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**D E C I S I O N**  
of 1 June 1995

**Case Number:** T 0501/92 - 3.4.1

**Application Number:** 84304457.9

**Publication Number:** 0133344

**IPC:** G09G 3/04

**Language of the proceedings:** EN

**Title of invention:**

System for displaying alphanumeric messages

**Patentee:**

THE ARTHUR G. RUSSELL COMPANY, INCORPORATED

**Opponent:**

GRUNDIG E.M.V. Elektro-Mechanische Versuchsanstalt Max Grundig  
holländ. Stiftung & Co. KG

**Headword:**

ARTHUR G. RUSSELL/Alphanumeric Display

**Relevant legal provisions:**

EPC Art. 56, 99, 100, 101, 110, 111

EPC R. 57, 58, 64, 66(1)

**Keyword:**

"Absence of a request from the Proprietor for maintenance of  
the patent, during opposition appeal proceedings, not in itself  
a ground for allowing the appeal and revoking the patent"  
"Inventive step - (No)"

**Decisions cited:**

G 0004/92 (OJ EPO 1994, 149), G 0009/92 (OJ EPO 1994, 149),

T 0220/83 (OJ EPO 1986, 249), T 0145/88 (OJ EPO 1991, 251),

T 0034/90 (OJ EPO 1992, 454)

**Headnote:**

I. If a new ground for allowing the appeal based upon the facts set out in the file record is raised by an Appellant for the first time as a new argument during oral proceedings at which the Respondent is voluntarily absent, it would be contrary to Article 113(1) EPC and contrary to the principles underlying decision G 0004/92 (OJ EPO 1994, 149) to decide to allow the appeal on the basis of this new ground without first giving the Respondent an opportunity to comment thereon.

II. Any procedural request made by a party to first instance proceedings before the EPO is not effective or applicable within subsequent appeal proceedings (following decision T 0034/90, OJ EPO 1992, 454).

III. In a Notice of Appeal, the statement pursuant to Rule 64(b) EPC of the "extent to which amendment or cancellation of the decision is requested" defines the legal framework of the appeal proceedings (following Decision G 9/92, OJ EPO 1994, 875).

IV. In admissible opposition appeal proceedings, in the absence of a "request" or reply from a Respondent indicating that the decision of the Opposition Division should not be amended or cancelled, a Board of Appeal must still examine and decide whether the appeal is allowable, in accordance with Articles 110 and 111 EPC.



Case Number: T 0501/92 - 3.4.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.4.1  
of 1 June 1995

**Appellant:**  
(Opponent)

GRUNDIG E.M.V.  
Elektro-Mechanische Versuchsanstalt  
Max Grundig  
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**Representative:**

Dreykorn-Lindner, Werner, Dipl.-Ing.  
(authorised employee)

**Respondent:**  
Proprietor of the patent)

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139 Center Street  
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**Representative:**

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**Decision under appeal:**

Decision of the Opposition Division of the  
European Patent Office dated 30 March 1992  
rejecting the opposition filed against European  
patent No. 0 133 344 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** G. D. Paterson  
**Members:** R. K. Shukla  
Y. J. F. Van Henden

### Summary of Facts and Submissions

- I. European patent No. 0 133 344 relating to a system for displaying alphanumeric messages was opposed on the grounds that the subject-matter of the patent did not involve any inventive step as required by Article 100(a) EPC and that the claimed invention was not so clearly and completely disclosed that it could be carried out by a person skilled in the art (Article 100(b) EPC). The following evidence was cited in support of the Opponent's submission that the subject-matter of the patent lacked an inventive step:

D1= US-A-3 976 995

D2= DE-A-2 432 457.

Following the filing of the Notice of Opposition, the Proprietor's representative stated that he was instructed to file no observations in reply, other than to state that the Proprietor relied upon the file record of the application during proceedings before the Examining Division, for patentability of the invention.

The Opposition Division rejected the opposition.

- II. The only independent claim of the patent as granted forming the basis of the decision of the Opposition Division, has the following wording:

"An alphanumeric visual display system including a unitary visual display device (10) having a limited number of character stations at each of which anyone of a multiple of characters may be displayed by the application thereto of a set of binary coded signals; memory means (12) for storing a plurality of complete message units, each of said message units including a

plurality of characters not greater in number than the number of character stations of said display device and having binary coded signals representative of each character to be displayed at each of the number of character station locations stored at corresponding character locations in said memory means, characterised in that said display system is capable of displaying a preprogrammed message made up of a number of complete message units in a sequence, said complete message units forming a plurality of complete messages and at least one of which complete messages is made up of a number of said complete message units in sequence; and sequencing means (20) is provided for causing each of said complete message units of a complete message to be displayed by said visual device in a time-spaced relationship; and first signal means (62) is provided for indicating the first complete message unit in a sequence of complete message units in a complete message, each of said complete message units having one predetermined character location in said memory for storing a first binary coded signal representative of said first signal means; and first sensing means (48) is provided for sensing said first signal means; and means (50) is provided which is responsive to the sensing of said first signal means for activating said sequencing means."

According to the decision, document D1 concerns a precessing display pager where a recirculating shift register is used as a memory, so that there is no correspondence between display character location and memory character location. Furthermore, according to the decision, the system of document D2 can not be technically combined with that of D1, and therefore the skilled person would not be led to modify the teaching of document D1 so as to arrive at the subject-matter of the patent. Moreover, the Opposition Division held that

the European patent disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

- III. The Opponent lodged an appeal against the above decision and requested in the Notice of Appeal that the patent be revoked. The Statement of Grounds of appeal contended that the claimed subject-matter did not involve an inventive step with regard to the documents cited during the proceedings before the Opposition Division and the following additional document:

D3= DE-A-3 031 527

Furthermore, it was contended that the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

- IV. The Proprietor did not file any observations in response to the Notice of Appeal or Statement of Grounds of Appeal.

In reply to the summons to oral proceedings, the representative of the Proprietor stated that the Proprietor would not be represented at the oral proceedings, and requested that copies of the minutes of the oral proceedings and of the decision of the Board of Appeal be sent to him in due course.

- V. Oral proceedings took place on 1 June 1995 in the absence of the Proprietor.

At the beginning of the oral proceedings, the Opponent drew attention to the fact that at no time during the appeal proceedings had the Proprietor filed any request; in particular no request for maintenance of the patent

had been filed, and no observations in reply to the grounds of appeal had been filed either.

The Opponent submitted that the filing of such a request by the Proprietor in the appeal proceedings was an essential procedural requirement, and relied in particular upon Rule 66(2)(e) EPC. In the absence of such a request, the Opponent submitted that the appeal should be allowed and the patent revoked, and that an apportionment of costs should be ordered. Alternatively he requested that a question on this point should be referred to the Enlarged Board of Appeal.

After deliberation on this point, the decision was announced that the Opponent's request for revocation on the above ground was rejected. The Opponent was therefore asked to present his case concerning alleged lack of inventive step.

VI. The Opponent went on to present essentially the following arguments in support of his request that the claimed subject-matter lacked an inventive step.

Although document D1 describes a precessing alphanumeric display pager, it is clear that a freeze switch (column 8, lines 1 to 8) is provided, by means of which the precessing can be stopped and the message of the display can be read, whereafter the precession can start again such that a new part of the message is entered on the display. Document D1 thus discloses that whole message units can be read into the display. Therefore, there is no real functional difference between a "sequential" or "scrolling" display according to the patent in suit and a "precessing" display as known from document D1. Furthermore, document D1 also shows an embodiment (Figure 3) where three characters are entered in parallel into the display. Therefore, in case a small

display with three character stations is used, document D3 discloses a display where the characters are entered in parallel in the same way as claimed in the patent in suit. Moreover, both US-A-4 381 505, which is cited in the description of the patent in suit, and document D2 disclose that the characters of a display can be entered in parallel. Such an arrangement must therefore be seen as obvious to the skilled person. It is common practice in the art to store a binary coded signal in the memory for a control function. Thus, for example, a logic "0" is provided at the beginning of each word supplied to a series to parallel converter S/P1 in document D2. Also, the application of a logic "0" or "1" at the inputs of devices G1 and G4 controls the operation of the converter (see the paragraph bridging the pages 9 and 10). For a skilled person concerned with displaying message units in sequence, it would be therefore obvious that each message unit has a predetermined location in the memory for storing a coded signal which causes the message units to be displayed in sequence.

- VII. At the conclusion of the oral proceedings the decision was announced that the patent is revoked on the ground of lack of inventive step.

#### **Reasons for the Decision**

1. *Procedural point: absence of a request from the Proprietor*

As stated in paragraph V above, the Opponent submitted at the beginning of the oral proceedings that the failure by the Proprietor to file a formal "request" for maintenance of the European patent should lead automatically to revocation of the patent, and that



there was in this circumstance no need to consider the substantive grounds of opposition - in particular lack of inventive step.

The Opponent did not make this submission in writing before the oral hearing. The Proprietor was not represented at the oral hearing and was therefore unable to reply to this submission at the oral hearing. The submission is a new legal reason why the appeal should be allowed, based upon the facts as set out in the file record, and is therefore a new "ground" within the meaning of Article 113(1) EPC, rather than merely a new argument. It would be contrary to Article 113(1) EPC, and contrary to the principles underlying opinion G 4/92 (OJ EPO 1994, 149) if the Board was to allow the appeal and revoke the patent on the basis of this submission, without first giving the Proprietor an opportunity to present comments in reply; because although the Opponent's submission did not include new facts or evidence and was essentially a new argument, based upon the facts set out in the file, such new argument brought forward for the first time at the oral hearing in the appeal proceedings a new legal reason for allowing the appeal. Giving the Proprietor an opportunity to present comments in reply would have involved an adjournment of the oral hearing and continuation of the appeal proceedings in writing. However, having carefully considered the Opponent's submissions, the Board decided that there was no need to take such a course in order to hear submissions in reply from the Proprietor, because the Board is satisfied that the absence of a "request" from the Proprietor, and indeed the absence of any substantive reply to the Opponent's contentions during the appeal proceedings, does not mean that the patent has to be revoked on procedural grounds. The reasons for this conclusion are set out below.

1.1 During the proceedings before the Opposition Division, as indicated in paragraph I above the Proprietor stated that he relied upon the file record during proceedings before the Examining Division to support the patentability of the claimed invention. Within the proceedings before the Opposition Division, such statement could clearly be interpreted as indicating the Proprietor's wish that the patent should be maintained as granted. However, as stated in decision T 34/90 (OJ EPO 1992, 454), "appeal proceedings are wholly separate and independent from first instance proceedings" for all procedural purposes. Thus any procedural request made by a party to first instance proceedings before the EPO is not effective or applicable within subsequent appeal proceedings before a Board of Appeal. Any statement during first instance proceedings which may affect the procedure within the first instance proceedings is not applicable in any subsequent appeal proceedings, and has to be repeated during subsequent appeal proceedings if it is to be procedurally effective during such appeal proceedings.

In the present case, as indicated in paragraph IV above, the Proprietor made no statement which could be interpreted either explicitly or implicitly as a request for maintenance of the patent, and merely requested that he be informed of the final result of the proceedings.

1.2 Opposition appeal proceedings are commenced by the filing of a Notice of Appeal within the prescribed time limit under Article 108 EPC by a party to the proceedings before the Opposition Division who is adversely affected by the decision of the Opposition Division. According to Rule 64(b) EPC, a Notice of Appeal shall contain inter alia "a statement identifying the decision which is impugned and the extent to which amendment or cancellation of the decision is requested".

Thus an Appellant must state at the outset of appeal proceedings the extent to which the decision which is the subject of the appeal is challenged. This is the "request" of the Appellant, and it defines the legal framework of the appeal proceedings (see paragraph 7 to 12 of decision G 9/92, OJ EPO 1994, 875; in particular, paragraph 9 states that the subject-matter of the appeal proceedings is always the appeal itself".)

Subsequently the Appellant must file within the prescribed time limit "a written statement setting out the grounds of appeal" (Article 108 EPC), that is, "the legal and factual reasons why the decision under appeal should be set aside and the appeal allowed" (see e.g. decisions T 145/88, OJ EPO 1991, 251, and T 220/83, OJ EPO 1986, 249).

- 1.3 If the appeal is admissible, the "examination of the appeal" follows (Article 110 EPC). Pursuant to Article 110(2) EPC the examination of the appeal "shall be conducted in accordance with the provisions of the Implementing Regulations". Under Rule 66(1) EPC, in an opposition appeal the procedural provisions relating to proceedings before the Opposition Division are "applicable to appeal proceedings mutatis mutandis", unless otherwise provided.

In proceedings before the Opposition Divisions, following the filing of a Notice of Opposition under Article 99(1) EPC (which is generally equivalent to the combination of a Notice of Appeal and a Statement of Grounds of Appeal in appeal proceedings), and following examination of the Notice of Opposition for admissibility pursuant to Rule 56 EPC, under Rule 57(1) EPC as part of the "Preparation of the examination of the opposition" the Opposition Division shall "invite" ("auffordern", "inviter") the Proprietor to file

"observations" within a fixed period. Rule 57(3) EPC states that "The observations and any amendments filed by the Proprietor" shall be communicated to the other parties. The use of the words "**The** observations" in contrast to "**any** amendments" appears to assume that such observations will be filed by the Proprietor. The other parties may be invited to reply to the Proprietor's observations, again within a fixed period.

Article 101 EPC is concerned with "Examination of the opposition". Article 101(1) EPC states that "If the opposition is admissible, the Opposition Division shall examine whether the grounds of opposition laid down in Article 100 prejudice the maintenance of the European patent". During this examination, Article 101(2) EPC and Rule 58 EPC envisage that the Opposition Division may issue one or more communications to the parties. There is nothing in the relevant Articles or Rules of the EPC to suggest that such examination of the opposition shall only take place if the Proprietor has filed a "request" for maintenance of the patent (either as granted or as proposed to be amended) in reply to the Notice of Opposition. On the contrary, in the Board's view the clear implication from the references to "fixed periods" in Rule 57 EPC is that, if a Proprietor is invited to file observations within a fixed period and fails to do so within that period, examination of the opposition in accordance with Article 101 EPC shall commence upon expiry of the fixed period.

- 1.4 Applying these procedural provisions mutatis mutandis to the opposition appeal procedure, in the Board's view it follows that following the filing of (an admissible) Statement of Grounds of Appeal by an Opponent/Appellant, the Proprietor has to be invited to file observations in reply within a fixed period. The practice of the Boards of Appeal is to send the Statement of Grounds of Appeal

to the Proprietor/Respondent under cover of a form stating "Any submissions in answer hereupon must be filed within ..." a fixed period.

If no observations are filed by the Proprietor/Respondent within the fixed period, examination of the appeal is commenced in accordance with Article 110(1) EPC, and following such examination, "the Board of Appeal shall decide on the appeal" in accordance with Article 111(1) EPC, first sentence. Again there is nothing in the relevant provisions concerning appeal procedure which suggests that examination of an decision upon an appeal shall only take place if the Respondent has filed a formal "request" in reply to the Statement of Grounds of Appeal.

On the contrary, the relevant provisions (in particular, those of Articles 110 and 111 EPC) clearly suggest that if the appeal is admissible, the Board of Appeal shall examine and decide upon the allowability of the appeal (that is, whether the decision of the Opposition Division should be amended or cancelled in accordance with the Opponent/Appellant's request in the Notice of Appeal), whether or not the Proprietor/Respondent has filed a request for maintenance of the patent.

- 1.5 The Opponent/Appellant in the present case relied in particular upon Rule 66(2)(e) EPC in support of his argument that a formal "request" by the Proprietor/Respondent was a procedural necessity if he wished that the patent should be maintained. This Rule requires that the written decision in every appeal shall contain inter alia "a statement of the issues to be decided" ("die Anträge der Beteiligten", "les conclusions des parties"). While it is true that the German and French versions of this Rule appear to

emphasise that the "requests" of the parties shall be stated in the written decision, while the English version refers more neutrally to the "issues to be decided", nevertheless, this Rule is only concerned with the contents of the written decision, and is not concerned with the procedure prior to or during the examination of the appeal. Thus the existence of this Rule does not assist the Opponent/Appellant in the present case. The reference to "die Anträge" in the German text must be interpreted as including "der Antrag" in the singular, if only one formal request, namely that of the Appellant, has been filed (as in the present case).

- 1.6 The Opponent relied upon the fact that the procedural provisions of German law require in the circumstances of a case such as the present that the Respondent must file a formal request in reply to the Appellant's request, if he wishes to contest the appeal. However, the present appeal proceedings are governed by the relevant provisions of the EPC, which are discussed above and which are different from the provisions of the German law.
- 1.7 The Opponent also requested that a question on the point at issue should be referred to the Enlarged Board of Appeal. However, the Board decided to reject this request, because the proper interpretation of the relevant provisions of the EPC seems to lead to a clear result as discussed above.
- 1.8 Similarly the request by the Opponent for an apportionment of costs because of the failure by the Proprietor to file a formal request during the appeal proceedings has no legal basis and is rejected.

1.9 In conclusion, therefore, in the Board's judgment, in the absence of a "request" or reply from a Respondent during opposition appeal proceedings indicating that the decision of the Opposition Division should not be amended or cancelled, a Board of Appeal must still examine and decide whether the appeal is allowable, in accordance with Article 110 and 111 EPC.

2. *Inventive step*

2.1 This is the main substantive ground of opposition raised by the Opponent.

Document D1, which constitutes the closest prior art, concerns a pager with a display 702, which has, in the wording of Claim 1 of the patent in suit, a number of character stations. In the embodiment shown in Figure 1, the display has 12 character stations; i.e. 12 characters can be simultaneously displayed. The message to be displayed is stored in a recirculating shift register (732, Figure 2) where the characters are represented by binary coded signals (received by the shift register in the ASC II code; see column 3, lines 58 to 66). The content of the memory is read out serially to a ROM (742, Figure 2) which drives the display. The message is thereby made to travel across the display such that the portion of the message that has already been viewed disappears, while at the other end of the display new portions of the message are displayed (column 3, lines 4 to 10; lines 30 to 33; column 4, lines 45 to 50). The pager can thus display a message which is longer than the number of character stations on the display. Such a longer message can be regarded as made of several "complete message units" as defined in Claim 1 of the patent in suit according to which a complete message unit includes a plurality of characters not greater in number than the number of

character stations on the display. Document D1 also discloses (column 3, lines 24 to 25) that several complete messages can be stored in the memory; i.e. the plurality of message units may together form a plurality of complete messages.

Document D1 thus discloses, in the wording of Claim 1 of the patent in suit, an alphanumeric visual display system including a unitary visual display device (702) having a limited number of character stations at each of which anyone of a multiple of characters may be displayed by the application thereto of a set of binary coded signals, memory means (732) for storing a plurality of complete message units, each of said message units including a plurality of characters not greater in number than the number of character stations of said display device and having binary coded signals representative of each character to be displayed, wherein said display system is capable of displaying a preprogrammed message made up of a number of complete message units in a sequence, said complete message units forming a plurality of complete messages and at least one of which complete messages is made up of a number of said complete message units in sequence.

Since in the device disclosed in document D1 a message is precessed across the display as the characters of a message unit recirculate in the shift register memory (see column 3, lines 4 to 10 and column 1, lines 62 to 65), it follows that during the read out, the characters of a message unit do not correspond to specific character stations on the display.

In the display system according to the claimed invention, each character of a message unit stored in a memory has a corresponding character station on the display, that is, the characters of a message unit are



read out in parallel. Furthermore, each message unit has a predetermined location in the memory for storing a coded signal which indicates that more message units will follow as part of the complete message and which activates a sequencing means for causing message units to be displayed in a time-spaced relationship.

2.2 The subject-matter of Claim 1 of the patent in suit is thus distinguished over the prior art disclosed in document D1 in that:

- (a) during the display of the message units, characters stored in the memory have corresponding character stations on the display;
- (b) sequencing means is provided for causing each of said complete message units of a complete message to be displayed by said visual device in a time-spaced relationship;
- (c) first signal means is provided for indicating the first complete message unit in a sequence of complete message units in a complete message and each of said complete message units has one predetermined character location in said memory for storing a first binary coded signal representative of said first signal means;
- (d) first sensing means is provided for sensing said first signal means, and means is provided which is responsive to the sensing of said first signal means for activating said sequencing means.

According to the display system as described in the patent in suit in column 5, lines 39 to 49, the first binary coded signal representing the first signal means, referred to in feature (c) above, may not be displayed

on the display device. Having regard to this disclosure, the statement in feature (c) above that the " first signal means is provided for indicating the first complete message unit " is to be interpreted to mean that the first signal means merely provides an indication or signal to the sensing means so as to activate the sequencing means (see also features (b) and (d) above).

2.3 The distinguishing features (a) to (d) above thus provide a display where the message units are fed to the display in parallel in the sense that each character stored in the memory is fed to a particular character station of the display, which means that a longer message is displayed by "scrolling" the message units over the display, such that the message units are displayed in a sequence.

2.4 The Opponent's submission that there is no clear functional difference between a "preprocessing" display as disclosed in document D1 and a "sequential" or a "scrolling" display cannot be accepted by the Board (see item VII above), since in the preprocessing display of document D1 the characters are read out serially and preprocessed across the display, so that there is no one to one correspondence between the characters of a message unit and the character stations on the display. The sequential display of the message units according to the present invention, on the other hand, requires that the characters of the message unit are entered into the corresponding character stations on the display, that is, read out in parallel, and that each message unit contains a signal for activating a sequencing means as set out in feature 2.2 (d) above.

Nevertheless, in the absence of any contrary contention by the Proprietor, the Board accepts the Opponent's submission that it is well known in the art of display systems that characters can be entered into a display either serially or in parallel. Moreover, document US-A-4 381 505, which is acknowledged in the patent in suit as disclosing the features of the preamble of Claim 1, describes a display where the characters to be displayed have corresponding character stations on the display so that the characters are entered into the display in parallel (see column 3, lines 58 to 63). Also document D2 (see in particular Figure 5 and the corresponding description) shows a display where the characters are entered in parallel. Therefore, in the Board's view, a parallel read out of characters from a memory into display constitutes an obvious alternative to the serial precessing display disclosed in document D1. Furthermore, a skilled person would find that a precessing display such as the one disclosed in document D1 may be difficult to read, so that, in the Board's view, there was a clear incentive for the skilled person to modify the precessing display.

For these reasons, in the Board's opinion, it would be obvious to modify the display known from document D1 such that the characters stored in the memory have corresponding character stations on the display and are entered into the display in parallel. Furthermore, for displaying longer messages, comprising several message units, it would be evident that the display system must include a sequencing means so as to display the message units in a time-spaced relationship. In the Board's view, therefore, the features (a) and (b) above would be obvious to a skilled person.

According to document D1 the beginning of a message is indicated by a pointer bit in a control register 740. Thereafter one logic level "1" bit is entered into this register for each new character of the message, such that the length of the message will be indicated by the number of logic level 1 bits in the register (column 5, line 44 to column 6, line 2). In this way these level "1" bits are sensed so as to control the precession of the displayed message. In the Board's view, therefore, the skilled person having decided to display message units in sequence in the display device of document D1 would regard the use of a binary coded signal in a message unit for controlling or activating the sequencing means as an obvious measure. Also, the use of a sensing means to sense the binary coded signal would be a routine measure for the skilled person. Features (c) and (d) would therefore be obvious for the skilled person.

- 2.5 For the foregoing reasons, in the Board's judgement, the subject-matter of Claim 1 does not fulfil the requirement of inventive step within the meaning of Article 56 EPC.
3. Since the subject-matter of the patent does not involve an inventive step, the patent has to be revoked pursuant to Article 102(1) EPC. It is therefore not necessary to consider the Opponent's submission that the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

**Order**

**For these reasons it is decided that:**

1. The Opponent's request for revocation of the patent on the ground set out in paragraph V above, and the associated requests for an apportionment of costs and for referral of a question to the Enlarged Board of Appeal, are rejected.
  
2. The appeal is allowed, and the European patent is revoked on the ground of lack of inventive step.

The Registrar:

The Chairman:

M. Beer

G. D. Paterson