

PATENTS ACT 1977

BLO/125/87

IN THE MATTER OF Patent No 2071709
in the name of Bond Knitting Systems Ltd

and

IN THE MATTER OF an application under
Section 13 by Michael John Blamey

DECISION

Mr M J Blamey alleges that he is the inventor of the invention which is the subject of the patent in suit and has the right to be so mentioned in accordance with Section 13(1) in a prescribed document, i.e. an addendum or erratum slip according to Rule 14(5). He further alleges that Mr R F N Curry ought not to have been mentioned as the sole inventor and is seeking a certificate to that effect under Section 13(3). The patentees, as proprietors of the patent, dispute these allegations and the matter came before me at a hearing on 15 May 1987 when Mr Blamey appeared in person and Mr K S Warren appeared as agent for the patentees. At the hearing, and with the agreement of Mr Warren, I admitted further evidence in support filed by Mr Blamey.

The patent was granted on 21 September 1983 on an application filed 13 March 1980 by Mr Curry who was named as sole inventor. The application was assigned to Bond Knitting Systems Ltd on 24 July 1980, Mr Curry being the managing director of that Company.

In the pre-grant proceedings the only alteration to the specification originally filed by Mr Curry involved correction by the examiner of the mis-spelling of the word "traverse" in claim 1, so for the present purposes reference can conveniently be made to the printed specification No 2071709A as published under Section 16(1).

The invention relates to flat bed knitting machines, and the aim was to provide such a machine which was easy to use and uncomplicated in construction. The machine described seems to meet that aim, so its main constructional features are relatively easy to understand, being described in terms intelligible to the layman. Moreover, the actual knitting process is apparently entirely conventional and a detailed consideration of that process does not appear to be necessary.

In the illustrated embodiment, needles 14 are slidably mounted in recesses in the bed 12 and are reciprocated by a camplate 24 releasably mounted in a carriage 16, the camplate having depending cams 26-32 which co-operate with the ends (or butts) 14a of the needles as the carriage is moved to and fro. To accommodate different types of yarn and provide for different stitch size, interchangeable camplates are provided which have their cams individually designed and located to minimise the force acting on the camplates in use. This is said to contrast with known machines in which the position but not the shape of the cams is adjustable to suit different requirements. The camplates are retained in a recess 22 in the carriage by a member 40 including a handle 42 having a yarn guiding slot 42a aligned with a yarn guide 44 at the front of the carriage. It seems to be this method of guiding the yarn that results in another stated advantage over conventional machines, namely no tensioning of the yarn is necessary and the tensioning arms and needle damper bars of conventional machines can be omitted. The carriage is hooked over the rear of the bed (18, 20 in Fig. 3) and from the drawings it seems that it slides on a rail at the rear of the bed and on a needle-retaining bar 56 located in a slot 58 in the bed, the bar also apparently serving (see Fig. 3) to prevent rearward movement of the carriage. At the front of the carriage is a shaped flat member 46 which serves to hold the yarn down on the needle hooks and prevent inadvertent closure of the needle latches before the hooks receive yarn from guide 44 to form a new stitch (step (4) in Fig. 7, although the member is not depicted there). Also mounted

at the front of the carriage is a shaped wire rod 50 which restrains the knitted fabric while the needles are pushed through it (step (3) et seq in Fig. 7). The member 46 and rod 50 are said to eliminate the need for expensive brushes and wheels as used in conventional machines. The bed is assembled to a desired length from inter-engaging module units 52 of serpentine cross-section (Figures 4 and 5) clamped together by rods 66, 68 and turnbuckle sleeve 70 (Fig. 6), the rods terminating at clamps 72 serving to secure the machine to a worktable. The outermost module units have end caps 74 clipped thereto and do not carry needles so as to provide a run-out for the carriage. The camplates and their retaining member may be transparent to allow the operator to monitor the knitting operation and for demonstration purposes.

The provisions of Section 13 under which the present application is made are as follows:

13.-(1) The inventor or joint inventors of an invention shall have a right to be mentioned as such in any patent granted for the invention and shall also have a right to be so mentioned if possible in any published application for a patent for the invention and, if not so mentioned, a right to be so mentioned in accordance with rules in a prescribed document.

13.-(3) Where a person has been mentioned as sole or joint inventor in pursuance of this section, any other person who alleges that the former ought not to have been so mentioned may at any time apply to the comptroller for a certificate to that effect, and the comptroller may issue such a certificate; and if he does so, he shall accordingly rectify any undistributed copies of the patent and of any documents prescribed for the purposes of subsection (1) above.

In Section 13, the terms "inventor", "joint inventor(s)" and "invention" stand to be interpreted in the light of definitions appearing in Sections 7(3) and 125(1) respectively which read as

follows:

Section 7(3): In this Act "inventor" in relation to an invention means the actual deviser of the invention and "joint inventor" shall be construed accordingly.

Section 125(1): For the purposes of this Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.

In Mr Warren's submission, with which I find myself in agreement, to succeed with his application Mr Blamey must establish that he was the actual deviser of some feature(s) set forth in the claims of the patent specification. In my view, the context of Section 13 does not require the invention to be taken to be something other than that specified in the claims, as interpreted by the description and drawings.

That the onus is upon Mr Blamey to show that he was the inventor and not upon the patentees to show otherwise follows the normal rule that he who asserts must prove and not he who denies. To my mind, this view is consistent with the provision of sub-sections (2) and (6) of Section 7 which read as follows:

Section 7 (2) A patent for an invention may be granted-

- (a) primarily to the inventor or joint inventors;
- (b) in preference to the foregoing, to any person

or persons who, by virtue of any enactment or rule of law, or any foreign law or treaty or international convention, or by virtue of an enforceable term of any agreement entered into with the inventor before the making of the invention, was or were at the time of the making of the invention entitled to the whole of the property in it (other than equitable interests) in the United Kingdom;

- (c) in any event, to the successor or successors in title of any person or persons mentioned in paragraph (a) or (b) above or any person so mentioned and the successor or successors in title of another person so mentioned;

and to no other person.

Section 7(4) Except so far as the contrary is established, a person who makes an application for a patent shall be taken to be the person who is entitled under subsection (2) above to be granted a patent and two or more persons who make such an application jointly shall be taken to be the persons so entitled.

Thus the patent was granted by virtue of the provisions of Section 7(2)(c) to Bond Knitting Systems Ltd, the successors in title to Mr Curry who originally applied for the patent in the capacity of inventor, and it seems to me that Mr Curry's claim to sole inventorship stands unless Mr Blamey can establish anything to the contrary.

It is appropriate at this point, therefore, to refer to the claims to identify those features which characterise knitting machines according to the invention, since on the above reasoning I have to consider the evidence and argument in this case to determine whether, on the balance of probabilities, Mr Blamey has established that he was the actual deviser of one or more of those

features, either alone or jointly with Mr Curry.

Claim 1 reads as follows:

A flat bed knitting machine comprising a flat elongate bed on which is retained a plurality of parallel, latchable, needles equally spaced along the length of the bed and each movable relative to the bed in a direction lengthwise of the needles and transverse of the bed length, a carriage slidably mounted on the bed for movement transversely of the needles, and a needle-engaging camplate releasably located in a recess in an upper surface of the carriage and retained in the recess, the carriage having a handle gripped by the user of the machine to traverse the carriage back and forth along the length of the bed.

According to Mr Warren, and this was my conclusion also, the novel element of the claim is defined by the passage underlined, the other features mentioned in the claim being conventional in flat bed knitting machines.

The other characteristic features are specified in dependent claims 2-9 effectively as follows:

Claim 2: a plurality of (interchangeable) camplates having different cam shapes to suit different stitch sizes.

Claim 3: the handle is handle provided by member positioned on top of camplate to retain it in the recess.

Claim 4: the handle and camplate are of transparent material.

Claim 5: the handle is provided with a slot to guide yarn to a yarn guide located on the carriage.

Claim 6: a shaped rod member extends from and parallel to the carriage to restrain the upper portion of the knitted

fabric while needles are pushed therethrough.

Claim 7: the bed is formed from a plurality of side by side interconnected identical module units .

Claim 8: each (module) unit is of serpentine cross-section to provide needle recesses and has a channel at one side and a (matching) ridge at the other side, and a transverse slot to receive a needle retaining bar.

Claim 9: one or more rods passing through aligned holes in the module units serve to secure them together.

There is no omnibus claim directed to the machine "substantially as described with reference to the drawings" (or words to that effect), so features other than those specified above are not of direct concern.

I feel that it would not be unfair to Mr Blamey to mention at this point that he did not seem to appreciate that the invention stood to be construed relatively narrowly with reference to the claims as outlined above. That is perhaps not altogether surprising in the circumstances since although he has wide practical experience of many aspects of the textile industry, and has been awarded several patents before on behalf of clients and employers both in the UK and the USA, he did not have the benefit of professional advice and representation in this case, and it seems that he has not had previous experience of the finer points of patent practice and procedure. The result has been that his evidence is not directed specifically to proving his inventorship of the invention as defined by the claims, and it was only at the hearing after some prompting by me that he directed his attention to the claims, and then simply to assert that all the characteristic features set forth in the claims were his "brain children". However, his evidence does present his view of the nature and history of his relationship with Mr Curry during a period of collaboration on the design, manufacture and proposed marketing of a simplified

domestic knitting machine in 1978-9, and he does attempt to establish that all the significant technical input during that period, which Mr Curry subsequently adopted as the basis for the patented machine, could only have come from him and not from Mr Curry. I have given careful consideration to that evidence and refer to it below to the extent that it seems relevant.

According to Mr Blamey, who is a consultant to the textile industry and one-time publisher and editor of the trade publication Textile Manufacturing/Knitting World, it was a mutual interest in the possible development of a simple hand knitting machine that first brought him into contact with Mr Curry in March 1978, the introduction being made by Mr Curry's wife with whom Mr Blamey had had previous contact in her capacity as a market research officer for the Industrial and Commercial Finance Corporation (ICFC). Mr Curry confirms this, except that according to him the purpose of the introduction was simply for Mr Blamey to introduce him to various companies who might be interested in his project for a simple hand knitting machine. This project, on Mr Curry's evidence, originated during his previous employment by Empisal Services Ltd, who were importers and distributors of Japanese domestic knitting machines, when he detected a gap in the market for a simplified machine which Empisal were not interested in manufacturing. Apparently backing his judgement of the commercial prospects for such a machine, Mr Curry founded Bond Knitting Systems Ltd (the patentees) in September 1977 and eventually resigned from Empisal in February 1978 "to develop the product on a full-time basis". This seems to have been a very brave move, if the machine was indeed the sole or main factor behind the company, since an application to ICFC for funding had already been turned down (in December 1977). However, while that application (exhibit RFNCl) does refer to a gap in the market for a "first time buyer machine", and to plans to manufacture a machine in that category to Bond's specification, it seems clear that the proposed new machine was not a critical element in the business plan. Thus, although the application refers to negotiations which were under way regarding manufacture of the

machine, and to the fact that a prototype had been developed and a Government grant obtained to cover tooling costs, no details of the machine were given. Bond had in fact already acquired the exclusive distributorship for existing machines suitable for the first time buyer, and the business plan included marketing those and other more sophisticated machines and yarn kits with instructions on how to knit and complete a fashionable garment. Mr Curry's evidence contains no further information regarding the nature of the prototype or his preliminary specification for the proposed new machine.

It seems agreed that following their initial meeting on 21 March 1978, which took place at Readicut Ltd (one of Mr Blamey's clients), and at which according to Mr Blamey no discussion of the hand knitting machine occurred, there was little further contact until June 1978 when, according to Mr Curry, he wrote to Mr Blamey clarifying his design ideas for the machine. That letter is dated 14 June 1978 (Mr Blamey's exhibit RFC3) and is based on what Mr Curry says are original design notes written by him the day before (Mr Curry's exhibit RFNC 2), and the intention behind the letter was allegedly to aid Mr Blamey in the search for manufacturers. Between them, these exhibits reveal that the design was not very advanced at that stage, and therefore cast some doubt on the existence of a prototype of any real substance, but they do contemplate (a) interchangeable camplates (though not mounted as specified in claim 1), (b) a modular needle bed of injection moulded plastics construction (but I note that the patent specification does not actually specify the material or method used for making the bed), and (c) various ways of simplifying yarn feed, latch control and stitch stripping (including the use of a guide slot in the carriage top, but in my view features, 44, 46, 50 shown in the specification are not suggested). It is also clear that at that stage the use of a composite bed comprising a pressed steel base and corrugated plastic insert was still being considered. Mr Blamey, however, disputes the authorship of these proposals and suggests that in fact Mr Curry in his letter was simply confirming the results of

preliminary design discussions which must have taken place a day or two earlier, but as Mr Warren observed there is no confirmation of a meeting or other contact with Mr Curry on 12 or 13 June in Mr Blamey's diary (which has been produced in evidence) and no other documentary evidence to confirm his recollection of those discussions. In the circumstances, therefore, Mr Blamey has failed to displace Mr Curry's claim to authorship of the contents of the above-mentioned exhibits. In that connection, I would also observe here that in my view Mr Blamey has also failed to substantiate a suggestion to the effect that of the two he was the only one technically competent enough to have originated the above proposals and others which emerged later. According to Mr Blamey, he was the acknowledged technical expert, which was why Mr Curry approached him in the first place, and Mr Curry concentrated on financial and marketing matters, but in the light of the latter's academic qualifications and his experience in the domestic knitting machine field, it would seem prima facie that he was not in fact ill-equipped to make the technical contributions in question.

Mr Blamey also exhibits a letter to him from Mr Curry dated 1 July 1978 which it seems agreed was written following visits they made towards the end of June on Mr Blamey's initiative to two knitting machine manufacturers (Monk and Bentley) whom it was hoped to interest in a joint venture if it proved impractical for them to go it alone. That letter (exhibit RFC4) and an enclosure entitled "Possible routes and deals" outlined their mutual responsibilities and commercial options and to my mind make it perfectly clear that at that stage at least Mr Curry had in mind their joint involvement in the project for bringing a new machine to the market. According to the letter, Mr Curry was to put together a financial plan including cash flow and approach various financial institutions, and Mr Blamey was to "explore the cost of tooling up and sub-contract manufacture including the cost of needles", following which they were to put together a draft business plan and Mr Curry would write a proposal for finance. At that stage, it seems, Mr Curry was hopeful of arriving at some form of

agreement with Monk or Bentley. On the face of it, the letter seems to confirm Mr Blamey's allegation that the technical matters were his responsibility, but according to Mr Curry neither in the letter nor at any other time was Mr Blamey asked to involve himself in any design work. Mr Blamey disputes this, and I must say that, bearing in mind that the design on Mr Curry's own admission was far from finalised at that stage, it is difficult to see how Mr Blamey could meet his responsibilities unless he was intimately involved in the design work as he alleges. However, I do not need to attempt to resolve this particular conflict of evidence, since all I am concerned to determine is whether Mr Blamey, at Mr Curry's request or not, actually devised any of the features specified in the claims.

It is agreed that before the end of July 1978 both Monk and Bentley had declined to become involved in the project, and that by then Mr Curry had produced drawings of an injection moulded modular needle bed comprising modules of serpentine cross-section (his exhibit RFNC3, dated 26 July 1978). Further notes and drawings produced by Mr Curry and dated August 1978 are exhibited both by Mr Curry (RFNC4) and by Mr Blamey (RFC5), but these do not seem to propose any significant advance towards the invention claimed save perhaps that the bed modules are shown as interlocking (though not in the manner specified in claim 8) and the carriage has a yarn feed hole drilled in its front (but not a slot 44 as shown in the patent specification, and there is no aligned guide slot in the top of the carriage in this case).

Also in August 1978, as a result of an introduction by the Mr Blamey, Mr Curry had a meeting with Aero Needle Group of Redditch (formerly Abel Morrell) who had expressed interest in the project, and by way of preparation for a second meeting held in September 1978 he produced a document allegedly summarizing his ideas to date. That document is exhibited by Mr Blamey (RFC5) and bears a copyright notice in the name of Aglion Ltd (another company owned by Mr Curry) and Airlie Associates (Mr Blamey's trading style). According to Mr Curry, the notice appeared in

that form "to give Mr Blamey some substance and reason for being involved in the negotiations with Aero Needle Group, although he had no part in the preparation of the document, in a consultative capacity or otherwise." So far as I am concerned, whilst the reason given for that notice may seem prima facie a little questionable, Mr Blamey has not asked me to draw any particular conclusions from the joint copyright in the document in question and in the circumstances I do not consider that I should. I would simply observe that that document does not represent any significant advance on exhibit RFNC4 which bears a copyright notice in the name of Bond Knitting Systems Ltd, although it does refer specifically to a strip pushed into a groove running across the needle channels at the front, but this feature (which is also illustrated in exhibit RFNC4) is mentioned in the context of interlocking the bed modules rather than retaining the needles as in claim 8.

It is appropriate to mention at this point that part of Mr Blamey's case is that during his association with Mr Curry he was kept busy with his normal consultancy work and running his trade publications, and relied on Mr Curry to convert rough sketches of his ideas into presentable drawings. Thus the clear implication is that Mr Curry's drawings represent Mr Blamey's ideas. In support of that, he exhibits what he maintains are the only rough notes and sketches left in his possession, the remainder having allegedly been passed to Mr Curry. These exhibits (MJB2) were left more or less to speak for themselves since at the hearing Mr Blamey did not direct my attention to any particular item contained in them, nor did he invite me to draw any particular conclusion from them. However, Mr Warren did refer to them in some detail in support of a submission that they contain nothing material to the invention claimed, and that in any case they are undated for the most part and in many cases not self-explanatory. According to Mr Warren, such items as are clear and might touch on the invention claimed, eg a sketch of a carriage with reversible and interchangeable camplates located by the handle, and a reference to reversible and modular needle

blocks, must be assumed in the absence of a date to be later than exhibits RFC3 and 5. Having carefully examined the various notes and sketches produced by Mr Blamey in his evidence in the light of the declarations and Mr Warren's arguments, I find that whilst they do tend to point to his claimed involvement in the design process which was under way, they do not provide the standard of proof necessary for the conflict of evidence regarding inventorship of the features considered so far to be resolved in Mr Blamey's favour. I well appreciate the difficulty faced by Mr Blamey in presenting his case so long after the event but, as reasoned above, the burden of proof is his and the documents in question, whose contents I do not consider it necessary to review in detail here, do not assist materially in the discharge of that burden.

According to Mr Curry in October 1978 he prepared design notes (his exhibit RFNC5) for the purpose of having models produced particularly to test his ideas for overhead sinkers (i.e. the protruding elements at the front of the bed, which are not directly material to this case) and interchangeable camplates. He also exhibits (RFNC 6) certain disassembled parts of a working prototype which was duly built for him by a firm called Matrix. Mr Warren referred me to this evidence, primarily it seemed to establish that the design notes foreshadow the method of interconnecting the bed modules specified in claim 8, and that the exhibit RFNC6 includes a bent wire "stripper" foreshadowing the shaped rod member specified in claim 6. Although his diary records a number of contacts with Mr Curry during September and October 1978, Mr Blamey made no direct claim to any particular involvement in this aspect of the project, so the evidence does tend to point to Mr Curry operating independently or on his own initiative as Mr Warren suggested. I would simply observe at this point that the "stripper" exhibited is not mentioned in the design notes and that it is not apparent from the evidence when the prototype was actually produced. There are other discrepancies between exhibits RFNC 5 and 6, neither of which is entirely self-explanatory or self-consistent, but these do not seem to be

material to the present case.

It is agreed that towards the end of November 1978 Mr Curry stayed at Mr Blamey's home for a few days, but there is conflicting evidence as to what the purpose was and what was achieved. According to Mr Blamey, he had been supplied by Mr Curry in June 1978 with a Japanese knitting machine, of the type Mr Curry had previously been responsible for selling, for use as a test bed for various ideas and items of hardware that he had thought up and produced. By the time of Mr Curry's visit, he alleges that he was able to show Mr Curry a simple but functional machine, and he states that during the period in question they were involved together in producing, modifying and testing hardware resulting from his design and development input. Mr Curry, however, cannot recall any such involvement, and according to his recollection the Japanese machine was not supplied to Mr Blamey for his use as a test-bed but simply to allow him to familiarise himself with the product with which he (Mr Curry) was concerned. According to Mr Curry, who is also unable to recall ever seeing any of the items allegedly produced by Mr Blamey, he stayed with Mr Blamey to facilitate several visits to be made in the region and to enable them to study the construction of the Japanese machine together, but he recollects that apart from the visits made together Mr Blamey spent most of the rest of the time on his own private business and no more than one or two hours was spent examining the Japanese machine. They do both recall making two visits together, one to LB (Plastics) Ltd to explore the possibility of using extruded needle bed components, and the other to Astro Yarns to discuss the supply of yarn for knitting kits, but Mr Curry denies Mr Blamey's suggestion that they took a prototype machine to the latter company for demonstration purposes. By way of support for his version of the events, Mr Blamey relies on evidence in the form of a statutory declaration from his neighbour Mr A De Barr who at that time was Director of the Machine Tool Industry Research Association (MTIRA).

Mr De Barr, however, simply confirms that Mr Blamey sought his

advice on technical matters relating to production techniques and machining costs of producing unspecified parts for a simple hand knitting frame, and that he arranged for various unspecified items for that unit to be machined and formed at MTIRA. Although Mr Warren objected that Mr De Barr's evidence amounted purely to hearsay, for my part I am prepared to believe that Mr De Barr would have known for a fact that his advice and help was sought in regard to components for a knitting machine. However, I do not need to try to resolve fully the conflict of evidence mentioned above, since what matters in this case is the nature of the various items referred to by Mr Blamey, and even if the issue was entirely resolved in Mr Blamey's favour I would still have no cogent evidence before me to confirm the precise nature of those items and whether they include features specified in the claims. According to Mr Blamey those items were mainly discarded or returned to Mr Curry along with the Japanese machine in December 1978 or early in 1979, and all that remains in his possession is contained in the tool-box belonging to that machine which was inadvertently not returned with the machine. The tool-box was produced in evidence by Mr Blamey, and I was referred to its contents by Mr Warren in support of a submission that it contained nothing to support Mr Blamey's claim to have invented any of the features of the invention. Having studied the contents carefully, I find myself in agreement with Mr Warren.

Shortly after Mr Curry's stay at Mr Blamey's home (it seems to have been 30 November 1978), they met Aero's consultant (Mr A Griffiths), at Aero's request, for further discussion of the project. Mr Curry does not elaborate on what was discussed at that meeting, but Mr Griffiths in his declaration suggests that the discussions were of a general nature and did not concern any specific aspects of the design of the machine. Mr Blamey disputes this and states that in a meeting lasting several hours they discussed tooling, costings and construction of parts in detail with reference to sketches and parts which were shown to Mr Griffiths, and that they also discussed Mr Griffiths fee to work for them. For what it is worth, even though Mr Blamey did

not seek to substantiate his challenge himself, this particular conflict of evidence can apparently be resolved in his favour in the light of letters written to Mr Curry by Mr Griffiths after the meeting. Those letters, dated 5 December 1978 and 3 January 1979, are exhibited by Mr Curry (RFNC 7) and the first refers to their design meeting whilst the latter returned a drawing and notes to Mr Curry (which Mr Warren indicated must have been handed over at the meeting) and quoted budget prices for various components. The quotation, however, is not self-explanatory as to the precise nature of the components (though there are references to moulded needle modules and a moulded carriage with a wire front - allegedly the "stripper"), and the particular drawing and notes are not exhibited. In the circumstances, therefore, I can draw no further conclusions in Mr Blamey's favour from the evidence relating to the meeting with Mr Griffiths since there is nothing in that evidence to support his claim to inventorship of any specific feature.

For whatever reason, and it is not clear from the evidence, contact between Mr Blamey and Mr Curry ceased quite early in 1979 and from then on Mr Blamey took no further part and Mr Curry pursued the development of the machine independently, though at first still with hopes of a joint venture with Aero but the latter eventually opted out in August 1979.

It is perhaps useful at this point to summarise from the evidence considered so far which features from among those specified in the claims had clearly been devised by the time that Mr Blamey ceased his involvement with Mr Curry. Thus the concept of interchangeable camplates had emerged (as specified in claim 2 though not located as specified in claim 1), as had the concept of a modular needle bed substantially as specified in claims 7 and 8. Moreover, a wire "stripper" had evidently been proposed as specified in claim 6, and there had also been a proposal to provide the carriage with a yarn guide slot and a further aligned yarn guide more or less as specified in claim 5. So far as I can tell, however, the essence of the invention, namely the particular

method of locating the camplate as specified in claim 1, and other subsidiary features specified in claims 3, 4 and 9 had yet to be devised. Those features seem on the face of it to have evolved during the period March 1979 to March 1980 (i.e. the date of filing of Mr Curry's application which led to the patent in suit). Mr Curry provides evidence as to developments during that period, exhibiting drawings produced on his instructions both by Mr Griffiths (exhibits RFNC 11 and 12 dated December 1979 to March 1980) and, earlier, by an industrial designer Mr G Watley (exhibit RFNC 9 dated March and May 1979). He also exhibits notes and drawings (RFNC 10) which he prepared during the period May-October 1979 and which formed the basis of his instructions to Mr Griffiths. Mr Curry more or less left these exhibits to speak for themselves, but Mr Warren referred me to them and submitted that the first disclosure of the characteristic feature of claim 1 appears in exhibit RFNC 9, and that the features specified in claims 3, 4 and 9 first appear in exhibits RFNC 9 to 12. So far as I can tell, Mr Warren was correct in that submission, and although I note that the documents forming exhibit RFNC 10 are actually undated for the most part, Mr Blamey has not challenged Mr Curry's declaration that they were prepared during the stated period. Regarding exhibits RFNC 11 and 12, i.e. the drawings produced by Mr Griffiths, these clearly bring together all the features specified in the claims for the first time, and it is clear, as Mr Curry declares, that they were used as a basis for preparing the patent specification. Mr Warren emphasised that Mr Watley and Mr Griffiths were instructed by Mr Curry alone, and for his part Mr Griffiths confirms that. Having given those exhibits careful consideration, although to my mind the onus was not on Mr Curry in this case to establish his inventorship, he has again produced cogent evidence to that end which Mr Blamey has been unable to displace.

I have also given careful consideration to a detailed criticism of the patent specification which Mr Blamey offered in support of a contention to the effect that certain defects reveal that its authors (i.e. Mr Curry and his original patent agent) clearly had

an incomplete understanding of knitting processes in general and the finer points of the machine in particular, and that the specification must have been based on information derived from some other (expert) source (i.e. Mr Blamey) but not fully appreciated. I do not propose to review points raised by Mr Blamey here, but would simply observe that in my view he has not highlighted any material inadequacies in the specification.

In accordance with the above findings, I am unable to conclude that Mr Blamey has established an entitlement to be named as inventor, or that Mr Curry ought not to have been mentioned as sole inventor, and I must therefore refuse his application.

Finally, I have to deal with the patentees' request for costs. In Mr Warren's submission, on the basis of the evidence put in by Mr Blamey the application was frivolous and his clients have been put to a lot of expense which was plainly unjustified and which should be defrayed by an award of costs in their favour. Regarding that submission, I would observe firstly that I cannot accept that the application was frivolous. Mr Blamey stressed in effect that his application was neither frivolous nor vexatious, and I must say that from his evidence and his conduct at the hearing I gained a clear impression of an eminently reasonable man with a genuine and keen sense of grievance. Since he did not have the benefit of professional advice and representation, it is not altogether surprising that he did not fully appreciate what the central points at issue would be and what needed to be proved and how, but he produced such evidence as he had (not all entirely helpful to his case on the face of it) and of course until the patentees' evidence was produced he could have had no clear idea of the likely force of the opposition to his application. Even in the absence of professional assistance to present his own case more thoroughly and fully test the patentees' case, which in itself may have coloured Mr Warren's view of the merits of the application, I am nevertheless satisfied that Mr Blamey was more closely involved in the design aspects of what was clearly for some time a joint project than Mr Curry has been prepared to

admit, even though he has not been able to convince me at the end of the day that any of the features specified in the claim were devised by him alone or jointly with Mr Curry. No doubt Mr Blamey will be left with the impression that the evidence filed did not give a full or accurate picture of his contribution, but I was obliged to reach a decision having regard to that evidence.

Secondly with regard to Mr Warren's submission, I would observe that although the respective degrees of success of each of the parties in inter-partes proceedings is taken into account in determining whether to make an order under Section 107 awarding a contribution to costs, other relevant factors are also taken into account, including the reasonableness of the behaviour of the parties. In this particular case, notwithstanding that I am satisfied that Mr Blamey's application was not frivolous or vexatious, nor unduly delayed, the patentees as the successful party qualify for an award of costs unless their own behaviour has been unduly unreasonable. In that connection, I have to consider complaints made by Mr Blamey at various points in his evidence and repeated at the hearing. Those complaints which were not commented upon by Mr Warren, concern the nature of the response which Mr Blamey received from Mr Curry's solicitors to a letter to Mr Curry dated 25 January 1985. That letter, which was the opening shot in the present dispute, was inspired by an article in the Autumn 1984 edition of Vogue Pattern Magazine brought to Mr Blamey's attention by his wife (exhibit MJB 8), and in it Mr Blamey expressed his surprise at Mr Curry seemingly claiming in the article to be the sole inventor of the Bond machine, and pointed out that his contribution had been overlooked and brought no reward. At the time of writing that letter Mr Blamey was unaware that a patent had been granted for the machine, and the present application was only filed after he was advised of the patent by Mr Curry's solicitors and had sought advice from patent agents (on what he calls an "informal" basis) and the Institute of Patentees and Inventors. I do not propose to quote from the letters which Mr Blamey received from Mr Curry's solicitors and which he produced in evidence, but to my mind they do demonstrate

an extremely aggressive reaction to Mr Blamey's approach and, it seems to me, have contributed significantly to Mr Blamey making the present application and to the overall costs ultimately incurred by the patentees. In these circumstances, I award the patentees, Bond Knitting Systems Ltd, the sum of one hundred pounds (£100) as a contribution to their costs, this sum to be paid them by applicant, Mr M J Blamey.

Dated this 5th day of August 1987

G K LINDSEY

Superintending Examiner, acting for the Comptroller

