. LIMITED
(2) YIMING CHEN
(3) MOTOGB LIMITED

Defendants

AND BETWEEN:

**CHANGZHOU HANWEI VEHICLE SCIENCE & TECHNOLOGY LIMITED
COMPANY**

Additional Counterclaimant

and

(1) SCOMADI LIMITED
(2) SCOMADI WORLDWIDE LIMITED

Defendants to the Additional Counterclaim

Jonathan Hill (instructed by Kuit Steinart Levy LLP) for the **Claimants/Defendants to the Additional Counterclaim**

Hugo Cuddigan QC and **Christopher Hall** (instructed by Kempner & Partners LLP) for the **Defendants/Additional Counterclaimant**

Hearing dates: 26th – 27th September 2017

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.

Mr Recorder Douglas Campbell QC:

Introduction

1. This is a case about a range of retro-style motor scooters based on the well-known Lambretta scooters of the 1960s. The Claimants' range is sold under the marque Scomadi. The dispute is about 3 different scooter models, each of which is made in China by the additional counterclaimant ("Hanway") and which D3 wishes to distribute in the UK. These 3 models are generally referred to as the Royal Alloy scooters, but more particularly are the GT, the GP mark I ("GP1"), and the GP mark II ("GP2").
2. The background is that the Claimants came up with the idea of re-launching updated versions of the classic Lambretta scooters, and entered into two agreements with Hanway (referred to as the Design and Manufacture Agreement, and the Supplementary Agreement) relating to the production thereof. This relationship later broke down, and resulted in the present litigation.
3. The parties to the present litigation fall into two groups. I will refer generally to the Claimants (ie the two Scomadi companies, which are in the same control and ownership) as "the Claimants", and to the Defendants to the original action plus Hanway as being "the Defendants" for ease of reference save where it is necessary to distinguish between them (as it is, for instance, in relation to the contractual claims).
4. These proceedings are complicated by a wide range of claims and counterclaims covering breach of contract, trade mark infringement, passing off, Registered Community Design ("RCD") infringement, UK unregistered design right infringement, negligent misrepresentation, negligent misstatement, infringement of copyright, and rescission. As a result of various case management orders made on previous occasions, notably the order of Morgan J removing unregistered design right issues relating to the GP1 and GP2 scooters from the trial; and the cooperation of the parties, including the Defendants' acceptance that the GT infringes some of C1's unregistered design rights, the list of issues for trial reduced to the following.

The Supplementary Agreement

- 1) *Was the Supplementary Agreement ("SA") a legally-enforceable binding contract between Hanway and the First Claimant? In particular:*
 - a) *Was the SA drafted without prior input from the Claimants and presented to them for signature without prior notice?*
 - b) *Is consideration for the SA found in (i) the compromise of arguable claims for breach of contract, negligent misrepresentation and/or negligent misstatement or rescission (ii) the continuation of the venture between Hanway and the First Claimant (iii) the variation of the commercial terms of*

the Design and Manufacture Agreement (“DMA”), or (iv) Hanway’s agreement not to assert arguable rights against the first Claimant?

- 2) *Are the Claimants estopped from asserting that the SA is of no contractual effect?*
- 3) *Is the Defendants’ trade in the Royal Alloy Scooters permitted pursuant to the SA (without prejudice to any issues relating to passing off and/or trade mark infringement)? In particular:*
 - a) *What is the correct interpretation of the SA?*
 - b) *What is the correct interpretation of the DMA?*
 - c) *When did the Claimants first “find” a third party to produce the scooters in issue?*
 - d) *In what circumstances was the DMA terminated?*

The Claimants’ design rights

- 4) *Are the RCDs novel and do they have individual character?*
- 5) *Are any of the features of the RCDs solely dictated by technical function?*
- 6) *Do the Royal Alloy Scooters or either of them produce on the informed user a different overall impression to the RCDs or any of them?*
- 7) *Are the Defendants or any of them liable for infringement of the RCDs or any of them?*
- 8) *Are the Defendants or any of them liable as joint tortfeasors for acts of infringement of the other Defendants?*

Relief

- 9) *Are the Defendants entitled to declarations that each of the Royal Alloy scooters does not infringe the RCDs or any of them?*
5. Most of the hearing was taken up with issue 3, and in particular issue 3(a).

The witnesses

6. On behalf of the Claimant I heard oral evidence from Frank Sanderson, a Director of both Claimants; and Mr Paul (Paulino) Melici, also a Director of both Claimants. On behalf of the Defendants I heard oral evidence from Mr Yiming Chen, the Second Defendant; and Mr Oliver, General Manager of the Third Defendant.
7. Both side’s counsel described Mr Sanderson as combative, and I agree. The Defendants’ counsel also submitted that Mr Sanderson was evasive. There is substance in this criticism too, particularly as regards Mr Sanderson’s dealings

with Mr Pimol Srivikorn (referred to throughout the trial as “Pimol”), a Thai businessman interested in the scooter sector. I shall explain the significance of these dealings with Pimol below.

8. The Defendants requested that Mr Melici should wait outside Court whilst Mr Sanderson was being cross-examined, and the Claimants agreed to this course. In the result Mr Melici’s oral evidence covered much less ground than that of Mr Sanderson. He gave his evidence clearly. The Defendants did not criticise his evidence, nor did they allege any inconsistency with that given by Mr Sanderson.
9. Mr Oliver’s evidence was criticised by the Claimants as being unconvincing as regards the circumstances in which the Third Defendant and Hanway began dealing in the Defendants’ scooters. I reject this criticism. This topic was only peripheral to the issues in any event.
10. Mr Chen gave his evidence through an interpreter. I have made allowances for this. When speaking about the work Hanway had done, his evidence was clear and consistent.
11. Another part of Mr Chen’s evidence was his attempt to explain why Hanway had applied for (a) a community registered design, and (b) a large number of “Scomadi” trade marks in its own name in a large number of jurisdictions, all without telling the Claimants. He said that so far as the design was concerned he was simply testing the Community design registration system to see if what he thought was an invalid registration could be registered; that so far as the Scomadi trade marks were concerned he thought the Claimants’ rights to their own name only applied in Europe; and that he did not tell the Claimants about any of these applications because “*I did not have a lot of contact with Scomadi directly, and my employees would not be able to do that by themselves*”. I did not find this part of his evidence convincing.
12. It is plain that this dispute has led to bitter feelings on both sides, which have become entrenched by the process of litigation. The Claimants submitted that in these circumstances I should primarily rely on the contemporaneous documentary evidence and inherent probabilities, with the recollection of individual witnesses being tested against the same. I agree, and I shall do so.

Issues 1-3 (contract)

13. I will deal with the contract claim (ie issues 1-3) first. First I will set out the law, which was not disputed, and then the facts, which were very much disputed.

Legal context

14. The legal approach to interpretation of contracts is well known. It was recently and authoritatively explained by the Supreme Court in **Wood v Capita Insurance Services** [2017] UKSC 24. In short the Court has to ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to

have meant: see **Wood** at [11], citing Lord Clarke in **Rainy Sky v Kookmin** [2011] UKSC 50 at [21]. This is a unitary exercise, and proceeds via an iterative process in which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated: see **Wood** at [12]. And where the contracts are not drafted with the assistance of skilled professionals, the correct interpretation may be achieved by a greater emphasis on the factual matrix as opposed to textual analysis: see **Wood** at [13].

15. The Claimants drew my attention to the *contra proferentem* rule, as explained by Lord Mustill in the Privy Council in **Tan Wing Chuen v Bank of Credit and Commerce Hong Kong** [1996] UKPC 2 BCLC 69, 77. The Claimants described this rule (without dissent from the Defendants) as a tie-breaker in cases of ambiguity.
16. The Defendants relied on Sales J (as he then was) in **Investec Bank (Channel Islands) v The Retail Group plc** [2009] EWHC 476 (Ch) for the following proposition:

“76 Accordingly, in interpreting a contract, regard may be had to the content of the parties' negotiations to establish “the genesis and object” of a provision. This seems to me to be a relevant part of the factual matrix, since if the parties in the course of their negotiations are agreed on a general objective which is to be achieved by inclusion of a provision in their contract, that objective would naturally inform the way in which a reasonable person in the position of the parties would approach the task of interpreting the provision in question...”

17. The Defendants also relied on **Peekay Intermark v Australia and New Zealand Banking Group** [2006] EWCA Civ 386 as to the effect of statements in the contract itself as to the basis thereof. In that case Moore-Bick LJ (with whom Chadwick LJ and Lawrence Collins J agreed) held as follows:

*“56. There is no reason in principle why parties to a contract should not agree that a certain state of affairs should form the basis for the transaction, whether it be the case or not. For example, it may be desirable to settle a disagreement as to an existing state of affairs in order to establish a clear basis for the contract itself and its subsequent performance. Where parties express an agreement of that kind in a contractual document neither can subsequently deny the existence of the facts and matters upon which they have agreed, at least so far as concerns those aspects of their relationship to which the agreement was directed. The contract itself gives rise to an estoppel: see **Colchester Borough Council v Smith** [1991] Ch. 448, affirmed on appeal [1992] Ch.421.”*

The Claimants did not dispute this principle.

18. There was a dispute about whether there was any consideration for the SA, but there was no dispute about the relevant law. I can summarise it as follows:

- i) It is no consideration to refrain from a course of action which it was never intended to pursue: see **Arnale v Costain Civil Engineering** [1976] 1 Lloyd's Rep 98, 106.
 - ii) Even where the new contract between A and B involves performing existing contractual obligations which A owes to B, there can still be consideration, In particular this can arise where B has some reason to doubt whether A will complete his side of the bargain, B promises A an additional payment, and as a result of giving his promise B "*obtains in practice a benefit, or obviates a disbenefit*". See **Williams v Roffey** [1990] 2 WLR 1153, CA.
 - iii) Where the parties agree to vary a contract in a way that can prejudice or benefit either party, the possible detriment or benefit suffices to provide consideration for the promise of either party. The possibility itself is sufficient. Thus if there is an agreement to vary the currency in which payments are made, it is immaterial that there is in fact no benefit (because the new currency depreciates) or that it was highly probable at the time of variation that the new currency would so depreciate. See **Chitty**, 32nd edition, at 4-080 citing various authorities.
19. The Claimants reminded me that at common law a party can treat itself as discharged from its obligations under a contract if the other party is in repudiatory breach: see **Stocznia Gdynia v Gearbulk** [2009] EWCA Civ 75.

The facts

The parties' dealings leading up to the DMA

20. The Claimants originally approached Hanway at a trade show called the EICMA show in Milan in 2011. This is an annual motorcycle show which has been running for over 100 years. The introduction was made via the European distributor of the Claimants' products, a Dutchman called Mr Robert Olsthoorn.
21. The Claimants decided that in general they would not send Hanway CAD drawings of their designs before entering into any firm agreement. The only exception to that consisted of some sample STP drawings, a type of CAD drawing. (Mr Chen explained that STP files are the type of files that are usually used to "open" moulds, ie to produce moulds that will then be used for production). Mr Sanderson sent these drawings to Hanway by email on 26th February 2012. He explained that he did so to show Hanway that the Claimants were in good faith and had done CAD work, but that the specific drawings which he sent were not particularly important because they could not have been used to build a vehicle.

The DMA

22. The First Claimant then entered into a Design and Manufacture Agreement ("the DMA") with Hanway on 13 March 2012. It contained provisions for royalty payment (see clause 3) weekly written production reports by email (see clause 5), and the following provision re intellectual property rights:

“7.1 All intellectual property rights and new material (including but not limited to copyright and design rights) therein in them shall be and remain the sole property of [the First Claimant]”.

The DMA did not define what it meant by *“intellectual property rights”*.

23. The First Claimant also had the right to terminate the DMA by not less than 30 days' written notice to Hanway: see clause 8.1. Hanway had no contractual right to terminate. The term of the contract was to expressed *“to continue from [date of signing] for the full production life of the scooter and any or all derivatives”*.
24. It is common ground that despite its name the DMA did not impose any obligations on Hanway either to design or to manufacture anything.

The parties' dealings between the DMA and the SA

25. There are a number of disputes about how much work Hanway did between March 2012 and November 2013 in relation to preparing manufacturing drawings for the scooters. I will summarise the evidence on this topic before reaching my conclusion on it.
26. First, Mr Sanderson accepted that Hanway did design some things. In his second witness statement at [24], he specifically accepted that Hanway designed the headlamp, indicators, and runner strips. Mr Melici also accepted that Hanway did some design work.
27. Secondly, the Claimants drew my attention to various disclosure documents showing that Hanway spent about 3 to 4 months doing the work in question. Hanway did not start in earnest until in or after April 2013 and the work was largely complete by August 2013. The Claimants did not take me through the detail of the work in question, but this is not self-evidently a trivial amount of time. Mr Chen said that this process would normally *“take up to 2 months or 3 months maximum”*.
28. Thirdly, the Defendants relied on an email which was later sent by a Hanway employee by the name of Elvis Lv on 15 September 2015. This email had been prompted by a perceived slight on Hanway's work by the Claimants. In it Mr Lv claimed that Hanway had been *“leading the way in research and development for Scomadi project since the beginning”* and claimed that Hanway had designed a large number of features including all plastic body parts, hubs, main cables, front/rear lamps, speedometer, front/rear braking systems, and an engine bracket bush, as well as finding new engines.
29. The Claimants' response to this email at the time was conciliatory, and did not dispute Mr Lv's allegations about what Hanway has designed. However in their evidence to me both Mr Sanderson and Mr Melici made it clear that they did not accept the substance of what Mr Lv had said, and gave reasons. I do not think it is safe to place much reliance on this email.

30. Fourthly, Mr Chen produced various exhibits illustrating design work which he claimed Hanway had done: see his exhibits YC5 to YC7. It was not put to him that there was anything incorrect about these exhibits. The Claimants' case was instead that these exhibits only showed that Hanway had done a limited amount of design work. Mr Sanderson was dismissive of Hanway's design contribution generally, calling it mere "productionisation". In his view this was not enough to create any rights. Mr Chen disputed Mr Sanderson's evidence on this topic. He explained that the CAD drawings done by the Claimants largely focussed on the outside of individual panels, or how they connected together. Mr Chen was not challenged on this.
31. I do not agree that it is fair to dismiss Hanway's work as trivial in design terms just because it is "productionisation". The whole reason why the First Claimant approached Hanway in the first place was in order to turn its CAD drawings into designs for production-ready moulds. One would not expect these detailed changes to have a major effect on the overall visual appearance of the original design. However it does not follow that Hanway's design contribution must have been trivial or unimportant. This was because Hanway's design changes were intended to implement the designs shown in the CAD drawings, as opposed to modifying them. In particular these design changes were intended to make each and every part of the scooter fit together in a way which was suitable for mass production, as Mr Chen explained. In short Hanway started off with CAD drawings which could not be used for manufacturing purposes and used them to create designs which could be so used.
32. Mr Chen also claimed in his oral evidence that Hanway had done 80% of the design work. This was not a figure he had mentioned before in any of his witness statements. I accept that Mr Chen honestly believed this to be true, but I do not think he was being objective about the 80% figure.
33. Fifthly, there is no dispute that Hanway spent a substantial amount of time and money – twice what they originally anticipated – making detailed changes to the CAD designs in order to achieve that end result. This is apparent from an email sent by Cathy Huang, then Sales Manager of Hanway, to Mr Olsthoorn's wife on 11th September 2013. Ms Huang explained that when Hanway first saw a sample of the Claimants' scooter (which was at a trade fair in Cologne), Hanway estimated that it would cost less than 150 000 euros to bring it to production, but that "*we now have invested more than \$300 000 on this project not including all the staff costs, and we didn't save any cost which is necessary for the model*". Ms Huang went on to propose that Mr Olsthoorn contribute another \$100 000 to Hanway's costs. Mr Chen confirmed the contents of this email in his oral evidence, and he was not challenged on any of the statements made therein. Mr Sanderson also accepted that this email showed that Hanway was unhappy about how much time and money they had to devote to the project.

What was said at the 2013 EICMA show in November 2013

34. In paragraph 53 of his first witness statement, dated 25 August 2017, Mr Chen explained that he raised the question of ownership of intellectual property at the 2013 EICMA show. In particular Mr Chen said that because of his (or rather Hanway's) design input, he did not want the Claimants to be able to take the

scooter incorporating the Hanway designs to another manufacturer. He said that both Mr Sanderson and Mr Melici readily agreed to this proposal.

35. The other topic of discussion between the parties at the 2013 EICMA show was the relevant royalty rate. In particular it was agreed that instead of 6% (as per the DMA), it should be \$35 in the future.
36. Both Mr Sanderson and Mr Melici served witness statements in reply to this statement, but neither of them took issue with Mr Chen's paragraph 53. Indeed Mr Sanderson's second statement, at paragraph [26], confirmed that "*Mr Chen stated he had spent more on the project than expected ... Mr Chen wanted a greater involvement as he thought [he] had done more than OEM. This was the genesis of the Supplementary Agreement*". When Mr Chen's paragraph 53 was put to him in cross-examination, Mr Sanderson agreed that Mr Chen's desire to prevent the Claimants taking the scooter incorporating the Hanway designs to another manufacturer "*may have been mentioned*".
37. Nor was Mr Chen's paragraph 53 effectively challenged in cross-examination either. The Claimants merely put a single question to Mr Chen that the only subject raised at the show was royalty payments, which Mr Chen denied, and then left the whole topic at that. In their reply speech the Claimants sought for the first time to argue that Mr Chen's memory of this show was at fault, but that was far too late to raise a point which should have been put to Mr Chen in cross-examination.
38. I accept Mr Chen's evidence about what he said at this show. It is consistent with the documentary evidence I have referred to above; there was no evidence from the Claimants' witnesses to the contrary; and it was not substantially challenged in cross-examination.

Conclusion on extent of Hanway's design work

39. I have found it difficult to quantify the precise extent of the design work which Hanway actually did in order to create the final production designs. However that precise extent does not matter since I am in no doubt that Hanway's contribution to these final production designs was on any view significant. I base this upon the evidence I have considered in paragraph [26]-[38] above, excluding the Elvis Lv email and Mr Chen's 80% figure. Mr Sanderson did not agree that Hanway's design contribution was significant, but this was largely because of his view that "productionisation" could not create any relevant rights and I have rejected that argument for the reasons set out above.

The Supplementary Agreement ("SA")

40. Following the 2013 EICMA show, Ms Huang sent Mr Sanderson a draft of the Supplementary Agreement ("the SA") on 20 November 2013. It had only 2 points in it. On 21 November 2013, Mr Sanderson replied by email raising an issue about producing a "flagship version" of the scooter in Europe to qualify for engine supply from Piaggio or other suppliers. He proposed a re-worded version

of the second point in order to deal with this possibility. The SA was then signed between the First Claimant and Hanway on 25th November 2013.

41. The construction of this document is disputed, so I will return to that later. For the moment I will simply set out the relevant provisions, which are as follows.

42. The preamble to the SA states:

This supplementary agreement clarifies two points based on previous agreement named AGREEMENT FOR THE DESIGN AND MANUFACTURE OF A SCOOTER VEHICLE signed by both Francis Henry Sanderson and Paul Melici on behalf of Scomadi Limited and chen yiming on behalf of Changzhou Hanwei Vehicle Science and Technology Limited Company

43. It then proceeds to set out the following:

POINT 1

Royalties Rate Commission Payment Calculation

Payment offered in US Dollars per scooter sold equals 35 USD for both 50cc and 125cc instead of 6% as the original contract agree on. As for 300cc, Scomadi Limited and Changzhou Hanwei Vehicle Science and Technology Limited Company will consult for confirmation later.

Point 2

A. As HANWAY have invested to develop the scomadi scooter project, and supplied many good design ideas in the processes of developing the scooter, so HANWAY owns some part of final design for frame, plastic parts and lamp moulds.

In any case, two parties should consult and solve in a friendly way.

B. However under no circumstance will Scomadi be allowed to find a third party to produce the same or similar scooter. If this happens, HANWAY is not restricted by any terms of the original contract and can sell this product to any market. Even though Francis Henry Sanderson and Paul Melici own the design patent, if Scomadi find a third party to produce this scooter, it will be treated as they have agreed or confirmed that HANWAY can sell this scooter in any market.

C. However Scomadi Ltd may complete the production of all 300cc piaggio engined promotional scooters, and also be able to carry out themselves or contract out if needed, the sub assembly production of the 250 cc and over, engined variants until a time when Hanway can produce these models, without being in breach of paragraph B above.

44. The genesis of the SA is as follows. Parts A and B of point 2 come from the original Hanway draft of 20th November 2013. Part C comes from Mr Sanderson's reply of 21st November 2013.

45. Mr Sanderson explained in his second witness statement that “*We were concerned that the project would stall if we did not sign it*”: see paragraph [26]. See also his third statement, at [29]. In cross-examination he confirmed this: “*we thought that possibly if we did not agree to the [SA], we might not get any production*”. The SA itself does not actually contain any terms requiring production, but that is a different matter. The point is that the Claimants thought there might be no production at all if they did not sign.
46. Mr Chen said that if the SA had not been agreed, he would have pulled out of the project. I am sure this is his genuinely held view today, after so much litigation, but I am not sure that it would have been his view at the time given the amount of money which he had already invested in it by then. However I am sure that if the SA had not been agreed in the form in which it was signed, Mr Chen would certainly have insisted on some sort of additional compensation or security (eg increased down payments) from the Claimants before going into any production. In such circumstances the project would have become significantly more disadvantageous for the Claimants, to say nothing of delay. This is not an unrealistic analysis since it seems to be much the same as the Claimants themselves thought at the time.

The breakdown of the relationship

47. The relationship continued into 2016. The scooters went into production, so the First Claimant’s decision to sign the SA was duly rewarded. Hanway paid the First Claimant a stream of royalties. Thereafter the relationship started to deteriorate over time as a result of the Claimants’ dealings with Pimol.
48. One can trace these dealings back to late 2015/early 2016, when Hanway started to look for a joint venture partner in Thailand. Mr Chen, Mr Sanderson, and Mr Melici all visited Thailand for this purpose in January 2016. Thus far, they were all on the same side.
49. Mr Sanderson’s written evidence was vague about the full extent of his subsequent dealings with Pimol: see eg his second statement at paragraphs [33]-[37]. His complaint was that “*my company Scomadi has been caught in the crossfire of two powerful Far Eastern businessmen with their own agendas in this matter*”.
50. The Claimants’ Supplementary Disclosure, which was provided by the Claimants on 1 September 2017 (ie after witness statements were exchanged), told a different story.
- i) On 11 May 2016, Pimol created a WhatsApp messaging group between himself, Mr Sanderson, and Mr Melici, shortly after a meeting between the three of them. This group did not include Mr Chen/Hanway, even though Mr Sanderson claimed in cross-examination that his discussions and meetings with Pimol were actually about Pimol’s joint venture with Mr Chen/Hanway.
 - ii) Mr Sanderson also said in cross-examination that his discussions with Pimol were about higher engine capacity models and “*getting rid of*

quality problems". I disagree. Higher capacity models may have been part of the discussion, but they were not the whole discussion. The rest of the discussion was about replacing Hanway with Pimol. That is why Mr Chen was excluded.

- iii) On 9th August Mr Sanderson's wife (who was also the company secretary of the First Claimant) sent Pimol a draft manufacturing licence by email. This was incomplete but Schedule 2 specifically referred, and only referred, to scooters and motorcycles. By 31st August 2016 Mrs Sanderson was exchanging emails with Pimol about corrections to distribution, manufacturing, and supply agreements; and about the best way to structure the arrangement between the parties in order to minimise tax liability with the UK HMRC. I was not shown any documents which even mentioned higher capacity models, let alone documents restricted to such.
 - iv) By the end of September or the beginning of October 2016, these distribution, manufacturing, and supply agreements appeared virtually complete, although they were not signed until 1 February 2017. See Pimol's email to Mrs Sanderson dated 23 September 2016 and her reply attaching "*three almost complete draft agreements as requested*" dated 1 October 2016. The only substantive change thereafter seems to be insertion of company numbers: see Mrs Sanderson's email to Pimol dated 25 October 2016.
51. Mr Chen did not know the full extent of the Claimants' relationship with Pimol at the time, but he had heard something about it from its Malaysian distributor and he was concerned that the Claimants were for the first time having their own stand at the EICMA show in November 2016. At that show, he spoke to Mr Oliver who told Mr Chen that he had known since August that the Claimants were setting up a factory in Thailand.
52. Hanway then sent a letter to the First Claimant on 22nd December 2016 in which Hanway purported to serve written notice of terminating both the DMA and the SA on three months' notice. The First Claimant's response, sent by Mrs Sanderson, was simply to express sorrow for the communication and to ask about the situation as regards spare parts.
53. On 9th January 2017, the First Claimant (acting via its Chinese lawyers, Golden Gate), wrote to Hanway terminating the DMA and, inter alia, demanding payments of all outstanding royalties. This letter did not mention the SA.

Analysis

54. I will deal with the issues in the order in which they have been set out.

Issue 1(a) - was the SA drafted without prior input from the Claimants and presented to them for signature without prior notice?

55. Although this was not formally conceded, I have found on the facts that both sides contributed to the drafting of the SA.

Issue 1(b) - Is consideration for the SA found in (i) the compromise of arguable claims for breach of contract, negligent misrepresentation and/or negligent misstatement or rescission (ii) the continuation of the venture between Hanway and the First Claimant (iii) the variation of the commercial terms of the Design and Manufacture Agreement (“DMA”), or (iv) Hanway’s agreement not to assert arguable rights against the first Claimant?

56. I find that there was consideration for the SA, as follows.

57. First, in the continuation of the venture between Hanway and the First Claimant. I have set out my findings on the evidence of Mr Sanderson and Mr Chen: see [45]-[46]. In my judgment that is sufficient by way of a practical benefit of the type identified in **Williams v Roffey** [1990] 2 WLR 1153, CA. The fact that the SA did not itself require production is irrelevant.

58. Secondly, the variation of the commercial terms; in particular, the provision whereby the 6% royalty was replaced by a flat \$35. Whether this was a real benefit to the First Claimant depended on various factors, such as the overall selling price, whether this change in royalty rates generated more sales, and the Chinese yuan exchange rate. However the Claimants did not dispute the Defendants’ argument that the possibility of an increased benefit was good consideration: see above.

59. The Defendants advanced other arguments, but it is not necessary to consider any of them.

Issue 2 - Are the Claimants estopped from asserting that the SA is of no contractual effect?

60. The Claimants pointed out, correctly, that the Defendants’ pleading was unclear in this respect. The Defendants’ response was that they only relied on estoppel in the event that they lost the argument on consideration. Since I have found for the Defendants on that issue, this does not arise either.

Issue 3 - Is the Defendants’ trade in the Royal Alloy Scooters permitted pursuant to the SA (without prejudice to any issues relating to passing off and/or trade mark infringement)? In particular:

a) What is the correct interpretation of the SA?

b) What is the correct interpretation of the DMA?

c) When did the Claimants first “find” a third party to produce the scooters in issue?

d) In what circumstances was the DMA terminated?

61. I will deal with issue 3(a) first. Both sides agreed that the SA was not professionally drafted. There the agreement stopped.

62. The Claimants argued that:

- i) The terms of the SA do not survive the ending of the DMA for Hanway's breach. This applied to any breach but applied *a fortiori* if Hanway was in fundamental breach.
 - ii) Even if the SA did apply, it did not permit manufacture of any further scooters after the end of the DMA, but only permitted sale of scooters already manufactured (ie a run-off period) in the end that the Claimants secured an alternative manufacturer of the same or a similar scooter.
 - iii) Their construction made commercial sense because it provided Hanway with "*further security for its investment*" whilst preventing the Claimant losing control "*over the project to which its directors ... had devoted all their lives*". This was so even without a runoff period, although if there were a runoff period then this would protect Hanway against being saddled with existing stocks.
63. The Defendants argued that:
- i) The SA was specifically intended to apply in the very event that the joint venture broke down. It was a "rough and ready resolution scheme".
 - ii) The SA was a complete code designed to reflect Hanway's design contribution, which contribution was expressly acknowledged in clause 2A. In particular, Hanway was to become the exclusive manufacturer. If the Claimants went elsewhere then Hanway itself was permitted to use the designs, subject to an ongoing obligation to pay the \$35 licence fee. Conversely the Claimants did not have to pay Hanway anything. This remained the position whatever the reasons for the breakdown.
 - iii) The suggestion of a runoff period was inconsistent with the wording of the clause. For instance clause 2B was triggered by the Claimant's use of a third party to produce "*the same or similar scooter*", which meant that Hanway was free to "*sell this product*". The Defendants argued that this wording went beyond what Hanway had actually manufactured, and was more apt to reflect IP rights which were jointly owned and developed.
 - iv) Their construction made commercial sense because the SA was in substance a dispute resolution scheme whereby both parties who had contributed to the design were able to run their separate businesses post-termination. Had it not been for the SA, there would be "*an unproductive and unsatisfactory stand-off*".
64. I accept the Defendants' arguments, for the reasons given by the Defendants. In my judgment the key point is Hanway's contribution to, and thus joint ownership of, the designs. I have found that there was such a contribution as a matter of fact, so it is part of the background knowledge, but in any event clause 2A acts as an estoppel against the First Claimant in this respect: see **Peekay**. Once one accepts that both sides owned rights in relation to the designs, and not just the First Claimant, then the rest of the Defendants' argument logically follows. The SA is indeed intended to apply in the event that the First Claimant went elsewhere for manufacture of the jointly owned designs, and it does

provide a regime whereby both sides can continue to manufacture scooters made to the relevant designs (or have such scooters manufactured) as opposed to merely being able to stop the other doing so.

65. I agree with the Claimants that the Defendants' construction leads to some odd results. For instance, the Claimants would theoretically trigger the operation of the SA by finding a manufacturer for a "similar" scooter which in fact owed nothing to Hanway. The Claimants' arguments about the distinctions between different types of breach, and the proposed runoff period, also have logic to them.
66. However I agree with the Defendants that these arguments all amount to rewriting the agreement (or a desire to do so) rather than interpreting it. The main problem with these arguments, and the Claimants' other arguments on construction, is that the Claimants do not really address the consequences of joint ownership of the designs.
67. I also find that the SA operated as a variation of the DMA. Neither party showed much enthusiasm for this argument, but it is obvious both from the recitals and, insofar as relevant, from the circumstances relating to the SA.
68. I turn to issue 3(b). The main argument between the parties on the interpretation of the DMA was whether clause 7.1 prevented Hanway from applying for design registrations and "Scomadi" trade marks in its own name. The short answer to this is that clause 7.1 does not say so, but I will assume that it does have this effect. I will deal with breach below.
69. I turn to issue 3(c). Here there was a dispute as to what was meant by "finding" a third party manufacturer. The significance of this is that such an event gave Hanway a right to terminate the agreement between the parties (ie the DMA as varied by the SA). This follows from the wording "*under no circumstance*" and "*Hanway is not restricted by any terms of the original contract*", the latter being a reference to the DMA.
70. "Finding" is an ordinary English word but the question is what it would be understood to mean in this context. One extreme view (for which neither side argued) would be that "finding" covers the very first contact with a third party manufacturer. The other extreme view (for which the Claimants contended) is that "finding" requires concrete agreement with such a manufacturer. The Defendants' submission was that "finding" was triggered by an irrevocable decision to use Pimol's company and that this was satisfied at least by the end of October 2016.
71. In my judgment, the term "*finding*" in this context is not restricted to entering into a formal contractual agreement as the Claimants contend. I agree that it is satisfied by an irrevocable decision as the Defendants submit, but in my judgment something less than an irrevocable decision also suffices. As I have said, Mr Sanderson's evidence on this topic was evasive, but it is clear that at least by the end of October 2016 the First Claimant had taken the commercial decision that it was going to proceed with Pimol. In my judgment that commercial decision (whether or not it was strictly irrevocable) amounted to

“*finding*” a third party to produce the same or similar scooter with respect to Pimol. Accordingly as at such date Hanway was entitled to terminate the DMA/SA.

72. As regards issue 3(d), the Claimants relied on various alleged breaches of the DMA by Hanway. These were the applications for IP rights referred to above, but also failures to report and/or make royalty payments, and finally the purported letter of termination dated 22nd December 2016. The Claimants said they were all fundamental breaches, particularly the last.
73. I accept that the purported letter of termination could amount to fundamental breach in circumstances where Hanway had no right to terminate. However, such is not the position here. In my judgment Hanway was entitled to do just that. The Claimants made a pleading point here, to the effect that the Defendants had not specifically pleaded Hanway’s right to terminate, but the Claimants did not allege that the pleading point prevented me from making the above finding, or that the finding was not open to me on the evidence.
74. I do not consider that the other alleged breaches by Hanway are fundamental in nature. In my judgment they did not go to the heart of the contract. Nor did the First Claimant allege they were repudiatory at the time. Indeed the First Claimant did not even allege that the purported termination was wrongful, let alone that it was a repudiatory breach. Given my finding that Hanway was entitled to terminate when it did, these issues do not matter anyway.
75. The way in which the issues are framed does not perhaps make it clear that if the Defendants won on the contractual issues, the issue of RCD infringement does not arise. Both parties nevertheless approached the case on that basis, from which it follows that it is not strictly necessary for me to consider the RCDs.¹ I will do so in any event.

Issues 4- 6 (Registered Community Design)

76. Again I will set out the law, then apply it to the facts. The RCD registration numbers are 000245634-0001 (“RCD1”), 000245634-0002 (“RCD2”), and 001390454-0001 (“RCD3”).

Legal context

77. It was common ground that Arnold J’s summary in **Magmatic v PMS International** [2013] EWHC 1925 (Pat) of the correct legal approach to assessing validity and infringement of registered community designs remains good law notwithstanding that the actual finding of infringement was later overturned by the Court of Appeal: see also **Neptune (Europe) v Devol Kitchens** [2017] EWHC 2172 (Pat) at [145], Henry Carr J. This summary in turn drew upon earlier authorities such as **Samsung Electronics v Apple Inc** [2013] FSR 9, CA. I shall adopt that approach.

¹ The Defendants’ attack on RCD validity was also closely tied to their defence on infringement.

78. I was also reminded of **Dyson v Vax** [2011] EWCA Civ 1206, Court of Appeal, at [8]-[9], citing Jacob LJ in **Procter & Gamble v Reckitt Benckiser** [2007] EWCA Civ 936:

3. The most important things in a case about registered designs are:

- (1) the registered design;*
- (2) the accused object; and*
- (3) the prior art.*

And the most important thing about each of these is what they look like. Of course parties and judges have to try to put into words why they say a design has "individual character" or what the "overall impression produced on an informed user" is. But "it takes longer to say than to see" as I observed in Philips v Remington [1998] RPC 283 at 318. And words themselves are often insufficiently precise on their own."

79. It was accepted that the assessment should be conducted from all perspectives that the informed user might realistically adopt: see **Senz Technologies v OHIM**, cases T-22/13 and T-23/13.

80. In general the more design freedom, the greater the scope of protection and vice versa: see **Grupo Promer** (T09/07), cited at first instance in **Dyson v Vax** [2010] FSR 39 by Arnold J in a passage with which the Court of Appeal agreed. The Claimants criticised that part of Arnold J's judgment where he had held that design freedom could be constrained by economic considerations, citing **Shenzhen Taiden v OHIM**, case T-153/08 at [58]. I do not agree with that criticism but nothing appeared to turn on this.

81. Article 8 of the Designs Regulation (6/2002) provides that a Community design "*shall not subsist in features of appearance of a product which are solely dictated by its technical function*". This is a narrow exception, as is apparent from **Lindner Recyclingtech GmbH v Franssons Verkstäder AB** (R 690/2007-3) [2010] ECDR 1:

"As long as functionality is not the only relevant factor, the design is in principle eligible for protection. It is only when aesthetic considerations are completely irrelevant that the features of the design are solely dictated by the need to achieve a technical solution"

82. I was shown one of the Claimants' own scooters (in particular a TL125) as part of the Claimants' case, but I do not rely on this since it is legally irrelevant. It is the registration which counts in a registered design case. Nor was any argument directed as to whether this scooter was made to any of the registered designs, and if so then which.

Issue 4 - are the RCDs novel and do they have individual character?

Analysis

83. First, it is necessary to identify the informed user of the product in which the RCDs are intended to be incorporated. There is no dispute that this is a user of scooters.
84. Secondly, it is necessary to identify the design corpus with which the informed user(s) will be familiar. There was no detectable dispute here either. The design corpus includes both classic Lambretta designs as well as modern scooters.
85. Thirdly, I have to compare the RCDs to the prior art, identifying similarities and differences and assessing their respective overall impressions having regard to the nature of the product, the design corpus and the designer's degree of freedom. I will deal with technical function separately since the parties have identified that as a separate issue.
86. By the time of closing submissions, it was conceded that RCD3, registered as of 20 November 2013, was invalid by reason of some of the Claimants' marketing so I will not consider that further. I have reproduced RCD1 and 2, which both date from 2004, in Annex 1 to this judgment.
87. It will also be noted that both registrations contain various additional features, namely solid lines and dotted lines. As noted by the Supreme Court in **Magnetic**, a key task for the Court is to interpret the design registration at issue relying solely on the representations filed: see [2016] UKSC 12 at [30]-[35].
88. In this case there was no real dispute about the effect of these lines. If one starts with RCD1, the solid lines used in the first and third representations indicate that the area for which protection is sought is not the whole scooter, but the rear part of it excluding the seat. The second representation then shows a top view of the part in question. The dotted lines exclude areas for which protection is not sought, such as the rear light, the rear wheel and the seat. The same conclusions follow for RCD2, for the same reasons. The relevant area was described at trial as consisting of central part, side panels, plus footplate.
89. The overall impression conveyed by these designs is difficult to put into words. The Claimants referred to a "*flatter, more bulbous main body*". This is not just general but seeks to define the registered designs by comparison to something else which is not identified. The Defendant said there were only 3 principal features in the plan views, namely the footplate, the width of the rear body, and the shape of the profile of the rear body, and made detailed submissions about each of these features. This is as specific as the Claimant's formulation is general. In my judgment the correct formulation is somewhere between the two, as follows.
90. RCD1 shows the rear end of a classic Lambretta scooter having a body section and a footplate. When viewed from above, it has side panels which extend noticeably outwards from the seat by and which taper gradually towards the rear and a footplate which extends beyond the side panels by a constant distance except at the very front. Overall, it would be seen by the informed user as a variation on the classic Lambretta scooter theme, where the variation lies in the details mentioned.

91. RCD2 also shows the rear end of a classic Lambretta scooter having a body section and a footplate. When viewed from above, it has side panels which extend noticeably outwards from the seat and a footplate which extends beyond the side panels by a constant distance except at the very front. The side panels extend all the way out from the rear light and the side panel profile is sharply curved towards the ends, so they look a little like a hamburger bun. Overall, it would be seen by the informed user as another variation on the classic Lambretta scooter theme, where the variation again lies in the details mentioned.
92. The above analysis focusses on the views from above because the Claimants relied particularly on the width (which is most visible in plan view) in order to establish validity. The plan view is only 1 view, but I agree that it is important to the informed user. For instance it is the view that the user will have when riding the scooter, when approaching it, and when getting on and off. There was no detailed argument directed to the side view, probably because of the prior art.
93. I now turn to the prior art. There were a number of citations, but those relied upon in closing were the Lambretta Jet 200 and Lambretta SX200, and in particular the plan views thereof. The Defendants produced a comparison of the RCDs, this prior art, and two of the alleged infringements (the GP1 and GP2) and I reproduce this comparison in Annex 2. The Defendants did not produce any 3-way comparison in relation to the GT, or indeed any overhead views of the GT at all, but the Claimants did produce an overhead view of the GT and I show this in Annex 3.
94. Again there are only 3 principal features visible in the prior art plan views. In relation to the Lambretta Jet 200 I find as follows:
- i) The rear body is again wider than the seat alone, but the length:width ratio is visibly different to that in either RCD1 or RCD2. The Defendants did some fairly unscientific measurements with a ruler which produced a ratio of 2.74, compared to 2.13 for RCD1 and 2.14 for RCD2. The Claimants did not do any measurements at all and gave no figure for the aspect ratio. However the point here is not so much the absolute value (and certainly not to 2 decimal places) but the visible nature of the difference.
 - ii) The profile of the rear body is similar to that of RCD1: see above.
 - iii) There is a footplate which extends beyond the rear body and runs about half way along it, but it has a different profile to either RCD1 or 2. Specifically it is wider at the front and tapers at the back.

The overall impression of the Jet 200 is thus that is another variation on the rear end of a classic Lambretta design generally, this time having these detailed features.

95. In relation to the Lambretta SX200 I find as follows:
- i) The rear body is again wider than the seat alone, but again it is a visibly flatter aspect ratio than either RCD1 or RCD2.

- ii) The profile of the rear body is notably asymmetric (more so than either the Jet 200 or the RCD1) and angular. It looks more like a coffin than a hamburger.
- iii) There is a footplate which extends beyond the rear body and runs about half way along it, but it has a different profile to RCD1 or 2. Specifically it is wider at the front and narrower at the back. It is like the footplate in the Jet 200.

Once again the overall impression here is the rear end of a classic Lambretta design generally, this time having these detailed features.

96. From the above analysis it will already be apparent that the general appearance of both RCDs is similar to the general appearance of the prior art, and that the differences are minor in nature. In this case, considering the design corpus generally makes little difference to the analysis since both of the prior art designs specifically relied upon are already part of that design corpus. In particular they are both classic Lambretta designs.
97. So far as design freedom is concerned, the Claimants submitted that there was plenty of design freedom since the designer was not obliged to take styling cues from classic Lambretta designs. For instance the successor to the Lambretta brand itself had taken a different design direction. I agree with this as a principle, but the fact remains that the designers of RCD1 and RCD2 have taken very little advantage of this theoretical design freedom. On the contrary they have produced something which only varies from the prior art in details – in particular, in the details identified above. This is not surprising since they were trying to produce something which closely resembled the prior art.
98. Drawing all of these points together, it seems to me that there are enough detailed differences to support the validity of both RCD2 and RCD1 over the pleaded prior art, in the sense that both of these designs are new and have individual character having regard to the same. The major reason is the side panels, with the footplate having less impact. This is more obvious in the case of RCD2 since the profile of its side panels is noticeably different to that of both the Jet 200 and the SX200. However in both cases the scope of the monopoly conferred by registration is narrow and relies on detailed differences with the prior art.

Issue 5 - are any of the features of the RCDs solely dictated by technical function?

99. This issue is formulated in the way it is because of the Defendants' argument that the increased width of the rear of the scooters was due to a technical desire to incorporate bigger engines. This, said the Defendants, meant that each of the RCDs was invalid because of the provision whereby an RCD cannot "*subsist in features of appearance of a product which are solely dictated by its technical function*": see Article 8 of the Regulation.
100. I do not accept this argument. The mere fact that the design was influenced by technical factors does not mean that aesthetic considerations are completely irrelevant to the end result: see **Lindner**. Moreover these scooters are consumer

products, which are intended to have an appearance which appeals to consumers. The side panels and foot plates are no exception.

101. Consistently with this the Defendants' witness on this topic, Mr Oliver, expressly agreed that when designing the shape of the canopy, a whole range of aesthetic considerations were taken into account. He also agreed that among other things "*you have to choose how you are going to curve it so it looks pretty*". These admissions are fatal to this argument.

Issue 6 - Do the Royal Alloy Scooters or either of them produce on the informed user a different overall impression to the RCDs or any of them?

102. This issue is expressed by reference to "either of" the Royal Alloy Scooters but in fact there are 3 – the GT, the GP1, and the GP2. Both sides approached the case on this basis. Once again the argument was dominated by reference to the plan views.

103. In relation to the GT I find as follows:

- i) The rear body is wider than the seat alone, but looks about the same general width as both the RCD1 and RCD2.
- ii) The profile of the rear body is similar to that of RCD2 (ie the hamburger).
- iii) There is a footplate which extends beyond the rear body and runs about half way along it. The profile is like both of the prior art examples rather than either the RCD1 or 2.
- iv) There are also rear indicators plus a metal rack. They are not features (like the seat, wheel, and rear light) which are specifically excluded from the scope of RCD1/RCD2; and the only reason for such specific exclusion must have been because such features were thought to make a difference. However the user is unlikely to attribute much significance to these items given their ubiquity on scooters.

The overall impression is that of another variant on a classic Lambretta design generally, this time having these features.

104. Is this a different overall impression to RCD1 or RCD2, taking the design freedom and design corpus into account? In my judgment this is close to the borderline so far as RCD2 is concerned. The difference in the footplate profile is not so trivial it can be ignored entirely, and nor can the rear indicators plus metal rack, but the similarity in the side panel size and profile is more important in design terms. I conclude that the overall impression on the informed user is not different, so the GT infringes RCD2. As this shows, a narrow registration can still be infringed even by something which is not identical.
105. The side panels of the GT are quite different to those in the RCD1 design, and the footplate is different too. This means that the overall impression on the informed user is different, and RCD1 is not infringed by the GT.

106. In relation to the GP1 I find as follows:

- i) The rear body is again wider than the seat alone. It looks like an exaggerated version of the RCD1/RCD2 panels in this respect. The Defendants calculated an aspect ratio of 1.88, although again the number is not important save insofar as it confirms the general impression.
- ii) The profile of the rear body is different to either RCD1 or RCD2, since it seems to have a gentle taper at the front although it does still have the “hamburger” profile at the rear,
- iii) There is a footplate which extends beyond the rear body and runs about half way along it. The profile is different to all of these seen thus far, but is closer to the prior art than either the RCD1 or RCD2.
- iv) There are also other features visible in the plan view – eg the clear rear indicators and the metal rack behind the seat. These are less important.

The overall impression is that of the rear end of a classic Lambretta design generally, this time having these features.

107. Given the modest scope of protection conferred by both RCD1 and RCD2, and the nature of the differences identified, the overall impression on the informed user of the GP1 is different to both RCD1 and RCD2. Hence the GP1 does not infringe either design.

108. In relation to the GP2 I find as follows:

- i) The rear body is again wider than the seat alone. It looks like the GP1. The Defendants calculated an aspect ratio of 1.86, but this difference with the GP1 is not particularly visible.
- ii) The profile of the rear body looks like that of the GP1, and has the same differences with the RCD1/RCD2.
- iii) There is a footplate which extends beyond the rear body and runs about half way along it. Its profile is like that in the GP1.
- iv) As with the GP1, there are also other features visible in the plan view – eg the clear rear indicators and the metal rack behind the seat.

The overall impression is that of the rear end of a classic Lambretta design generally, this time having these features.

109. Given the modest scope of protection conferred by both RCD1 and RCD2, and the nature of the differences identified, the overall impression on the informed user of the GP2 is different to both RCD1 and RCD2. Hence the GP2 does not infringe either design.

Issues 7-9

110. These can be dealt with more briefly, having regard to the above.

Issue 7 Are the Defendants or any of them liable for infringement of the RCDs or any of them?

111. No, for the reasons given above.

Issue 8 Are the Defendants or any of them liable as joint tortfeasors for acts of infringement of the other Defendants?

113. This does not arise. However it is clear on the evidence that all of the Defendants, and Hanway, were jointly concerned in a plan to import and sell the scooters complained of in at least the UK. The Defendants did not give any reasons as to why they would not all be liable as joint tortfeasors if the products in question infringed. I find that if I am wrong on infringement, the Defendants would all be so liable.

Issue 9 Are the Defendants entitled to declarations that each of the Royal Alloy scooters does not infringe the RCDs or any of them?

113. The Claimants gave no reason as to why the Defendants would not be so entitled, provided that I found in the Defendants' favour on infringement. Hence I am prepared in principle to grant such declarations in relation to the GP1 and GP2. I will hear counsel on the wording thereof.

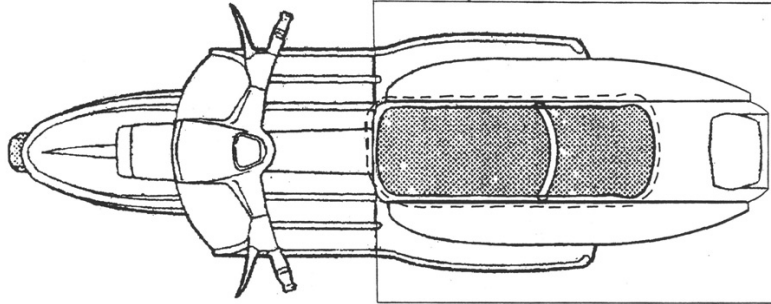
Conclusion

112. In short:

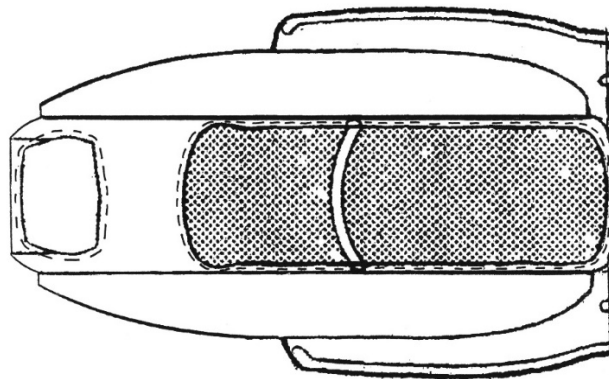
- (a) The Defendants are entitled to manufacture and sell all of the GT, GP1, and GP2 pursuant to the true construction of the SA.
- (b) Both RCD1 and RCD2 are valid. RCD3 is invalid.
- (c) The GT infringes RCD2, but not RCD1. The GP1 and GP2 do not infringe either RCD1 or RCD2.

Annex 1 – RCD1 and RCD2 register entries

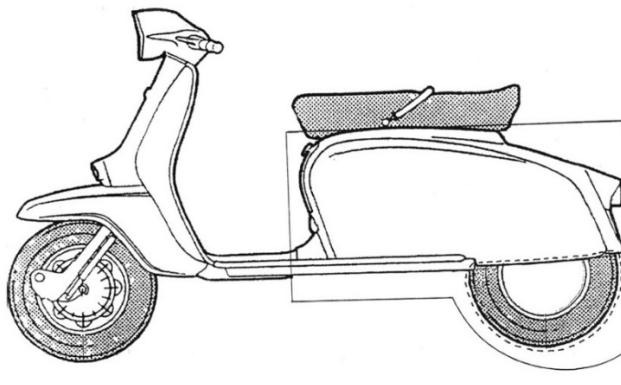
RCD1



0001.001

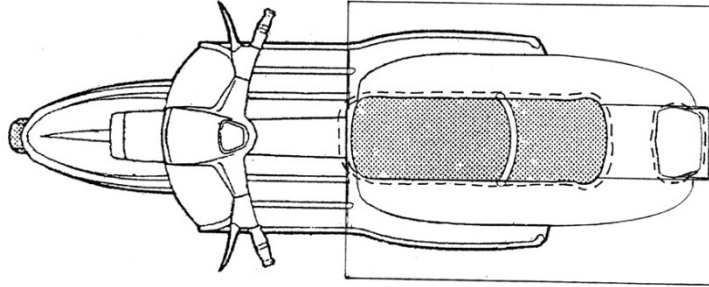


0001.002

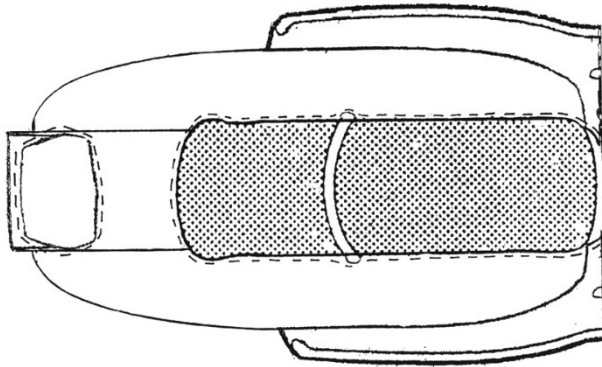


0001.003

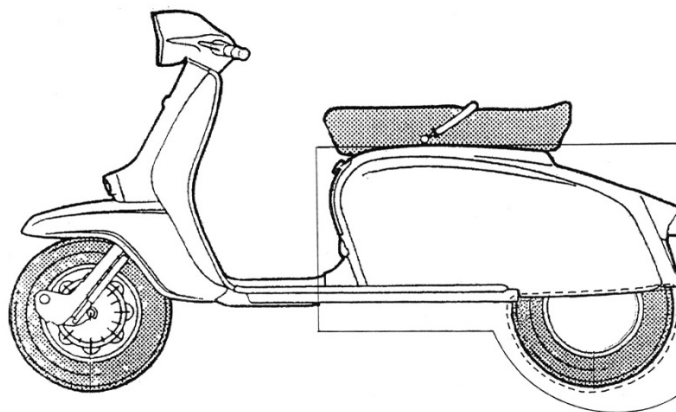
RCD2



0002.001



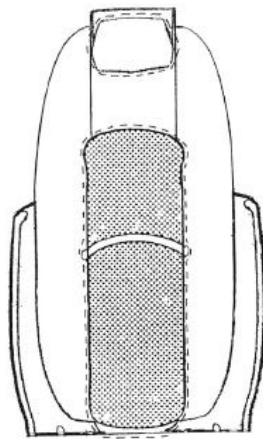
0002.002



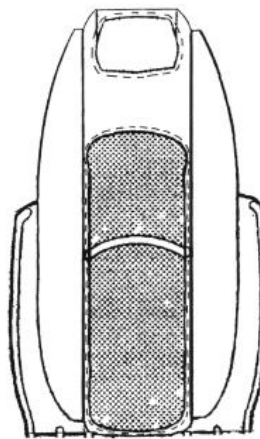
0002.003

Annex 2

Annex E – Plan views of RCD 1 and RCD 2 vs the prior art vs the Royal Alloy GP Mark II



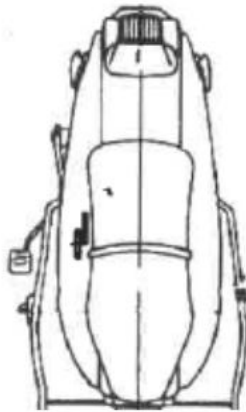
RCD 2 representation 2 [D/8/81]
(higher quality image from EUIPO)



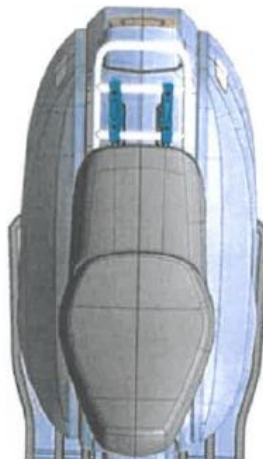
RCD 1 representation 2 [D/8/77]
(higher quality image from EUIPO website)



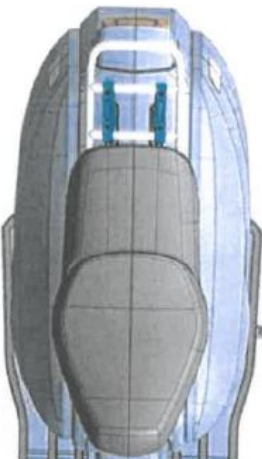
Lambretta SX200 scan – SEO 5 [H/5/15]



"Lambretta Jet 200" as shown in Annex 6
to the Defence [D/20/234]

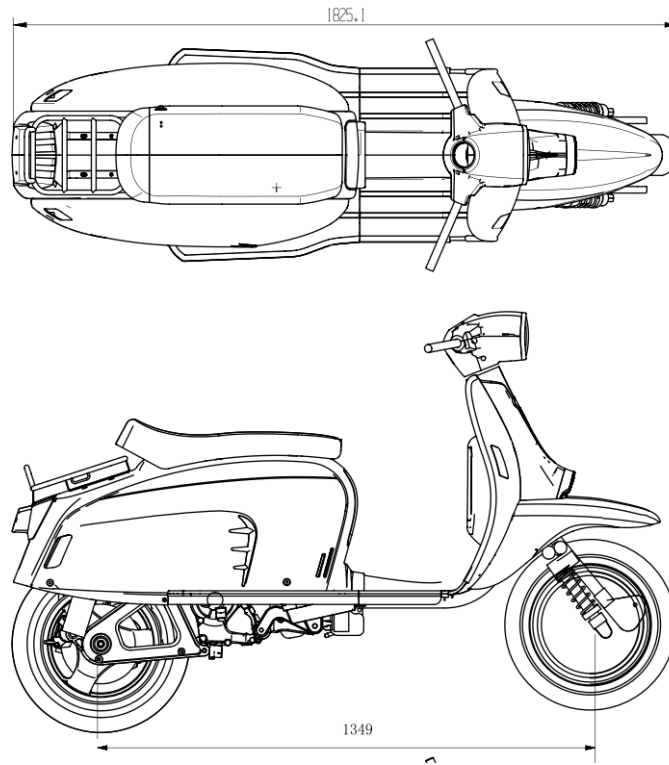


Royal Alloy GP Mk II – SEO 21 [I/4/31]



Royal Alloy GP Mk II – SFO 21 [I/4/31]

Annex 3



The GT