

## **PATENTS ACT 1977**

### **IN THE MATTER OF**

patent application

9626086.4 (GB 2324340 A)

in the name of Waldo Belmonte Zbinden

## **DECISION**

### **Introduction**

- 1 This decision concerns a short but difficult point concerning the interpretation of section 2(3) of the Patents Act 1977. Mr Zbinden, who lives in La Paz, Bolivia, has made an invention in the field of pumps. The patenting of this invention in the United Kingdom has proceeded somewhat fitfully. A first patent application (9511323.9) was filed on 5 June 1995 and was searched. That application is of no concern here except that it formed the priority document for a second application (9611753.6) filed a year later on 5 June 1996 and in which the invention was developed. I call this application A. It was searched, and fell due for publication under section 16 of the Act in December 1996. But at this time it was decided that application A would not be prosecuted: it was withdrawn in favour of a third application, which was filed that month and is the application in suit, and which I call application B. It was substantially identical in content to application A, but is independent from A as it includes no priority claim. The significant point about application A is that it was published despite having been withdrawn.
- 2 Application B proceeded smoothly in its own right (except that both requests for search and for substantive examination were filed late) until the substantive examiner came upon published application A when completing the search on B, and formed the view that A was a complete novelty anticipation against B. The agent for the applicant responded that A was not a valid publication to be cited because it was withdrawn before its publication, and this was established practice before the European Patent Office even if not before the UK Patent Office. This issue was debated over some five cycles of correspondence without any progress towards a resolution. It therefore came before me for hearing on 31 May 2001, when the applicant was represented by his agent Mr P Kemp of Brookes Batchellor, and the examiner Mr R Crowshaw attended for the Office.
- 3 With that overview I will now flesh out the issue in more detail.

### **Application A and its publication**

- 4 Under the terms of section 16 of the Act and rule 27 of the Patents Rules 1995 the Comptroller has a statutory obligation to publish patent applications as soon as possible after 18 months from the declared priority date, or the filing date if there is no priority date. Relevant parts of the UK legislation are as follows, and I give the corresponding measures under the European Patent Convention (EPC) because the European parallel is important throughout this case:

### **Section 16 (PA77)**

(1) Subject to section 22 below, where an application has a date of filing, then, as soon as possible after the end of the prescribed period, the comptroller shall, unless the application is withdrawn or refused before preparations for its publication have been completed by the Patent Office, publish it as filed,.....

### **Rule 27 (PR95)**

The period prescribed for the purposes of section 16 shall be the period of eighteen months calculated from the declared priority date or, where there is no declared priority date, the date of filing the application.

### **Article 93 (EPC)**

(1) A European patent shall be published as soon as possible after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, as from the date of priority. ....

### **Rule 48 (EPC)**

(1) The President of the European Patent Office shall determine when the technical preparations for publication of the European patent application are to be deemed to have been completed.

(2) The European patent application shall not be published if it has been finally refused or withdrawn or deemed to be withdrawn before the termination of the technical preparations for publication.

5 For each application under the Act there will be a date on which preparations for publication are completed (I call this the key date), and the significance of this is that the only derogation allowed by section 16(1) from the Comptroller's duty to publish is if the application is withdrawn or refused before the key date. By implication there appears to be no such derogation if a withdrawal were to come in after the key date. The Comptroller may at any rate safely proceed with the publication process after the key date. The period between key date and publication date is thus a pipeline period in which the Comptroller is committed to publication.

6 In 1996 the Office had introduced improvements which shortened the pipeline period to five weeks. Applicants were informed if the key date was to fall later than expected. This did indeed happen with application A: in August 1996 the estimated key date was said to be 16 October 1996 but in September this was revised to 30 October 1996, and on both occasions it was emphasised that this would be the last date to withdraw to prevent publication. The Office then wrote on 19 November 1996 to confirm that preparations for publication were complete, and that publication would take place on 18 December 1996. I include these details to show that the applicant had more than usual warning about the approach of the key date and the publication date of application A, and the need to decide about withdrawal if publication was to be prevented.

7 It was not until 12 December 1996 that the Office received a letter concerning application A from the agent stating:

“We hereby withdraw the above-mentioned application for all purposes. We realise the application will be published on 18th December 1996 and it is too late to prevent such publication. It is our intention, however, to file a fresh patent application prior to the publication date.”

8 Application A was duly published on 18 December 1996. The Office then recorded it as withdrawn as of 19 December 1996. It was later agreed that this was erroneous and that the

date of withdrawal should be recorded as the date on which the Office was notified of the withdrawal, ie 12 December 1996. A suitable correction was made. This has some significance here as it puts the date of withdrawal before the publication date and provides a starting point for the argument that the publication was ineffective for prior-art purposes. We need now to turn to application B to consider the prior art situation.

### **Application B and its state of the art**

- 9 Section 1(1)(a) of the Act requires that the invention be new. The meaning of “new” is defined in section 2 of the Act, and it is worth quoting the sequence of the first three subsections, together with their counterparts in the European Patent Convention (EPC):

#### **Section 2 (PA1977)**

(1) An invention shall be taken to be new if it does not form part of the state of the art.

(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.

(3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied, that is to say-

- (a) that matter was contained in the application for that other patent both as filed and as published; and
- (b) the priority date of that matter is earlier than that of the invention.

#### **Article 53 (EPC)**

(1) An invention shall be considered to be new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use or in any other way, before the date of filing of the European patent application.

(3) Additionally, the content of European patent applications as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published under Article 93 on or after that date, shall be considered as comprised in the state of the art.

(4) Paragraph 3 shall be applied only in so far as a Contracting State designated in respect of the later application was also designated in respect of the earlier application as published.

- 10 Application B was filed on 16 December 1996 without a priority claim. The effect of section 2(2) for application B is to define a field of prior art comprising information made available to the public before 16 December 1996. By filing B before A was published, it was ensured that A was not included in the section 2(2) field. The effect of section 2(3) for application B is to define a further field of prior art limited to patent applications published on or after 16 December 1996, if those applications also satisfy the conditions (a) and (b). There is no dispute that A satisfies conditions (a) and (b) and was published after 16 December 1996, and thus appears at first sight to qualify for inclusion in the section 2(3) field against

application B. Does the withdrawal of A before its date of publication have the intended effect of nullifying the publication so far as section 2(3) is concerned? More generally, is “application” in section 2(3) to be construed as limited to applications which are pending (not withdrawn or refused) when published? These are the central questions to be answered and they have thrown up the following arguments.

### **The main arguments**

- 11 The agent for the applicant has relied principally on the fact that the practice of the European Patent Office (EPO) on this point is to answer these central questions in the affirmative. There are compelling reasons for us to have the same practice. Section 2(3) can and should be interpreted accordingly.
- 12 The examiner has argued that section 2(3) cannot allow of this interpretation and is clear in its own terms, so that the questions must be answered in the negative; and that the reasoning adopted in the EPO is not compelling.
- 13 To enlarge firstly on the agent’s arguments on the European parallel. It is clear above that section 2 is equivalent to Article 54 and that despite differences of wording the effects are the same. This equivalence is cemented by section 130(7) of the Act which conveys that section 2(3) was so framed as to have, as nearly as practicable, the same effect as Article 54(3). Moreover our courts have repeatedly underlined the need to look to Europe, both (i) to see how the corresponding EPC provision is framed, and even to prefer it over our own Act as having “direct effect” (see *Bristol-Myers Squibb Co. v Baker Norton Pharmaceuticals Inc.* [1999] *RPC* 253 at pp 258, 259), and (ii) to take account of case law under the EPC and to accord it “great persuasive authority” (*Merrell Dow Pharmaceuticals Inc. v H N Norton & Co Ltd* [1996] *RPC* 76 at page 82).
- 14 As to point (ii), the EPO does have some case law and advice to offer. In contrast to the *Manual of Patent Practice*, which gives guidance on practice within the United Kingdom Patent Office and is silent on the above questions, the *Guidelines for Examination in the EPO* state at Part C, Chapter IV, paragraph 6.1a:

Further it is required that the conflicting application was still pending at its publication date (see J 5/81, OJ 4/1982, 155). If the application has been withdrawn or otherwise lost before the date of publication, but published because the preparations for publication have been completed, the publication has no effect under Art. 54(3), but only under Art 54(2). Art. 54(3) must be interpreted as referring to the publication of a “valid” application, ie a European patent application in existence at its publication date.
- 15 Mr Kemp relied heavily on this. The examiner also made some assessment of the foundation for this interpretation, which is the decision of the Legal Board of Appeal identified as J 5/81. This is important so I will look at it some detail. The situation in that case was that the applicant withdrew the application in the pipeline period and was insistent that publication should be stopped. The Receiving Section had refused this request, saying that the EPO was prevented by law (Rule 48(2) EPC) from stopping publication after the key date. The Board of Appeal exposed this as erroneous (paragraph 2 of Reasons for the decision) by pointing out that Rule 48(2) merely assures that withdrawal *before* the key date will prevent publication, and there was no basis for drawing any converse conclusion that withdrawal

after the key date must *not* prevent publication. There was no such obligation to publish withdrawn applications.

- 16 The Board of Appeal then (paragraph 3) remarked, in support of this conclusion, that there are general considerations which weigh against such an obligation:

“Thus, a published European patent application becomes part of the state of the art under Article 54(3) EPC, with retroactive effect as from its filing date or priority date, in assessing applications filed after that filing date or priority date but prior to its publication. However this should only apply if such a “prior application” is still in existence at the time of publication. Furthermore, under Article 139(1) EPC a published European patent application can have a national prior right effect too. It is therefore in the general interest to keep the number of “false” prior rights as low as possible. Potential difficulties in connection with the Register of Patents (Article 127 EPC) and inspection of files (Article 128 EPC) should also be avoided if possible.” (emphasis added)

- 17 The Board also remarked in paragraph 4:

“Article 93 EPC lays down the principle that all applications must be published promptly after 18 months. The Convention thus gives the public the right in principle to be informed after that period of all pending patent applications.” (emphasis added)

- 18 The Board’s general conclusion was therefore that if withdrawal takes place after the key date the applicant cannot rely on preventing publication, although the EPO would be allowed by law to prevent publication, at its discretion.

- 19 I turn now to enlarge on the examiner’s argument that section 2(3) cannot allow of the interpretation which the EPO practice would suggest, and that the EPO reasoning is not compelling. The examiner has attempted to put section 2(3) into a context, which at one level is the whole of the Patents Act 1977, and in considering the agent’s contention that “application” in section 2(3) must mean “live application” has looked at how the word “application” has been handled elsewhere in the Act. He referred firstly to the principle that words should be taken to mean the same throughout a statute, in the absence of express indications to the contrary, a principle relied on in the patents context by Falconer J. in *Unilever Limited (Davis’s) Application [1983] RPC 219* at page 229 (in relation to the word “therapy”). He secondly cited examples of uses of the word “application” in the Act where it carried no special meaning as to live or withdrawn. Section 5(2) allows for claiming priority from “earlier relevant applications” and it is indeed possible to claim priority from live or withdrawn applications (the scenario of section 5(3) concerns withdrawal of applications made before the priority application and does not affect this). Also, section 17(1) (and hence section 18(1)) explicitly requires applications not to be withdrawn before they are referred for search (or substantive examination), which qualification would have been unnecessary if “application” had meant “live application”.

- 20 The examiner also considered the context of sections 2(3) and 16(1), and made the point that section 16(1) has the clear consequence that some applications will get published even if withdrawn after the key date: section 2(3) even so does not pick out such applications for different treatment.

- 21 The examiner finally showed himself reluctant to accept the EPO practice, saying that it did

not seem to have a firm legal basis. I say more about this in my assessment below.

## **Assessment of the main arguments and responses**

### Statutory interpretation

- 22 Clearly if the meaning of a term in a statute is in issue one must have recourse to the accepted principles of statutory construction. The word “application” as it is used in section 2(3) of the Act is not given any special definition in section 130(1) of the Act and thus takes its ordinary meaning. One must then ask whether the scheme of the Act, that is the context that it provides as a whole, provides any strong pointers to the meaning that the draftsman had in mind. The examiner mentioned a couple of instances where it would be unsafe to draw the inference that “application” must mean “live application”, and it seems to me that the convention that the draftsman has followed is that if the status of the application (live, withdrawn, refused etc) is a consideration relevant to a provision then the status has been mentioned explicitly. If as Mr Kemp contended “application” can uniformly be taken to mean “live application” unless qualified in some way, the qualification in section 17(1) “and is not withdrawn” would for example have been unnecessary. Mr Kemp varied his argument by saying that an application is something which has some possibility of becoming a patent, and once it is withdrawn that possibility disappears and there is then *no* application; and I note this view echoes what is said in the EPO Guidelines about Article 54(3) requiring an application to be in existence. I think in many contexts the existential argument cannot be denied, but it can only be safely assumed to apply in certain simple contexts, and for more complicated situations one looks for explicit confirmation. For example, it might be thought self-evident that a patent that had lapsed through non-payment of renewal fees was no longer a patent in name and the question of infringement could therefore never arise: yet section 60(1) goes to the trouble of explicitly confirming that a patent must be in force in order to be infringed. Reverting to the withdrawal of applications, the context is not even as straightforward as my example for patents: the withdrawal of a patent application does not necessarily annihilate it as if it had never been. If for example it gets published under section 16 and is *then* withdrawn there is no question but that the publication persists in the prior art and the entry on the Patents Register persists also. This is not a simple situation, and I cannot believe that the draftsman, if he had had it in mind that section 2(3) should *not* apply to applications withdrawn after the key date but then published as section 16 requires, would not have made specific provision in those terms, to nullify the act of publication.
- 23 I have considered the interpretation of the word “application”, and I should also consider the interpretation of the word “published” in section 2(3), to assess whether it can be considered nullified by a prior withdrawal. Here we have a couple of definitions in section 130: “published” is given a general meaning of “made available to the public” in section 130(1), but more specifically, references to an application for a patent being published are said in section 130(5) to be references to its publication under section 16. This therefore establishes a link between section 2(3) and section 16. This highlights that withdrawn applications will inevitably be published under the provisions of section 16, yet they are not separately dealt with under section 2(3). I think the examiner was right to place some significance on that point of drafting.

### Policy underlying section 2(3)

- 24 I believe we should also weigh the policy underlying this area of the Act, and the role it plays in the patent system. As the quoted sections above make clear we are dealing in section 2 with the delineation of the state of the art, which is that body of prior public knowledge that can be drawn on to test the novelty of the invention. For knowledge that became public before the priority date of the invention we have in section 2(2) a straightforward and all-embracing provision. Should it then be policy to include a provision on knowledge that emerges, to become public on or after that date, but yet pre-dates it in some sense? The prime example of such emerging knowledge is that contained in patent applications of earlier priority date, and this is indeed included in section 2(3). The section comes into play when there is conflict between patent applications that overlap in the time they spend passing through the Patent Office.
- 25 It is sometimes said, and Mr Kemp said it at the hearing, that the purpose of section 2(3) is to prevent double patenting, with the implication that if as here one of the applications falls by the wayside, double patenting ceases to be a danger and section 2(3) does not or need not operate. I would say that it is an *effect* of section 2(3) that it prevents double patenting, but it goes beyond that: it must be considered a blunt instrument if that was the prime purpose. I say this because section 2(3) does not require the earlier application to be processed to grant. Many applications are terminated in one way or another *after* early publication, and there has been no suggestion made to my knowledge that these should be disregarded under section 2(3) because there is no risk of double patenting. If it had been desired to prevent double patenting, a provision more along the lines of section 18(5) or 73(2) would have been required.
- 26 Section 2 deals with novelty. Novelty goes to prior knowledge that was public or becomes public. The teaching of a prior patent application that gets published is prior knowledge that has become public, and the withdrawal of the application before the publication date nullifies neither the original knowledge, lodged at a patent office in a document of record on the priority date, nor does it nullify the publication, whereby it passes into the public domain. On the latter point, Mr Kemp did not dispute that the publication of application A was effective to include it in the state of the art provided in section 2(2). For my part I believe there are good reasons whereby publication of an application should *not* have different effects under sections 2(2) and 2(3). In either case the content is undeniably made available to the public. Withdrawal of the application beforehand cannot change that, and thus should not change the state of the art.
- 27 There are other considerations that support the view that publication should not be subject to condition or qualification. One is the element of uncertainty that this would introduce, and the examiner raised this point at the hearing. If Mr Kemp's arguments were accepted no publication of an application could be taken at face value for the purposes section 2(3), without checking the Register of Patents to find out if the application was withdrawn before the publication date.
- 28 Another consideration is the parallel that is to be found in section 78(5) of the Act. Section 78 sets out the "equivalence" conditions on which an application made to the EPO for a European patent can, if it designates the United Kingdom when it is filed, be treated as a domestic UK application. It is provided that such EP(UK) applications go into the section 2(3) state of the art on publication by the EPO (sections 78(2) and 78(3)(d)). Interestingly we also have a provision in section 78(5) that switches off the equivalence if the EP(UK)

application is (*inter alia*) withdrawn, or the UK designation is withdrawn. How does this switch-off operate if the application is published and already in the section 2(3) state of the art? This is the question that was addressed in the well-known case of *L'Oréal's Application [1986] RPC 19*. At that time the court felt compelled to give section 78(5) a literal meaning, which had the effect that published EP(UK) applications disappeared from the section 2(3) state of the art if withdrawn. This "bizarre" effect (to quote the *CIPA Guide to the Patents Act*, fourth edition) was felt to be sufficiently undesirable that an amendment to the Act was introduced, and this was section 78(5A) which was effective from 7 January 1991. This provides for the "continued operation of section 2(3)" if an EP(UK) application has so entered the state of the art, even if withdrawn later. I note that a government spokesman speaking to the original section 78(5) in its passage through the House of Lords said that the wording already had the meaning which is now provided by subsection (5A) (*CIPA Guide to the Patents Act*, fifth edition, paragraph 78.05).

- 29 The thread running through the *L'Oréal* history and its outcome is that the proper view of applications entering the section 2(3) state of the art is "what's done cannot be undone": a publication cannot be un-published, what is known cannot be un-known. Clearly, the present case involves a different point in that we are here thinking about a withdrawal that took place *before* publication rather than after, so that arguably the application was never in the section 2(3) state of the art. But the idea that publication should bring with it certainty for section 2(3), an idea which seems always to have been the mind of the draftsman of the Act, as eventually confirmed by section 78(5A), is clearly an idea that has implications for the present case also. Section 78 has not however been discussed in this case and I should make clear that I regard it only as an interesting parallel, not something that is critical to my decision.
- 30 Given this entire context I am certain in my own mind that had the draftsman of the Act intended section 2(3) not to apply to applications withdrawn in the pipeline period, he would have made an explicit derogation. Further, it is not open to me to read such a derogation into the present wording. Mr Kemp made a general point that exclusions from patentability should, according to the case law, be interpreted narrowly. I take that point, but I do not see that it applies very well to the particular question at issue and it does not disturb my conclusions so far.

#### The European parallel

- 31 The European parallel in this case, which depends upon section 130(7) and a decision of an EPO Board of Appeal, is a very strong one for the applicant. I am very conscious of the obligation I am under to observe and reflect EPO legislation and case law, an obligation which follows from the Act and from many judgments of UK courts. I wish first to evaluate the European approach in this area.
- 32 Firstly, nothing significant arises from a comparison of the respective statutory provisions: the EPC gives no more of a clue on the point at issue than the Patents Act 1977. Secondly, the practice of the EPO on the point at issue, as set out in the passage already quoted from the Guidelines for Examination in the EPO, is based on comments of a Board of Appeal made in the course of decision J 05/81. As I have noted, the Board of Appeal had already at this point in their decision been able to rebut the reasoning that the Receiving Section had used in their decision, *viz* that there was an obligation to publish applications withdrawn after



the key date. This rebuttal was based on logical analysis of the legal provisions. The Board then found general considerations to support this rebuttal, particularly the desirability of minimising the number of what they termed “false” prior rights. It was in this context that it was stated that there should be no prior right effect under Article 54(3) if the prior application is not still in existence when it is published. This statement, which is not in itself given justification, is in the nature of an *obiter dictum* as it is incidental to the question under discussion, the obligation to publish late-withdrawn applications, and certainly incidental to the issue that the applicant was concerned with, which was simply to prevent publication. The policy advanced by the Board for Article 54(3) does not reduce the number of publications, false or otherwise: publication still occurs (but is to be deemed legally ineffective for prior-art purposes, if the application was withdrawn). The Board of Appeal was not presented with argument on the interpretation of Article 54(3) which might have brought out the pros and cons of the two views that can be taken as to whether withdrawn applications can enter the state of the art. I agree with the examiner that these considerations lessen the persuasive power of the EPO practice on this point.

### **Conclusions**

- 33 I have found that the Patents Act 1977 has no provision to exempt applications withdrawn after the key date from the state of the art provided by section 2(3). I have detected no inconsistency between the relevant corresponding provisions of the Patents Act 1977 and the European Patent Convention. There is thus far no divergence that might cause concern under section 130(7). It is however clear that EPO case law and practice embody the opposite conclusion, of exempting late-withdrawn applications from the state of the art provided by Article 54(3). This appears to be long-settled practice in the EPO and for that fact alone it is of some significance. This is of concern under section 130(7) as corresponding legislative provisions may have different effects. The final question to be answered is therefore, does section 130(7) require me to superimpose, in the interests of uniformity, the EPO interpretation upon a section of our Act which I believe was not intended to support it?
- 34 I answer that question in the negative, for the following reasons.
- 35 The European Patent Convention (EPC) is an international treaty that is given legislative effect in the United Kingdom by the Patents Act 1977. The Act required the draftsman to make certain choices of language and structure in order to express the effects of the EPC according to UK styles and practices in those core areas which are identified in section 130(7). That section also records the draftsman’s intention that these areas should have the same legal effects. The Act therefore has a certain primacy in the UK, while always requiring attention to be paid to corresponding parts of the EPC.
- 36 Given the different drafting styles of the Act and the EPC, in particular the strict need for the Act to provide vires for all administrative actions and for all dependent secondary legislation, in comparison with the treaty language of the EPC which is not so concerned with provision of vires (for example, the EPC currently does not define the scope of its rule-making powers, see Article 164), it seems inevitable that divergences will appear between UK and EPO practices. There are several known differences, not necessarily outside the core areas. The role of designations in the state of the art under section 2(3) and Article 54(3) is an example which is not far from the subject of the present case: in the UK it is enough for a European

application to designate UK at its filing date for it to pass into the section 2(3) state of the art when published by the EPO, whereas the EPC has since July 1997 imposed a further condition before a European application passes into the Article 54(3) state of the art, that is that the relevant designation be confirmed by payment of the designation fee (Rule 23a). Planned changes to the EPC will remove this divergence, but had it proved necessary to reflect this EPO procedure in the UK it seems doubtful that the very specific condition introduced by Rule 23a could have been given effect, absent amendment of section 78 and/or 130(1) of the Act.

37 The situation in the present case is not dissimilar to the one just described: I am doubtful that the specific condition relating to withdrawal before publication can be given effect in the UK without amendment of section 2(3) of the Act, given the scheme of the Act. But there is an important difference in that here the EPO practice follows, not from the EPC itself, but from an *obiter* statement of a Board of Appeal, which lessens its persuasive power.

38 I therefore find that application A, published as GB23301866, is not exempted from the state of the art under section 2(3) by reason of its withdrawal before publication. Since it completely removes the novelty of application B, the application in suit, and since I can see no way in which application B might be amended to avoid this difficulty, I refuse this application GB 9626086.4.

39 Mr Kemp observed that it can hardly have been the intention of Parliament when enacting the Act that applicants under the EPC would have a relative advantage. That is not however the general effect of my decision. We are dealing in this case with a relatively rare situation, so-called “self-collision”, which has now led to the complete loss of the later application. In the more usual situation where the applications that come into conflict under section 2(3) are from different applicants and are not identical, the effect of my decision is simply to confirm that certain applications, relatively few in number and not necessarily anticipatory for any later application, are not to be excluded from the section 2(3) state of the art. This does not constitute a general disadvantage for UK applicants relative to EPO applicants.

### **Appeal**

40 This is not a procedural matter and any appeal against this decision must therefore be made within six weeks. The period allowed under section 20(1) of the Act for granting the application was to expire on 16 June 2001 but is now extended under section 20(2). If on appeal my decision is reversed the application will need to be remitted to the examiner for consideration of some relatively minor points of clarity, for which a further extension of time may be required.

Dated this 13th day of June 2001

H J EDWARDS  
Deputy Director acting for the Comptroller

**THE PATENT OFFICE**