Vancouver
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REGISTRY

No. S-248103
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1527920 B.C. LTD.

PETITIONER

APPLICATION RESPONSE

Application response of: Dapit NA, LLC ("**Dapit**")

THIS IS A RESPONSE TO the Notice of Application of Felix Payment Systems Ltd. ("**Felix**") filed October 21, 2025 and scheduled for hearing on November 3, 2025.

Dapit estimates that the hearing of the application will take 1 day.

This matter is not within the jurisdiction of an associate judge. Justice Masuhara is seized.

PART 1: ORDERS CONSENTED TO

Nil.

PART 2: ORDERS OPPOSED

Dapit opposes **all** the relief sought in Part 1 of the notice of application. Dapit seeks an order that the application be dismissed, with costs.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

Nil.

PART 4: FACTUAL BASIS

A. Overview

1. Felix's novel application seeks to re-ignite the *CCAA* process after Felix has come out of it, to help Felix jump the queue ahead of other litigants in order to try in B.C. an issue of U.S. law

for the U.S. courts—the validity of the assignment of a U.S. patent application to a U.S. party—without the standard procedural tools that enhance the court's truth-seeking and adjudicative functions.

2. The application should be dismissed because:

a. In light of Felix's completed restructuring, the *CCAA* court lacks jurisdiction to order adjudication of the Patent Dispute (as defined below) within these *CCAA* proceedings;

b. Even if the *CCAA* court has jurisdiction (it does not), the order sought is inappropriate: the Patent Dispute should be commenced by action and adjudicated using the ordinary civil process, under which the jurisdiction of a B.C. court to determine an issue of U.S. law for the U.S. courts can be decided as a threshold issue; and

c. Even if the Patent Dispute is litigated in these proceedings (it should not be), Felix's proposed litigation plan is inadequate: a significantly modified plan that more resembles the ordinary litigation process is necessary to provide procedural fairness and protect the court's truth-seeking function.

B. The Dapit Group and its Relationship to Felix

3. Dapit is a Delaware limited liability company. Its head office and principal place of business are located in New York, New York, United States.

Affidavit #3 of Andrew Clough, made October 28, 2025, para. 2 ("**Clough #3**")

4. Dapit operates in the payments and internet security sector, with a focus on payment processing technology. Together with five other persons—BBSG Hall Investments, LLC; Ripcord Capital, LLC; Steve Hall; S.R. Hall Management, LLC; and MaxaFi Holdings LLC—Dapit comprises the "**Dapit Group**."

Clough #3, para. 5

5. Between 2021 and 2024, the Dapit Group was a consistent source of outside capital for Felix, providing a total of approximately CAD$16.9 million in external financing.

Clough #3, paras. 6–7

6. Through a series of agreements and transactions, the Dapit Group acquired a significant equity stake in Felix. As of December 20, 2023, the group owned 79.47% of Felix's outstanding equity interests.

Clough #3, para. 16

C. Dapit Acquires the Patent Application

7. On or about December 20, 2023, Felix and Dapit made an agreement to assign U.S. Patent Application no. 17/996,200, titled "Systems and Methods for Centralized Authentication of Financial Transactions" (the "**Patent Application**"), and the rights to any later-filed related patent applications, from Felix to Dapit, and executed a written Assignment of Patent Properties Agreement (the "**Original Assignment Instrument**").

Clough #3, para. 17 and Ex. "G"

8. Subsequently, on or about January 5, 2024, Felix and Dapit executed a second written Assignment of Patent Properties Agreement (the "**Second Assignment Instrument**"). The assignment of the patent rights from Felix to Dapit was recorded with the United States Patent and Trademark Office (the "**USPTO**") on January 10, 2024, under Reel/Frame 066080/0949, with the USPTO subsequently designating Dapit as the owner of the Patent Application.

Clough #3, paras. 19-20 and Ex. "H"–"I"

9. Since acquiring the Patent Application, Dapit has taken key steps to prosecute the Patent Application, as well as a continuation patent application made by Dapit in respect of the Patent Application (together with the Patent Application, the "**Patent Applications**"), for the purpose of maximizing the value of the applications, incurring approximately USD$300,000 in expenses in doing so.

Clough #3, paras. 21-23

D. Felix Enters Creditor Protection, Completes Restructuring and Emerges

10. On November 25, 2024, nearly one year after Dapit acquired the Patent Application, this court granted an initial order with respect to Felix under the *CCAA*. On December 6, 2024, this court granted an amended and restated initial order, which, among other things, extended Felix's stay of proceedings until February 28, 2025.

Order Made After Application (Initial Order), made November 25, 2024;

Order Made After Application (Amended and Restated Initial Order), made December 6, 2024 ("**ARIO**")

11. While under *CCAA* protection, Felix and its advisers arranged for a restructuring transaction to be implemented through a corporate reorganization tool known as a "reverse vesting order." This court approved the RVO on February 28, 2025.

Order Made After Application (Approval and Reverse Vesting Order), made February 28, 2025 ("**RVO**")

12. The RVO refreshed Felix's capital structure, cleansed its balance sheet, and facilitated a significant restructuring by enabling Felix to:

a. retain desirable assets, in each case free and clear of all but a limited set of permitted encumbrances;

b. vest out undesirable assets and liabilities into a separate corporate entity, "**ResidualCo**";

c. cancel its existing share capital for no consideration; and

d. issue new shares from treasury to a group of new investors.

RVO, para. 6

13. In addition to approving and providing for the implementation of the restructuring, the RVO expressly provided for Felix's emergence from the *CCAA* process. That is, Felix ceased to be a petitioner in these proceedings and was expressly released from the purview of the ARIO and all other orders of this court in respect of these proceedings, save for the RVO itself. In Felix's place, ResidualCo was added as a petitioner and made the subject of these proceedings on a go-forward basis.

RVO, paras. 6, 19 and 32

E. After Emergence, Felix Applies to Litigate Patent Dispute in CCAA Proceedings

14. Despite its emergence from the *CCAA* process, Felix now has attempted to impermissibly return to the *CCAA* court to seek further relief.

15. By notice of application filed October 21, 2025, Felix applies for an order approving a "streamlined litigation process" within the *CCAA* proceedings to adjudicate the question of

ownership of the Patent Application—and, therefore, the validity of the assignment of the Patent Application from Felix to Dapit (the "**Patent Dispute**"). That issue is for the U.S. courts and Dapit is in the process of filing there. Despite that, Felix in essence seeks an order that the question of who lawfully owns the Patent Application be heard and decided by the *CCAA* court within this proceeding on an expedited timeline that would inhibit rather than enhance a just determination on the merits.

16. The order sought on this application would require the *CCAA* court to hear and determine the Patent Dispute in a manner that undermines Dapit's right to procedural fairness. Among other concerns detailed below, the proposed litigation order dispenses with discovery, relies solely on affidavit evidence, and contemplates tying the court's hands from the outset on the evidence available to it and the form of the merits hearing.

17. Were this court to accede to Felix's request, it would also mean that Canadian and U.S. courts are concurrently considering the same issue. Dapit intends to file, and its U.S. counsel is in the process of filing, a complaint in the U.S. courts seeking a declaratory judgment affirming that:

a. the Patent Applications were transferred by Felix to Dapit in valid patent assignment documents;

b. Dapit owns all patent rights in the Patent Applications; and

c. Felix does not have any ownership rights in the Patent Applications.

Clough #3, para. 25

PART 5: LEGAL BASIS

18. A *CCAA* court should not try an issue of U.S. law—the validity of the assignment of a U.S. patent application to a U.S. party—that is for the U.S. courts.

19. Felix frames the Patent Dispute in an unduly narrow way. The dispute does not, as Felix would have it, turn simply on whether Steve Hall had authority to execute the Second Assignment Instrument on behalf of Felix.

20. Instead, the "crux of the matter" is whether Dapit (a Delaware limited liability company) or Felix (a B.C. corporation) is the lawful owner of the Patent Application (an issue of U.S. intellectual

property rights). Answering that question will entail an inquiry into whether the Patent Application was validly assigned from Felix to Dapit. That, in turn, will require careful consideration of an array of complex factual and legal considerations, including those relating to both the Original Assignment Instrument and the Second Assignment Instrument.

21. That Dapit is the lawful owner of the U.S. intellectual property rights in question is the *status quo*: it is what USPTO records show. Through the Patent Dispute, Felix seeks to set aside that *status quo* in a Canadian court by reviving effectively spent *CCAA* proceedings.

22. These proceedings are not the right procedural vehicle to litigate the Patent Dispute. Having already emerged from the *CCAA* process with a refreshed capital structure and a cleansed balance sheet, Felix should not be permitted to return and invoke these proceedings as a means to jump the queue and consume scarce judicial resources at the expense of other litigants who urgently await court dates.

23. Further, even if the court were to permit the Patent Dispute to be heard and determined within these *CCAA* proceedings, Felix's so-called "proposed litigation plan" fails to afford Dapit anywhere near adequate procedural rights. Dapit's ownership of the Patent Application is being impugned. Dapit is therefore entitled to procedural fairness, including document and oral discovery rights at least comparable to those available in an ordinary civil action.

24. As explained in greater detail below, the relief sought by Felix on this application should be refused for three reasons:

a. *First*, the *CCAA* court has no jurisdiction to order that the Patent Dispute be heard and determined within these *CCAA* proceedings;

b. *Second*, even if the *CCAA* court has that jurisdiction, the order sought is inappropriate because the Patent Dispute should be resolved through the usual civil trial process, where, among other issues, the jurisdiction of a B.C. court to determine a matter of U.S. law about a U.S. party's ownership of a U.S. patent application can be decided; and

c. *Third*, even if the *CCAA* court were to hear the Patent Dispute, Felix's proposed litigation plan is inadequate.

A. The CCAA Court Lacks Jurisdiction to Hear the Patent Dispute

25. This court's interpretation of s. 11 of the *CCAA*, and the terms of the RVO, show that the *CCAA* court lacks jurisdiction to hear the Patent Dispute.

26. Felix asserts that s. 11 of the *CCAA* empowers the *CCAA* Court to grant the relief sought:

> **11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

27. However broad the authority conferred on supervising judges by s. 11 may be, it is not without limits. Importantly, the Supreme Court of Canada has explained that s. 11 empowers a supervising judge to act only where, among other considerations, the matter properly falls within the supervising judge's "purview."

9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10 [***Callidus***] at paras. 65–69

28. Consistent with that overarching restraint, decisions of this court have specifically delineated the outer bounds of s. 11 jurisdiction insofar as it pertains to ordering the hearing and determination of claims within existing *CCAA* proceedings.

29. In *Alderbridge Way*, Fitzpatrick J. adopted a tailored rule, holding that s. 11 provides the court with jurisdiction to bring other claims into a *CCAA* proceeding where doing so will assist the restructuring process and further the remedial purposes of the *CCAA*:

> [55] … It is undeniably the case that the *CCAA* court is attuned to providing a means by which claims can be adjudicated, as they relate to the restructuring proceeding, in an efficient manner and in a manner that is fair to all stakeholders.
>
> [56] I agree that it will not always be the case that other claims are appropriately brought into the *CCAA* umbrella for adjudication. However, I adopt the reasoning and result in *U.S. Steel SC* in concluding that, if the circumstances are such that bringing other claims into the *CCAA* proceeding will assist in the restructuring process and further the remedial purposes of the *CCAA*, that may ground the exercise of the court's jurisdiction to grant such an order under s. 11 of the *CCAA*.

Alderbridge Way GP Ltd. (Re), 2023 BCSC 1718 [***Alderbridge Way***] at paras. 55–56 (emphasis added);
See also *Mercy Falls BC Inc. (Re)*, 2025 BCSC 1960 [***Mercy Falls***] at para. 30

30. There, Fitzpatrick J. ordered the adjudication of certain related claims within the *CCAA* proceedings at issue on the basis that there was a "critical and essential need to resolve the issues" in those related claims "so as to advance [the] restructuring." In particular, resolution of the claims in the context of the *CCAA* proceedings would assist the *CCAA* Court in identifying the "fulcrum creditor(s)" who would dictate how any bid arising in the ongoing sales and investment solicitation process would be responded to—and thus the outcome of the restructuring.

Alderbridge Way at paras. 16-17, 69-70, 110-111, 117 and 121;
Alderbridge Way GP Ltd. (Re), 2024 BCSC 382 [***Alderbridge II***] at para. 12

31. Similarly, in *Mercy Falls*, Basran J. applied *Alderbridge Way* and ordered that a "straightforward" contract claim—being the petitioner's only meaningful asset—be heard and determined within the *CCAA* proceeding. He reasoned that doing so was necessary to ensure "the best possible outcome for the parties and the unsecured creditors" in the ongoing restructuring. The jurisprudence thus emphasizes that there must be a strong rational connection between: (i) the resolution of the claim sought to be brought in; and (ii) the outcome of the restructuring that is ongoing under judicial supervision.

Mercy Falls at paras. 28–39

32. The tailored jurisdictional rule adopted by this court respects the "purview" of *CCAA* supervising judges by recognizing that it is not appropriate to bring any civil claim under the *CCAA* "umbrella." Rather, s. 11 can only be used to bring in those claims the resolution of which will genuinely assist in the ongoing restructuring that is under judicial supervision.

33. In asserting that s. 11 affords the *CCAA* Court jurisdiction to adjudicate the Patent Dispute, Felix relies heavily on the so-called "single proceeding model"—the purpose of which is to group claims involving the insolvent company to avoid possible "inefficiency and chaos" in the insolvency process, as well as to maximize returns for creditors.

Mundo Media Ltd. (Re), 2022 ONCA 607 at paras. 40–42, citing C*entury Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 [***Century Services***] at para. 22

34. In *Alderbridge Way*, Fitzpatrick J. held that the breadth of s. 11 jurisdiction is "informed by" the single-proceeding model, and that the tailored rule adopted and applied there is "entirely consistent" with that model and its intended benefits. The rule articulated in *Alderbridge Way* therefore incorporates the rationale of the single-proceeding model.

Alderbridge Way at paras. 46 and 55

35. In essence, Felix contends that, because the Patent Dispute is a claim by Felix—the original subject of these *CCAA* proceedings—to an asset (and a foreign asset at that), the single proceeding model dictates that the Patent Dispute be heard and determined in the *CCAA* proceeding. For Felix, the determining factor is that it is Felix making the claim. Felix argues that the single proceeding model includes claims brought by an insolvent company against a (foreign) third party, so long as that third party is not a "stranger" to the proceedings.

36. But that does not assist Felix here. That is because Felix already has emerged from the *CCAA* process.

37. The RVO, pronounced on February 28, 2025, approved the implementation of the transactions contemplated in an Amended and Restated Stalking Horse Subscription Agreement. The transactions closed—thereby implementing Felix's *CCAA* restructuring—the same day: February 28, 2025.

Affidavit #6 of Andrew Cole, made June 27, 2025, para. 9 and Ex. "B" ("**Cole #6**")

38. As explained, under the RVO: (i) Felix retained desirable assets, in each case free and clear of all but a limited set of permitted encumbrances; (ii) Felix vested out undesirable assets and liabilities into a separate corporate entity, ResidualCo; (iii) the existing share capital of Felix was cancelled for no consideration; and (iv) new shares in the capital of Felix were issued from treasury to a group of new investors.

RVO, para. 6;
Affidavit #5 of Andrew Cole, made February 24, 2025, Ex. "D" ("**Cole #5**")

39. Further, the RVO ordered that Felix "shall cease to be the petitioner in these CCAA Proceedings" and "shall be deemed to be released from the purview of the Amended and Restated Initial Order … and all other Orders of this Court granted in respect of these CCAA proceedings," except for the RVO. In Felix's place, the RVO provided that "ResidualCo shall be added to these CCAA proceedings as a petitioner." The style of cause for these *CCAA* proceedings was subsequently amended, reflecting the transition to ResidualCo as the subject of the proceedings.

RVO, paras. 6, 19 and 32

40. Moreover, the RVO does not include a term providing that Felix may return to this court to seek further orders in this proceeding.

41. In short, the RVO permitted Felix to emerge from the *CCAA* process with a refreshed capital structure and a cleansed balance sheet. As Felix's affiant Mr. Cole deposes in an affidavit filed in support of this application, the implemented restructuring benefitted Felix because it "assure[d]" stakeholders that there would "be a going-concern outcome for Felix's business." In other words, the restructuring that closed on February 28, 2025 achieved the *CCAA*'s remedial aim of "facilitat[ing] the reorganization and survival of the pre-filing debtor company in an operational state — that is, as a going concern."

Cole #6 at para. 11;
Callidus at para. 41

42. In these circumstances, where a going-concern restructuring already has been implemented by court order and, as stated in the RVO, that court order has provided for "the release of [Felix] from the purview of these CCAA proceedings," the rationale underpinning the single-proceeding model lacks force.

RVO, s. 29

43. Felix cites no authority holding that, ***after*** a company has emerged from the *CCAA* process through a reverse vesting order, that same company is entitled then to return to the *CCAA* proceeding (which by then is concerned with the "ResidualCo" to which the company's unwanted assets and liabilities were vested out) and use it as a forum in which to litigate property disputes through a process designed to handcuff both the opposing party and the court.

44. In this case, with Felix already having emerged from the *CCAA* through the RVO with a completed corporate restructuring behind it, there is no basis to conclude that determination of the Patent Dispute within these proceedings will assist any ongoing "restructuring process" and further the remedial purposes of the *CCAA*.

45. The restructuring process, insofar as Felix and its now-former creditors and shareholders (including those in the Dapit Group) are concerned, is concluded. Through that process Felix refreshed its capital structure and cleansed its balance sheet, enabling it to emerge as a going concern. The remedial purposes of the *CCAA* have been served.

46. Accordingly, the Patent Dispute fails the governing test articulated in *Alderbridge Way* which, as set out above, incorporates the considerations relating to the single proceeding model on which Felix relies. The *CCAA* court thus lacks jurisdiction to hear and determine the Patent Dispute—the resolution of which is outside the "purview" of the supervising judge at this juncture.

B. Even if the CCAA Court Has Jurisdiction the Order Sought is Inappropriate

47. If this court determines that it has the jurisdiction to grant the order sought by Felix under s. 11 of the *CCAA*, it remains to be determined whether the court *should* exercise that jurisdiction. It should not.

48. Section 11 discretion is broad, but not boundless: it must be exercised in furtherance of the *CCAA*'s remedial objectives. In particular, its exercise is guided by three "baseline considerations." The applicant bears the burden of demonstrating that: (1) the order sought is "appropriate in the circumstances," (2) it has acted in good faith, and (3) it has acted with due diligence.

Callidus at paras. 49–50 and 67;
Century Services at paras. 59 and 69–70

49. "Appropriateness" turns on whether the order sought will advance the statute's policy objectives: "The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* – avoiding the social and economic losses resulting from liquidation of an insolvent company." The "due diligence" requirement prohibits parties from "sitting on their rights" or strategically maneuvering to gain an advantage.

Century Services at paras. 69–70;
Callidus at paras. 50–51

50. The order sought should not be granted for three main reasons:

a. *First*, there is no material connection between the conduct of these proceedings at this stage and the Patent Dispute, and thus the order sought fails to satisfy both the "appropriateness" and "due diligence" requirements;

b. *Second*, litigating this dispute outside the ordinary civil process and without its attendant procedural safeguards risks prejudice to Dapit and its rights, and to the court's adjudicative function, including by allowing Dapit to impermissibly bootstrap jurisdiction by resurrecting the *CCAA* proceedings; and

c. *Third*, there is no reason why Felix should be able to jump the queue and consume scarce judicial resources while other litigants are forced to wait for their day in court. Felix should commence an ordinary action, like any other litigant asserting similar claims would have to do.

(i) There is No Connection Between Patent Dispute and These CCAA Proceedings at This Juncture

51. On the first point, there is no material connection between the Patent Dispute (which involves Felix's claim to an asset) and these proceedings, which now concern ResidualCo—not Felix. It follows that adjudicating the Patent Dispute in these proceedings will not "usefully further efforts to achieve the remedial purpose" of the *CCAA*. That purpose, insofar as Felix is concerned, was realized when Felix was permitted to restructure its affairs and emerge from creditor protection as a going concern.

52. Having obtained the benefits of restructuring, Felix also has been released from the purview of these proceedings. That means, for example, it is no longer subject to certain operational restrictions formerly imposed on it by the ARIO. It would not further the *CCAA*'s remedial objectives to allow Felix to re-enter these proceedings to litigate an asset ownership dispute through a gerrymandered process simply because it claims to be facing capital-raising challenges—an issue common to many businesses outside insolvency. The order sought therefore is not "appropriate in the circumstances," and the application should be dismissed on that basis alone.

53. Felix contends that adjudication in this proceeding would further the *CCAA*'s remedial objectives, in that it would "allow" Felix to "finalize" the transactions that were approved and implemented under the RVO, thereby creating commercial certainty. This framing ignores the fact that the transactions <u>are</u> finalized; they have been since the closing date, February 28, when Felix refreshed its capital structure and vested out its unwanted assets and liabilities. What Felix complains of is not an issue in implementing an ongoing restructuring, but rather a claimed post-restructuring difficulty in raising capital (based on an uncorroborated, conclusory assertion deserving of no evidentiary weight).

54. Felix's argument also illustrates how it cannot satisfy the "due diligence" requirement in respect of the order sought. As Felix's affiant Mr. Cole observes, an assignment of the Patent Application to Dapit was publicly recorded with the USPTO on January 5, 2024, transferring

ownership of the Patent Application from Felix to Dapit. Nearly a year later, in November 2024, this court granted its initial order in these *CCAA* proceedings and the next month, made an order approving a sales and investment solicitation process (the "**Sales Process Order**").

Cole #6, para. 16 and Ex. "D";
Cole #5, paras. 4–6

55. Mr. Cole explains that after the Sales Process Order was issued, a data room was established (it went live on December 20, 2024), and a bidding process took place. That transaction process led to the RVO. Mr. Cole also deposed, in support of Felix's application for the RVO, to his belief that the transactions were in Felix's best interests and ought to be approved because, among other things, the transaction process involved due diligence in respect of Felix.

Cole #5, paras. 9–10 and 16

56. The only plausible inference to be drawn from this evidence—which demonstrates that due diligence into Felix took place as part of the SISP leading to the RVO about one year after the assignment of the Patent Application to Dapit had been recorded at the USPTO—is that during the restructuring process Felix and its principals must have known, or at least reasonably ought to have known, that the USPTO recognized Dapit as the owner of the Patent Application. Felix offers no evidence to the contrary. Accordingly, Felix knew or reasonably ought to have known during the restructuring process that, insofar as the Patent Application was concerned, Felix had at most a *claim* asserting ownership.

57. Yet, Felix chose to proceed to seek and obtain approval of the RVO, to close the transactions, and to obtain a release from the purview of these *CCAA* proceedings. Felix did not, for example, attempt to argue that the Patent Application was a proverbial "pot of gold" asset that required expedited pre-closing litigation in the *CCAA* proceedings to facilitate the restructuring, as has been done in cases like *Mercy Falls*.

See *Mercy Falls BC Inc. (Re)*, 2025 BCSC 1045 at paras. 22–23;
Mercy Falls at paras. 3, 12 and 28–39

58. Felix should not now be permitted to return to these proceedings, *post-closing*, asserting that asset litigation is required to provide transactional certainty—when it should have been readily apparent, *pre-closing*, that Felix's claim to ownership of the Patent Application was contingent and so would require litigation to assert and attempt to enforce. In this sense, Felix sat

on its rights and accepted the attendant risks—including how the capital markets might react to the nature of its retained assets. The due diligence requirement therefore cannot be satisfied.

(ii) The Patent Dispute Requires the Procedural Safeguards of an Action

59. Fairness and the proper administration of justice requires that Felix commence an action in the B.C. Supreme Court. Litigating this dispute outside the ordinary civil process and without its attendant procedural safeguards risks prejudice to Dapit, whose ownership of the Patent Application is being impugned. It also would compromise the court's adjudicative function, which rests on the framing of issues through proper pleadings and a discovery process shaped by those pleadings.

60. Felix accepts that the USPTO transferred ownership of the Parent Patent Application from Felix to Dapit. Whether that transfer was valid, contrary to Felix's submission, will not turn solely on Mr. Hall's signature for Felix on the Second Assignment Instrument. Mr. Clough's affidavit appends the Original Assignment Instrument, executed on behalf of Felix by its Co-CEO's and principals: Owen Newport and Kim Fleury. Thus, whether Mr. Hall had the authority to execute an assignment on behalf of Felix is not dispositive of the Patent Dispute, as Felix suggests. Instead, the Patent Dispute is far more complex, both legally and factually.

Cole #6, para. 15

61. In other words, the patent dispute concerns resolving the legal issue of who should be the registered owner of a U.S. patent application in the USPTO registry. A B.C. company seeks to disturb the *status quo* and have itself registered instead of the current registered owner, Dapit, a Delaware limited liability company. While Felix suggests that the narrow issue of Mr. Hall's signature can be decided by the *CCAA* court, there is no suggestion by Felix that the balance of the dispute can be or should be decided in the B.C. courts. To the contrary, the procedural safeguards of an action are needed to determine the territorial competence and *forum non conveniens* issues both of which Dapit intends to raise in any B.C. proceedings concerning the patent dispute.

62. *On territorial competence:* The *CJPTA* at s. 10 sets out the claims over which this Court has territorial competence and requires the court to determine whether there is "a real and substantial connection between B.C. and the facts on which a proceeding is based."

Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 [***CJPTA***]

63. Rules 4-5(1)–(2) of the *Supreme Court Civil Rules* require the plaintiff to identify the provisions of s. 10 of the *CJPTA* being relied on. It is also the plaintiff's burden to plead the jurisdictional facts needed to establish a real and substantial connection. Presence of a plaintiff in the jurisdiction is not enough to give this Court territorial competence. If the pleaded jurisdictional facts are disputed, both parties can lead evidence to prove or disprove territorial competence.

Ewert v. Höegh Autoliners AS, 2020 BCCA 181 at paras. 16–17;
Club Resorts Ltd. v. Van Breda, 2012 SCC 17 at para. 86

64. Given the above, in the usual case, a plaintiff could not establish territorial competence by simply pointing to a limited aspect of a *potential claim* and to its residence in B.C. Indeed, there is a risk that Felix is attempting to resurrect the *CCAA* proceeding to impermissibly bootstrap jurisdiction over a proceeding that otherwise has only a weak connection to B.C. There is no need for the court to accept that risk. Rather, as any other potential claimant, Felix should bring an action and plead the jurisdictional basis of why a claim to displace Dapit as the registered owner of a U.S. patent application *can* be brought in B.C. Dapit should then be afforded the opportunity to challenge those jurisdictional facts. Only then can Dapit and this court make a proper assessment on territorial competence and whether the claim can even be brought in B.C.

65. *On forum non conveniens*: Even if this court has subject-matter jurisdiction (under the *CCAA*) and territorial competence (under the *CJPTA*) over a proceeding, the court can still decline to exercise jurisdiction on the basis that there is a "more appropriate" forum to hear the proceeding.

CJPTA at s. 11

66. To determine the more appropriate forum, the court must consider the factors set out in s. 11(2) of the *CJPTA*, which reads:

> (2) A court, in deciding the question of whether it or a court outside B.C. is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including:
>
> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
>
> (b) the law to be applied to issues in the proceeding,
>
> (c) the desirability of avoiding multiplicity of legal proceedings,
>
> (d) the desirability of avoiding conflicting decisions in different courts,
>
> (e) the enforcement of an eventual judgment, and
>
> (f) the fair and efficient working of the Canadian legal system as a whole.

67. As to s. 11(2)(f), that factor captures the cumulative effect of the *forum non-conveniens* analysis. In turn, the Canadian legal system is best served when disputes are litigated in the jurisdiction they are most clearly connected to, not a jurisdiction chosen for tactical reasons.

Wang v. Fu, 2023 BCCA 247 at para. 60

68. *Prima facie*, the *CJPTA* factors militate towards the U.S. as the more appropriate forum to adjudicate ownership of a US patent application:

a. **A B.C. proceeding will create a multiplicity of proceedings and risks conflicting decisions (11(2)(c)–(d)):** These factors aim to avoid parallel proceedings where different courts are considering the same facts or cause of action, which may lead to conflicting judgments. Here, Dapit has a pending action in the U.S. Felix's remedy is to participate in the U.S. proceeding, not to seek to revive the *CCAA* proceeding.

Colonial Countertops at paras. 54 and 59

b. **Foreign law applies (11(2)(b)):** Under Canadian law, the assignment of a patent must occur in accordance with the laws of the jurisdiction of the patent. Under U.S. federal law, the validity of the assignment of a patent is determined by the law of the state where the assignee is resident. So, here, the assignment of the U.S. patent would turn on U.S. law, specifically the laws of where Dapit is resident (either New York or Delaware).

Seismotech Safety Systems Inc. v. Forootan, 2021 FC 773 at para. 58;
EMA Electromechanics, Inc. v. Siemens Corp., 2021 WL 4483400 (W.D. Tex. Sept. 30, 2021) at 6

c. **The balance of convenience favours proceedings in the U.S. (s. 11(a)):** While this court can apply foreign law, there is no need spend valuable (and scarce) judicial resources doing so. That step would require both parties to retain experts and cause added inconvenience to this Court of having to rule on the qualification of experts and, perhaps, resolve a 'duel of the experts'.

Smith v. Hayes, 2023 BCSC 1761 at paras. 74–75

d. **Any judgment would have to be enforced in the U.S. (s. 11(e)):** There is no suggestion that this court can make an order that binds the USPTO and require it to

transfer a patent application registered to Dapit to Felix. Regardless of the outcome in B.C., U.S. proceedings are likely to be required for such an order to be made.

e. **The fair and efficient functioning of the justice system favours U.S. proceedings (s. 11(f)):** the heart of the patent dispute is ownership of a U.S. patent application, to be adjudicated under U.S. law, where the present owner registered in the USPTO is Dapit, a Delaware limited liability company. The connection to B.C. created by Felix being a B.C. company does not overwhelm the factors above. And to the extent that this application is merely an attempt by Felix to resurrect a *CCAA* proceeding to 'benefit' from the expedited proceedings therein and avoid the usual procedural safeguards, then (as held in *Wang*) exercising jurisdiction so that Felix can benefit from those perceived tactical advantages in the BC courts undermines the proper functioning of the justice system.

Wang at para. 60

69. In short, the U.S. is the more appropriate forum to adjudicate the patent dispute. Dapit and the court should have the benefit of full pleadings and a full record, both of which are provided for in an action, so that an application can be brought and the court can make that assessment, if necessary. There is no injustice in requiring Felix to file a claim as any other litigant must.

70. In sum, Dapit should be afforded the procedural rights inherent in an action, including document and oral discovery and, if necessary, the ability to compel witnesses, to enable a full defence and to properly test any evidence advanced through Felix's witnesses. The truncated *CCAA* adjudication proposed by Felix—which dispenses with discovery, relies solely on affidavit evidence, and imposes on the court and Dapit a constrained hearing—fails to provide these protections and, in doing so, denies Dapit natural justice and a fair opportunity to defend the impugnment of its ownership of the Patent Application on the merits. The prejudice is not just to Dapit, as stated above—it is also to the court's truth-seeking and adjudicative function.

(iii) Litigating the Patent Dispute in These Proceedings is Unfair to Other Litigants

71. It would be fundamentally unfair to permit Felix to return to these proceedings and jump the adjudication queue while other litigants await scarcely available court dates. Felix's claim is no more urgent than the claim of any other person who seeks the aid of the courts. But other

litigants must follow the rules by commencing an action and proceeding to resolution under the rules of court. There is no principled reason to afford Felix special treatment.

72. In sum, the interests of justice favour the Patent Dispute being heard in an ordinary civil action, not within these *CCAA* proceedings. To be clear, that would not preclude Felix from seeking to have the dispute heard summarily, as the *Rules* provide for summary procedures where appropriate. Rather, it would ensure that the Patent Dispute is fairly decided on its merits and that no one party's rights are privileged at the expense of another's.

C. The Proposed Litigation Plan Must be Significantly Revised if the Patent Dispute is to be Determined by the CCAA Court

73. In the full alternative, if the court orders that the Patent Dispute be heard and determined in these *CCAA* proceedings, a significantly modified form of litigation order that more closely resembles the ordinary litigation process is necessary, fair, and equitable.

(i) CCAA Litigation Must Be Tailored to the Case at Bar

74. In *Walter Energy*, Fitzpatrick J. held that although claims are presumptively determined summarily within a *CCAA* proceeding, the court has discretion to direct another procedure, including a full trial. In exercising that discretion, the court must ensure "that the determination of claims is made in a manner that is just and fair to all the stakeholders." Relevant considerations include the nature and complexity of the claim and evidence, and procedural factors such as the need for oral or documentary discovery.

Walter Energy Canada Holdings, Inc. (Re), 2017 BCSC 709 [***Walter Energy***] at paras. 23–27

75. Although developed in the context of s. 20 of the *CCAA*, these principles have since been applied under s. 11 to permit the court to "fashion a 'bespoke' trial process that makes sense in the circumstances." In *Alderbridge Way*, for example, Fitzpatrick J. granted a procedural order for the litigation of claims within an ongoing *CCAA* proceeding that "substantially reflect[ed] the normal litigation process contemplated by the *Rules*," thereby preserving the "full panoply" of procedural rights that a litigant would otherwise have.

Alderbridge II at para. 36;
Mercy Falls at para. 38;
Alderbridge Way at para. 120

76. In the circumstances of this case, Dapit should also be permitted to seek security for costs. Under s. 236 of the *Business Corporations Act*, where a corporation is the plaintiff in a "legal proceeding" and it appears unable to pay the defendant's costs if unsuccessful, the court may require security (failing which the proceeding may be stayed).

Business Corporations Act, S.B.C. 2002, c. 57 at s. 236

77. On a s. 236 application, the applicant must establish a *prima facie* case that the plaintiff corporation would be unable to satisfy a costs award if its claim fails. Dapit should be permitted to bring such an application if the Patent Dispute proceeds here (that is, subject to the jurisdiction issues). While Felix has not provided particularized evidence of post-restructuring attachable assets in B.C., Mr. Cole's evidence portrays a "pre-revenue" business in "urgent" need of external financing, suggesting Felix may be unable to satisfy a costs award.

Integrated Contractors Ltd. v. Leduc Development Ltd., 2009 BCSC 965 at para. 11;
Cole #6 at para. 19

78. Further, as noted above, even if the Patent Dispute is litigated within the *CCAA* proceedings, Dapit should be afforded the opportunity to bring its territorial competence and *forum non conveniens* objections.

(ii) Felix's Proposed Litigation Plan is Inadequate

79. The Patent Dispute is complex, both factually and legally. It engages jurisdictional concerns, foreign law, intricate commercial agreements, and numerous actors whose willingness to cooperate is uncertain. To mount a complete defence and fairly protect its interests, Dapit is entitled to a procedural order that substantially reflects the normal litigation process and preserves the "full panoply" of procedural rights available in an ordinary civil action.

80. As well, Felix's claim that Dapit is not the rightful owner under U.S. law of the U.S. patent application, and Felix is, makes likely a counterclaim against Felix based on unjust enrichment. The counterclaim would restore to Dapit, were Felix's claim to succeed, the benefit resulting from the expenditures by Dapit to maintain and enhance the value of the U.S. patent application.

81. Felix's litigation plan fails to preserve such rights. It is inadequate and unsupported by evidence showing why the court should jettison standard litigation processes routinely (and successfully) used to determine disputes over ownership of assets.

82. The so-called "Proposed Litigation Plan" purports to dispense with: (i) pleadings, including provisions for a counterclaim; (ii) all document discovery; (iii) oral examinations for discovery; (iv) notice and a process for expert evidence; (v) any *viva voce* evidence, before knowing what the live issues for determination will be; and (vi) necessary early interlocutory applications on jurisdiction and, subject to that, security for costs.

83. Felix offers no persuasive rationale for its Proposed Litigation Plan and instead puts forward bald and conclusory assertions that do not withstand scrutiny. For example, Felix goes so far as to claim that an expedited proceeding that maintains procedural fairness is "a luxury not offered in traditional litigation." Felix evidently is unaware of Rule 9-7 of the *BC Supreme Court Civil Rules*, an access to justice initiative first brought into force in B.C. in 1983 as Rule 18A of the former *Rules of Court*.

84. As this court stated a decade ago, "Summary trial applications have been commonplace in civil and family litigation in BC for over 30 years [now 40 years as of 2025]." What is now Rule 9-7 provides "for the early resolution of many cases without the costs and delays associated with a full trial." As stated by Griffin J. (as she then was), the procedure has become "widely used in BC for all sorts of disputes," including complex cases (such as the recent constitutional challenge before the Chief Justice to the *Legal Professions Act*). Griffin J. also pointed out that "hybrid" trials, where the direct evidence of witnesses is put before the court by way of affidavit but then witnesses are subject to cross-examination, potentially before the chambers judge, are within the scope of the summary trial. And Griffin J. observed in *Bilfinger* that "the approach to summary trials in BC … is entirely consistent with the observations in *Hryniak* … including the concept of proportionality."

Greater Vancouver Water District v. Bilfinger Berger AG, 2015 BCSC 485 [***Bilfinger***] at paras. 51–52 and 77

85. Summary trials, in suitable cases, achieve all of that without, as Felix would do here, depriving the parties, and the court, of the benefits of pre-trial processes that define and focus the issues, such as pleadings and pre-trial discovery. As noted by Griffin J. in *Bilfinger*, citing a Court of Appeal decision, "in considering proportionality <u>one must not lose sight of the ultimate goal which is to determine cases on the merits justly</u>."

Bilfinger at para. 72 (emphasis added)

86. Felix's position does not merely lose sight of that ultimate goal; it appears crafted to prevent a just determination on the merits.

87. Felix offers no adequate evidentiary foundation for the extraordinary position it advances. The only evidence proffered is an anemic, conclusory and unsubstantiated single sentence in Mr. Cole's sixth affidavit that, "while the Patent Claim remains outstanding, third parties have been unwilling to invest in Felix." The court properly gives no weight to such vague, self-serving, and conclusory statements. What third parties, when were they approached, what is the magnitude of the proposed investment, what understanding do they have of the "Patent Claim," what other sources of financing has Felix pursued? The court knows none of this. There is no evidence from any such third party, and it was Felix's burden to lead that evidence with its application if it wished the court to give this consideration any weight.

Cole #6, para. 19

88. Pleadings are not a mere inconvenience to be dispensed with on the whim of a party seeking shortcuts. The issues raised by Felix's claim to a U.S. company's ownership of a U.S. patent application are complex. Pleadings will enhance and not detract from the proper and just adjudication of those issues. As stated by Voith J.A. in a recent Court of Appeal judgment, pleadings "are foundational:"

> [21] Pleadings are foundational. They guide the litigation process. This is true in relation to the discovery of documents, examinations for discovery, many interlocutory applications and the trial itself.
>
> [22] Pleadings also give effect to the underlying policy objectives of the *Rules*, which are to ensure the litigation process is fair and to promote justice between the parties. They enable the parties and the court "to ascertain with precision the matters on which parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision".
>
> [23] For the court, pleadings serve the ultimate function of defining the issues of fact and law that will be determined by the court.

Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc., 2021 BCCA 362 [***Mercantile***] at paras. 21-23 (emphasis added; citations omitted)

89. A proper notice of civil claim allows the defendant to identify the claim it must address and meet and also advances the fairness of the pre-trial process and of the trial.

Sahyoun v. Ho, 2013 BCSC 1143 at paras. 18–19

90. Felix's Proposed Litigation Plan seeks to substitute a notice of application and application response for a notice of civil claim and response to civil claim, respectively. Felix offers no insight into the contents of such documents and no explanation for how they could substitute for proper pleadings. Under the *BC Supreme Court Civil Rules*, a notice of application and application response is not a "pleading," as defined. As the Court of Appeal stated in *Mercantile*, the *BC Supreme Court Civil Rules* prescribe "comprehensive and prescriptive" requirements for pleadings, and these "formal and content-based requirements are neither anachronistic nor technical. Instead, they are necessary and serve to further the purposes of the *Rules.*" Felix offers no basis for the court to conclude that its claim can be tried justly and proportionately without any pleadings whatsoever.

Mercantile at para. 20;
BC Supreme Court Civil Rules at R. 1-1(1)

91. Pleadings are especially necessary where, as here, the claim involves foreign parties and elements of foreign law. As a starting point, and as explained above, Rule 4-5 requires that an originating pleading served outside B.C. without leave state, by endorsement in prescribed form, the circumstances enumerated in s. 10 of the *CJPTA* which permit service outside of B.C.

92. Felix's proposed litigation plan also presumes to do away with all pre-trial discovery, once again offering no persuasive justification for that unusual restraint on the fact-finding process and on trial fairness. "It is trite law that the fullest disclosure of relevant documents is essential to the trial process."

Bains v. Bhandar, 1999 BCCA 32 at para. 55 *per* McEachern C.J.B.C., concurring (result varied on reconsideration, but without affecting this point: 2000 BCCA 466).

93. Felix offers no evidentiary foundation for a conclusion that McEachern C.J.B.C.'s observation should be ignored in this case. On the contrary, even a cursory consideration of the issues in the Patent Dispute point to the importance of document discovery. Among the necessary subjects of discovery are the following:

a. Felix's notice of application refers only to the assignment agreement dated January 5, 2024. Felix is silent on the assignment agreement executed by Felix's co-CEOs, Owen Newport and Kim Fleury, the prior month, on December 20, 2023. Felix's records concerning both documents will be material.

b. In paragraph 17 of Cole #6, Mr. Cole deposes, in qualified terms that render his evidence on the point of limited value, if admissible at all, to his "belief," "so far as [he is] aware," as to Mr. Hall's signing authority. Especially given the unsatisfactory state of Mr. Cole's evidence on the point, there will need to be discovery on that issue which, having overlooked the December 20, 2023 assignment agreement, appears to be central to Felix's position.

c. At paragraph 18 of Cole #6, Mr. Cole asserts, without corroboration or explanation, that the "USPTO requires confirmation of Felix's ownership." Why that might be so is neither stated nor self-evident, given Mr. Cole's prior evidence, in paragraph 15, that the USPTO "transferred ownership of the [patent application] from Felix to Dapit" in 2024. This is another area for necessary discovery.

d. Another material subject for discovery will be Felix's communications about ownership of the Patent Application with the third parties referred to in para. 19 of Cole #6: What has Felix said to such third parties about the basis on which Felix claims ownership?

94. As another example of the incompleteness of Felix's proposed litigation plan, there is no consideration of the need for expert evidence in a case where elements of foreign law are clearly in play. That consideration reinforces the need for pleadings to define the issues with precision and necessitates a timeline for expert evidence.

95. Finally, as explained above, at an early stage the process needs to provide for the bringing of applications on jurisdiction, and subject to the outcome of that, for security for costs.

(iii) Dapit's Proposed Litigation Process

96. For the reasons discussed above, should this court determine that these *CCAA* proceedings are the proper procedural vehicle for the hearing and adjudication of the Patent Dispute, Dapit proposes a litigation process on the following terms, with precise timelines to be established by subsequent mutual agreement of the parties, subject to the availability of the court, as applicable:

a. Felix files and serves notice of civil claim;

b. Dapit files and serves a jurisdictional response;

c. Hearing of a jurisdiction application before this court;

d. Subject to the outcome of the jurisdiction application, Dapit files and serves a response to civil claim and counterclaim;

e. Felix files and serves a response to counterclaim;

f. Dapit brings application for security for costs;

g. Hearing of Dapit's security for costs application before this court;

h. The parties conduct document discovery;

i. The parties conduct oral examinations for discovery;

j. The parties exchange expert evidence;

k. This court holds a trial management conference to address the mode of trial; and

l. A trial or summary trial is held before this court.

PART 6: MATERIAL TO BE RELIED ON

1. Affidavit #3 of Andrew Clough

2. The pleadings and proceedings filed herein.

3. Such other materials as counsel may advise and this Honourable Court may permit.

Dated: October 28, 2025

Lawyer for Dapit NA, LLC
Craig Dennis, K.C./Owen James/Simon Lusztig

THIS APPLICATION RESPONSE is prepared and delivered by Craig Dennis, K.C., Owen James and Simon Lusztig of the firm Dennis Dawson James Aitken LLP, solicitors for Dapit NA, LLC, whose place of business and address for service is 770-666 Burrard Street, Vancouver, BC, V6C 2X8. Telephone: (604) 659-9479; Facsimile: (604) 282-7824; Email: cdennis@djacounsel.com/ojames@djacounsel.com/slusztig@djacounsel.com