

10/115(93

PATENTS ACT 1977

IN THE MATTER OF a reference under Section 8(1)

by Malcolm Withnall

in respect of patent application no GB 2242556 A

in the name of Shop-A-Long Bingo (Midlands) Limited

INTERIM DECISION

Patent application no 9005995.7 ("the GB application") was filed in the name of Shop-A-Long Bingo (Midlands) Limited on 16 March 1990, claiming no earlier priority date, and was published under section 16 of the Patents Act 1977 ("the Act") on 2 October 1991 as GB 2242556 A. On 20 March 1992 a reference under section 8(1)(a) of the Act was made on Form 2/77 and an accompanying statement by Malcolm Withnall ("the referrer") through his patent agents Craske & Co. The question referred as set out in the statement is whether the referrer:

- "(a) is entitled to be named as inventor in respect of the invention disclosed and claimed in GB 9005995.7; and
- (b) is entitled to be granted a patent for the invention disclosed in GB 9005995.7".

The relief sought is:

"an Order:

1. That the Application in question be amended to include the Referor as an inventor solely or jointly with any other inventor.
2. That the Application shall proceed in the name of the Referor solely or jointly with that of any other Applicant.
3. That Shop-a-Long Bingo (Midlands) Limited shall pay the full costs of the Referor.
4. Such other order as the Comptroller thinks fit to give effect to his determination hereunder."

In a counterstatement filed on 26 June 1992 through its patent agent, Laurence Shaw, Shop-A-Long Bingo (Midlands) Limited ("the opponent") denies each and every allegation and claim made in the statement and seeks an order that those claims be rejected with costs in its favour.

Evidence rounds before the hearing followed the usual course. The referrer filed two statutory declarations which he had made, one with exhibits MW1 to MW5, and the opponent filed one statutory declaration with exhibit WJS01 by Mr Wyatt James Stanley, who is the named inventor of the GB application and an officer of the opponent company. This then was the evidence before me at a hearing which was held on 9 July 1993 to determine the reference. At the hearing, Mr L Shaw appeared as agent for the opponent, but the referrer did not attend nor was he represented. In these circumstances I think it appropriate for me to stress that I have given the referrer's evidence no less weight or careful consideration for that.

The invention of the GB application relates to a card reader. The card reader is described in the context of the use of non-returnable coded cards in games machines. A problem in such machines is said on page 2 of the specification to arise in that once the machine has registered a credit on acceptance of a card, it has been possible to withdraw the card with a previously attached piece of string while retaining the credit. The card may then be fraudulently reused.

A particular embodiment of the invention is described with reference to figures 1 and 2. At this point I should note that the formal drawings contained in the GB application as published are not the same as the informal drawings originally filed. Only two figures, 1 and 2, were originally filed and it is to these that the description refers. Figures 4 and 5 of the published GB application closely correspond to them, but are not identical to them by virtue of having different reference numerals. Published figures 1 to 3 do not properly belong to this GB application. The examiner objected to the published drawings in the first substantive examination report under section 18(3) issued in an official letter dated 14 June 1993. At the hearing I drew the matter to Mr Shaw's attention and he accepted that amendments will have to be made in the course of prosecution of the GB application.

Referring then to the informal figures, in the particular embodiment the card reader comprises a slot 2 into which a coded card is fed in direction P. The code may be in any suitable machine readable form, but in the illustrated example it is magnetic. Inside the reader the card is constrained to move along grooves 4 shown in figure 2. A first sensor 12 (in particular an optical sensor or "opto") indicates the presence of the card to a microcomputer 14, which controls a motor to drive one of a pair of pinch rollers 16, 18 to drive the card past a head 20 which reads the code and sends signals to the microcomputer 14. If the code indicates the card is acceptable it is driven on by the rollers past a second sensor 26 (as illustrated an opto), but if unacceptable the microcomputer 14 reverses the motor to return the card. An accepted card falls into a chute 28 and onto a ramp 30 down which it slides through a slot 32 into a hopper 34. In the path of the card is one end 36 of a pivotally mounted member 38, the other end of which is normally sensed by a third sensor (an opto) 42.

The microcomputer 14 will only signal a credit on an output 44 after the card has cleared the second sensor 26 and if two other conditions have been met. First, the first sensor 12 must also be clear. If it is not, the inference is that the card is being withdrawn and an alarm condition is indicated by a signal on a line 46. Second, the third sensor 42 must first clear, suggesting that a card is entering the hopper 34, and then within a predetermined time limit again sense the other end 40 of the member 38. If the third sensor 42 does not clear within a predetermined time from the time at which the second sensor 26 clears, the inference is that a card is being held back and again an alarm condition is indicated on line 46.

If, in an attempt at fraud, a line has been attached to what is the leading edge of the card as it enters the slot 32, the line will not readily be towed around the edge 48 and the card will not enter the slot or will be delayed; also, retrieval of the card by pulling on the line will be impeded. If a line has been attached to what is the trailing edge as it enters the slot 32, pulling on the line to attempt to withdraw the card will incline the card in the slot 32 where it will jam. If the card is successfully withdrawn through the slot using a line, alignment of the card with the grooves 4 would, it is said, be difficult. If any of the described events involving the sensors takes place out of proper sequence or not within a set time limit, an alarm is signalled.

The claims of the GB application, which were present in the specification on the date of filing, read as follows:

- "1. A card reader comprising: means for constraining a card from an input slot, to a first path past a reading head; means for transporting the card along the path; means responsive to the reading head for rejecting or accepting cards according to the information read; means defining a second path located below the level of the first path and into which, in use, an accepted card falls free of the constraint, the second path leading through a slot into a hopper, the slot being of such dimensions that a card will jam therein if it is inclined significantly relative to the ramp.
2. A card reader as claimed in Claim 1, in which the second path is defined by a ramp or included [*sic*] chute.
3. A card reader as claimed in Claim 1 or 2, including means to sense the arrival of a card into the hopper and means to signal a credit only if the arrival of a card in the hopper is sensed.
4. A card reader as claimed in Claim 3, including means for detecting the direction of movement of a card in the reader, and means for signalling an alarm condition if the direction of movement next detected after signalling a credit corresponds with the card being withdrawn from the reader.
5. A card reader as claimed in Claim 3 or 4, including one or more sensors for sensing the presence of a card in the first path, the means to signal a credit responding to the arrival of a card in the hopper to signal a credit only if the or each of the sensors in the path is/are clear."

As set out earlier, part (a) of the question referred is whether the referrer is entitled to be named as inventor of the invention disclosed and claimed in the GB application. Section 7(3) of the Act defines "inventor" in the following terms:

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

To determine part (a) of the question it is therefore necessary for me to decide who was the actual deviser of the invention disclosed in the GB application.

On Form 7/77 filed on 12 June 1991, the inventor is named as Wyatt James Stanley. However, in paragraph 7 of his first declaration Mr Withnall asserts that the following features ("the disputed features") of the card reader were devised solely by him and by him alone:

"(a) The provision of a slot through which the card passes from the second path (chute) into the hopper, the slot being arranged such that a card will jam in the slot should an attempt be made to withdraw the card from the hopper via the slot ...

(b) The provision of a sensor in the hopper for detecting the arrival of a card therein, in order to signal a credit when the card arrives in the hopper. I proposed that this detector should be in the form of either (i) a pivoted member, or (ii) an opto/electronic sensor positioned at the side of the card path".

The circumstances which Mr Withnall alleges gave rise to him devising these features are broadly as follows. He asserts that at a meeting on 16 February 1990 Mr Stanley showed him a prototype card reader which had a solenoid-operated flap on the outlet of the card reader, the flap having teeth to stop the card from being pulled back. It was intended that the card should fall down a simple chute into a hopper located below the card reader. Mr Withnall says Mr Stanley briefed him to re-engineer the device with the object of reducing the manufacturing cost and improving its efficiency, and to relocate the solenoid which operated the toothed flap in the interests of compactness. A letter (exhibited at MW2) dated 22 February 1990 from Mr Withnall to Malco International, a company with which it appears Mr Stanley has some association, was intended to confirm Mr Withnall's brief. It refers to improvements to the card hopper arrangement, re-engineering the anti-fraud flap, and evaluating possible relocation of the first opto-detector. I would observe that the correspondence exhibited to Mr Stanley's declaration indicates that Mr Withnall was involved

in work on what might generally be called card-handling apparatus as early as October 1989, and does not contradict Mr Withnall's account so far.

Mr Withnall goes on to state that on his own initiative he proceeded to undertake a substantial re-design of the device. Although not an essential part of his brief, he considered that he could substantially improve on the original prototype he had been shown. Referring to reference numerals used in figure 4 of the GB application as published, he says that during the course of his work on the device he replaced the toothed flap and solenoid with an inclined member (148), which created a slot (132) at the bottom of the chute. He also claims to have added a pivoted member (138) and a sensor (140 or 142) to detect the arrival of a card in the hopper. He stresses that these ideas were his and his alone. Exhibits MW3 and MW4 are presented as copies of his original working drawings of the new design; the latter is dated 9 March 1990. Exhibited at MW5 are a later version of drawing ("the MW5 drawing") and a letter which Mr Withnall says were sent by facsimile transmission to Mr Stanley's patent agent, Laurence Shaw, on 15 March 1990. This I note is the day before the filing date of the GB application.

Mr Withnall contends that his revised drawings have quite clearly been used as a basis for figure 4 of the published GB application. In view of the objection which I have already mentioned exists to the published drawings, I prefer to draw comparison with informal figure 1, which corresponds to published figure 4. Having done so, it seems to me that the representation of that part of the device shown in detail in the MW5 drawing, namely the chute, slot and hopper-sensor arrangement, does form the basis for the corresponding part of informal figure 1. At the hearing Mr Shaw admitted that Mr Withnall was asked for the original drawings in order to incorporate them into the patent application and that they are the subject matter of MW5. He also commented that the MW5 drawing is a document sent to a patent agent (himself) in order to write a patent specification. From these remarks I infer that he does not dispute that the MW5 drawing was sent to him by Mr Withnall before the filing date of the GB application.

The opponent's short counter to Mr Withnall's assertions is to be found principally in paragraph 3 of Mr Stanley's declaration to which Mr Shaw took me. Referring to exhibited

correspondence, Mr Stanley says that Mr Withnall was consulted to solve a problem in relation to designs he, Mr Stanley, had created. Mr Withnall was required to translate the invention in Mr Stanley's ideas into design form at a level which was commercially practical. In reply Mr Withnall observes in his second declaration that Mr Stanley does not deny that Mr Withnall added the slot and sensor to the hopper.

It seems to me that the evidence firmly indicates that Mr Withnall had an involvement in the disputed features of the reader before the filing date of the GB application, but does not suggest that Mr Stanley did. In my view the opponent has adduced no evidence to suggest that the disputed features claimed by Mr Withnall were in fact Mr Stanley's ideas, or that they were derived from them. It might be expected that if, as he claims, Mr Stanley was the true deviser of these features and not Mr Withnall, he would have exhibited sketches that predated Mr Withnall's, and not *vice versa*, notwithstanding that, as Mr Shaw put it at the hearing, Mr Stanley is not a draughtsman but "a back-of-a-fag-packet drawer". Thus I am satisfied on the evidence before me at the hearing that Mr Withnall devised the features which he claims to have devised.

Although neither party drew my attention to the relevant case law on inventorship, it is I believe still as stated in the long-standing judgments in *William Rose Smith's Patent* (1905) 22 RPC 57 and *Allen v Rawson* (1845) 1 CB 551. In *Smith's Patent* at page 61 Mr Justice Buckley followed the law as stated by Mr Justice Earle in the following terms in *Allen v Rawson*:

"I take the law to be that if a person has discovered an improved principle and employs engineers agents or other persons to assist him in carrying out that principle, and they in the course of experiments arising from that employment make valuable discoveries accessory to the main principle and tending to carry that out in a better manner, such improvements are the property of the inventor of the original improved principle and may be embodied in his Patent; ..."

In *Allen v Rawson* Chief Justice Tindal said:

"It would be difficult to define how far the suggestions of a workman employed in the construction of a machine are to be considered as distinct inventions by him ... Each case must depend upon its own merits."

This then is the law I believe I should apply to my finding that Mr Withnall devised the disputed features. The question to be applied to the present case is whether, if Mr Stanley is regarded as having invented a new principle, Mr Withnall's contribution, using the words of Mr Justice Earle in *Allen v Rawson*, amounted to a valuable discovery accessory to the main principle and tending to carry that out in a better manner. If so, the inventor of the features I have found Mr Withnall devised will be Mr Stanley. If Mr Withnall's contribution is more than this, he will be the inventor of those features.

On the evidence, it seems to me that Mr Stanley's concept was of a card reader incorporating a solenoid-operated toothed flap at its outlet to prevent a card from being pulled out of the reader. Mr Withnall's commission was to re-engineer the device to reduce manufacturing costs and improve the efficiency of the device, and to relocate the solenoid that operated the flap. Mr Stanley's assertion is that Mr Withnall translated the invention in Mr Stanley's ideas into design form at a level which was commercially practical. He contends that at no time did Mr Withnall exercise inventive ingenuity but instead used his skills to make equipment which Mr Stanley could not, firstly because Mr Stanley is, he admits, not a skilled engineer familiar with production methods, and secondly because the company (which I take to mean the opponent) does not have its own facility in-house to do that job. At the hearing, Mr Shaw argued that the evidence clearly shows that the opponent company was the driving force and Mr Withnall was the hands and legs to their brains, and that there is nothing more in the evidence than that.

I am unable to accept the opponent's arguments, which appear to me to run contrary to the evidence. It seems clear to me that Mr Withnall was not merely conducting experiments to give effect to Mr Stanley's ideas in respect of the disputed features. There is no evidence that when commissioned Mr Withnall was told by Mr Stanley to refine a chute, slot and hopper-sensor arrangement of the sort disclosed in the GB application. Rather, instead of following the agreed lines of the brief suggested by Mr Stanley and confirmed in

correspondence, which would if anything have led him away from developing the disputed features, Mr Withnall exercised his own initiative to go beyond his brief, and unprompted devised the disputed features relating to the present chute, slot and hopper-sensor arrangement. Thus in regard to these disputed features Mr Withnall was not merely a non-inventive technician by whom Mr Stanley's ideas were implemented, but a deviser of features not envisaged by Mr Stanley. I do not consider that the provision of the chute, slot and hopper-sensor arrangement to prevent a card being pulled out of the reader, as an alternative to Mr Stanley's concept of using a solenoid-operated toothed flap for this purpose, can be regarded as being accessory to that concept. Accordingly, I am not persuaded that the referrer's contribution belongs to the opponent and I therefore recognise Mr Withnall as being the inventor of the disputed features disclosed in the GB application.

Mr Withnall lays no claim to any features disclosed in the GB application other than those disputed ones which I have considered and found he invented. Indeed, in paragraph 8 of his first declaration he specifically states that he makes no claim to the provision of means for detecting the direction of movement of the card in the card reader itself to signal an alarm if the direction of movement of the card corresponds with the card being withdrawn from the reader. Nor, he says, does he make any claim to the provision of sensors in the first path which must be cleared before a credit is given on arrival of the card in the hopper. Thus, in spite of the broad assertion made in the statement that the referrer devised the arrangement shown in figures 4 and 5 of the GB application as published and is the sole inventor of the invention specified in published claims 1 to 3 at least, there seems no dispute between the parties that the subject matter of the GB application other than the disputed features is Mr Stanley's contribution, and I have no reason to doubt that this is the case. Furthermore, the referrer has put forward no evidence or argument in support of the proposition that Mr Withnall's contribution constitutes the main principle of the GB application and that Mr Stanley's contribution is accessory to his, for example on the grounds that it is conventional. To be recognised as sole inventor of the invention disclosed in the GB application, the referrer would need to establish that proposition. On this basis, since Mr Stanley is named as an inventor on Form 7/77 and since the onus is on the referrer to show that Mr Stanley is not entitled to that status, which he has not done, I am unable to conclude other than that Mr Withnall is not the sole inventor but a joint inventor with Mr Stanley.

This would normally be the end of the matter and my finding on inventorship would be firm. However, in the peculiar circumstances of the present case I am uneasy in reaching a final conclusion because I am concerned that in preparing his case the referrer may have been misled by the publication of the wrong drawings, including erroneous figures 1 to 3, into thinking that an embodiment of card reader comprising a toothed flap, in place of the chute, slot and hopper-sensor arrangement, was part of the GB application when in fact it was not. At the hearing, Mr Shaw said he had not copied to the referrer the examiner's report under section 18 in which the problem with the published drawings is raised. Accordingly, I am reluctant to close the door on the referrer in this respect.

I therefore propose to reach an interim finding on inventorship in respect of the GB application. This is that the referrer has discharged the onus on him to show that he was the actual deviser, and by virtue of section 7(3) the inventor, of a main principle disclosed in the GB application, and that he has a right under section 13 to be mentioned as an inventor. I am prepared to entertain further submissions on whether that mention should be as sole inventor or as joint inventor with Mr Stanley, and I therefore leave that question open for the moment.

Part (b) of the question referred is whether the referrer is entitled to be granted a patent for the invention disclosed in the GB application. The right to apply for and obtain a patent is governed by section 7 of the Act, sub-section (2) of which reads:

- "(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 making 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".

The applicant named on Form 1/77 is the opponent company. According to Form 7/77, and notwithstanding an error in the name of applicant given there, the applicant derives the right to be granted a patent by virtue of employment of the named inventor, that is Wyatt James Stanley. However, it follows directly from sub-section (2)(a) of the Act that, having held as I have that he is an inventor, the referrer has an entitlement in the GB application unless any preference of the sort specified in sub-section (2)(b) exists. Moreover, by virtue of the presence of the word "primarily" in sub-section (2)(a), the onus of proof shifts from the referrer, as an inventor, to the opponent, since an inventor is presumed to have an entitlement unless the opponent can demonstrate otherwise.

At the hearing Mr Shaw submitted that the opponent company, having paid the bills, claimed ownership of the GB application. Mr Stanley says that at no time was it ever made a condition of the commercial arrangements that Mr Withnall would in any way personally have any share in the ownership of the resultant assets, including intellectual property. He also observes that Mr Withnall makes no mention of his claim to ownership in his first declaration. In paragraph 3 of his second declaration, Mr Withnall responds by saying in effect that since there was no agreement regarding ownership of intellectual property rights between him and the opponent company, as an inventor he is entitled to be a proprietor of the GB application by virtue of section 7(2). In the statement the referrer says there is no subsisting agreement or instrument requiring him to transfer his rights in the invention to the opponent company.

Both sides have also exhibited certain correspondence that passed between them. However, this and the other evidence falls short, in my view, of establishing the existence of a contract between the referrer and the opponent or any other party under which the patent rights in the features I have found Mr Withnall to have invented are transferred from the inventor to the company that commissioned the work. Thus, the opponent has not discharged to my

satisfaction the onus on him to activate the preference of section 7(2)(b), and the matter of ownership of the GB application therefore depends on the position under section 7(2)(a).

On this basis I find that the referrer has an entitlement in the GB application deriving from his status as an inventor. As matters stand, with the referrer established as joint inventor, the entitlement is at least a joint one with the opponent. However, the exact extent of that entitlement will depend on my final decision on inventorship.

At the hearing Mr Shaw argued in effect that the referrer's case is weakened by the apparent delay in launching the present reference; Mr Withnall did not raise these matters at the time and as a practical businessman he would have been expected to do so. However, Mr Shaw conceded that the referrer may not have seen the text of the GB application until it was published in October 1991, or some stage later. While the delay may perhaps be surprising, I do not consider Mr Shaw has made out a point here which detracts from the strength of the referrer's case or justifies any different finding on my part.

There are two additional matters which I should deal with. The first arises from a letter dated 13 July 1993 from Mr Shaw covering further documents which he says were not available before the hearing and which he asks me to take into account before issuing any decision. The further documents comprise a second statutory declaration by Mr Stanley and one by Mr Paul Trappett, an employee of the opponent company from 1986 to 1991. The referrer subsequently submitted under cover of his agent's letter dated 18 August 1993 further evidence-in-reply comprising a third statutory declaration by Mr Withnall.

Under rule 7(6), such further evidence in these proceedings shall not be filed except by leave or direction of the Comptroller. I have already reviewed in detail the evidence which was available to me at the hearing. In the further evidence tendered by the opponent on 13 July 1993, Mr Stanley declares that on his way to the hearing he recollected that there was a particular drawer in a filing cabinet that he had not looked at. After the hearing he inspected that drawer, and found he says a relevant drawing, a copy of which is exhibited to his declaration. It is similar to the MW5 drawing for which Mr Withnall claims responsibility. Mr Stanley says that he designed what he calls the pivotal flap and inclined ramp shown on

the drawing he exhibits, and that he recognises the handwriting on the drawing as that of Mr Trappett. Mr Trappett gives evidence that he made the drawing on 15 March 1990 on the instructions of Mr Stanley or Mr Stanley's brother.

While the opponent's further evidence is clearly relevant to the issue of whether Mr Withnall or Mr Stanley devised the disputed features, it is in my opinion not of sufficient probative value for me to admit it at this late stage in the proceedings. It is perfectly plausible in my view that both Mr Stanley and Mr Withnall had sketches of an improvement which Mr Withnall had devised. I also do not regard the explanation for the late production of this further evidence as satisfactory. There is for instance no evidence of any investigation for drawings made on behalf of the opponent at the time its evidence-in-answer was in preparation. In conclusion I refuse to admit the opponent's further evidence. Since the referrer's further evidence was lodged in reply to that of the opponent, it follows that I refuse to admit that too.

The second additional matter concerns an application filed under the Patent Co-operation Treaty. Patent application no PCT/GB91/00216 ("the PCT application") was filed on 13 February 1991 claiming priority from two earlier applications, one of which is GB 9005995.7, the GB application identified in the present reference under section 8. It was published on 22 August 1991 as WO 91/12595 A1. The PCT application has the same named inventor as the GB application, but a different named applicant. For all states designated under the Treaty, and there are many, except US the named applicant is Bilgrey Samson & Company Limited, and for the US it is the named inventor, Wyatt James Stanley.

The subject matter of the PCT application extends beyond that of the GB application. The PCT application contains two embodiments, the first of which is described with reference to its figures 1 to 3 and has no clear counterpart in the GB application. However, the text present in both applications under the headings "Field of the invention" and "Background of the invention" is very similar indeed. Moreover, the second embodiment of the PCT application as shown in its figures 4 and 5 is the same as the single embodiment of the GB application and is described in the same terms. Furthermore, claims 12 to 16 of the PCT application correspond *mutatis mutandis* with those of the GB application. Thus I believe

it is fair to say that the invention of the GB application is also disclosed in the PCT application.

The PCT application is not mentioned in any of the papers submitted by either party in respect of the present reference under section 8 of the Act. When at the hearing I raised the question of the PCT application with Mr Shaw, he accepted that should I make a finding in favour of the referrer in respect of the GB application, consequential changes in the PCT application would be needed. It seems clear to me that my eventual finding on the reference in respect of the GB application will have a substantial bearing on the ownership of rights in the PCT application containing the same matter.

It seems to me therefore that there are three issues on which, in the circumstances of this case, it would be appropriate for me to give the parties an opportunity to make further submissions before I make my final decision. The first is, as I have said, whether Mr Stanley's contribution to the subject matter of the GB application is accessory to that of Mr Withnall, and hence whether Mr Withnall should be recognised not as a joint inventor with Mr Stanley but as the sole inventor of that subject matter.

The second concerns the form of order I should make in relation to the ownership of the GB application. If I should find that the referrer and opponent both have a right in the GB application, I can envisage that an order made under section 8(2)(a) of the form sought by the referrer that the GB application should proceed jointly in the names of the referrer and the opponent might in practice prove unsatisfactory to both parties. When I raised this point at the hearing Mr Shaw indicated that there is no relationship between the parties and that such an order would probably be uncomfortable to both. He speculated that if I found a joint entitlement to exist, one party might try to buy the other out.

The third is whether any consequential action is needed in relation to the PCT application.

I allow the parties a period of two months from the date of this interim decision within which to make written submissions on these three issues. Each party should send a copy of its submissions to the other party, who will then have a period of one month from the date of

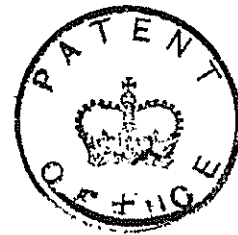
receiving the copy within which to submit any comments on them. I will then consider any such submissions and comments before making my final decision.

In order that the referrer should be clear about the content and status of the GB application, I direct that a copy of the drawings as originally filed should be sent to him, together with a copy of the examiner's substantive examination report.

I shall defer considering the question of costs, for which both parties have requested an award, until the conclusion of these proceedings. However, I note that in the statement the referrer seeks an order that the opponent should pay the referrer's full costs. I would observe that it is not the normal practice to make such an award in proceedings before the Comptroller, where the scale of costs applied is such that awards are usually fairly nominal. There seems at present no reason to depart from that practice in the present case.

This being a substantive matter, the time within which an appeal may be lodged is six weeks from the date of this decision.

Dated this 9 day of September 1993



W J LYON

Superintending Examiner, acting for the Comptroller

THE PATENT OFFICE