0/199/97

PATENTS ACT 1977

Mr P Hayward
3Y46

IN THE MATTER OF an application
under Section 72 for the revocation of
UK Patent No. GB 2201408B in the name
of Nobuo Someya

INTERIM DECISION

1. UK Patent No. GB 2201408B (hereafter "the present patent") in the name of Nobuo Someya (hereafter "the proprietor") was applied for on 24 February 1987 under application No. 8704347.7 without claim to priority. The application was granted on 20 March 1991.

2.The present patent relates to the treatment of water for drinking. The claims of the granted patent read as follows:

> *1. A method of purifying water for drinking purposes which comprises bringing the water into contact with coral sand which has been washed to remove salt therefrom and dried at a temperature of from 70 to 190 °C.*
>
> *2. A method as claimed in claim 1, wherein the coral sand is coated with silver.*
>
> *3. A method as claimed in claim 1 or 2, wherein the coral sand is obtained from a living coral reef.*
>
> *4. A method of purifying water as claimed in claim 1, substantially as described herein.*
>
> *5. Drinking water which has been purified by the method of any one of the preceding claims.*

3. An application for revocation was filed by Marine Coral Co. Ltd. (hereafter "the applicant") on 31 August 1995 on the following grounds under Section 72(1) of the Act:

(i) all the claims lack novelty;

(ii) all the claims lack inventive step;

(iii) all the claims relate to a "discovery" and are not patentable;

(iv) the specification does not disclose the invention clearly and completely enough for it to be performed by a person skilled in the art.

4. In support of their application the applicant referred to a number of exhibited prior published patents and other documents as follows:

(A) UK Patent No 2128600A;

(B) European Patent No 0115216B and the European Patent Office public file history for prosecution of the respective application (published as EP 0115216A);

(C) Japanese patent application No 56-158184;

(D) Japanese patent application No 58-146491;

(E) Japanese utility model application No 53-102258;

(F) A decision of the board of appeal of the Japanese Patent Office on Japanese patent application No 57-233889 together with a copy of an English language abstract of Japanese patent application No 57-125676 cited in the decision;

(G) The notice of rejection and decision of rejection to Japanese patent application No 60-225329 (laid open patent application No 62-83089);

(H) An article entitled "Chemistry of Coral Reef" from the Japanese journal "Chemistry";

(I) UK Patent No 1387552;

(J) English language abstracts of Japanese patent application No 59228990;

(K) English language abstracts of Japanese patent application No 58114787;

(L) English language abstracts of Japanese patent application No 56063909;

(M) UK Patent Office public file history for prosecution of the application for the present patent.

5. The applicant further submitted that the specification and claims were incapable of being amended to avoid the above defects without adding new matter, which would contravene Section 76 of the Act.

6. The proprietor responded on 5 March 1996 with an unconditional offer to amend the description and claims of the present patent under Section 75 of the Act, and submitted that the claims thus amended were novel and inventive over the cited prior art. The allegations of "discovery" and insufficiency were denied. The proprietor made no attempt to defend the unamended claims in the face of the prior art cited by the applicant.

7. The applicant filed on 16 May 1996 a statement of opposition to the proposed amendments under Section 75, together with a first supplementary statement under Section 72 relating to the amended specification in the event that the amendment was found to be allowable. A translation of an extract from the "Encyclopaedia Japonica" relating to coral limestone was also filed (Exhibit 'N').

8. On 15 August 1996 the proprietor filed a counterstatement under Section 75 in response to the applicant's opposition to the amendment, in which they offered a further amendment in response to one of the grounds raised by the applicant, but rebutted the other three of them. On the same date he also filed a supplementary counterstatement in response to the applicant's supplementary statement under Section 72 and a statutory declaration by the proprietor about the relationship between himself and the applicant. Parts of the latter document have been treated as confidential under Rule 94 and are the subject of a confidentiality undertaking by the applicant's agent.

9. On 14 February 1997 the applicant filed a supplementary statement under Section 75 opposing the further proposed amendment and maintaining the opposition to the originally proposed amendments. The applicant also filed a second supplementary statement under Section 72 dealing with the supplementary counterstatement of the proprietor dated 15 August 1995 and with the statutory declaration of the proprietor filed on the same date. In the latter the applicant referred to further prior art in the shape of Japanese published

applications Nos. 58-114787, 60-33403 and 61-118305 (Exhibits 'O', 'P' and 'Q', respectively).

10. No further evidence was forthcoming and the parties have agreed that both the question of the allowability of the proposed amendments and of the application for revocation may be decided on the papers. That is what I shall therefore proceed to do.

11. It is convenient first to consider briefly the unamended claims of the present patent in relation to the cited prior art. The applicant submitted that the most relevant document is GB 2218600, which is the proprietor's own earlier patent and was published in May 1984, ie nearly three years before the priority date of the patent in suit. This discloses a process for preparing silver-coated coral sand used for the treatment of drinking water comprising several steps including desalting by washing with water, heating at a temperature of 200-400 degrees C, coating with silver and drying at 50-80 degrees C.

12. Although it discloses additional intermediate steps not contemplated in the present patent, this document clearly discloses every integer of claims 1, 2 and 5 of the present patent as granted.

13. Claim 3 relates to the use of sand obtained from a living coral reef. The most relevant reference to this aspect is to be found in the examples of GB2218600 wherein the coral sand is stated to be obtained by crushing coral "naturally occurring in the sea around the Taketomi Island". There is no evidence about whether this particular source is in fact a "living" reef , but I interpret the comment bridging pages 4-5 of the proprietor's supplementary counterstatement of 15 August 1997 *viz*

> "*It is our understanding that a coral reef is a habitat for living coral or was the habitat for recently deceased coral. It is sand from this material which is to be used in the present invention.*"

as acceptance that the use of such material is envisaged by the invention, and I therefore conclude that claim 3 also is anticipated.

14. The other cited documents all disclose the use of coral sand or related substances for the treatment of potable water. However it is not necessary to consider them all in detail in relation to the unamended specification. I would, however, like to highlight one of them, also an earlier patent publication by the present proprietor, that is EP 0115216. With respect to this document, I should note that although the applicants in their statement cited the granted 'B' version of this patent (which was published too late to be available for consideration for inventive step purposes), they additionally (as the proprietor has recognised in his counterstatement) have cited open documents involved in the prosecution of this patent application before the EPO and, hence, by implication the earlier 'A' version of that patent which was published well before the priority date of the present patent. Whilst, *inter alia* the claims differ between the two versions of the EP document, for the purposes of this decision I find them to be equivalents. For convenience, I will refer simply to EP 0115216, but indicate particular passage references with respect to EP 0115216B..

15. EP 0115216 describes, *eg* in claim 1, the use of coral sand, as such, after washing to de-salinate, drying at 80 - 150^{0}C and pulverising as a health promotion composition. Whilst thus it is ostensibly directed to a different invention than the present patent, however, it nevertheless does describe dissolving of the coral sand so produced in tap water to provide a drinking water of improved property (page 3 lines 56 - 58 and page 4 lines 6 - 33). This is a method of 'purifying' water which seems to me to be clearly within the terms of claim 1 of the patent in suit. I am particularly fortified in this view by the fact that the EP specification at page 6 gives detail of the anti-chlorination effect of the composition in similar terms to the present patent, and further that the present patent at page 4 lines 5 - 7 states that the coral sand need only be immersed in water for its effect to be achieved and later at lines 19 - 23 of the same page indicates that it is soluble in water. It is clear from page 1 of the EP document that use of coral sand obtained from living coral reef is envisaged and, thus, again claim 3 is also anticipated.

16. I shall turn next to the proposed amendments. As I have concluded that the unamended patent lacks novelty, the patent will fall if the amendments are not allowable.

17. Although two sets of amendments have been filed, the second set is essentially consequential to the first set and it is therefore convenient to consider them together. The claims as amended read:

> *1. A method of treating water for drinking purposes to render it bacteriostatic which comprises bringing the water into contact with coral sand as obtained from a living coral reef but for being washed to remove salt therefrom and for being dried only at a temperature of from 70 to 190 °C.*
>
> *2 . A method of treating water for drinking to render it bacteriostatic as claimed in claim 1, substantially as described herein.*
>
> *3 . Drinking water which has been treated to render it bacteriostatic by the method of either of the preceding claims.*

Consequential amendments to the description were also offered.

18. The applicants originally opposed the request to amend on the following grounds:

> (i) the proposed amendments extend the protection conferred by the patent;
> (ii) they do not cure the invalidity of the claims with respect to the prior art;
> (iii) there has been unreasonable delay in seeking the amendments.

It will be convenient to consider the question of alleged unreasonable delay first.

19. In their submission the applicants draw my attention to the decision of Aldous J in *Smithkline and French Laboratories Ltd* v. *Evans Medical Ltd* [1989] FSR 561 which specifies principles concerning the exercise of discretion to allow amendments. One of these principles is that amendment should be sought promptly and that a patentee who delays for an unreasonable period before seeking amendment must show reasonable

grounds for his delay. However, I must also note that a further principle is that amendment will be allowed provided the amendments are permitted under the Act and no circumstances arise which would lead the court (or in this case the patent office) to refuse the amendment, and that mere undue delay, as opposed to where a patentee has deliberately elected to maintain invalid claims in the actual knowledge of their invalidity, is not necessarily a reason to refuse discretion.

20. It is clear that the proprietor has known for some time of the prior art now under consideration. GB 2128600 and EP 0115216, which I have already found anticipate certain unamended claims of the present patent, were first published in 1984 and are in the name of the proprietor himself. Neither is it in dispute that the proprietor's Japanese patent application No 60-225329, which contains substantially the same description as the present patent, was rejected by the Japanese Patent Office on the grounds that "the fact that coral sand is used as a water purification agent or a water treatment agent is described [in the prior art]".

21. As regards the rejection of the Japanese application, the proprietor argues that this is not equivalent to the present patent because the single claim of the former was framed much more broadly than the claims of the latter. He says it is not surprising that the Japanese application was rejected. If we were here discussing a UK patent application I would have little sympathy for this argument since, as I have remarked, the descriptions of the respective patent documents seem very close; it is also the case that the claims of the present patent as originally filed related to a method which corresponds quite closely to the "use" interpretation of the Japanese application according to page 4 of the proprietor's counterstatement. However I have no evidence about Japanese patent law or practice and I am not therefore in a position to judge whether the Japanese application might have been amended to bring it into line with the claims of the present patent. I cannot therefore draw any conclusions from the papers before me about whether the proprietor ought to have known from the fate of their Japanese application that their UK patent was potentially invalid.

22. I am more concerned about the cited patents GB 2128600 and EP 0115216. Given the relevance of these documents and the fact that they are the proprietor's own earlier patents, there must be a relatively heavy onus on him to explain why he has delayed proposing amendments until now. The proprietor argues that it was only after the lodging of the application for revocation that he contemplated the need for amendment of the granted claims in the face of prior art more extensive than any cited by the examiner. It is unfortunate that neither GB 2128600 nor EP 0115216 were cited by the UK examiner in earlier prosecution of the present patent but, in the absence of evidence on the matter, it is reasonable to conclude that the proprietor nevertheless knew of his own earlier patents.

23. To be aware of the earlier patents and to be aware of their true significance *vis-vis* the present patent are two different things, however. When one compares the inventions of the respective patents one sees firstly, that the emphasis of earlier GB 2128600 is to drying at the relevant temperature range only as the final step of an essential phase of coating of the coral sand with silver, *ie* to drying of silver-coated coral sand, and to pre-coating treatment of the de-salted coral sand by 'activating' at a higher temperature range, whereas in the present patent the drying step is effected immediately following the de-salting phase, *ie* on the coral sand itself, and there is no activation treatment; and secondly, that EP 0115216 is directed to a different intended application. Whilst such distinctions do not remove the novelty objections *per se*, it perhaps to some extent introduces doubt as regards whether or not the proprietor should have been clearly aware that remedial action was necessary, particularly since the UK examiner *prima facie* did not find the prior documents relevant.

24. In consequence, therefore, whilst I find the issue to be finely balanced, I am not persuaded that there has been a culpable delay and, hence, that this is an appropriate case for me to refuse to exercise the Comptroller's discretion to allow the requested amendments on the ground of undue delay in the proprietor seeking them.

25. With that decision made, I can move on to the other grounds under which the amendments have been opposed. I will consider first whether or not the proposed amendments extend the protection conferred by the present patent in contravention of Section 76(3)(b).

26. The differences between the original and amended claim 1 are as follows (where additions are shown in italics and deletions are shown by strikeout):

> 1. A method of *treating* ~~purifying~~ water for drinking purposes *to render it bacteriostatic* which comprises bringing the water into contact with coral sand *as obtained from a living coral reef but for being* ~~which has been~~ washed to remove salt therefrom and *for being dried only* ~~dried~~ at a temperature of from 70 to 190°C.

27.The opponents arguments in this regard centre around the change in direction of the claims from "a method of purifying water for drinking purposes which..." to " a method of treating water for drinking purposes to render it bacteriostatic which..." and which they claim broadens to scope in that 'purifying' is a more limiting requirement than that the requirement for a bacteriostatic effect. The proprietor, not unnaturally, argues the opposite and contends that since purifying water for drinking purposes requires both bactericidal and bacteriostatic action, then the limitation to the latter only is a narrowing of the claim. In support of this case a number of EPO decisions are cited - T371/88, T108/91 and T172/82.

28. I cannot accept the proprietor's argument. The EPO decisions are based on the requirement to construe the claims in the light of the description. Applying that to the present situation, the introduction to the description makes it clear that the intention of the invention is to treat acidic water to shift its pH to the alkaline side of neutrality (cf. The unamended patent at page 1 lines 2-5, page 1 line 33 - page 2 line 5, page 2 lines 13 - 15 and 30 - 34, and page 4 lines 24 - 31), the bacteriostatic effect of the coral sand being a combination effect (cf. Page 5 lines 5 - 8), and thus the expression "purifying of drinking water" was to be read in this context. Claim 1 as proposed to be amended, although (as the proprietor has also pointed out) clearly more limited as to the material to be used is nevertheless otherwise broadened, in my view, in that is no longer clearly restricted to this combined pH shift and bacteriostatic 'purifying' treatment implied in the granted patent. This broadening, to my mind, is highlighted by the deletive amendment proposed for page 1 lines 2 - 5. I thus find that the proposed amendments will contravene Section 76(3)(b).

29. The remaining ground under which the amendments are opposed, *viz* that they do not cure the invalidity of the claims with respect to the prior art, is effectively the same question that I would need to consider with respect to patentability of the amended claims if I allowed the amendments. The opponents maintain that the amended claim is clearly lacking in inventive step over the prior art and general knowledge available at the priority date of the alleged invention.

30. In considering the patentability of the amended claims it is first necessary to construe them. The proprietor places great importance on two aspects of claim 1 (as amended) to distinguish it over the prior art. The first is the expression "a method of treating purifying water for drinking purposes to render it bacteriostatic" which he argues should be interpreted as meaning that bacterial growth is kept at a low level (ie growth is prevented) but the bacteria are not necessarily killed. The other is the physical treatment of the coral sand. The proprietor submits that the expression "coral sand as obtained from a living coral reef but for being washed to remove salt therefrom and for being dried only at a temperature of from 70 to 190°C" relates to the important discovery that bacteriostatic activity can be achieved without the costly treatments proposed in the prior art.

31. As regards the word "bacteriostatic" I am content to construe this as meaning that the growth of bacteria is inhibited. However I am unhappy about interpreting it too narrowly. GB 2128600 refers to the known activity of coral sand as a 'bacteriological inhibitor' and says that plating with silver "greatly improves its sterilising power" (page 1 line 21). The plain English interpretation of this is that coral sand which is not silver plated has some anti-bacterial effect but is less effective (which I interpret to mean leaves more viable bacteria behind) than silver plated coral sand. "Sterilization" is clearly not an all or nothing effect but a continuum which I consider runs smoothly into "bacteriostasis" at least in this context. For this reason I conclude that GB 2128600 does disclose the use of coral sand alone to produce a bacteriostatic effect. Effects referred to as "sterilising" are also referred to in some of the other cited documents, but these add little to the argument on this point.

32. The other aspect on which the proprietor places heavy reliance is the physical treatment of the coral sand. The amended claim stipulates that the sand must be in the form "as obtained from a living coral reef but for being washed to remove salt therefrom and for being dried only at a temperature of from 70 to 190°C". This I construe as excluding any method which uses coral derived material which has been subjected to any high temperature treatment or other physical or chemical alteration (except for washing and drying at moderate temperatures). I note in passing that this interpretation, on the face of it, is inconsistent with the passage at page 4 lines 1 - 3 of the present patent which suggests that the coral sand may additionally be coated with silver. However, in view of the deletion of claim 2 relating specifically to that option, I will assume that it is no longer the intention to embrace such a possibility.

33. There is no dispute that GB 2128600 and many of the other citations direct higher temperature activation of the coral sand and therefore fall outside the scope of amended claim 1 in this respect. The only documents cited which clearly disclose the use of coral derived material which has not been subjected to physical or chemical treatment in this way are EP 0115216 and GB 1387552, but neither are overtly concerned with any kind of anti-bacterial activity. Further, GB 1387552 does not disclose the required washing and drying steps, and EP 0115216 although satisfying the washing and drying requirements adds an additional step of pulverising the coral sand. The applicant also argued that Japanese application 58-114787 discloses a method of producing an antiseptic for potable water in which coral sand is rinsed and desalted and subsequently dried at temperature in the range of 50-80°C, but this material is also subjected to coating and a high temperature treatment, so I consider it no more relevant than GB 2128600.

34. I therefore conclude that the claims of the present patent as proposed to be amended are novel over the cited prior art references. There remains however the question of inventive step.

35. No particular precedents in relation too assessing obviousness have been brought to my attention by the parties. I think, however, that it is well established that the correct

approach is to first identify the alleged inventive concept; consider what would have been common general knowledge to the skilled, unimaginative address at the relevant priority date; identify any differences which exist between the latter and the alleged invention; and ask whether, viewed without knowledge of the claimed invention, those differences would constitute steps which would be obvious to the skilled man or whether those steps required invention (*Windsurfing Int. v Tabor Marine* [1985] RPC 59).

36. In the present case I find the alleged invention of the proposed amended patent to lie in the realization that coral sand when de-salted and dried at 70 - 150°C is effective as a bacteriostat in its own right.

37. It seems clear that common general knowledge was that coral sand *per se* was effective as a bacteriological inhibitor for water, and that its effect could be improved by activating at above 200°C and coating with silver (*cf* applicant's earlier GB 2128600, JP 56-158184, JP 59-228990 and JP 56-063909). I note that, further, JP 60-33403 discloses a treatment at the broader temperature range of **100** - 450°C prior to coating with silver. Further, it was known that coral sand was effective to treat water also for chlorine removal and pH adjustment (*cf* applicant's earlier EP 0115216 and JP 56-158184, and JP 78-102258 and 'chemistry of Coral Reef' article).

38. I have already concluded that the prior art passage on page 1 of GB 2128600 discloses use of coral sand as a bacteriostatic agent. As the proprietor himself acknowledges (page 2 of the supplementary counterstatement filed 15 August 1996) it is natural to wash a natural product taken from the sea. This leaves claim 1 effectively characterised only by the subsequent drying at the specified temperature range. The proprietor argues that, in the context of the intended use as a water treating agent, drying is itself a non-obvious step. Moreover, even if drying is suggested, then the moderate temperature range of 70 - 190°C cannot be adduced from any of the relevant prior art. I do not agree. It seems to me that drying is a fully natural step, *eg* to put the product into a state where it can be more readily handled or shipped. Further, once one contemplates drying, then the specified temperature range seems at least to embrace what is natural to use in the circumstances, *ie* somewhat

either way of the boiling point of the water to be driven off. The fact that the prior art references use the term 'activating' rather than 'drying' seems to me also to be a pointer to use lower temperatures if the latter only is sought. I have no evidence before me to establish that drying within this general range produces any special effect. The proprietor does suggest in his supplementary counterstatement of 15 August 1996 (passage bridging pages 3 and 4, and the table appended to thereto) that this so-called 'drying' treatment is effective to additionally sterilise the coral sand, but there is no evidence that this effect will be achieved across the whole of the 70 - 190°C temperature range (as opposed to the preferred range of 160 - 190°C specified in the table) and, indeed, the suggestion from the passage on earlier page 4 is that the prior art 50 - 80°C would not be adequate for this purpose, notwithstanding the overlap of the two ranges (at the 70 - 80°C sub-range).

39. Moreover, as the applicants point out, correctly in my view, in their first supplementary statement under Section 72 there is some confusion between the effects of heating the coral sand to sterilise the material itself and the effect on the water being treated. Paragraph 7 of the proprietor's counterstatement of 5 March 1996 makes the point that the less costly treatment of the coral sand of the present patent may be all that is necessary to treat water which has an initially low bacterial count, while the arguments in the third paragraph of page 3 of the supplementary counterstatement of 15 August 1996 seem to be based on the assumption that a moderate level of sterilisation of the sand itself may be all that is necessary depending on the bacteria which are present. In either interpretation, in my view, inventive step cannot reside in the recognition that less severe treatment is necessary for less contaminated starting materials.

40. Irrespective of the above, I consider a further document to be crucial to the issue of inventive step, that is the proprietor's own earlier EP 0115216. I have already noted under novelty above that EP 0115216 discloses the required drying conditions with the intended purpose of providing an agent to 'purify' water, at least in the sense of dechlorinating same. There is an ostensibly additional intermediate step of disinfecting the coral sand (page 4 lines 18 - 22), but this on further inspection appears to be no more than the effect of the 'drying' step itself (*cf* Example 1). Further, whilst I have noted that EP 0115216A

ostensibly relates to an entirely different invention, *viz* health promoting compositions, it nevertheless does describe dissolving of the coral sand so produced in tap water to provide a drinking water of improved property (page 5 lines 10 - 14 and page 6 lines 5 - 19). This is a method of 'treating' water in which, it seems to me, that bacteriostasis must be an inevitable effect of such treatment and one which is unsurprising in view of the already known properties of coral sand. The only effective difference of substance is that the earlier EP disclosure specifies the additional step of pulverising the coral sand. I see nothing inventive in omitting such a step, and thus additionally find claim 1 to be obvious in view of EP 0115216A.

41. I should comment here that I have noted the documents filed on behalf of the proprietor which are the subject of a confidentiality undertaking, but I do not consider them to be relevant to the questions before me.

42. In conclusion, therefore, I find claim 1 as proposed to be amended to be obvious and thus that the proposed amendments (even if otherwise allowable under Section 76) do not cure the invalidity of patent No 2201408.

43. The patent as proposed to be amended contains, besides claim 1, only an 'omnibus' claim 2 in the terms "A method ... as claimed in claim 1, substantially as described herein", and a claim 3 relating to "drinking water which has been treated to render it bacteriostatic by the method of either of the preceding claims". I find these claim to be open to objection as lacking inventive step in the same way as claim 1.

44. For completeness, I should perhaps mention the remaining grounds of revocation leveled by the applicants in their original statement, *viz* that the claimed invention related to a discovery rather than to an invention within the terms of section 1(2)(a) of the Act, and that the specification of the patent does not disclose the invention clearly enough for it to be performed by a person skilled in the art.

45. The applicants' argument as regards the former is on the lines of lack of technical effect in the choice of material or the choice of drying temperature, and that what is being

claimed is simply the discovery of the inherent properties of washed, dried coral sand which moreover acts in a way expected from the prior art. This in effect is the same as the point I have already decided under obviousness, and in view of my finding under that head I need consider it no further.

46. Although the applicants, as indicated, originally attacked the patent in suit additionally under insufficiency on the grounds that the specification did not make teach that there must be no 'activation' heating of the coral sand above 200°C. I do not find this objection to be well founded.

47. In conclusion, therefore:

(a) I have found UK patent No 2201408 in the form as originally granted to be invalid for lack of novelty;

(b) I have found the amendments proposed by the proprietor to UK patent No 2201408 to be unallowable in that they contravene Section 76(3)(b);

(c) I have found the claims of UK patent No 2201408 as proposed to be amended to be objectionable under Section 72(1)(a) due to lack of inventive step and thus that the proposed amendments do not cure the invalidity of the claims with respect to the prior art.

48. In the above circumstances, I find that this is not a suitable case for the Comptroller's discretion to be exercised to allow the amendments, and accordingly I refuse to allow them. The question is, then, whether or not to allow the proprietor a further opportunity to submit amendments, since otherwise, as I have already concluded that the unamended patent is anticipated, it would follow that the patent should be revoked outright.

49. I find it hard to envisage an allowable amendment that would meet my finding under obviousness, but in view of my decision in the proprietor's favour on the issue of 'undue delay', I am inclined to give the proprietor a further opportunity to submit amendments. Of

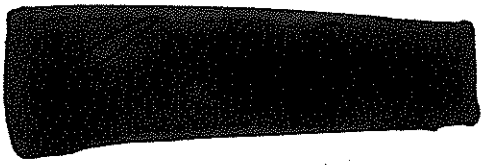
course, any such amendments must not only take account of my finding under Section 76 as regards the currently proposed amendments, but in addition be themselves allowable with regards to the provisions of Section 76.

50. In these circumstances the appropriate order is, as provided under Section 72(4), that patent No 2201408 should be revoked unless within a period of two months from the date of this decision the specification is amended under Section 75 to the satisfaction of the Comptroller. To that end the proprietor may, within the two month period, submit to the Patent Office proposals for amendments in accordance with my findings in this decision. Such amendments should be shown in red ink on a fresh copy of the B specification and a copy sent to the applicant for revocation, who will then have a period of one month to submit any comments thereon to the Patent Office, copied to the proprietor. I will then determine how matters should proceed. In the event that no amendments are submitted within the specified period, I will issue a formal decision revoking the patent.

51. I will defer the consideration of costs in this action until the final decision.

52. The period within which any appeal to the Patents Court from this decision must be lodged is six weeks from the date of this decision.

Dated this 14th Day of November 1997



G M BRIDGES

Superintending Examiner, acting for the Comptroller

THE PATENT OFFICE