An application was made for a patent in respect of a method and apparatus for automatically recording the journeys of passengers in a transport system for the purpose of working out how much to charge them. It consisted of giving to each passenger an identification card, the particulars on which were recorded automatically whenever the passenger entered or left the transport system, the recorded data at each point of entry and exit being processed at a central depot. An application in respect of this invention had been accepted by the Canadian Patent Office, and the applicants relied on the observations of Lord Parker, L.C.J. in Swift's Application [1962] R.P.C. 37, 47 to the effect that homogenous development of patent law was desirable. The hearing officer rejected the application on the ground that the alleged invention was not a manner of new manufacture, and observed that the definition of invention in the relevant Canadian Statute was different from that prevailing in England, Australia and New Zealand, the countries to which Lord Parker was directing his mind in Swift's case. On appeal:

Held, that as a current text book of Canadian patent law expressed the view that there was no substantial difference in effect between the wording of the British and Canadian Statutes, the Tribunal would accept the possibility that the Canadian Commissioner of Patents was required to apply criteria equivalent to our own. The appeal was dismissed for the reason given by the hearing officer, that the alleged invention was not a manner of new manufacture.


This was application No. 7650/62 for a patent made by Nils Evert Johans Stahl and Oscar Uno Larsson. The facts of the case appear from the following decision of Mr. J. V. Hudson dated 10th December 1964.

A. D. Russell-Clarke, instructed by Haseltine Lake & Co. appeared for the applicants.

Mr. Hudson—This application is entitled “Improvements in or relating to methods of and apparatus for obtaining records of passenger journeys in passenger-transport systems.” It was filed on the 27th February 1962 and was based under the international convention on an application filed in Sweden on the 1st March 1961.
The examiner reported that the subject-matter of the application is not an invention within the meaning of section 101 of the Act. This question came before me at a hearing on the 26th October 1964.

The nature of the invention the applicants seek to protect is readily seen from their claims 1 and 6, which read as follows: —

1. A method of obtaining records of passenger journeys in a passenger-transport system having places at which passengers can enter and leave the system, the method comprising the steps of issuing potential passengers with an identifying document; receiving in apparatus of said system said document from each passenger, recording in said apparatus relevant data pertaining thereto and said apparatus returning said document to the passenger, said receiving, recording and returning being effected both upon entry of the passenger into the system and exit of the passenger from the system; transmitting the recorded data to a central depot; and processing the data to obtain records of the journeys of each passenger whereby each document-holding passenger can be periodically billed.

6. Apparatus for obtaining a record of passenger journeys in a passenger-transport system having places at which passengers can enter and leave the system, the apparatus comprising an identifying document for each potential passenger; means at said places for receiving said document from each passenger, recording relevant data pertaining thereto and returning the document to the passenger; and means at a central depot for processing said data to obtain records of each passenger's journeys and for tabulating the fares chargeable to each document-holding passenger.

At the hearing, Mr. Russell-Clarke proposed certain amendments to claim 1. I have incorporated these (italics) in the above quotation, and the hearing proceeded on the basis of the claims as so amended.

The particular embodiment described in the specification is concerned with an omnibus system. Each potential passenger has a personal identification card which he inserts in an apparatus on entering the vehicle, and in another apparatus on leaving. Each apparatus records certain data from the card, including the passengers identity and the place of entry or exit. This data is also recorded on a tape. Periodically, the tapes are transferred to a central station and information from them is fed to a computer of known kind which debits the account of each passenger with the charge for the journey.

Considering first the invention as it is presented in claim 1, I have to decide whether this invention could, on any reasonable view, be likely to be found to be a manner of new manufacture within the meaning of the Act. Only if, in my opinion, there is no reasonable doubt that the answer to such a question is in the negative, would it be proper and necessary for me to stop this application from proceeding.

Mr. Russell-Clarke informed me that an application in respect of this invention had been accepted by the Canadian Patent Office. He then referred to the remarks of The Lord Chief Justice in Swift's Application [1962] R.P.C. 37 at page 47 lines 43 et seq., viz., "Finally one cannot shut from one's mind the desirability of having a homogeneous development of the law in all countries which have adopted our system of patent legislation. That desirability must result in a tendency of our court to follow those decisions if it is possible to do so." Mr. Russell-Clarke urged that, in view of these remarks, the acceptance of the application by the Canadian
Office was a strong ground for acting in the same way here. It is, however, to be noted that under Canadian law', as under the law of the United States of America, invention means "any new and useful art, process, machine, manufacture. . . ." The Canadian law can thus, it would seem, be said to be related to that of the United States of America, in this particular respect, rather than to that of this country. When the learned Lord Chief Justice spoke of countries "which have adopted our system of legislation" I believe I may with respect deduce that he had in mind New Zealand and Australia, for it is to be noted that under section 6 of the (Australian) Patents Acts, 1952-60, "invention" means any manner of manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies, and that the same wording occurs in section 2(1) of (New Zealand) Patents Act 1953. Mr. Russell-Clarke said that no application in respect of this present invention had been filed in Australia or New Zealand. I think, therefore, that the acceptance of an application in respect of this present invention by the Canadian Office is not a fact which assists me in my present task, for that acceptance was made under a law different from that laid down in the Patents Act, 1949.

The invention defined in claim 1 is "a method of obtaining records of passenger journeys." The product of the method is data, i.e., intellectual information. The form in which the data appears and is recorded is immaterial. In General Electric Co.'s Application (1943) 60 R.P.C. 1, Morton, J. stated that a method was a manufacture if it results in the production of some vendible product. The import of this judgment was discussed in the judgment of the High Court of Australia, reported in [1961] R.P.C. at page 145. This states that "what is meant by a 'product' in relation to a process is only something in which the new and useful effect may be observed. Sufficient authority has been cited to show that the 'something' need not be a 'thing' in the sense of an article, it may be any physical phenomenon in which the effect, be it creation or merely alteration, may be observed: a building (for example), a tract or stratum of land, an explosion, an electrical oscillation. It is, we think, only by understanding the word 'product' as covering every end produced, and treating the word 'vendible' as pointing only to the requirement of utility in practical affairs, that the language of Morton J's 'rule' may be accepted as wide enough to convey the broad idea which the long line of decisions on the subject has shown to be comprehended by the Statute of Monopolies."

There is no doubt that the applicants' method is useful in practical affairs. The product of it, the end produced, is intellectual information. This is quite different from any notion of "product" appearing from the Australian judgment. This judgment referred to "any physical phenomenon in which the effect (of the process) may be observed." Illustrations given were: a building, land, an explosion, an electrical oscillation. Although the judgment states that the word "product" should be understood as covering "every end produced," I venture to think, with respect, in view of the reference to physical phenomena, and in view of the illustrations cited, that an end product comprising merely intellectual information is not within the meaning given to the word "product" by the learned Australian court. I conclude, therefore that the invention of claim 1, if it be regarded as a method, cannot, on any reasonable view, be said to be an invention within the ambit of the Patents Act, 1949. The invention of claim 1 can also be looked upon as a scheme or plan, or as an instruction setting out the sequence of which various pieces of apparatus are to be used. I believe, in view of certain remarks of the
Patents Appeal Tribunal in Rolls-Royce Ltd.'s Application [1963] R.P.C. 251, at 255 lines 21 et seq., that this approach gives a result equally fatal to the applicant's case. These remarks are

"the earlier decisions relevant to the present enquiry are found conveniently summarised by Sir Thomas Inskip, in his judgment as Solicitor General in D.A. 5 and K's Application (1926) 43 R.P.C. 155, wherein a succession of decisions by Sir Robert Finlay, Sir John Simon, Sir Stanley Buckmaster, Sir Ernest Pollak, and Sir Henry Slessor are collated to justify the conclusion that a scheme or plan is not within the statutory definition...."

I turn now to the invention as presented in claim 6. The various items of apparatus specified therein must be presumed to be known, for the specification does not suggest anything to the contrary, and gives nothing but the barest description of them. This claim gives only a catalogue of apparatus necessary to carry out the method of claim 1, each item being defined by the function, i.e., by the step in the method, which it is to perform. I do not think the invention the claim seeks to protect is in practical effect different from that claimed in claim 1, because claim 1, when performed, necessarily involves using the apparatus of claim 6. The claim is, however, to an assembly of apparatus, and not to a method. After careful consideration, I have concluded that claim 6 does not claim a patentable combination of integers. Lord Tomlin, in British Celanese Ltd. v. Courtaulds Ltd. (1935) 52 R.P.C. 171 at page 193, stated that "a mere placing side by side of old integers so that each performs its own proper function independently of the others is not a patentable combination." In this quoted case, the patent in question was held to be invalid on the ground, inter alia, of want of subject-matter. In my opinion, the present claim 6 is directed to a mere collocation of old integers, having no true working inter-relationship, and hence it comes within Lord Tomlin's condemnation.

Mr. Russell-Clarke argued that the invention of claim 6 was, rather, analogous to that in F.M.M.'s Application (1941) 58 R.P.C. 115. The invention claimed in that instance comprised means on each of two approaching motor cars for interrupting the light emitted in rapid sequence and for likewise interrupting the driver's vision of the oncoming car lights, together with a synchronising device situated at the road side which enabled the drivers to time and phase their respective means. The object of all this was to avoid dazzle. Objection was taken by the Comptroller that the invention was not a manner of new manufacture. Morton, J., sitting as the Patents Appeal Tribunal, stated "I am only concerned with the question whether the apparatus for which protection is claimed is a manner of manufacture, and I have arrived at the conclusion, though not without hesitation, that this question ought to be answered in the affirmative." I think the set of apparatus the Tribunal was considering is clearly distinguishable from that of the present claim 6, for in the anti-dazzle case, the devices on the two cars, and the synchronising means, must all co-operate properly and simultaneously to produce the desired result. In the present case, each piece of apparatus operates to perform its own function independently of all the other pieces.

I conclude that, whether claim 6 is approached from the point of view of want of inventive subject-matter, or of absence of invention within the meaning of section 101 of the Act, on no reasonable view is it likely to be found a valid claim.

I do not find any other matter sufficiently disclosed in the applicants' specification to form the basis of acceptable claims.

I thus find there is lawful objection to the grant of a patent in pursuance of this application, and acting under section 6(2)(b) of the Act, I must, therefore, refuse to proceed with the application.
The applicants appealed, and the decision of the Patents Appeal Tribunal, delivered on 13th May 1965, was as follows.

Lloyd-Jacob, J.—The applicants appeal from a decision of Mr. J. V. Hudson (superintendent examiner acting for the Comptroller General) dated the 10th December 1964, whereby he refused to permit the application to proceed on the ground that it did not relate to an invention within the meaning of section 101 of the Act, i.e. that it did not describe and claim a manner of manufacture.

The specification is concerned with a method of and apparatus for collecting statistical information of passenger journeys in a transport system, the method claim reciting the order in which collection of the required data is to be secured, and the apparatus claim specifying the various pieces of known equipment needed for each stage of such collection. The specification itself emphasises the advantage of such statistical information in the more efficient operation of the transport system and contemplates operation in circumstances wherein collection of charges by users of the system is periodical and in arrear.

[His Lordship recited claims 1 and 6, supra p. 597.]

It is not and cannot be disputed that on the authorities, thought to be determinative until comparatively recently, this method claim would have been decisively rejected as a mere scheme or plan not capable of constituting a manner of manufacture. Those cases showed that, however ingenious the alleged invention appeared to be, if in reality it was no more than a plan for the conduct of business in a particular way, it was not a manner of manufacture (see in particular Johnson's Application (1902) 19 R.P.C. 56). This line of authority, the applicants assert, has now been superseded. It is quite true that new light has been thrown upon the ambit of the expression "manner of manufacture" by the judgment of the High Court of Australia, which is reproduced in [1961] R.P.C. 135 to 147, and a valuable guide provided by their formulation, as a test of the production of a useful physical result or effect in relation to a tangible entity.

The hearing officer was unable, as I am unable, to regard the collation of statistical data as a physical result, it being intellectual in character. Such collation, to the extent to which it required the employment of physical means, might well have provided utility for a claim directed to the interaction of such physical means, but that is not the present case, neither in the method nor in the apparatus claims. None of the pieces of equipment referred to in the specification required detailed description, for all are admittedly commonly known and used, and are individually and independently operated in the normal manner in succession to secure a summation of effect without any other inter-relationship. Inventiveness, if any, must therefore be found in the purpose of their use, and the enquiry is the same for both method and apparatus claim. The isolation of statistical data is not of itself the exercise of any of the useful arts and, unless constrained by authority, the plain duty of the hearing officer and of this Tribunal is to reject the application.

Such authority it is urged by the applicants, will be found in the judgment of the Divisional Court in Swift's Application [1962] R.P.C. 37, 47, where the Lord Chief Justice of England in giving the judgment of the court said: "Finally one cannot shut from one's mind the desirability of having a homogeneous development of the law in all countries which have adopted our system of patent legislation. That desirability must result in a tendency of our court to follow those decisions if it is possible to do so." It appears that an application equivalent to the present has been accepted by the Canadian Patent Office and issued under No. 843,423.
in November 1964. The operative definition of "invention" in Canadian law is expressed in words somewhat different from those of section 101 of the Patents Act 1949, a difference which was presumably intentional, but reference to the current text book on Canadian Patent law confirms that its very distinguished author, Dr. Harold Fox, Q.C., holds the opinion that no substantial difference in effect is produced thereby. It follows that, for present purposes, the Tribunal should not attempt a final determination of the point but accept the possibility that the officer acting for the Commissioner of Patents in accepting the application was required to apply an equivalent principle to that of our domestic law. The Lord Chief Justice was not, as I read his judgment, suggesting that the Comptroller General should be relieved of his obligation to make his own determination of the issue by the automatic acceptance of a prior ruling elsewhere, still less to hold himself bound to infer that a grant in another jurisdiction must have been preceded by consideration of a particular ground of objection to grant. The word "decision" in the judgment, it must be remembered, is the word applied to the reasoned statements issued from the British, the Australian and the New Zealand Patent Offices—the three then being considered by the Divisional Court—wherein the points taken and the grounds for deciding them are set out. All that is relied upon by the applicants in the present case is the fact of grant in Canada and this affords no guidance in any material respect, save perhaps to emphasise the responsibility resting upon the Tribunal to be sure that only if no reasonable doubt remains should an application be finally rejected.

In the result I find myself in complete agreement with the hearing officer that the application disclosures no foundation for a claim to an invention and I must in consequence endorse his ruling and dismiss this appeal.