

The Application

- 4 The application is concerned with using the information gathered by Automatic Number Plate Recognition (ANPR) cameras to determine the likelihood that a vehicle is carrying a cloned number plate. A cloned number plate is considered to be an illegal copy of a legitimate number plate which is being used on another vehicle other than the one for which it is legally registered too. The system uses a parameter calculated from the time at which an image is captured and the distance apart of the cameras to determine whether it was possible for the vehicle to be in the locations at the times the images were taken.
- 5 Prior to the hearing, Mr Hirsz filed a skeleton argument for which I am grateful. In his skeleton he filed an auxiliary set of claims and I have considered both these claims and the claims on file.
- 6 The claims on file were filed on 12th Feb 2009 and comprise a first independent claim to a method for detecting the use of a cloned number plate and a corresponding apparatus claim:

“Claim 1:

A method of detecting the use of a cloned number plate, the method comprising the steps of receiving first input data from a first ANPR camera and second input data from a second ANPR camera,

comparing first and second input data and if the first and second input data is the same, determining a parameter corresponding to the distance between the first and the second ANPR cameras and comparing the parameter with one associated with the time at which input data was observed by the first and second ANPR cameras to automatically generate a likelihood of a number plate corresponding to the first or second input data detected by first and second ANPR cameras being a clone.

Claim 6:

Apparatus for the detection of a cloned number plate, the apparatus comprising:

A first ANPR camera in a first geographical location;

A second ANPR camera in a second geographical location;

Means for logging number plates captured by the first and second ANPR cameras, and for noting the time at which each number plate was captured;

Means for comparing the number plates captured;

Means for comparing the time at which any single number plate was captured by the first ANPR camera and by the second ANPR camera,

means for determining the distance between the first and second ANPR cameras at the time of capture of said any single number plate,

means for detecting a likelihood that any single number plate is a clone and means for generating a report in the event of a likelihood of a cloned number plate being detected.”

- 7 The auxiliary claims filed in the skeleton argument comprise a first independent claim to a method for the detection and calculation of a probability that the detected number plate is a clone. A further independent claim to a corresponding apparatus is also included.

“Claim 1:

A method for the detection and calculation of the probability that a number plate has been cloned, the method comprising the steps of receiving first input data from a first static or moving ANPR camera at a first geographical location and second input data from a second static or moving ANPR camera at a second geographical location, the first and second geographic locations being geographically distinct, using a processor to compare the first and second input data and if the first and second input data is the same, a parameter corresponding to the distance between the first and the second ANPR cameras and comparing the parameter with one associated with the time at which input data was observed by the first and second ANPR cameras to automatically generate a likelihood of a number plate corresponding to the first or second input data detected by first and second ANPR cameras being a clone and generating a report in the event that a high probability of the number plate being a clone is detected.

Claim 5:

A system for the detection and calculation of the probability that a number plate has been cloned the system comprising:

A first ANPR camera in a first geographical location;

A second ANPR camera in a second geographical location, the first and second geographic locations being geographically distinct;

A database for logging detection events the detection events comprising the details of number plates captured by the first and second ANPR cameras noting the time at which the details of each number plate were captured;

A processor, wherein the processor compares the details of the number plates captured by each ANPR camera and if an identical number plate was captured by both the first ANPR camera and by the second ANPR camera, the processor calculates the difference in time between the two corresponding detection events, wherein the processor compares this difference in time to a travel time, the travel time being a calculation of the time required to travel between the first and second ANPR cameras and wherein if the difference in time between the detection events is substantially less than the travel time, the processor generates a probability report indicating the probability that one of the number plates has been cloned.”

The Law

8 The relevant parts of Section 1(1) read (emphasis added)

A patent may be granted only for an invention in respect of which the following conditions are satisfied:

- (a) The invention is new;
- (b) It involves an inventive step**
- (c) It is capable of industrial applicability
- (d) The grant of a patent for it is not excluded by subsections (2) and (3) or Section 4A below:**

9 The relevant parts of Section 1(2) read (emphasis added)

“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.**

10 Section 3 of the Act reads:

“An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of Section 2(2) above and disregarding Section 2(3) above.”

I do not propose to quote sections 2(2) and 2(3) here, but it follows from these that the state of the art comprises all matter which has at any time before the priority date of the application been made available to the public, whether in the UK or elsewhere.

11 The interpretation of Section 1(2) has recently been considered by the Court of Appeal in *Symbian Ltd's Application [2009] RPC 1*, (hereafter *Symbian*) decided on 8th October 2008. *Symbian* arose under the computer program exclusion, but as with its previous decision in *Aerotel v Telco Holdings Ltd and Others and Neil*

William Macrossan [2007] RPC 7 (hereafter *Aerotel*) the Court gave general guidance in regard to Section 1(2). Although the Court approached the question of excluded matter primarily on the basis of whether there was a technical contribution, it was quite clear (see paragraphs 8-15 of the decision) that the structured four-step approach to the question in *Aerotel* was never intended to be a new departure in domestic law; that it remained bound by its previous decisions, particularly *Merrill Lynch [1989] RPC 561* which rested on whether the contribution was technical; and that any differences in the two approaches should affect neither the applicable principles nor the outcome in any particular case.

12 Indeed the Court at paragraph 59 considered its conclusion in the light of the *Aerotel* approach. It is therefore clear that the correct approach is to carry out the *Aerotel* test in the light of the clarification provided by *Symbian*, and I will therefore proceed on the basis of the four-step approach explained at paragraphs 40-48 of *Aerotel*, namely:

- 1) Properly construe the claim;
- 2) Identify the actual contribution;
- 3) Ask whether it falls solely within the excluded matter;
- 4) Check whether the contribution is actually technical in nature.

Arguments and Analysis - EXCLUDED MATTER

13 In deciding whether the application relates to a patentable invention I must follow the four step test as set out in *Aerotel*.

Step 1: Claim Construction

14 The first step of the test requires me to construe the relevant claim. During the hearing it also became clear from Mr Hirsz's argument that determining what was meant by the claim was also an important factor in determining the inventive step he considers the application to make.

15 In order to construe claim 1, I believe it is first necessary to clearly understand several of the terms used. The first of these is to consider what is meant by an ANPR camera. These are cameras designed for the purpose of taking an image of a passing vehicle and then applying Optical Character Recognition (OCR) techniques to this image to provide some data indicative of the number plate. Importantly for this application I should make it clear that these are not speed cameras though this is clearly a use to which they can be put as, indeed, is the monitoring of a congestion charging area.

16 Secondly, what does the term "geographic location" mean? This was a cause of some disagreement during the hearing. Mr Hirsz in his comments regarded the "geographic location" to mean locations where there was some distance between them. In particular, he saw the concept of different geographic locations as being

one that involved a large network of cameras rather than a more local grouping of cameras. This distinction was said by Mr Hirsz to be important as the greater the distance between the camera the more accurate the calculation of the parameters of claim 1. At the hearing Mr Hirsz also sought to distinguish his application from the prior art by suggesting that a set of cameras along the same stretch of road were, in his words “serial cameras” and they should not be considered to be in different geographic locations.

- 17 However, after consideration of this point I cannot agree with this interpretation of the meaning. I consider that “geographic location” can only have one meaning and it cannot be determined by the distance between the two points or their vicinity to each other. As long as the cameras are in different places they are in different geographic locations irrespective of whether that distance is a matter of centimeters, meters or kilometres. It may well be true that the accuracy of the claimed invention is improved if the distances are larger but that is a function of the system and not one of geography. Furthermore, at the time of filing of the application, it was possible to distinguish two locations that were only a few metres apart as being separate geographical locations through the use of GPS (Global Positioning Satellite) technology.
- 18 Finally, what is meant by the term ‘cloned number plate’? This is not difficult to determine and all agreed that it is a copy of a number plate placed on a vehicle other than the one to which it is registered.
- 19 What then does claim mean? The system relies upon two ANPR cameras in different locations. Each camera then functions as expected and produces data which is fed into a comparison means. Though not specified in the claim it is clear that this data includes a time relating to when the image was captured and a number plate.
- 20 The system then compares the number plate information entered into the system and if a match occurs, i.e., the same number plate is detected from different cameras; a parameter is calculated based on the difference in time between the capture of the images and their geographic distance apart. In its basic form this parameter would appear to be intrinsically linked to an indication of the speed of the vehicle between two points. From this, the system is then able to determine a likelihood or probability that a cloned number plate has been detected.
- 21 Looking to the description for assistance at this point, and taking into account the submissions made during the hearing, the likelihood of a cloned number plate is determined by working out whether such a journey was possible in the measured time difference. If the journey was possible then the likelihood of a clone is low whereas if a journey was unlikely because it would require an excessive speed to travel between the two points then the likelihood of a clone is high.
- 22 As indicated above Mr Hirsz also submitted an auxiliary claim set. I have carefully considered these claims and they do not, to my mind, alter the construction I have just discussed.

Step 2: Identify the actual or alleged contribution?

- 23 Having construed the claim above I must now go on to consider the contribution made by the claim as the *Aerotel* test requires.
- 24 The use of ANPR cameras is well known in the art of traffic control and enforcement and I do not believe this is in dispute. It is also clear from the prior art cited by the examiner that it is also well known to use the cameras in pairs or groups of cameras. In cases such as the prior art cited by the examiner the cameras are connected to a central point or computer system which receives the input data from each camera. The cameras appear to have no other function other than the capture of an image of a vehicle as it passes that point and the specification does not suggest any functionality beyond this understanding.
- 25 This prior art also show that it is known to use a central computer to compare the inputs from different cameras and record when a match occurs, i.e., when data for the same number plate is received from two different cameras. It is also known that such a parameter can be calculated based on the distance between the camera and the time differences between the capture of the images.
- 26 Further, in the prior art cited by the examiner, the calculated parameter is used to determine if a speeding offence has occurred by calculating the average speed between the two locations and making a further comparison with a predefined value representing the maximum possible speed between the two locations. Another way of looking at such a calculation would be to determine the minimum parameter, in this case, time expected for a journey between these different geographic locations by taking account of the appropriate speed limit and the time for a legal journey between the two locations. If the parameter calculated was lower than that measured this would suggest that there was a high likelihood that the vehicle was speeding.
- 27 In the current application the central computer system makes a similar comparison with the measured parameter. The result of this comparison is then further used to determine if one of the number plates is a likely clone, i.e., if the journey time between the two cameras is excessively short when compared to the expected journey time the system decides that there is a high probability that a cloned number plate has been use.
- 28 The contribution therefore appears to lie solely in the interpretation of this parameter. In effect the contribution made by the application is the use to which an existing parameter is put.

Step 3: Does the contribution lie solely in excluded matter?

- 29 The third step of the *Aerotel* test requires me to determine if the contribution lies solely in the area of excluded matter. In this case I consider that it does. Primarily I consider it to be a method of performing a mental act albeit one that is achieved through the aid of a computer.
- 30 It is clear from the application that all the hardware used in the system and by the method is entirely standard as the specification provides for no amended or

changed functionality. The contribution made by the invention occurs only after the stage of comparing data to establish whether the same number plate has been recognised at different cameras and manipulation of this data to arrive at a difference in time between the two images and distance apart of the cameras.

- 31 The contribution then lies in the determination of whether or not, on the basis of that information, a cloned number plate has been detected. I do not see any other possibility that performing the calculations required is anything other than a mental act. Indeed as the examiner has pointed out in the last examination report dated 10 December 2008, the Courts have considered the question of whether or not performing a calculation was a mental act in *Fujitsu [1997] RPC 608* where Aldous LJ stated at page 620 :

“Thus a method of solving a problem, such as advising a person that they have acted tortuously, can be set out on paper, or incorporated into a computer program. The purpose is the same, to enable advice to be given, which appears to be a mental act. Further the result will be the advice which comes from the performance of a mental act. The method may well be different when a computer is used, but to my mind it still remains a method for performing a mental act, whether or not the computer program adopts steps that would not ordinarily be used by the human mind”

and at page 621:

“A claim to a method of carrying out a calculation (a method of performing a mental act) is no more patentable when claimed as being done by a computer than when done on a piece of paper. Methods of performing mental acts, which means methods of the type performed mentally, are unpatentable unless some concept of technical contribution is present.”

- 32 I am reinforced in my use of *Fujitsu* by the comments of the Court in paragraphs 41 and 42 of *Symbian* where the Court concurs that Aldous LJ was right to find the relevant claim excluded on the grounds of being a mental act.
- 33 Having found the claims to be excluded as a mental act, I do not have to apply the fourth step of the *Aerotel* Test. Furthermore, there is no need for me to decide whether the computer program of the application makes a technical contribution. In *Symbian* it was clearly stated, at paragraph 53, that if an application was excluded as a mental act, it remains so even if a computer program was present.
- 34 However, since I have also identified that the claim may be further excluded as a computer program, I should determine if the claim makes a “technical contribution”. It is clear from the analysis of claim above that the comparison step and calculation of the probability are implemented as a computer program. However, this is exactly what the contribution is – a computer program for performing a calculation and providing a result. I can see no technical contribution in this. The program does not control anything, either externally or internally, to the system nor does it make a computer operate in a new or different way. All the hardware appears entirely conventional and so there appears to be no increase in speed or reliability. Furthermore, I do not see the

problem of identifying cloned number plates as a technical one to be solved by a technical solution.

- 35 I therefore consider that the application makes no technical contribution and is also excluded as a computer program in addition to the main exclusion as a mental act.

Analysis & Arguments - INVENTIVE STEP

- 36 Having decided that the application is already excluded under Section 1(2), I have no need to determine whether the application makes an inventive step. However, in case I have erred in my decision on excluded matter, I will now turn to consider if the application makes an inventive step.

The Caslon Document – relevance of internet citation

- 37 The examiner has cited a document “Caslon Analytics – ANPR” which was retrieved from the website www.caslon.com.au/anprnote2.htm and is dated as the version of June 2007. Prior to the hearing www.archive.org was searched using “the wayback machine” and provided an archive date of 7th July, some 21 days, before the priority of this case. Consequently, on the face of it this document appears to be a valid citation.

- 38 However, Mr Hirsz considered that there was some doubt as to whether this date was correct and, as a result, he considered that the document should not be a valid citation. For the purposes of this decision it is helpful to recount Mr Hirsz’s argument.

- 39 In the first instance Mr Hirsz made the point that version dates and publication dates are not always the same thing. This he considered introduced an element of doubt as to the date when the “Caslon” document was available to the public. As an example of this Mr Hirsz, in his skeleton, quoted a document found using Google having a version date of 13th April 2009 yet it was not published or released until 1st October the same year.

- 40 Mr Hirsz then went onto draw my attention to the decisions of the Hearing Officer of the IPO in *HSBC France BL 0/180/09* and of the EPO Board of Appeal in *Konami T1134/06*. In particular, he focused on the decision by the EPO that the date of an internet citation must be “beyond reasonable doubt” as opposed to the standard tenet of the UK civil law courts which is the “balance of probabilities”. In connection with the latter case Mr Hirsz further drew my attention to the Manual of Patent Practice at paragraph 18.09.03 which states that the correct test is “balance of probabilities” and that, should the publication date be contested, then the issue should be decided on the balance of the evidence available and in coming to a decision the use of tools such as archive.org may be useful although not conclusive.

- 41 This takes me to the nub of Mr Hirsz’s argument - that there was a question mark over the validity of the date retrieved from archive.org for the Caslon Document. He drew upon comments made in the *Konami* decision, in particular, he relied upon the view of the EPO Board that the Internet archive is not an “archive in the

classical sense” and that this affects the evidentiary value of any material from this source. In this same decision, the German BundesGerichtshof (BGH) was also quoted as indicating that this was not a reliable source for determining the state of the art.

- 42 Mr Hirsz also pointed out that the process of “web crawling” to compile the archive is in itself open to interpretation. He notes that the web archive shows the document was available on 7th July 2007 which was before the priority date of the application but that a second crawl showed it again on 28th August 2007 which was after the priority date of the application. Mr Hirsz’s view was that this introduced an element of uncertainty into the date that the document was available and as such there was sufficient doubt as to the validity of this document as a citation.
- 43 Mr Hirsz also directed me to consider the PCT Search and Examination manual which at paragraph 11.2.3 allows for rebuttal of evidence when the web archive is used as opposed to the level of “proof” associated with “trusted websites” which are mentioned in paragraph 11.14 of the manual. In his words, this shows that the web archive is not to be trusted for evidence of a date of publication and subsequently its use casts a doubt over the date, and consequently the validity, of the Caslon document.
- 44 However, the newly issued EPO guidelines state, at paragraph 3.4, that “[T]he fact that the Internet Archive is incomplete does not detract from the credibility of the data it does archive”.
- 45 Mr Hirsz argues in his further submissions that this notice should be viewed with caution as he believes it to be inconsistent with the decisions of the EPO Board in decisions T-1134/06 and T-0373/03 which argue for “proof beyond reasonable doubt”. Given this inconsistency he argues that the notice is likely to be challenged. He further argues that as such the notice does not have supremacy over the Board of Appeal decisions.
- 46 I have little problem in agreeing with Mr Hirsz that version date and release date may be different and introduce an element of doubt as to the date the document was available. However, this specific issue is of less relevance when one takes into account that the archive.org date is shown to be 7th July and thus indicates that the document was available before the priority of this application. The current EPO guidelines now suggest that this date is a perfectly valid one. Further, these guidelines make no comment about the accuracy of the “web crawling” technique used to compile the archive and, if such doubts existed, I am happy that these would have been expressed in the note from the EPO given its purpose.
- 47 While it is relevant and appropriate for me to take note of EPO practice in such matters, it does not bind me in the way that UK law does. The maxim of the English Courts in civil matters is that the correct assessment to be made is on the “balance of probabilities”, whereas in criminal matters, it is one of “proof beyond reasonable doubt”. In this case, the recent EPO note would appear to support that this view, despite Mr Hirsz’s argument to the contrary, and I must therefore decide the issue on “the balance of probabilities”

- 48 In coming to a decision I am also drawn to take note of the contents of the Caslon document. The relevant section includes the phrase “Police Forces that have adopted ANPR thus typically boast that the systems have helped to weed out fake and cloned plates”. I consider this to be relevant to my decision as it clearly talks of the realization in the past tense, that is, the document is merely summing up something that is already known or has been experienced. From this I can deduce that this was known at the version date and at the publication date.
- 49 On the basis of the evidence before me, I consider that on the balance of probabilities that the CASLON document is valid for use in the examination.

Applying the Windsurfer/Pozzolli test.

- 50 The test for inventive step is the four-step *Windsurfing* test as reformulated by the Court of Appeal in *Pozzolli*². The steps are as follows:

Step (i): Identify (a) the notional person skilled in the art and (b) the relevant common general knowledge of that person

- 51 The Examiner has identified the skilled person as someone skilled in the use of ANPR technology. As to their common general knowledge they would be well aware that it can be used for many functions where there is a need to identify a vehicle such as in speed detection devices, traffic light offences and basic traffic management. He has also made the point that the skilled person would have a basic understanding of Physics and would know that the speed of a vehicle is a function of the distance covered over a period of time.
- 52 For his part Mr Hirsz submits that the skilled person is one who is looking to help police with criminal activity. He then goes on to describe the system of using ANPR in average speed cameras as low level criminal activity and one that is, by and large, automatic whereas cloned number plates are of a different and higher level of criminal activity.
- 53 Discussions as to what constitutes a level of criminal activity are unhelpful at this point and it does not fall within the remit of patent law to decide that particular issue. I consider the Examiner’s view to be persuasive and the skilled person is one who clearly understands ANPR technology and is well aware of its uses. In particular, he is aware that by operating cameras in pairs you can determine an average speed or optimum journey time between the two cameras and use this as a basis for determining the behaviour of a vehicle.

Step (ii): Identify the inventive concept of the claim in question or, if that cannot readily be done, construe it

- 54 Mr Hirsz identifies the realization that you can link cameras that are in different “geographical locations” and a substantial distance apart as the inventive concept of the invention. From this you are able to obtain a parameter that indicates the probability that a number plate is cloned.

² See *Windsurfing International Ltd v Tabur Marine (Great Britain) Ltd* [1985] RPC 59 and *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

55 I have already discussed the use of “geographical location” earlier in this decision when considering the issue of excluded matter. Suffice it to say, I am not going to depart from the view I expressed earlier that the distance apart does not provide any clarification of the locations – whether cameras are centimeters or kilometres apart they are still in different geographic locations.

56 The Examiner argues for his part that the inventive concept is the use of a known parameter to determine whether a cloned number has been identified? As such, any inventive concept lies in the use of the parameter and not in how it is obtained.

Step (iii): Identify what, if any, differences exist between the matter cited as forming part of the state of the art and the inventive concept of the claim or the claim as construed.

57 The examiner has identified four patent citations and one document from the Internet as forming the state of the art:-

MOETELLI	EP 0945840
DONNINI	WO 01/35372
LANGE	BE 1014680
PIPS	GB 2425385
CASLON	Caslon Analytics – ANPR Retrieved from www.caslon.com.au/anprnote2.htm

58 The citation attributed to DONNINI on page 4 describes a system of using two ANPR cameras on a section of road to monitor the mean speed of a vehicle. It is made clear that the section of road can be a few metres or several kilometres. The mean speed is calculated by obtaining the exact time of transit of each vehicle past a camera and since the timing devices are synchronized the mean speed of each vehicle is calculated.

59 LANGE in Fig 1 clearly shows a number of cameras connected to a network having a central computer and central time source. The system is designed to calculate a mean speed of a vehicle based on the time of passing a camera and the distance apart of the cameras. LANGE, also on page 12, includes a table showing a number of weighting factors related to time and distance used in the determination of whether a vehicle has been speeding.

60 PIPS also shows a vehicle speed monitoring system comprising a plurality of ANPR cameras located in a plurality of geographical locations. Each camera takes an image of the vehicle registration plate from which it extracts the number plate which it forwards to a central point together with the time of the image. At the central computer these marks are compared and if a match occurs the journey time between the two cameras is calculated.

61 The MOETELLI document is a further example of the use of ANPR cameras to monitor vehicles travelling between two points and determining an average speed. MOETELLI also, specifically at paragraph 13, mentions that cameras can

be placed at the opposite ends of a city to determine whether a vehicle has paid city taxes.

- 62 The documents cited clearly establish systems of cameras taking images of passing vehicles and using them to create a data record comprising a time and registration number. Each document also shows a central computer for identifying matches for vehicles passing two cameras and using these matches as a means to determine a parameter based on the time of travel between the two locations and their distance apart. It is noted that in each case that parameter is used to determine if a speeding offence has been committed.
- 63 Mr Hirsz argued that the cited prior art did not show a network of cameras but rather pairs of cameras. Such a use was “local” whereas the cameras in the applicants network could be much further apart and the use of cameras over such a distance would be ineffective for the purposes of calculating average speed because such a journey may include episodes of high speed, low speed due to traffic delay or road works and periods where the vehicle was stopped for a break in the journey. He further argues that the problem solved by the prior art is detection of speeding and not cloned number plates.
- 64 I do not consider this to alter the information available from these documents. Principally, in the technology available at the filing date, a network can consist of two machines. It is clear that in a number of these documents, especially PIPS and LANGE, indicate that the network consists of more than two cameras connected to one or more centralised computers. To suggest that a pair of cameras does not constitute a network of some kind, albeit, the simplest one, is I think somewhat disingenuous.
- 65 The Caslon document deals in some fairly general detail with the uses of ANPR systems. In the section headed “fuzziness”, there is a clear reference to the use of ANPR as a tool for identifying cloned number plates.
- 66 What differences therefore exist between the inventive concept and the prior art? To my mind the prior art clearly shows that the underlying technology is well known. It also shows that the calculation of a parameter relating to the difference in time between when an image was taken by two different cameras and the distance apart of these cameras is known. The prior art also shows that such a parameter can be compared with a speed limit or an optimum journey time to arrive at a decision with regard to a possible speeding offence.
- 67 It follows therefore that the only difference between the state of the art and the inventive concept is the use to which the parameter is put, i.e., to identify a cloned number plate. Taking on board Mr Hirsz’s argument it may well be that the accuracy of such a parameter may be improved if the distance between the cameras is large but it does not alter the fact that the only difference provided by the inventive concept is in the use of this parameter.

Step (iv): Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to persons skilled in the art or do they require any degree of invention?

- 68 The average speed systems arrive at a vehicle speed between two locations. In many cases this will, within a margin of error, be either above or below a speed limit so enabling a determination to be made as to whether the vehicle was speeding. In effect, the system is calculating a probability that a speeding offence has occurred. On this point Mr Hirsz suggests that this is simply a yes/no question, i.e., yes or no that a speeding offence has occurred. As such he claims that this is not a probability.
- 69 However, this does not affect the real question of whether it would be obvious to use the parameter to determine if a cloned number plate has been detected. The Examiner in his examination report, dated 10 December 2008, makes it clear that if the speed parameter is excessively high the skilled man would face two choices: either the equipment is not working or the number plate is cloned. The first of these two questions would be very easy to ascertain and would be answered simply by checking other records. This leaves only the fact that a number plate is cloned. As such this appears to be an obvious interpretation of the data.
- 70 On this basis I find that the application does not make an inventive step and is therefore excluded under Section 1(1)(b) of the Act.
- 71 I have also reviewed the dependent claims of the application. I do not consider that checking the number plate in a database is inventive or is logging the report with the police. If anything, these are standard steps when a vehicle is seen and a check is made with either the Police National Computer or direct with the DVLA computer.

Conclusion

- 72 I find the invention is excluded under Section 1(2) because it relates to a performance of a mental act and/or a computer program as such. It is further excluded under Section 1(1)(b) as it lacks an inventive step over the prior art. I have carefully reviewed the specification and do not see any possible saving amendment. I therefore refuse the application under Section 18(3).

Appeal

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

Dr L Cullen

Deputy Director acting for the Comptroller