

4th July 2007

PATENTS ACT 1977

APPLICANT

1. Astron Clinica Limited
2. Cyan Holdings Plc.
3. SurfKitchen Inc.
4. Inrotis Technologies Limited
5. Software 2000 Ltd.

ISSUE

Whether the following patent applications comply with section 1(2):

1. GB 0519497.2,
2. GB 0618038.4,
3. GB 0402252.1,
- 4(i). GB 0508596.4,
- 4 (ii). GB 0622273.1 and
5. GB0423105.6

HEARING OFFICER

P Marchant

DECISION

Introduction

1 This decision is concerned with claims to computer programs for carrying out patentable methods; sometimes called “program on a carrier” claims. For many years, such claims have been allowed by patent examiners examining applications under the Patents Act. However, following the judgment of the Court of Appeal in the *Aerotel and Macrossan*¹ case (hereafter “*Aerotel*”), the Office issued a practice notice² on 2 November 2006 which set out, in its paragraph 14, the Office’s interpretation of the judgment in relation to claims of this sort. It indicated that they appear to be excluded from patentability as a consequence of the test set out in *Aerotel*. As a result, since 2 November 2006 it has been the usual practice of examiners to disallow such claims.

2 Beresford and Co. requested hearings on this issue in relation to the

¹ *Aerotel Ltd v Telco Holdings Ltd and Macrossan’s Application* [2006] EWCA Civ 1371, [2007] RPC 7

² Patents Act 1977: Patentable subject matter

applications set out above. In each case the examiner has found method and apparatus claims to be allowable but has reported that corresponding claims to computer programs are not allowable. In each case this is the sole outstanding question preventing grant. The matter came before me at a hearing on 21 May 2007 at which Mr Nicholas Fox represented the applicants.

3 I will take the Inrotis Technologies Ltd (“Inrotis”) application, number GB 0508596.4 as an example to illustrate the form in which these claims are often drafted. Claims 1 and 8 are independent method and apparatus claims which the examiner has found acceptable, while claims 13 to 17 relate to computer programs on storage media. They read as follows:

*“1. A method of identifying groups of target proteins for drug therapies comprising:
obtaining proteome data defining proteins and protein interactions for an organism to be targeted;
storing said proteome data as network data defining a network comprising a plurality of nodes and a plurality of links between said nodes;
generating data defining a number of groups of nodes;
determining one or more values indicative of the extent to which removal of said nodes of said groups of nodes from said network effects the structural identity of said network;
generating further data identifying further groups of nodes;
determining one or more values indicative of the extent to which removal of said nodes of said further groups from said network affects the structural identity of said network;
identifying groups of nodes associated with values above a threshold value; and
outputting as data identifying groups of target proteins, data identifying groups of proteins corresponding to said identified groups of nodes,
wherein said determining one or more values comprises calculating for a group of nodes the average shortest path length between nodes in said network not in said group via links not connected to said nodes in said group.”*

*“8. Information processing apparatus for processing proteome data defining proteins and protein interactions to identify groups of target proteins for drug therapies, said apparatus comprising:
a data store operable to store proteome data defining proteins and protein interactions in the form of network data defining a network comprising a plurality of nodes and a plurality of links between said nodes;
a generator operable to generate data defining a number of groups of nodes defined by data stored in said data store;
an assessment module operable to determine one or more values indicative of the extent to which removal of the nodes of groups of nodes generated by said generator from said network defined by said data stored in said data store affects the structural identity of said network, said assessment module being operable to determine one or more values by calculating for a group of nodes the average shortest path length between*

nodes in said network not in said group via links not connected to said nodes in said group;

a group identifier operable to identify groups of nodes associated with values by said assessment module above a threshold value; and

an output module operable to output data identifying groups of target proteins, data identifying groups of proteins corresponding to groups of nodes identified by said group identifier.”

“13. A storage medium storing computer implementable instructions to cause a programmable computer to become configured as an information processing apparatus in accordance with any of claims 8 to 12.

14. A storage medium storing computer implementable instructions for causing a programmable computer to perform a method in accordance with any of claims 1 to 6.

15. A storage medium in accordance with claim 13 or 14 comprising an electrical signal in a communications network.

16. A storage medium claim in accordance with claim 13 or 14 comprising a disc.

17. A disc in accordance with claim 16 comprising a magnetic, optical or magneto-optical disc.”

4 The program claims in the other applications, apart from Cyan Holdings Plc's ("Cyan's") application, number GB 0618038.4, are of much the same form. It is not necessary for me to set them all out here since as far as the issue presently under consideration goes, whatever applies to claims of this form in relation to one application applies equally to the others. Cyan's program claims are slightly different in that they do not refer back to earlier independent apparatus or method claims but are self contained, and I set out their first program claim below. However these claims too are of equivalent scope and can be considered along with the rest.

“44. A computer readable medium storing computer implementable instructions to cause a programmable computer to perform a method for identifying a set of register values for storage within registers of a micro-controller which includes a plurality of peripherals, the micro-controller being operable to route different selections of signals to and from said peripherals via a set of ports on the basis of the register values stored in said registers, the method comprising:

receiving via a first user interface data identifying a selection of peripherals from the plurality of peripherals included in said micro-controller;
determining for received data identifying a selection of peripherals, a set of signals required for routing to and from said selected peripherals to enable each of said peripherals to function;

identifying a plurality of combinations of register values which when stored within registers of a micro-controller enable all of the determined signals to be routed via ports of said micro controller;

receiving via a second user interface data identifying a selection of one of said plurality of identified combinations of register values; and outputting data identifying a set of register values for storage within registers in a micro controller including register values corresponding to a selected combination of register values.”

The Law

5 The provisions in the Act relating to excluded matter appear in section 1(2) which reads:

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

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

(b) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever;

(c) a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer;

(d) the presentation of information;

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

These provisions are based on and are equivalent in their effect to Article 52(2) of the European Patent Convention (“EPC”). As discussed above, this area has recently been considered by the Court of Appeal in the *Aerotel* case and the interpretation of this judgment by the UK Intellectual Property Office (“UKIPO”) has led to the present hearing.

The case for allowing program claims

6 The applicants’ arguments have two main limbs. They say firstly that *Aerotel*, and the subsequent judgments in *Cappellini and Bloomberg*³, *Oneida Indian Nation*⁴ and *IGT*⁵ do not support the exclusion of program claims, and as a result, the Office was mistaken in interpreting *Aerotel* in the way it did. Secondly, the approach now being taken by the Office is inconsistent with that of the European Patent Office (“EPO”) and other European countries. They cite a number of grave pronouncements that have been made in UK court judgments

³ *Cappellini and Bloomberg, Re* [2007] EWHC 476 (Pat)

⁴ *Oneida Indian Nation’s Application* [2007] EWHC 0954 (Pat)

⁵ *IGT’s Application* [2007] EWHC 1341 (Ch)

as to the importance of harmonisation between EPC contracting states, and conclude that the Office should not diverge from well established European practice. The applicants also make the point that it is overwhelmingly UK based patentees that are disadvantaged by this situation, given the filing patterns of UK and international applicants and they explain the problems of enforcement for patentees.

Effect on UK applicants

7 Taking the last point first, I can not take into account here what Mr Fox says about the detrimental effect on UK companies. That relates to public policy whereas in deciding this matter I am able to concern myself only with the law. Nevertheless I will set out his arguments briefly. Mr Fox highlighted the disproportionate way in which the situation affects UK applicants. He took figures from the UK Patent Office Annual Review of 2006 to show that 82% of patents which are in force in the United Kingdom have been granted by the European route. The effect of the UKIPO's approach to program claims is therefore to produce a different result in just 18% of patents in the UK. The figures also show that UK applicants for UK national patents outnumber applicants of the next most prolific nation filing in the UKIPO (namely Germany) by 33 to 1. Figures from the EPO Annual Report of 2005 show in addition that UK applicants account for 3.6% of EP applications. One can quibble about the details - some of these figures relate to applications rather than patents, and the figures cover the whole field of technology not just computer implemented inventions - but I think the point is well made, that there is likely to be a disproportionate effect on UK patentees.

8 Mr Fox set out what that effect is, namely that the inability to protect independent sales of the program creates problems for his clients. The main difficulty is that an infringement action can be brought against a party who handles such programs only under the contributory infringement provisions of section 60(2). This has the disadvantage that in order for the act of supplying articles to qualify as contributory infringement, the substantive infringement must also take place in the UK. A person could produce and sell programs in the UK for use abroad without infringing. Key personnel in the applicant companies in the present cases provided witness statements which confirmed that the software, on disks or as downloads, was their primary commercial product and it was therefore of great importance to them to have claims to the software *per se*. I appreciate the point that is being made here, but it is the case, as I have said, that I am unable to take it into account in this decision.

The court judgments

9 It is common ground that the *Aerotel* judgment does not set out what view practitioners should take of program type claims. Mr Fox said that the rationale of the judgment ran counter to the Office's interpretation. He referred primarily to paragraph 43 in which Jacob LJ considered how the "contribution" should be identified in step two of the proposed four part test.

"43. The second step - identify the contribution - is said to be more problematical. How do you assess the contribution? Mr Birss submits the test is workable - it is an exercise in judgment probably involving the

problem said to be solved, how the invention works, what its advantages are. What has the inventor really added to human knowledge perhaps best sums up the exercise. The formulation involves looking at substance not form – which is surely what the legislator intended.”

10 Mr Fox’s point is that the contribution is to be assessed in relation to the substance of the advance made by the invention over what has been done before, and it is therefore irrelevant when one comes to consider step three of the test whether that advance is embodied in an apparatus, method or program claim; the question in step three: “ask whether (the contribution) falls solely within the excluded subject matter” must be answered in the same way for the contribution when it appears in the form of a program claim as it would be in an apparatus or method claim.

11 This considers the second and third steps of the test but not the first. The first step requires the practitioner to “properly construe the claim” The judgment at paragraph 42 says in relation to this:

“42. No-one could quarrel with the first step – construction. You first have to decide what the monopoly is before going on the question of whether it is excluded. Any test must involve this first step.”

The Office Notice “Patents Act 1977: Patentable subject matter” addresses this point in its paragraph 14 as follows:

“14. Also left open is a question over permissible forms of claim: can claims to a computer program (or a program on a carrier) be allowable when other claims in a different form, claims covering the use of that particular program, would be allowed? In the past, the Office has allowed such claims on the basis that substance should prevail over form. Whilst the judgment maintains the emphasis on substance over form, it also characterises the first step as deciding what the monopoly is, and if the monopoly does not go beyond the program, the contribution is also unlikely to go beyond “a program for a computer”. Accordingly, whilst examiners will continue to assess each case on its merits, it seems likely that few claims to programs in themselves (or programs on a carrier) will pass the third test.”

12 The question boils down to whether “the contribution” should be assessed as including or excluding the context of the scope of the monopoly. Mr Fox thinks it should be excluded and the examiners in these applications, based on the guidance in the Practice Notice, think it should be included.

13 That was the main thrust of Mr Fox’s argument in relation to *Aerotel*. However, he referred to other parts of the judgment to support his interpretation. Paragraphs 22, 24 and 26, Mr Fox said, provide guidance on how the analysis should be approached. In paragraph 22, Jacob LJ rejects an over-restrictive view of the scope of the exclusions, which some may have thought was signalled in an earlier judgment of the Patents Court. In paragraph 24, he confirms that some formality is required in making assessments of excluded matter; it is not sufficient to work on the basis that you know an excluded invention when you see one. In paragraph 26 he reviews the different approaches to assessing excluded

matter, including, in item (1), to which Mr Fox drew my attention, the finding of the Court of Appeal in the *Merrill Lynch*⁶ case. This was to the effect that the whole invention is not to be excluded just because the advance arises in an excluded area. Having considered these passages, I do not think they provide any insight into how “the contribution” in the present test is to be assessed and consequently I do not think they add to Mr Fox’s main argument in relation to paragraph 43.

14 Mr Fox also referred to paragraph 31. Here, Jacob LJ notes by way of distinction from the EPO Boards of Appeal, the Court of Appeal’s view that the computer program exclusion includes real computer programs in a practical and operable form, not just programs in the sense of the abstract series of instructions. Mr Fox pointed out that this assessment was prefaced by the words: “Before you get to the “as such” qualification ...” I think he was concerned to avoid any possible misunderstanding that the paragraph might be taken to say that all computer program inventions are excluded. I agree with Mr Fox’s interpretation, and I note that the same thing is said in different contexts in paragraphs 36 and 92. As with the previous paragraphs I do not think this point sheds any light on how the test should be applied to program claims.

15 Mr Fox also referred me to paragraph 54 of the judgment. Here, having found that the apparatus claim in *Aerotel* was not excluded; Jacob LJ considered the method claims and decided that since they were of narrower scope, being claims effectively to the use of the apparatus, they must also be patentable. Mr Fox said that this demonstrated a clear principle that if the broader invention is patentable, a narrower claim falling wholly within its scope must also be patentable. This principle may be sound, but I do not agree that the present program claims are of narrower scope than the apparatus and method claims. I am not even sure whether it is usually possible to make a meaningful comparison of the scopes of different categories of claim with one another: they are likely to be disjoint, which is after all the purpose of writing claims in different categories. To the extent they can be compared, it seems to me that the situation is rather the other way round than that suggested by Mr Fox. Apparatus claims involve apparatus operating in accordance with the program, so apparently relate to a subset of the scope of claims to the program at large. To the extent a method claim invokes the operation of physical means, which is a feature of all the present method claims, the same applies, and there is the further limitation arising from operation of the method. I do not think this assists with the present inquiry.

16 Having considered Mr Fox’s points in relation to the *Aerotel* judgment, and having re-read the judgment, in particular in relation to the application of the test to the *Aerotel* and *Macrossan* claims, I do not find any guidance which assists with interpreting how the contribution is to be assessed, in a way material to the point at issue here. My initial view is that, since the test relies on the initial step of “deciding what the monopoly is”, the contribution can not be some general concept developed from an overall appreciation of the teaching of the specification but must be derived from the claim under consideration. That being the case, I do not see how the contribution can extend beyond the scope of the monopoly. But that is a preliminary view and is subject to Mr Fox’s further

⁶ *Merrill Lynch’s Application* [1989] RPC 561

arguments.

17 Mr Fox referred me to paragraph 9 of Pumfrey J's judgment in *Cappellini and Bloomberg*, the last part of which reads, with bold text substituted for the original italic:

*"I prefer to approach this problem from the direction indicated by the Court of Appeal in **Aerotel**: what is the claimed invention **as a matter of substance**? A claim to a programmed computer as a matter of substance is just a claim to the program on a kind of carrier. A program on a kind of carrier which, if run, performs a business method adds nothing to the art that does not lie in excluded subject matter."*

18 Mr Fox pointed out that Pumfrey J was equating programmed apparatus with a program on a carrier. However this is in the context of a discussion of the EPO approach to excluded matter in T0931/95 *Controlling pension benefits/Pension Benefit Systems Partnership*. It relates to excluded rather than permissible subject matter and is making the point that running a computer program on a conventional computer does not of itself confer the necessary technical character to render the invention patentable. I do not think this amounts to guidance on whether program claims are or are not admissible. I note that later in the judgment, in paragraph 17, Pumfrey J states that the form of claims is of relevance to the consideration of excluded matter, narrow claims in some cases being acceptable where broader claims are not, which if paragraph 9 pulls in one direction, tends to pull in the other.

19 In the *Oneida* case, Mr Christopher Floyd QC sitting as a deputy judge found the invention claimed to be excluded but went on to discuss the question whether a program claim (claim 16) would have been patentable had he found the apparatus claims patentable. Mr Fox said firstly that this part of the judgment was *obiter* because the main finding on the business method exclusion was said in paragraph 29 to be "enough to dispose of the appeal". I am not sure I agree. Mr Floyd QC had at this point addressed only claim 1. After making this comment, he went on to consider other grounds of exclusion and other claims in a way which supports the conclusion in paragraph 29. I think it is therefore debatable whether these comments are indeed *obiter*. What appears to me to be of greater significance is that he made a specific point of considering the patentability of the program claim in paragraph 33 and adopting a position on it. Consequently I do not think it can be regarded as an incidental comment that can be ignored.

20 Mr Fox argued that the reason Mr Floyd QC went on to consider the program claim was to assess the question whether the technical effect of the claimed invention was merely of the sort that arises when any program is run on a computer, or was of the kind discussed in *Merrill Lynch* as being apt to confer patentability. I understand him to be saying that the learned deputy judge was inquiring into the patentability only of the claim in suit and not program claims in general, so although he came to the conclusion that this particular program claim was excluded, there might be program claims in other applications which would not be excluded. Of course Mr Floyd QC is considering the claim before him but the question he sets himself seems to go wider than that. When he asks: "... is a

claim in the form of claim 16 allowable even where claim 1 is patentable?” The words: “... in the form of ...” indicate that he also has in mind the general question. He also labels it a “controversial question” and I do not see that an assessment limited to a claim of the patent in suit could be called controversial. Finally, as pointed out by Mr Fox, the references to *Gale’s Application*⁷ and paragraph 92 of *Aerotel* in paragraph 33 seem to refer to the narrow question, but are equally applicable to the general one if they are made by way of analogy. My view is that Mr Floyd QC is in fact addressing the general point, and he finds that such claims are not allowable.

21 Following the hearing, in a letter of 8 June 2007, Mr Fox submitted further observations on a judgment which had recently been issued concerning *IGT’s Application*⁵. He said that this judgment, in particular paragraphs 15 to 18, shows that the test in *Aerotel* should not be applied in relation to software inventions which do not involve novel hardware, and since *Aerotel* does not apply to such “pure” software inventions, there was no basis for the Office to change its practice in relation to program claims.

22 I do not agree with Mr Fox’s assessment of *IGT*. What I understand Warren J to be saying is that where, as in *Aerotel*, there is new physical hardware, it is appropriate to consider the business method exclusion; however, where the only new feature is new software, the issue of patentability would be likely to revolve around the computer program exclusion. I do not think this negates the application of the *Aerotel* test to pure software inventions, but rather indicates which of the exclusions should be, or would normally be, considered.

Consistency with European practice

23 Introducing his arguments on consistency between UK and European practice, Mr Fox pointed out that the European Patent Convention and the Patents Act 1977 were intended to harmonise practice between contracting states. The preamble to the Patents Act includes the words:

“... to give effect to certain international conventions on patents ...”

and the EPC says in its preamble:

*“The Contracting States,
DESIRING to strengthen co-operation between the States of Europe in respect of the protection of inventions,
DESIRING that such protection may be obtained in these States by a single procedure for the grant of patents and by the establishment of certain standard rules governing patents so granted,
...”*

24 Mr Fox then referred me to Nicholls LJ’s judgment in *Gale* as an example of a pronouncement by the Court of Appeal as to the importance of a common approach to patentability between the EPO and national courts. The judgment reads on page 323:

⁷ *Gale’s Application* [1991] RPC 305

“From this brief reference to the European Patent Convention one point which emerges is that it is of the utmost importance that the interpretation given to section 1 of the Act by the courts of the United Kingdom, and the interpretation given to Article 52 of the European patent convention by the European Patent Office, should be the same. The intention of parliament was that there should be uniformity in this regard. What is more, any substantial divergence would be disastrous. It would be absurd if on an issue of patentability, a patent application should suffer a different fate according to whether it was made in the United Kingdom under the Act or was made in Munich for a European patent (UK) under the Convention. Likewise in respect of opposition proceedings.”

25 Mr Fox went on to cite a passage from Hoffmann LJ’s judgment in the *Merrel Dow*⁸ case in the House of Lords, which says at page 82:

“... must have regard to the decisions of the European Patent Office (“EPO”) on the construction of the EPC. These decisions are not strictly binding upon courts in the United Kingdom but they are of great persuasive authority; first, because they are decisions of expert courts (the Boards of Appeal and Enlarged Board of Appeal of the EPO) involved daily in the administration of the EPC and secondly, because it would be highly undesirable for the provisions of the EPC to be construed differently in the EPO from the way they are interpreted in the national courts of a Contracting State.”

26 Mr Fox also referred to the *Bristol-Myers Squibb*⁹ case which was heard in the Patents Court. Jacob J (as he then was), considering the possibility of departing from EPO practice of allowing second medical use claims, quoted the passage from Hoffmann LJ I have just set out and continued:

“What Lord Hoffmann said has all the more force in relation to a court of first instance. If all the courts of first instance of the member states of the EPC felt able readily to differ from the questions of law decided by the Boards of Appeal (and particularly an Enlarged Board) the result would be an all too easy fragmentation of the European system of patent law. It is a matter of the utmost seriousness for any court to depart from a decision of an Enlarged Board EPO on a point of law, and, if it is to be done at all by a national court, I think it should only be done by a higher national court and not one of first instance. For the sake of coherence of the system as a whole, first instance courts should exercise self restraint, however erroneous they may think a particular decision of an Enlarged Board may be.”

27 It is clear from these passages that it is of fundamental importance for practice to be harmonised between the EPO and contracting states; and that if a UK court is to depart from EPO practice it should not be a court of first instance – or indeed the comptroller.

⁸ *Merrel Dow Pharmaceuticals Inc. and Anr v H N Norton & Co Ltd* [1996] RPC 76
⁹ *Bristol-Meyers Squibb Co v Baker Norton Pharmaceuticals Inc* [1999] RPC 253

28 In addressing that point, I observe that in the area of inventions excluded from patentability, the question of EPO practice was exhaustively considered by the Court of Appeal in *Aerotel*. They found recent developments in Board of Appeal decisions inconsistent with one another, and as a result felt it necessary to take an independent view pending any clarification of the matter by the Enlarged Board of Appeal. I am consequently obliged to follow the reasoning and guidance in the *Aerotel* judgment.

29 Mr Fox accepts that, but says that while main decisions of the Boards of Appeal in the area of excluded matter may be inconsistent with one another, there is no inconsistency in the EPO regarding the allowability of program claims. He cited a number of Board of Appeal decisions beginning with *IBM/Computer programs* T1173/97 dating from 1998 where the issue of program claims was first comprehensively considered, and from which time such claims were generally allowed by the EPO. (They were also allowed in the UK Patent Office following issue of a Practice Notice in 1999 dealing with this development in the EPO.) Mr Fox went on to cite some more recent decisions which had also found program claims to be acceptable and to refer to the EPO "Guidelines for Examination" which codify this practice. I accept Mr Fox's point on the treatment of program claims in the EPO, and so I do not need to consider this part of his argument in detail.

30 However, it appears that the guidance in *Aerotel* departs from EPO practice in force at any time during the period since such claims have been allowed. Paragraph 41 of *Aerotel* explains that the new test is a reformulation of the approach taken by the Court of Appeal in *Merrill Lynch*. That reformulation has the effect of linking the assessment of excluded subject matter more directly to the statement of exclusions in the Act and the EPC, than was the case in previous approaches. If a by-product of the reformulation, properly interpreted, is to exclude program claims, the practice now adopted by the Office arises as an interpretation of the new guidance by the Court of Appeal, not as an independent departure of the type that the authorities quoted by Mr Fox hold to be undesirable.

31 Mr Fox had also gone to the trouble of securing witness statements from patent practitioners Grégoire Desrousseaux in France and Peter Strehl in Germany, to demonstrate that the practice in those countries is the same as it is in the EPO. He clarified for me the procedure before France's Institut National de la Propriété Industrielle ("INPI"). Although patent applications are not searched or examined in INPI, examiners there carry out screening checks to avoid sending applications relating to excluded subject matter to the EPO for search and examination. M Desrousseaux's statement confirmed that INPI practice in this area was entirely parallel to the EPO's. Herr Strehl's statement explained that there were some differences in the way the technical nature of an invention was determined under German law compared to the approach in the EPO, however, where it is established that an invention is patentable, program type claims are allowed in the same way as in the EPO.

Conclusion

32 Although there is no direct guidance in *Aerotel* as to how program claims

should be treated, the requirement to consider the scope of the monopoly in step one of the test, coupled with the direct comparison between the contribution and the excluded fields, suggests that such claims should be excluded. The *Oneida* judgment appears to confirm this. There seems to be little else in the recent cases cited by Mr Fox to assist in this inquiry. Although this position is inconsistent with practice in the EPO and other European countries, which is highly undesirable; if it is the correct interpretation of the approach set out in *Aerotel*, as I believe it to be, then I am obliged to apply it in the present cases. I consequently find that the program claims are not allowable and that as a result, the patent applications under consideration here can not be accepted in their present form, and stand to be refused.

33 I will however provide an opportunity for the applications to be amended so that they can be granted. If within 28 days of the date of this decision the applicants in any of the present applications file amendments deleting the program claims (as identified by the respective examiners in their reports under section 18(3) of the Act), and making any necessary consequential amendments to the body of the specification, then I will consider the amended applications for grant. I note that the Inrotis applications, numbers GB 0508596.4 and GB 0622273.1, came to the end of their rule 34 period on 29 June 2007 and would require that period to be extended under rule 110 if amendment were to be pursued.

Appeal

34 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

P MARCHANT

Deputy Director acting for the Comptroller