

0144/92

PATENTS ACT 1977

IN THE MATTER OF

Patent Application No 8720581

in the name of Crane Ltd

DECISION

Application no 8720581, entitled "A Chart", was filed in the name of Crane Ltd on 2 September 1987. In an Official letter dated 29 November 1990 setting out the first report under section 18(3) of the Patents Act 1977 ("the Act"), the examiner objected that all eleven claims did not relate to a patentable invention in that they concerned matter which is excluded from being patentable by section 1(2)(a) and/or (d). The examiner also objected that, contrary to section 1(1)(b), the same claims did not include an inventive step having regard to the disclosure of four cited specifications.

In letters of 29 May and 13 December 1991, the applicant's agent, Mr D J Crouch of Bromhead and Co, offered no amendment and disputed both objections, which the examiner nevertheless maintained in further Official letters dated 13 August 1991 and 9 January 1992. In this last Official letter, however, the examiner modified the objection under section 1(1)(b), citing references from two textbooks instead of pursuing the previously cited specifications. The examiner also renewed the offer made in both earlier Official letters that a Hearing be appointed to resolve matters. With his letter of reply of 16 January 1992, the agent submitted amendments to the specification and requested that a Hearing be appointed if they did not dispose of the objections.

The examiner considering that the amended claims were also open to objection under sections 1(1)(b) and 1(2), a Hearing before me was set for 17 February 1992. However, in a letter dated 10 February following a telephone conversation with me on the same day, the agent informed the Office that the applicant did not wish to attend or be represented at the Hearing, and requested that I come to a decision on the basis of the papers already on file. In this

letter he added that the applicant would be prepared to accept any main claim I might propose.

Since the Hearing was therefore held unattended, I should perhaps make quite clear at the outset that in reaching this decision I have given the most careful consideration to the various submissions made in the agent's letters. In particular, although the arguments put forward before 16 January 1992 were made in respect of the unamended claims, I have regarded them as also having been put in support of the amended claims to as great an extent as it is possible so to do.

The application in suit relates to a chart, which is defined in the amended form of claim 1, the only independent claim apart from omnibus claim 6, in the following terms:

"A chart comprising a valve selection graph or a valve size checking graph juxtaposed to a further fluid system parameter checking or selection graph, in which the two graphs have a common flow rate scale, in which the valve selection graph or valve size checking graph is in the form of a nomogram, having a valve head loss scale substantially parallel to but spaced apart from the flow rate scale, and a flow coefficient scale substantially parallel to both the head loss scale and the flow rate scale such that a single line drawn through the desired values of flow rate and head loss gives the related flow coefficient value, in which chart bars, substantially parallel to all three scales, are superimposed on the valve selection nomogram, their ends coinciding with positions on the flow coefficient scale corresponding to the extremes of adjustment of a given regulating valve, at its narrowest and widest settings respectively, and in which the further fluid system parameter graph is a pipe loss checking graph, or a pipe size selection graph, or a differential signal indicator graph, having a pipe loss scale or a pressure differential scale perpendicular to the flow rate scale, and lines which are indicative of the relationship between pipe loss and flow rate for different respective pipe sizes, or which are indicative of the performance characteristics of various different flow measurement devices of different respective orifice sizes, whereby, when the chart is in use, a first line drawn on the further fluid system parameter graph perpendicular to the flow rate scale through a point thereof

which represents a desired flow rate value indicates, by the intersection between the drawn line and one or more of the lines of that graph, the required pipe size, or the required flow measurement device, a second line, drawn on the nomogram, connecting the point of intersection between the said first line and the flow rate scale with a point on the valve head loss scale of the nomogram representing a desired head loss value, indicates by its position of intersection with the flow coefficient scale the required flow coefficient value, and a third line drawn through the latter said position perpendicular to the flow rate scale provides an indication, by its intersection with one or more of the said chart bars, the possible regulating valves which can be used to meet the said desired values of flow rate and valve head loss".

The examiner's objections, maintained against this and all the other amended claims, arise under sections 1(1)(b) and 1(2) and are to a considerable extent linked. Before I go more deeply into the details of the present case, I think it appropriate for me to consider what the nature of this link is and how it affects the way I should view the present claims.

Section 1(1)(b) of the Act reads:

"A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say -

- (a) ...
- (b) it involves an inventive step;
- (c) ...
- (d) ...

and references in this Act to a patentable invention shall be construed accordingly."

Section 1(2) reads:

"It is hereby declared that the following (among other things) are not inventions for the purposes of this Act, that is to say, anything which consists of -

- (a) a discovery, scientific theory or mathematical method;

- (b) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever;
- (c) a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer;
- (d) the presentation of information;

but the foregoing provision shall prevent anything from being treated as an invention for the purposes of this Act only to the extent that a patent or application for a patent relates to that thing as such."

There have been a number of decided cases in which the requirements of one or both of these two sections have been considered. Perhaps two of the most relevant and important judgments so far as the present case is concerned are the those of the Court of Appeal in Genentech Inc's Patent [1989] RPC 147 and in Merrill Lynch's Application [1989] RPC 561, both of which have been referred to in correspondence by the agent in support of the patentability of the invention claimed in the present case. In Genentech, the Court held, among other things, that a patent which claimed the practical application of a discovery did not relate to the discovery as such and patentability was not excluded by section 1(2), even if the practical application might be obvious once the discovery had been made. The Court also held that the reasoning (but not the conclusion) of Falconer J in the Patents Court judgment of the Merrill Lynch case ([1988] RPC 1) was erroneous insofar as he held that an invention was unpatentable if the inventive step was contributed only by matter excluded under section 1(2).

The Genentech judgment was considered by the Court in hearing the appeal of the Merrill Lynch case. The position in regard to the operation of the exclusions of section 1(2) is summarised by Fox LJ on page 569 of the latter in the following terms:

"The position seems to me to be this. Genentech decides that the reasoning of Falconer J is wrong. On the other hand, it seems to me to be clear, for the reasons indicated by Dillon LJ, that it cannot be permissible to patent an item excluded by section 1(2) under the guise of an article which contains that item - that is to say, in the case of a computer program, the patenting of a conventional computer containing

that program. Something further is necessary. The nature of that addition is, I think, to be found in the Vicom case where it is stated: "Decisive is what technical contribution the invention makes to the known art". There, must, I think, be some technical advance on the prior art in the form of a new result (eg, a substantial increase in processing speed as in Vicom).

Now let it be supposed that claim 1 can be regarded as producing a new result in the form of a technical contribution to the prior art. That result, whatever the technical advance may be, is simply the production of a trading system. It is a data-processing system for doing specific business, that is to say, making a trading market in securities. The end result, therefore, is simply " a method .... of doing business", and is excluded by section 1(2)(c). The fact that the method of doing business may be an improvement on previous methods of doing business does not seem to me to be material. The prohibition in section 1(2)(c) is generic; qualitative considerations do not enter into the matter. The section draws no distinction between the method by which the mode of doing business is achieved. If what is produced in the end is itself an item excluded from patentability by section 1(2), the matter can go no further. Claim 1, after all, is directed to "a data processing system for making a trading market". That is simply a method of doing business. A data processing system operating to produce a novel technical result would normally be patentable. But it cannot, it seems to me, be patentable if the result itself is a prohibited item under section 1(2). In the present case it is such a prohibited item."

The Vicom case to which Fox LJ refers is Decision T208/84 of the European Patent Office's (EPO) Technical Board of Appeal in Vicom Systems Inc's Application OJEPO 14/1987, in which the Board decided that even if the idea underlying an invention may be considered to reside in a mathematical method, a claim directed to a technical process in which the method is used does not seek protection for the mathematical method as such.

Another relevant decision, to which the agent in the application in suit refers, is T26/86 of Koch and Sterzel OJEPO 1-2/1988, in which the EPO Technical Board of Appeal considered on page 23 "an ordinary computer program used in a general-purpose computer ... to be a

program as such and hence excluded from patentability ... but if the program controls the operation of a conventional general-purpose computer so as technically to alter its functioning, the unit consisting of program and computer combined may be a patentable invention". The Board also opined that in deciding whether or not an invention is excluded from patentability, the invention must be assessed as a whole, it being neither necessary or practical to attempt to give a relative weighting to its technical and non-technical features.

Although these authorities are not concerned with precisely the same mix of exclusions as arise in the present case, they do, I think, establish general principles concerning the consideration of matter excluded as such from patentability under section 1(2) and the circumstances in which it could contribute an inventive step. In particular, they indicate, in my view, that in relation to a claim containing at least some matter which would be excluded as such by section 1(2), it is necessary to consider the claim as a whole, and determine whether or not there is defined in the claim a technical advance on the prior art in the form of a new result and whether or not that result is itself excluded by section 1(2).

With these principles in mind then, I now turn to the specifics of the present case.

First of all, I note the statement on page 1 of the application in suit about prior charts. There it is acknowledged that:

"One such chart may comprise a valve selection graph or valve size checking graph which enables an engineer to determine which of a number of different valves having different orifice sizes, or different ranges of orifice size in the case of a regulating valve, is most suitable for the system he has in mind. Another such chart may enable him to check on pipe head loss for a selected flow rate in such a system.

Hitherto the values of these parameters which an engineer needs to know in designing a domestic water circuit, for example, have been ascertained by finding appropriate charts in a whole book of different charts, and by using the selected charts to provide the answers sought. This procedure is time consuming and error prone. The problems are greater for regulating valves which are combined with a flow

measurement device, when both the valve and measurement device have to meet the design criteria.

The present invention seeks to provide a remedy."

The objection of lack of inventive step was, as I have said, initially based on the disclosure of four cited specifications, but these were not pursued in the Official letter of 9 January 1992, references from two textbooks being preferred instead to support an assertion originally made in the Official letter of 13 August 1991 that the use of a common scale when drawing or printing more than one graph on a single sheet is very well known when the graphs are of related subject matter and need to be used together. The first two references are drawn from the 1983 reprint of "Fluid Mechanics" by Douglas/Gasiorek/Swaffield. Figure 1.5 on page 8 shows a pair of graphs arranged one above the other with their vertical axes, respectively representing interatomic force and potential energy, aligned. Each graph has the same quantity, in this case interatomic separation, plotted along respective parallel horizontal axes which are evidently drawn to the same scale as a dashed vertical line is printed to show the corresponding potential energy and force at a given separation. On page 417, Figure 14.4 shows a similar arrangement of two graphs, but in this case the quantities plotted are specifically concerned with flow in pipes, as is of course the application in suit.

The third reference comes from Holzbock's "Automatic Control - Principles and Practice" of 1958. In Figure 5-7 on page 70, two graphs are situated one above the other, their aligned vertical axes representing magnitude ratio and phase angle respectively, their horizontal axes being parallel and both representing frequency and marked in cycles per minute to the same scale. Pairs of parallel dashed horizontal lines on the upper graph are linked to similar lines on the lower one by a pair of parallel vertical lines spanning the two graphs to link corresponding magnitude ratio, frequency and phase angle readings.

The chart which is defined in claim 1 of the application in suit, as amended, comprises inter alia two graphs having "a common flow rate scale". Although this expression was not the subject of an objection by the examiner, it is not absolutely certain in my mind which of two possibilities, both consistent with the particular embodiment, is intended. It could


conceivably connote either a single axis representing flow rate shared by the two graphs, or two parallel axes, one on each graph, both representing flow rate and graduated in the same scale. Claim 1 makes better sense under the former interpretation, in which case line 26 on figure 1 of the application in suit would be regarded as constituting the "common flow rate scale" in the particular embodiment. In this event, the line 14 may be regarded as an ancillary flow rate scale which is preferably provided but is not essential, not being mentioned in claim 1. On either interpretation, however, I consider the concept of producing a chart comprising two (or more) graphs with a common scale, which forms one aspect of claim 1, to be disclosed in the cited references. Bearing in mind the nature of the references, that is extracts from two educational textbooks, I believe it is reasonable for me to conclude that this concept was well known in the engineering field at and before the filing date of the application in suit. If the expression "common scale" is taken to imply two axes having the same graduated scale, all three cited figures clearly show that. If, as I have said seems more likely, the expression implies one shared axis, the cited figures can also be seen to show it, the lower of the two horizontal axes in each case simply corresponding to line 14 of the present particular embodiment, and being superfluous for the purposes of claim 1.

Of course the amended claim 1 which I have to consider consists of more than merely a chart comprising two graphs having a common scale. So far as what I shall call the structure or composition of the chart itself is concerned, as opposed to the information it contains or the way in which it may be used, which I shall come to later, there are as I see it two further features in the claim. The first is that one of the graphs "is in the form of a nomogram" having three axes or scales, including the common (flow rate) scale, each representing a different quantity. A "nomogram" is defined in Chambers Dictionary of Science and Technology (1971) as "a chart or diagram of scaled lines or curves for facilitating calculations". The dictionary goes on to say that "those comprising three scales in which a line joining values on two determines a value on the third are frequently called alignment charts". It therefore seems clear to me that the nomogram defined in claim 1 is itself of this known type, the three scales here representing valve head loss, flow rate and flow coefficient, so that a line drawn through desired values of head loss and flow rate gives the related flow coefficient value.



The second further feature resides in what are in the application in suit called "chart bars", which are superimposed on the nomogram. No evidence has been adduced by the examiner to support the contention that such bars are well known, but equally the agent has not made any submission or assertion that their addition to claim 1 at amendment was considered to imbue it with an inventive step. While I am as a matter of principle cautious of saying so in the absence of evidence or argument, I nevertheless believe that it is a matter of common knowledge in the field of engineering to use this form of representation to illustrate ranges of values characteristic of different entities.

Thus, it seems to me that the three fundamental structural features of the chart as claimed in claim 1, namely the drawing of two graphs with a common scale, a three-graph nomogram, and chart bars, are each well known, even commonplace, means of representing technical information in a form that is useful for a working engineer. I do not therefore believe that, taken separately or in combination, they suggest that the structure of the chart claimed in claim 1 involves an inventive step. This does not of course constitute a final conclusion as to the allowability of claim 1, but it is a point of some significance. In coming to it, I have of course carefully considered the agent's arguments on the inventiveness of the structure of the chart. The agent's letter of 29 May 1991 dealt with inventive step in the context of the four specifications which had been cited by the examiner at that stage of the proceedings. As those citations are not now being pursued, I need only go into what is said to the extent to which the comments could also bear on the inventiveness of the amended claim 1 in the light of the references now cited, although I am bound to remark that the agent has in fact made no explicit comment on those references. The agent asserts on page 4 of his letter of 29 May 1991 that "engineers have hitherto spent much time gleaning data hitherto presented in books to work out what valves should be used in a given situation", and argues that "the fact that so much time has hitherto been used in this way implies that there has been a long felt want for some sort of device such as the chart which is the subject of the present application, which in turn, it is submitted, suggests that there must be invention in the chart" (my added emphasis). In his letter of 13 December 1991, the agent draws attention to the judgments in the cases of American Cyanamid Company v Ethicon Ltd [1975] RPC 513 and Joseph Lucas (Batteries) & Another v Gaedor & Others [1978] RPC



297 in support of his argument. Both of these judgments are long, and the agent quotes but the one short passage, from page 358 of Lucas v Gaedor, which reads:

"If an invention has resulted in the solution of a problem which has been troubling industry for years and achieves immediate success upon its introduction, then the suggestion after the event that the step was obvious inevitably rings a little hollow".

I find myself unconvinced by the agent's submissions on this point. Although page 1 of the application in suit refers, as I have already noted, to the procedure of using existing charts as being "time consuming and error prone", this unsupported assertion does not in my view in itself establish the existence or recognition of a long-felt want, that is a need which has troubled industry for years. My doubt is compounded by the absence of evidence, or indeed any substantial argument from the agent, that the present chart has satisfactorily met any want that may have existed, or that any commercial success has ensued, notwithstanding that in the light of Lucas v Gaedor commercial success is not essential to confirming an inventive step to be present. I am not therefore persuaded that an inventive step can be established on the basis of a long-felt want.

As I have noted, only one of the cited references relates to a chart presenting information about fluid flow in pipes, and the chart as claimed in claim 1 of the application in suit is clearly concerned with such information, since its purpose is to assist engineers in selecting or checking which of a number of valves having different orifice sizes, or a range of different orifice sizes in the case of a regulating valve, is the most suitable for the system in mind having regard to the corresponding head losses and flow coefficients. From page 1 of the present specification, where it is broadly acknowledged that separate charts containing the relevant information have previously been available in a book, I infer that the information itself is not novel. However, I do not attach an inordinate weight to this inference and do not believe that it is material to my decision in the present case whether or not the information is itself new. The presence in claim 1 of a number of alternatives as to the precise information presented strengthens my view that the exact nature of the information is not critical. Section 1(2)(d), which I recited in full earlier, makes clear that "anything which consists of the presentation of information" is not an invention for the purposes of the

Act, though "only to the extent that a patent or application for a patent relates to that thing as such". Thus, that part of the claim which details the information per se represented in the chart can be identified as matter excluded as such from patentability by section 1(2)(d). It therefore seems to me that the question I now have to consider is whether this excluded matter can nevertheless contribute the inventive step required to make the invention of claim 1, ie the chart, patentable.

The agent's arguments on the applicability of section 1(2)(d) and the scope of the exclusion from patentability of the presentation of information are based on a number of authorities, including Merrill Lynch, Genentech and Koch and Sterzel which I have considered earlier (together with Vicom) and from which I have distilled what I see as the principles to be applied in this case. In his letter of 29 May 1991, the agent argues that claim 1 specifies, contrary to the examiner's assertion, a technical function "in that the chart enables a valve selection or valve-size checking to be made". However, it seems to me that to say simply that a chart has a technical function in that sense is to do no more than state its obvious and inherent purpose in view of the nature of the information it contains. Although the information is clearly in a sense technical, and the chart is used to come to a decision on a technical question, this does not to my mind approach the key issue of whether the invention provides a technical advance in the form of a new result.

The agent does not argue what technical advance in the form of a new result arises in the specifics of the present case. On page 1 of the application in suit and on page 4 of the agent's letter of 29 May 1991, which I have already considered in relation to the argument of long-felt want, it is contended that the present chart affords the advantages of being quicker and less error prone to use. However, mere advantage is not sufficient and does not equate to a technical advance on the prior art in the required sense. It is to be expected that improved performance of some sort will accompany many developments. I do not understand Fox LJ to be saying in Merrill Lynch that a computer running a particular program is patentable merely because it executes more quickly than prior art programs. In the case of Vicom, it was not the mere improvement in processing speed which was crucial, but the fact that the improvement occurred in a technical field. In other words, the

allowability of Vicom resulted from the particular field in which the result lay, namely the technical field of image enhancement, rather than from the result itself.

The agent argues on page 2 of his letter of 13 December 1991 that " the application relates to a novel arrangement of information and not as such to a mere presentation of information or a mathematical method". To my mind, the advance in the present case can be regarded as being in the way the information is presented, either so as to make it easier, quicker and more reliable to use, or so as to facilitate mathematical calculations which is its inherent function. The former produces a result which is an improved presentation of information, the latter a method of calculating a desired valve size. These results lie in fields which are respectively excluded from patentability by sections 1(2)(d) and (a), and cannot in my judgment be regarded as technical ones. The structural components of the chart are put to their expected and normal uses and these are essentially unchanged by the particular information which the chart contains.

The agent also cites in his letters of 29 May and 13 December 1991 several cases decided under the Patents Act 1949. The first is Fishburn's Application 57 RPC 245 (1940) in which a novel arrangement of printing on a ticket served a mechanical purpose in that information was not lost when the ticket was torn and was held to be patentable. Although the agent suggests that a close parallel exists between that case and the application in suit, I am not persuaded of it. In that case, the arrangement of print on the ticket was important because it served a function when the ticket was torn. In the present application, by contrast, information of a technical character is presented in such a way that it may be read and understood and a technical decision reached, but notwithstanding that it can be done quickly and correctly as the agent contends, this does not amount to a technical effect beyond the excluded one of the mere presentation of information.

Drawing a comparison with Pitman's Application [1969] RPC 646, the agent suggests that "arguably the way a person pronounces words is less of a technical function than the way an engineer would use a chart ... in so far as the chart assists him in making a technical decision". Again, I fail to see a technical effect demonstrated by the chart. Its information

is read and a decision made; the mere insertion of the adjective "technical" does nothing to diminish the operation of the exclusion of section 1(2)(d).

Rhodes' Application [1973] RPC 243 concerned a speedometer having two scales, one marked "impact speed", and was held to be a manner of new manufacture under section 101 of the Patents Act 1949. If that case were to arise under the current law, it would apparently now stand or fall according to whether the provision of a second scale were itself novel and inventive. If it were held that such a scale was known or obvious, then the invention could not be saved by the nature of the scale, since this would constitute the mere presentation of information. The conclusions I have reached above seem to me fully in line with the judgment in Rhodes' Application.

In addition to the structure of the chart, and the information it represents, there is a third aspect to claim 1, that is the way in which the chart may be used, which is set out on page 12 of the amended specification in the passage of the claim following the phrase "...whereby, when the chart is in use, a ..." at line 2 of that page. In this passage, use of the chart is outlined in terms of drawing certain specified lines on it so that particular values of different quantities can be read off. However, it is absolutely standard practice to draw lines on graphs between points or other lines that are related or of interest. This is basic to the use of graphs, and especially nomograms, and can hardly be thought to contribute towards inventive step. Furthermore, I have to say that it would not seem to me necessary in many cases actually to draw the lines on the chart as opposed to constructing them in the mind from study of the chart with the naked eye. This calls into question the clarity of the scope of the limitation, if any, introduced into the claim by this passage. Notwithstanding this observation, however, I do not regard the passage as imposing any meaningful limitation on the claim, which is, after all, directed to "a chart" rather than, say, "a method of using a chart". All that is necessary as a consequence of this passage is that the chart be capable of being used in the manner indicated.

However, even if I were to consider the passage as implying some limitation, I would not find myself able to regard it as forming the basis of an allowable claim, notwithstanding the comments made by the agent in his letters. The examiner pointed out in the first section

18(3) report that a new method of calculation as such is not patentable under section 1(2)(a). Since the matter of the passage amounts to no more than an indication of how the chart may be used in a method of calculation, it would in itself be excluded as such from patentability by section 1(2)(a). Furthermore, when considering the claim as a whole, this matter would not contribute to the production of a technical advance on the prior art in the form of a new result. In this regard, I have in mind of course the remarks of Fox LJ which I have already quoted, and in particular his statement that "it cannot be permissible to patent an item excluded by section 1(2) under the guise of an article which contains that item".

In further support of his submission that the use to which the chart is put by virtue of the information it contains contributes an inventive step, the agent refers to Decision G2/88 of the Enlarged Board of Appeal of the EPO in the case of Mobil III OJ/EPO 4/1990, in which it was held that a claim to the use of a known compound for a particular purpose, which purpose is based on a technical effect described in the patent, should be interpreted as including that technical effect as a functional technical feature and that the claim was not open to an objection of lack of novelty, provided that this technical feature had not previously been made available to the public. In his letter of 13 December 1991, the agent contends that the present graphs "have never been used in the way described in the present application and therefore certainly can be regarded as a new use as understood in the Mobil III case".

While I must of course pay the greatest respect to the decisions of the European Patent Office, I have to say that there appears to be some divergence at this time in regard to the question of the novelty of new uses of known compounds between practice before the EPO and decisions of its Technical Boards of Appeal on the one hand and practice before the UK Patent Office and the judgments of British Courts on the other, to such an extent that I do not feel bound to follow this Decision. However, even if this were not the case, I would be obliged to observe that the circumstances in that case and the present one are rather different. The application in suit is concerned not with a new use of a known compound but with a chart claimed as such but which can be used, as I have said, in a way that is not unusual or unexpected.

Thus, having fully considered all the circumstances of the case and the arguments submitted by the agent, I do not discern in the chart as claimed in the amended form of claim 1, when viewed as a whole, a technical advance on the prior art in the form of a new result, other than a result itself lying in a field excluded by section 1(2). I therefore find that the invention which is the subject of that claim does not involve an inventive step as required by section 1(1)(b), and that the claim is not saved by one or both of the information presented, being excluded as such from patentability by section 1(2)(d), or the way in which the chart may be used.

Turning to the appendant claims, claim 2 further specifies the information presented in the chart, claim 3 relates to the conventional device of using logarithmic scales to yield straight-line graphs, claim 4 specifies the provision of a further set of chart bars, and claim 5 provides three graphs having a common scale. None of these claims, taken in conjunction with claim 1 either separately or together, would yield a claim which in my view would be allowable in the light of my reasoning above in respect of claim 1. Furthermore, having given detailed consideration to the disclosure of the specification as a whole, I am unable to conclude that there is any feature mentioned which is capable of doing so. Although the description contains a good deal of information and calculation, it does not afford any matter which could contribute an inventive step. I therefore find that omnibus claim 6 is also unallowable and that, despite the applicant's stated willingness to accept any allowable main claim, there is nothing in the specification on which such a claim could be supported. In doing so, I should say that I have taken due note of the request in the agent's letter of 29 May 1991 that on the questions of obviousness under section 1(1)(b) and patentability under section 1(2) the benefit of any doubt should be exercised in favour of the applicant. However, no significant element of doubt exists in my mind as to the conclusions I should reach.

For the reasons I have given, I support the examiner's objections that the invention claimed in all the claims does not involve an inventive step, contrary to section 1(1)(b), when considered in conjunction with the exclusions from patentability of section 1(2). Moreover, I do not believe that it is possible to draft claims on the basis of the disclosure of the application in suit which would be allowable. I therefore refuse to allow this application to

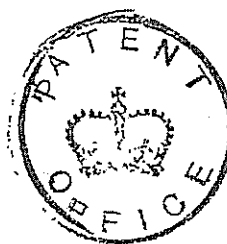
proceed. Since the application has now gone beyond its unextended period for being put in order, it follows from section 20(1) that it shall now be treated as having been refused by the comptroller at the end of that period, namely on 2 March 1992.

Since this is a substantive not a procedural matter, the time within which an appeal may be lodged is six weeks from the date of this decision.

Dated this 16 day of March 1992

S N DENNEHEY

Principal Examiner, acting for the Comptroller



THE PATENT OFFICE