

2009 PAPER P6

SAMPLE SCRIPT A

This script has been supplied by the JEB as an example of an answer which achieved a pass in the relevant paper. It is not to be taken as a "model answer", nor is there any indication of the mark awarded to the answer. The script is a transcript of the handwritten answer provided by the candidate, with no alterations, other than in the formatting, such as the emboldening of headings and italicism of case references, to improve readability.

Construction

Claim 1

1.1 *A parking garage => a structure for parking vehicles in;*

because that is its normal meaning and the spec refers only to such structures and does not suggest any broader application of the invention.

1.2 *including at least two superimposed floors*

including => having, but additional features may also be present

at least two => two or more

superimposed => on top of one another. The term suggests that the floors should match the floors below in shape, and that is consistent with the described embodiment. It is suggested (p8, 16-7) that some galleries may connect into an adjacent building, however there is no suggestion that the galleries should themselves extend.

Therefore I construe 'superimposed' as meaning on top of another and matching in shape, but note, that there can be other features because 'including'

floors => substantially flat area

because the roadways are not part of the floors (floors connected together ... by ... roadways, p6, 115-16) so the floors are the flat bit and the roadways are the sloping bit.

Therefore 1.2 => having two or more substantially flat areas on top of one another, but can also have additional features.

1.3 *each having traffic lanes with parking spaces distributed along them*

each => both of the at least two floors must have

traffic lanes => routes left free for traffic i.e. not having parking spaces thereon. (Note plural so more than one) because that is the standard meaning and the spec does not provide a different description. Lanes are not shown on Fig. 1 but must be the clear bits.

Note: not limited to one-way because "one way lane" has been used at p6, 126 and patentee has chosen not to so limit the claims.

parking spaces => marked space because that is as shown (26 in Fig. 1)

distributed => includes side by side i.e. ///// because that is as shown in Fig. 1.

Therefore 1.3 => both of the floors must have more than one route left free for traffic with marked spaces along it.

1.4 *the lanes extending along three sides of a quadrilateral.*

quadrilateral => 4 sided shape. Not limited to rectangle because of repercussive effect of claim 2.

three sides => three or more sides extending along – must include parking spaces outside because that is as shown. So lanes form a quadrilateral but the quadrilateral need only be part of the floor.

Therefore 1.4 => the lanes forming three or more edges of a four sided shape, which can only be part of floor.

1.5 *and bounding a space for roadways extending between opposite sides of the quadrilateral, allowing vehicles to ascend and descend from floor to floor.*

bounding => defining the edges of, because that is normal meaning. However must include defining only some of the edges because the embodiment shows only bound on three sides and patentee must have intended to include that. Note 12, 14 & 20 described as ‘bounding’ space (p6, 125).

a space for roadways – are roadways part of the claim? A literal reading suggests not – just need space for them. However invention wouldn’t work without them, they are an essential feature so I construe claim as including the roadways because the patentee must have intended them to be included because he includes further features of them in the rest of claim 1.

extending between opposite sides - does the space or the roadways so extend? I construe as the roadways because that is the more natural meaning of the sentence and is consistent with the embodiment. Note that ‘extending between’ does not imply right to the edges but includes going from lane to lane because that is as shown on Fig. 1.

allowing vehicles ... => providing a route from floor to floor. Embodiment shows each ramp going from floor to floor (Fig. 2) but ramps in embodiment are one way (p6, 127) so no single ramp provides ascent and descent from floor to floor. Therefore must construe as the roadways together providing an up route and a down route.

NB Roadways may include lanes and parking spaces (p6, 127) so roadways just means sloping part, as opposed to floor, which is flat part.

space => area. Because it has roadways in so clearly isn’t “empty space”.

Therefore 1.5 => and defining at least some of the edges of an area having sloping parts that run from edge to edge across the quadrilateral, the parts together providing routes up and down from floor to floor.

Claim 2

- 2.1 Must have all features of claim 1
- 2.2 *in which on each floor* => both of the floors must have
- 2.3 (i) the traffic lanes form three sides of a rectangle => repercussive effect on claim 1. Lanes here form three sides of a rectangle (meaning clear).
- 2.4 and (ii) there are two such roadways
- => there are exactly two roadways extending between sides of the quadrilateral and together forming a route up & down from floor to floor because that is consistent with the embodiment, and patentee could have used 'two or more' or similar language if he wanted to show that broader coverage was intended.
- Note 'and' so both (i) and (ii) must be present.
- 2.5 *one being located on the fourth side of the rectangle* => one forms the fourth side of the rectangle because standard meaning makes sense. Note rectangle not necessarily all of floor (4 sided shape wasn't – see 1.4).
- 2.6 *and the other being parallel thereto within the rectangle* => the other roadway is parallel to the one forming the side and is inside the rectangle because standard meaning makes sense.

Claim 3

- 3.1 Must have all features of claim 1. May additionally have features of claim 2.
- 3.2 *in which each floor comprises a pair of parallel, level galleries* => wherein both floors include two, parallel, flat edge regions extending across entire width but additional features may be present
- because each* => both must have
- comprises* => includes but additional features possible
- pair* => two, but not limited to matching because galleries 12 & 14 don't match (traffic flows in opposite directions)
- parallel* => meaning clear
- level* => meaning clear
- galleries* => edge regions extending across entire width because that is how 'galleries' are described on p6, 121-22.
- 3.3 *connected by a level crossover link* => joined together by a substantially flat part of floor because joined together is standard meaning of connected and is consistent with described embodiment & link is part of floor and substantially flat (p6, 122-23 floor includes ... substantially level ... link).

Claim 4

4.1 All features of claim 3 (which includes features of some previous claims, see 3.1, so they are also included in claim 4).

4.2 *In which one of the galleries is connected to one of the roadways extending towards it for ascending traffic and to another of the roadways extending towards it for descending traffic.*
=> one of the galleries attaches to a first roadway only for ascending traffic coming up from the floor below and to a second roadway for descending traffic coming down from the floor above only because extending towards it must imply the traffic is coming towards the gallery because of the contrast with 'outgoing' later in the claim.

Also because that is the traffic system described at p6, 128-32, which is for 'one way' lanes (p6, 127), hence the 'only' in the above construction.

4.3 *the other gallery being connected to an outgoing roadway for descending traffic and an outgoing roadway for ascending traffic.* => the 2nd gallery being attached to a 1st roadway for down traffic to the floor below only and a second roadway for up traffic to the floor above because that is as described at p6, 134 to p7, 13.

Infringement

Y = present N = not present. Numbering as for construction.

1.1 Y is a 'multi-storey car park' p3, 19.

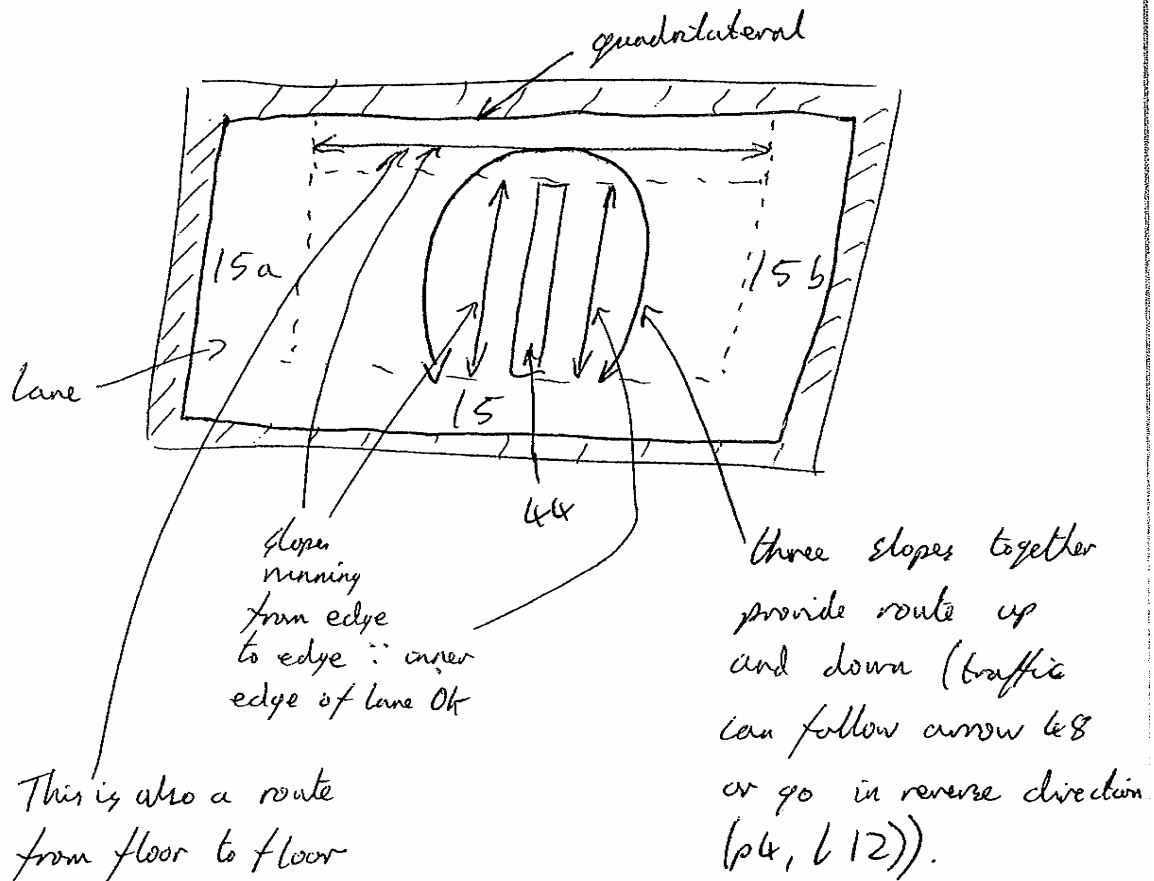
1.2 Y 15a, 15b & 15 are substantially flat areas and there are two or more (4 in Fig. 1) on top of each other as required by construction

1.3 Y there are routes free for traffic with parking spaces alongside on 15a, 15b & 15 (see Fig. 2) as required by construction

1.4 Y the lanes on 15a, 15b & 15 form three sides of a 4-sided shape (rectangle). Shape isn't all of floor, but construction didn't require that.

1.5 Y lanes on 15a, 15b & 15 define 3 edges of an area containing slopes (20A, 20B & 17) running from edge to edge of quadrilateral (note claim construction permits starting at inner edge of lane and only requires across quadrilateral, not from lane to lane), the slopes (20A, 20B & 17) together providing a route up and down. No requirement for single ramp to go all the way (see 1.5).

(see next page for drawing)



All features of claim 1 present so claim 1 is infringed.

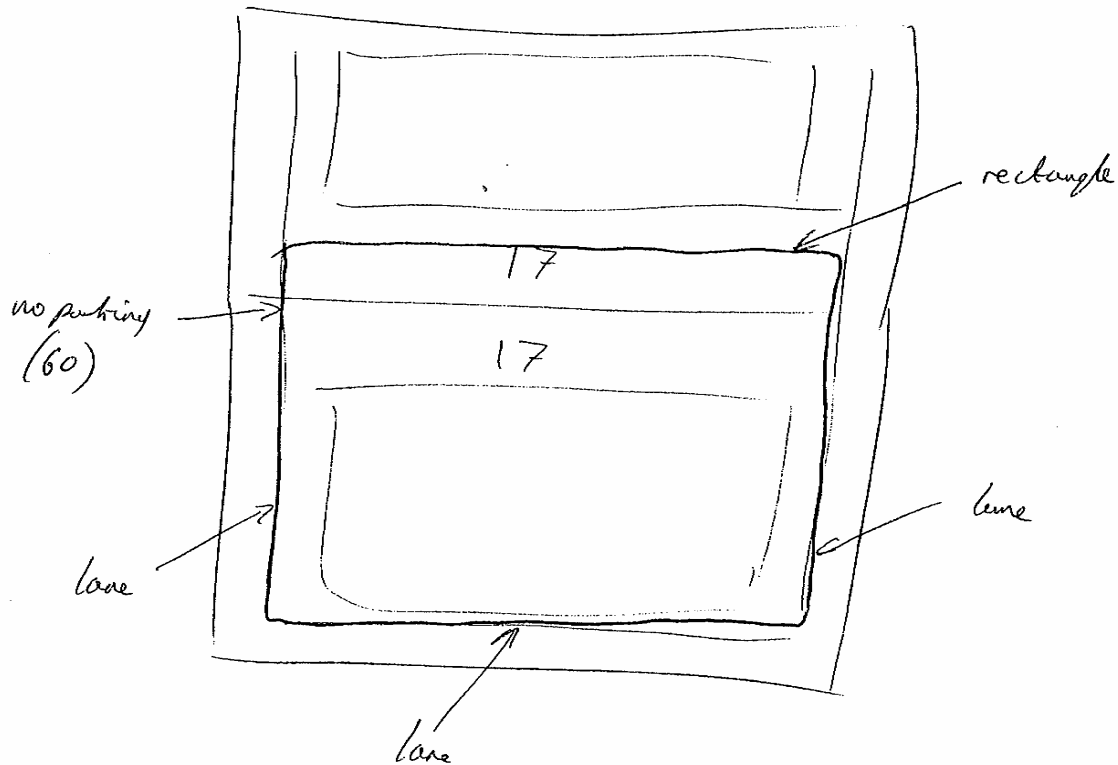
- 2.1 Y see above
- 2.2 - nothing to check
- 2.3 Y lanes are rectangle see 1.4 above
- 2.4 N Construction required exactly two roadways.
17 is a roadway. Route 48 could be interpreted as a single roadway*. Then there would be 2 but they would not be parallel (see 2-6). *Note 44 may not exist (edges in one plane p4, 11).

If 17 is not a roadway then two halves of 48 could be two roadways. They are parallel but neither is on the edge of the rectangle (see 2-5).

17 could be a roadway (on edge) and lanes where 20A and 20B are written could be roadways (parallel) but the latter don't form a route from floor to floor without going on to 17 via part of 48 so don't form a separate roadway.

In 'mirror embodiment' p4, 115 onwards then 20A and 20B can be argued to be not roadways and 17 and 17 from mirror would be 2 roadways.

See next page for drawing



So not present, except in mirror embodiment.

2.5 Y 17 is on the 4th side.

Note in mirror embodiment 17 on mirror forms 4th side (see drawing above).

2.6 N See various roadway combinations above (2.4)

Present in mirror embodiment, two 17s are parallel (see drawing above).

Claim 2 not infringed by main embodiment because construction required only 2. However, note that 17 is on the 4th side and there are no parallel roadways to 17 so a broader construction wouldn't change conclusion.

However, claim 2 is infringed by the mirror embodiment because parts 20A & 20B can be argued not to be roadways and the two 17s then fulfil the roadway requirements of claims 1 & 2. That finding would be reinforced in a '2 or more' construction.

3.1 Y when dependent on 1
when dependent on 1 or 2 for mirror.

3.2 Y 15a & 15b are parallel, flat edge regions across entire width as required by construction.
Same true for mirror because spaces removed at 60 so 15A & 15b go right across.

3.3 Y 15a & 15B are joined together by 15 which is flat piece of floor as required.

Same applies for mirror.

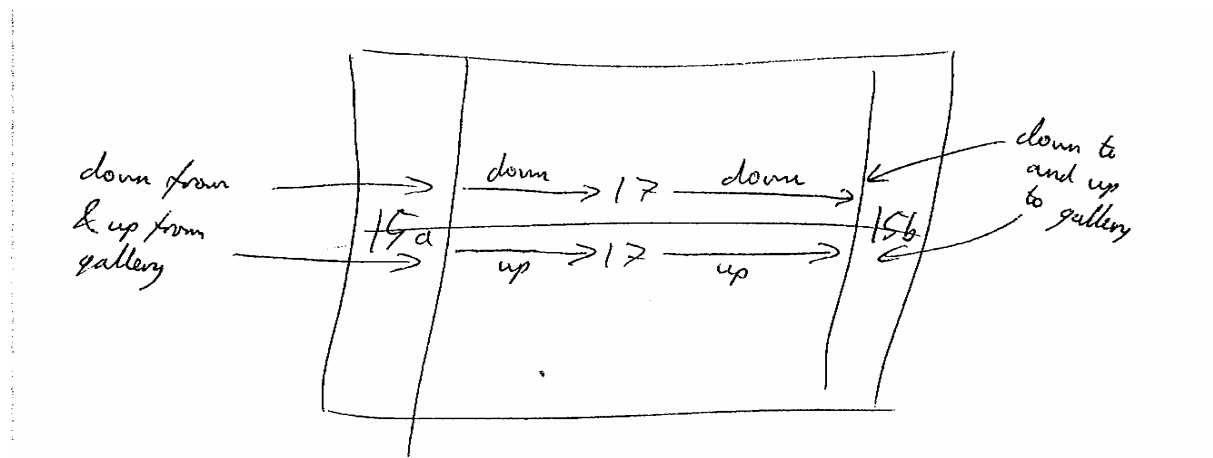
Claim 3 infringed by both embodiments because all features present. Only infringed when dependent on claim 1 by main embodiment.

4.1 Y see above

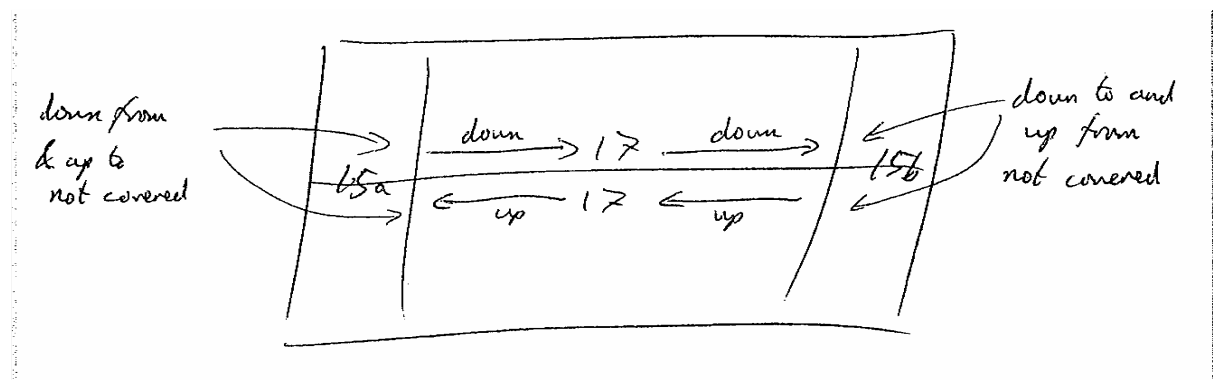
4.2 N for main embodiment because two-way traffic so no separate up & down roadways.

Y for mirror because one set exclusively for up and the other exclusively for down.

Therefore some layouts can infringe:



And some don't



4.4 N for main because not one-way

Y for mirror in some embodiments (see drawings above)

Claim 4 is not infringed by the main but may be infringed by some layouts of the mirror.

Novelty

Doc C

- 1.1 Y car park (p1, 15)
- 1.2 Y floors 2 substantially flat and on top of each other as required.
- 1.3 Y tracks are on level floor at sides (see figs.) and have parking spaces outside them (p11, 121) so there is a route for traffic and parking as required.
- 1.4 N racetrack shape does not fall within construction 'four-sided shape'. Not limited to a rectangle but a racetrack has not got four sides. Construction should have read 'substantially straight' because all patentees lanes are straight and lane therefore implied a straight lane.
- 1.5 N the ends of opposing racetracks define the edge of the central region where the slopes are, which is within construction. However, roadways are not running across quadrilateral because there isn't one (see 1.4).

Claim 1 is novel. However that conclusion depends on the racetrack not being a quadrilateral so there is an argument that could be made for anticipation with a different construction.

- 2.1 N as above
- 2.2 -
- 2.3 N not a rectangle
- 2.4 N the inner ends of the two racetracks could be 2 curved roadways, but they wouldn't be parallel (see 2.6). Taking half the car park the roadways 7 from the top of fig. 1 and 7 from the bottom of fig. 1 are two parallel roadways but they are not one on the side of the rectangle and one within it (see 2-5 & 2-6).
- 2.5 N no rectangle. If there were then roadways 7 & 1 would form an edge.
- 2.6 N needs to be parallel and in the rectangle. If 7 or 1 or 7 & 1 were a roadway on the edge of a rectangle then the parallel roadway would have to be the other half of 7 or 1 or 7 & 1 so would necessarily also be on the edge and not inside as required by construction.

Claim 2 is novel over C.

- 3.1 N see above
- 3.2 Y 2 & 3 together can be floor (construction did not require continuous – see 1.2) so they are then the galleries as they are flat across width.
- 3.3 N They are not joined together by 4. There are significant slopes and construction required substantially flat.

Claim 3 is novel over C.

- 4.1 N see above
- 4.2 N helicoid tracks may be reversed (p11, 128-32) but will still always have arrival and departure from gallery so not covered by claim.
- 4.3 N same as 4.2

Claim 4 is novel over C.

Doc D

- 1.1 N cargo hold or warehouse. Not for parking cars (p 13, 15-6)
- 1.2 Y can be overlap (p13, 121&22). Construction required same shape but also said there could be other features. Therefore overlapping bits are same shape and non-overlapping bits are other features.
- 1.3 N no parking spaces
- 1.4 Y flat bits 1 or 2 are on 3 sides of a rectangle.
- 1.5 Y centre portion has roadways and is within flat bits.

Claim 1 is novel.

- 2.1 N see above
- 2.2 -
- 2.3 Y flat bits are side of rectangle
- 2.4 N there is only one roadway in the middle
- 2.5 Y would be on edge in split in half embodiment (p14)
- 2.6 N no other road

Claim 2 is novel.

- 3.1 N see above
- 3.2 Y edges of 2 or 1 at top and bottom in Fig. 2 Not 2 & 1 on different floors so extend across width.
- 3.3 Y right hand side of 2 or left hand side of 1.

Claim 3 is novel but only because of dependency.

- 4.1 N see above
- 4.2 N just one roadway

4.3 N just one roadway

Claim 4 is novel over D.

Inventive step

The skilled person is a maker of car parks because that is the field of the invention.

The common general knowledge will include car park features such as parking spaces and lanes.

Claim construction see above.

Claim 1 is distinguished from C by the lanes not forming 3 sides of a quadrilateral and bounding i.e. space for the roadways (see novelty 1.4 & 1.5). The skilled person would try squaring off the ends of the racetracks of C and would therefore reach the invention of claim 1. It is a straightforward variation to try. Therefore claim 1 is probably not inventive. Doc D shows a quadrilateral without parking spaces but the skilled person is unlikely to combine C & D because they are in different fields. Therefore D does not improve the inventive step attack.

Claim 2 is further distinguished by the feature of the rectangle and the parallel roadways on the 4th edge and inside. Neither C nor D teach parallel roadways, one to the edge of and one inside a rectangle so claim 2 is likely to be inventive given that the squaring off of the ends would not result in the invention of claim 2 (see novelty 2.5).

Claim 3 is further distinguished by the level cross-link joining the galleries. That feature is taught in D, but because C and D are in different fields there is an argument that the skilled person would not combine them. Also the teaching of a flat cross-link in D is incompatible with the teaching of an intermediate level in C so there is a further strong argument that they would not be combined. Therefore claim 3 is likely to be inventive.

Claim 4 is further distinguished by the arriving both up and down or departing both up and down to a gallery feature. C teaches same-handed or opposite-handed racetracks and in doing so gives the skilled person alternatives so he would not look for more. If he did, he would not arrive at the arrangement of claim 4, because that arrangement would not work with the car park of Doc C, because there is no connection between the galleries other than the ramps and so there would either be only exits or only entries on each gallery and the cars would get stuck. Doc D has a system whereby trucks can go anywhere on the ramp and the ramp is designed with that in mind with its shallow slopes in all directions (p13, 130-32).

Therefore D does not teach a one-way system of the kind in claim 4 and the skilled person would see no reason to implement one. There are therefore strong arguments that claim 4 is inventive.

Internal Validity

There do not appear to be any sufficiency issues because the described embodiment enables the skilled person to put the invention into effect.

Amendment

Since claim 1 is of questionable inventiveness, the patentee could amend to bring the features of claim 3 into claim 1.

There are strong inventive step arguments for claim 3 and it is infringed when dependent on claim 1 by both the client's embodiments so the new claim would strengthen the patentee's position.

They are likely to try and amend before taking action as damages may be reduced for a partially valid patent. We should put a caveat on the patent so as to possibly oppose any amendment.

Advice

Claims 1 & 3 re infringed by the main BMM embodiment and claims 1, 2, 3 & 4 would be infringed by certain layouts of a mirror embodiment.

All claims are novel, but I do not think claim 1 would be found to be inventive, although a court may disagree. There appear to be good inventive step arguments for claims 2, 3 & 4.

We should put a caveat on the patent so as to see if the patentee tries to amend so that we can oppose.

Mr Hall has just drawn your attention to the patent so as to avoid you taking action for unjustified threats. You are right that such a letter can be the first step toward litigation but usually a more formal letter before action should be sent before litigation starts.

In any case you should take this matter seriously because you potentially infringe valid claims in the patent and Mr Hall could take further action leading to an injunction, damages or an account for profits, delivery up for destruction (although he's unlikely to get this for a car park – or want it because of the potential bad publicity). Because he has informed you of the patent you will not be able to have damages reduced for innocent infringement.

You should provide me with details of the cargo ramp arrangement you describe as that may be relevant prior art and could change the position regarding viability of Mr Hall's patent. It would be helpful if you would also explain how the ramp has inspired the features of your car park.

As a small firm it is presumably important for you to avoid court fees. I recommend we review the cargo ramp asap and contact Mr Hall to see if he would be interested in offering you a licence. Since the car park is for BMM they probably also infringe if you do so they may be willing to pay a licence fee to Mr Hall for both of you if he is amenable to that. We should approach BMM and ask them about it.

As project managers you will not actually be making the car park, but you are being paid as project managers so are probably joint tortfeasors with those making the car park so can still be liable for infringement.

Note my comments about designing around certain aspects of the patent, particularly claim 4 (see infringement 4.3).

Ground works have started, but you have not yet built the car park (or rather, had it built under your management) so at present there is not yet infringement. However, there will be once the car park is complete. That gives us some time to negotiate with Mr Hall (and BMM).

* * * * *

2009 PAPER P6

SAMPLE SCRIPT B

This script has been supplied by the JEB as an example of an answer which achieved a pass in the relevant paper. It is not to be taken as a "model answer", nor is there any indication of the mark awarded to the answer. The script is a transcript of the handwritten answer provided by the candidate, with no alterations, other than in the formatting, such as the emboldening of headings and italicism of case references, to improve readability.

1. Construction

1.1 Claim 1 Independent claim.

1.1.1 “A *parking garage*” – sets the scene. A building with “parking space” for cars. Does not necessarily require safety barriers etc. referred to at pg 7 line 31.

1.1.2 “*including*” – non-exclusive term. Garage has the following features but is not limited to them.

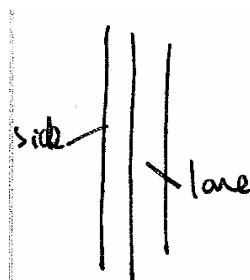
1.1.3 “*at least two*” – i.e. two or more.

1.1.4_ “*super imposed floors*” – patent explains at pg 7 lines 17 to 20 that one possibility for superimposed floor is a series of stacked floors with the same layout. However, this term could be taken to mean a series of floors, one on top of the other, without necessarily the same layout. I therefore believe this term will cover layout where, when viewed from above, each floor has the same shape. A floor does not necessarily, but may, comprise the specific layout described in claims 2 & 3, e.g. floors do not need to be, but may be, level, as currently specified in claim 3.

“*each having ... distributed along them*” – according to the patent, the roadways must be suitable for traffic movement, but not necessarily one way.

“*traffic movement*” – see pg 6, line 27. Further, there can be parking space on one or both sides of the lanes (see pg 6, line 28 and illustrated in Fig 1). However there is nothing to suggest that these features are essential. I therefore believe this phrase will be construed to cover an arrangement allowing both traffic movement and space for traffic to park without impeding movement.

1.1.5 “*the lanes extended extending ... quadrilateral*”- Quadrilateral = four sided shape. Not necessarily the rectangle specified in claim 2. The lanes “extend” along the sides of the quadrilateral – this could mean they follow its shape: i.e.



as in the patent.

or it could mean simply that the lanes are present along that length of the quadrilateral.

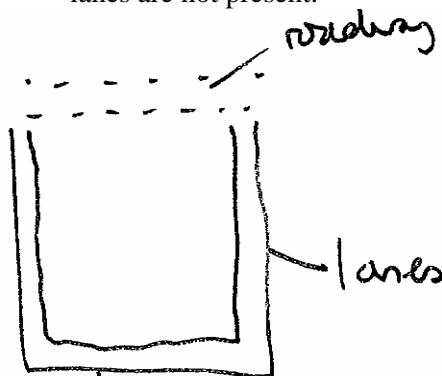
There is no reason to limit this term to the former interpretation, therefore I believe this term covers any lane provided it is present along the length of a quadrilateral.

Does “*three sides*” necessarily mean only three sides? An alternative fate for the fourth side is specified in claim 2 – name the location of a fourth road way. Claim 1 is not limited to this though.

- 1.1.6 “*bounding a space*” – means that the three sides define a zone in which the roadways are located.
- 1.1.7 “*Roadways ... opposite sides of the quadrilateral*” - “roadways” is a plural term. Could mean that each of 16, 24, 11 and 22 is individually a roadway. Alternatively, could mean that 16 & 24 together form one roadway and 18 and 22 together form one roadway. The latter construction is not excluded, and I therefore believe that this term covers one or more “arrangements”, each comprising two pathways, one extending from one side of the quadrilateral upwards, the other extending from the other side of the quadrilateral downwards.
- 1.1.8 “*allowing vehicles to ascend and descend from floor to floor*” – this term is likely to be construed as covering any arrangement where vehicles can move between floors. Not limited to separate ascending and descending pathways – i.e. a single pathway between floors could allow ascent and descent.

1.2 Claim 2 dependent on Claim 1

- 1.2.1 “*in which on each floor*” – i.e. every floor has the following features.
- 1.2.2 “*the traffic lanes form three sides of a rectangle*” – can limit the quadrilateral to a rectangle. Can be any three sides, i.e. two long, one short or two short, one long. Traffic lanes must be straight on the outer edge otherwise would not form a rectangle.
- 1.2.3 “*there are two side roadways*” – limits the number of the roadways specified in claim 1 to two i.e. must be two pathways between levels.
- 1.2.4 “*one being ... fourth side of rectangle*” – i.e. located at the position in the rectangle where lanes are not present:



i.e. roadway 16 and 24 in Figure 1.

- 1.2.5 “*and the other being parallel there to within the rectangle*” - Exemplified in the patent as roadway 18/22 – parallel to other roadway and located in the central region of the rectangle.

1.3 Claim 3 – dependent on claim 1 or claim 2

- 1.3.1 “*in which each floor*” – each floor has the following features but is not limited to these features i.e. comprising is non exclusive.
- 1.3.2 “*pair of parallel level galleries*” – patent specifies that these are “substantially level” at pg 6 line 21. No reason why floors should be 100% level, i.e. horizontal. Some degree of slope therefore possible, provided it does not interfere with ascent/descent system. The galleries are part, but not necessarily the whole of two of the traffic lanes which are the two parallel sides of the quadrilateral.
- 1.3.3 “*connected by a level crossover link*” – this crossover includes the third side of the quadrilateral formed by the lanes, and is part but not necessarily the whole of that third lane. Again, patent says substantially level at pg 6 line 21, therefore same comments apply as in 1.3.2.

1.4 Claim 4 – dependent on claim 3

- 1.4.1 “*in which ... ascending traffic*” – this describes the configuration illustrated in Figure 1, where 16 extends towards gallery 12 for ascending traffic.
- 1.4.2 “*and to another ... descending traffic*” –The same gallery must be must be attached to a roadway take descending traffic from the above flow, as in 18 in Figure 1.

Together 1.4.1 and 1.4.2 cover a gallery with two pathways attached, one connected to a lower floor, the other connected to an upper floor. “For” means “suitable” for so it is not important which way the traffic does move, providing it is capable of going to the next floor up on one pathway & the next floor down on the other.

- 1.4.3 “*the other ... ascending traffic*” - This describes gallery 14 and pathways 22 & 24 in Figure 1. As with 1.4.1 and 1.4.2, “for ascending/descending” simply means that one pathway be connected to the next floor up and the other to the next floor down.

2. Infringement

2.1

- Tetch Associates (T) is not actually building the multi-storey car park. It is merely project manager therefor. T might therefore not be considered to be ‘making’ the product in question at all; depending on exact involvement as project manager. Get more information from T on this point.
- Nevertheless T might be joined in as a joint tortfeasor with whichever party is making/building the car park, since acting in “common design”.
- Further, supply of designs for a building might be considered a “means relating to an essential element of the invention”, in which case T potentially a contributory infringer.
- Builders/construction company for car park potentially direct infringers, since making the product in question.

- Eventual car park users = users of product but are likely to be private & non-commercial therefore have defence.
 - Eventual owners of car park liable for keeping product? More information required on ownership, but BMM might be liable eventually.
- 2.2 There are two embodiments described in Doc A – the main embodiment (1) and the “mirror image structure (2) described at pg 4 lines 15 to 19.

Please let me know which structure you are currently building. For completeness, both considered below.

2.3 Embodiment 1

2.3.1 Claim 1

Embodiment 1 is evidently a “parking garage” because it provides parking space for cars. It includes the following features:

- It has “*at least two floors*” because Figure 1 shows four floors. These floors are “*superimposed*” because I have constructed this term to mean having the same slope when viewed from above and Figure 1 of Doc A shows this.
- Each floor has “*traffic lane ... distributed along them*” because level sections 15a, 15 and 15b in Figure 1 provide parking spaces without impeding movement and areas 20A = 20B allow traffic movement on route 48, as per my construct in 1.1.4 above.
- “*the lanes ... quadrilateral*” – present in embodiment 1 because together 15a, 15, 15b and 20A and 20B, which form the lanes are along three lengths of a quadrilateral, as shown in Figure 1, thereby satisfying my construction in 1.1.5 which requires lanes along three lengths of a quadrilateral.
- The lanes in embodiment 1 “*bound a space*”, namely they define a zone in which 17, 17a & 17b are part, as per my construction in 1.1.6.
- Embodiment 1 has “*roadways ... floor to floor*” because portions 17a & 17b extend respectively from opposite sides of the quadrilateral to form a roadway which provides a pathway between floors, so that vehicles can move between floors, as per my construction in 1.1.7 & 1.1.8.

Embodiment 1 therefore has all of the features of claim 1 and therefore falls within scope of claim 1.

2.3.2 Claim 2

Embodiment 1 is:

- A garage according to claim 1 – see 2.3.1
- in which on each floor, the traffic lanes for three sides of a rectangle, because 15a, 15 and 15b clearly form three sides of a rectangle and therefore satisfy my construction in 1.2.2.

However, there is only a single pathway between levels, that provided by 17a & 17b in Fig. 1. This is located at the fourth side of the rectangle. Nevertheless, there is no second pathway in the central region of the rectangle.

Therefore embodiment A does not fall within scope of claim 2.

2.3.3 Claim 3

In embodiment 1, sections 15, 15a & 15b which are level sections (see pg 3, line 17) provide two level galleries connected by a crossover. There are only a portion of the 'lanes', but as per my construction in 1.3.2 & 1.3.3, the fact that the sections 20A and 20B are not part of the galleries/crossover does not matter.

Product falls within scope of claim 3 when dependent on claim 1, but not when dependent on claim 2.

2.3.4 Claim 4

As discussed in section 1.4, this claim carries an arrangement with two separate routes for ascending/descending. As discussed in respect of claim 2 in 2.3.2, Embodiment 1 has only a single ... route.

Embodiment 1 does therefore not fall within the scope of claim 4.

2.4 Embodiment 2

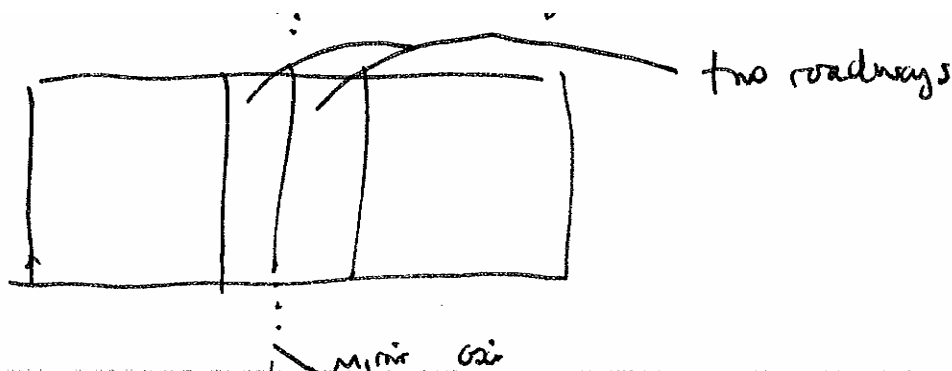
Embodiment 2 differs from embodiment 1 in that it has a mirror image structure against end points of 15a, 15 and 17a 17b.

For the reasons discussed above, this arrangement will satisfy all features of claims 1 & 3.

Considering new claims 2 & 4.

2.4.1 Claim 2

Both "roadways" in embodiment 2 are located within the rectangle – there is no "roadway" located at the end of a rectangle.



Therefore embodiment 2 does not fall within the scope of claim 1.

2.4.2 Claim 4

Embodiment 2 has gallery 15a attached to 17a which provides a pathway down, and gallery 15b attached to 17b which provides a pathway up. The question is, do the mirror image components provide a second set of such pathways? If the two sets are joined without barriers, there could simply be considered to form a single entity. Need to check which client will install walls, barrier, etc. In any event, these will not form the vertical arrangement required by claim 4, since the two ups will be on one side and the two downs on another.

Embodiment 2 does not fall within scope of claim 4.

3. Novelty

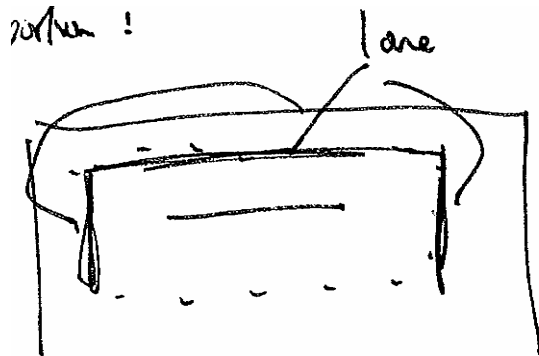
Prior art = Doc C & Doc D. Both available for novelty & inventive step. Novel arrangement described briefly by client appears to be Doc D. Check this through with client.

3.2 Doc C

3.2.1 Claim 1

Doc C describes a “*parking garage*” because a multi-storey car park is a building with parking space for cars (see 1.1.1). Doc C describes at least two, i.e. more than one, superimposed floors, because floors 2 and/or floors 4 will have the same shape when viewed from above, as per my construction in 1.1.4. The floors in Doc C have “*traffic lanes ... along them*” because the tracks in Figure 1 show traffic movement in floors 2 and 4, and pg 11 line 21 indicates that parking spaces are provided when evidence cannot impede traffic movement.

Doc C also describes, “*lanes entering ... quadrilateral*” since the tracks also extend up the ramps and provide parking space outside the tracks. Thus, one portion of track on ramp can provide a lane portion which extend along the three sides of a rectangle.



These “*bound a space*” because they provide a zone in which a roadway is located. That roadway is the opposite portion 7. However, this portion 7 does not provide two pathways, one extending upwards, the other extending downwards as per construction in 1.1.7. Therefore claim 1 is novel over Doc C.

Claim 2

Doc C does disclose traffic lanes for any three sides of a rectangle, as discussed above in regard of claim 1. However Doc C does not disclose any “*roadway*” for the same reasons discussed in claim 1 above.

Claim 2 is therefore novel under Doc C.

Claim 3

The pair of galleries 2 and 4 in C are level, however the crossover 7 linking them is sloped, and is involved in the ascent/descent system (see 1.3.2). Therefore claim 3 is novel over Doc C.

Claim 4

Again, as for claim 4, no “roadways”. Therefore claim 4 is novel over Doc C.

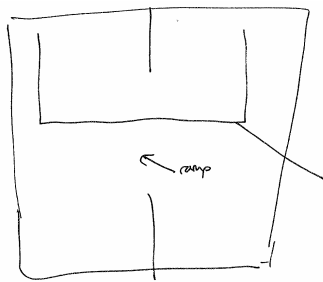
3.3 Doc D

Claim 1

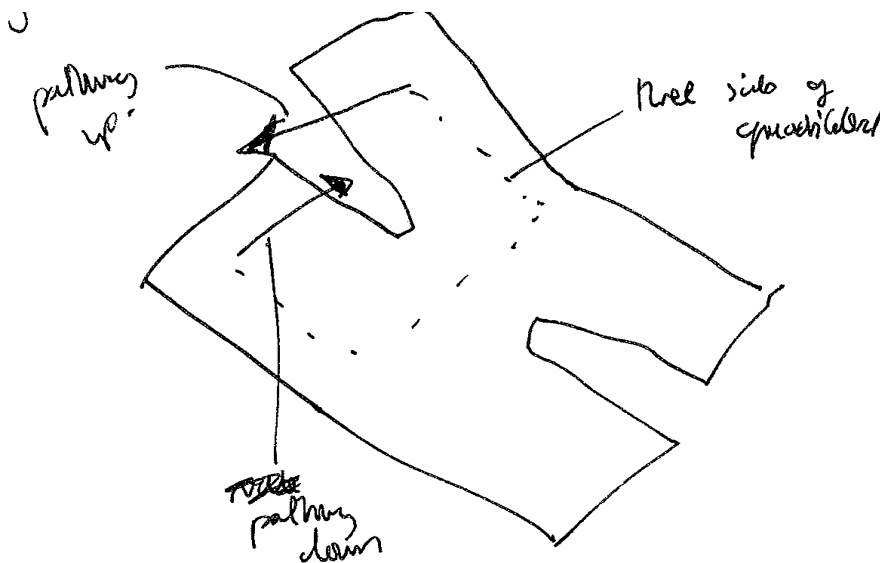
Doc D discloses “a parking garage” because, although not specifically mentioned, when in the form of a warehouse (see pg 13 line 6), Doc D is a building which allows fork lift and pallet trucks (see pg 28) to enter and is therefore suitable for vehicles. Cargo/vehicles could be stacked i.e. parked.

Doc D may include at least two superimposed floors – pg 14, lines 1 to 2 specify a series of adjacent decks which would have the same shape.

Each floor in Doc D has traffic lanes, since vehicles can move and parking spaces are wide – there are spaces to park cargo – cargo might be a vehicle. These lanes extend along three sides of a quadrilateral. In particular, considering Figure 2, the following pathway forms three sides of a quadrilateral.



These bound a space, namely the fourth side of the quadrilateral, which provide pathway to the upper level and a separate pathway to the lower level, as per my 1.1 construction, i.e.



This will clearly allow vehicles to ascend and descend.

Claim 1 therefore has novelty over Doc D.

Claim 2

Doc D only discloses a single roadway, i.e. the two pathways discussed in respect of claim 1. There is therefore no roadway located within the rectangle.

Claim 2 is therefore novel over Doc D.

Claim 3

The side portions A and B in Doc D provide a pair of parallel level galleries. However, these are connected by the ramp which is not level. It is not even substantially level (see 1.3.2 & 1.3.3) because this ramp is involved in the ascent/descent, therefore does effect the way the intervention works.

Claim 3 is therefore novel over Doc D.

Claim 4

As discussed for claim 2, Doc D only discloses a single roadway i.e. the single pathways up and down.

Claim 4 is therefore novel over Doc D.

4. Inventive step

Claim 2

The skilled person is likely to be an expert in large commercial storage buildings, such as car parks. A document relating to warehouses such as Doc D is therefore likely to be a document of which he is aware.

The difference between claim 2 and Doc D is the presence of an additional roadway. This provides separate helical pathways, as described on pg 6 lines 15 to 19, minimising distance travelled in the car park.

Document C discloses helical pathways, as illustrated in Figure 1 of Doc C.

Doc C is also in the field of parking garages and car parks and so the skilled person would be aware of this document and would therefore consider its teaching in the light of his knowledge of Doc D.

The skilled person might appreciate the importance of helicoidal tracks from Doc C. It is not clear though how he or she might seek to adapt the Doc D arrangement to form a helical structure of claim 2.

In this regard, Doc C & Doc D describe rather different solutions to the problem of moving vehicles between floors of a building. It is not clear that their teachings can be combined to arrive at a structure of claim 2.

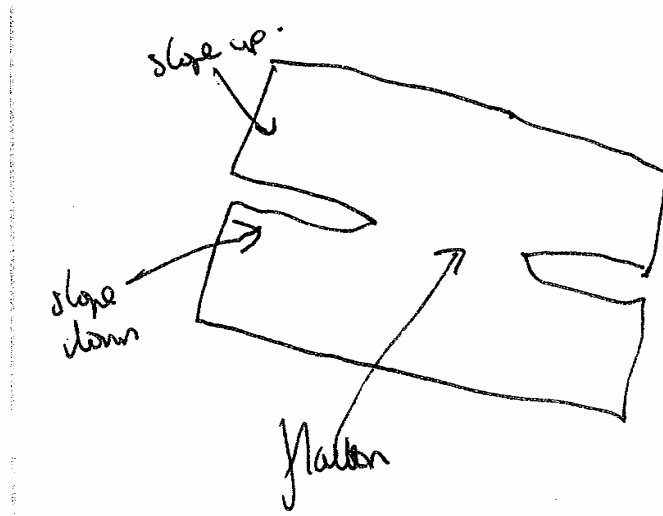
Further, there is nothing in Doc D or Doc C to suggest the advantage in reduced distance travelled achieved by the helical arrangement. There is therefore no incentive to add an additional, internal roadway to arrive at the arrangement of claim 2.

Claim 2 therefore involves an inventive step.

Claim 3

As with claim 2, starting from Doc D, the difference between claim 3 and Doc D is one of a level crossover link.

There is no particular advantage associated with this crossover link. Indeed, starting from Doc D, one could arrive at the claim 3 arrangement by flattening the ramp section and instead sloping the offset floors, i.e.



This appears to be a simple variation on the general idea of Doc D. Indeed, it is very similar to the variation of the client's building, which he admits was 'inspired' by a cargo ramp arrangement of this sort.

It would be advisable to consult an agent, but it does appear that claim 3 lacks an inventive step over Doc D.

Claim 4

Doc D does not disclose the second pair of pathways beside the second roadway described in claim 4. This was discussed with respect to novelty above.

This arrangement allows cars to travel the minimum distance, since they never need to ascend before descending (see pg 7 lines 22 to 26). As with claim 2, Doc C does not suggest this advantage & neither does it seem possible to arrive at claim 4 by combining Docs C & D.

On this basis claim 4 seems to be inventive.

5. Amendment

Claims 2 and 4 appear to be novel and inventive. A suitable amendment might therefore be to combine claims 1 and 2. This could be done either in front of the comptroller or, if infringement

proceedings started, before the court. Amendment discretionary. May be dependent on whether patentee aware of Doc D or only just became aware of it. If the latter, amendment should be allowed.

6. Sufficiency

Only one embodiment described in patent, therefore some features of claims may be insufficient. However, clues seem that patent = sufficient at present.

7. Added matter

Get prosecution history of patents and see whether any amendments made add subject matter.

8. Advice

- Your building falls within the scope of claim 1 and claim 3 when dependent on claim 1. It does not seem to fall within the scope of claims 2 and 4.
- Claim 1 seems to lack novelty over Doc D and claim 3 seems to lack an inventive step over Doc D.
- On that basis, you do not appear to infringe any potentially valid claims.
- Please note that a court may find differently – to avoid expense consider negotiating with T.
- Explain potential validity issues to D and that building does not fall within scope of claims that appear valid. Suggest either a royalty free licence or a licence on very reasonable terms (for legal certainty to you and the construction company, etc).
- As mentioned above, you are probably not a direct infringer but construction company may be. You may be contributory infringer/joint tortfeasor.
- Do a thorough prior art search – may be more pertinent art out there which helps your case.
- FTO search – does competitor or other third parties have any other relevant documents that your building may infringe?
- Threats – T has just brought patent to your attention. This is not usually a threat. Please let me see the letter to clarify further.
- If T starts infringement proceedings it is unlikely that T will get an interim injunction – the building is under way and T has delayed by contacting you first.
- If T did win (i.e. valid and infringed claim found), which seems unlikely, then could expect a first injunction, damages or account of profits, order to deliver up & destroy and certificate of contested validity/infringement.
- In summary, your position seems strong and a negotiated free/cheap licence deal with T may be the best option.

NB Also consider non-binding validity and infringement opinion from the Patent Office, as prelude to negotiation.

* * * * *

2009 PAPER P6

SAMPLE SCRIPT C

This script has been supplied by the JEB as an example of an answer which achieved a pass in the relevant paper. It is not to be taken as a "model answer", nor is there any indication of the mark awarded to the answer. The script is a transcript of the handwritten answer provided by the candidate, with no alterations, other than in the formatting, such as the emboldening of headings and italicism of case references, to improve readability.

Introduction

Please read the notes I have made on the exam paper as I may not have had sufficient time to discuss all the issues I have noted.

References to documents will use the notation provided on the exam papers (i.e. docs A-D, pages 1-15).

I'll break the claims up into sections as referenced in the claim glossary and then refer back there during discussion.

Claim glossary

- 1.1 A parking garage
- 1.2 including at least two superimposed floors
- 1.3 each having traffic lanes with parking spaces distributed along them
- 1.4 the lanes extending along three sides of a quadrilateral
- 1.5 and bounding a space
- 1.6 for roadways
- 1.7 extending between opposite sides of the quadrilateral
- 1.8 allowing vehicles to ascend and descend from floor to floor.

- 2.1 A garage according to Claim 1, in which on each floor
- 2.2 the traffic lanes form 3 sides of a rectangle, and
- 2.3 there are two such roadways
- 2.4 one being located on the fourth side of the rectangle and the other being parallel thereto within the rectangle.

- 3.1 A garage according to Claim 1 or 2

- 3.2 in which each floor comprises a pair of parallel level galleries connected by a level crossover link.
- 4.1 A garage according to claim 3.
- 4.2 in which one of the galleries is connected to
- 4.3 one of the roadways extending towards it for ascending traffic,
- 4.4 and to another of the roadways extending towards it for descending traffic
- 4.5 the other gallery being connected to
- 4.6 an outgoing roadway for descending traffic
- 4.7 and an outgoing roadway for ascending traffic.

Construction

Kirin-Amgen – what would the person skilled in the art (PSITA) understand the claims to mean?

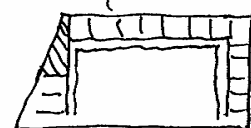
Shorthand: “=>” = “This section of the claim means”. “‡” = “because”

- 1.1 => a building into which vehicles may be driven and left/stored
‡ B: p6: lines 5 & 6 refers to ‘vehicles’ and ‘garage building’ for use by car owners, so ‘stored’ above does not include storing cars in a factory setting or by way of forklift.
- 1.2 => which has at least two levels, one above another
‡ “superimposed” = “one above another.” This can be found at B:p6: line 15.

Does each floor or “level” include the interconnecting roadway, or is this separate? This point is finely balanced – on the one hand there is a hint in C1 that the floor has “lanes” along 3 sides and it does not discuss anything else the floor “has” (the “lanes” bounding a “space” in each floor, and this floor being filled by the roadways). This would be supported by C3 which seeks to limit the exact characteristics of the ‘floor’ and makes no mention of the roadways. On the other hand, C3’s limitation uses ‘comprising’ which when construed openly does not prevent the floor from also including the ‘roadway’. On the balance, it appears there is slightly more justification for excluding the roadways from the definition of ‘floor’ (or per my construction, “level”) therefore “floor” does not include roadway.

Further support for this interpretation is found at B:p6:line 15 – “floors connected together ... by roadways” implies not part of “floor”.

- 1.3 => whereby every floor has routes for traffic movement, with parking spaces leading off from them on one or both sides
‡because lanes = “routes” per B:p6:line 16
distributed along = “leading off ... both sides” per B:p6: line 27-28.
- 1.4 => the lanes stretch along three of four sides of a parallelogram because quadrilateral is taken not just to mean rectangle but any 4-sided shape with parallel sides. While the lanes define



this shape not expressly necessary that floor is of this shape: i.e.

- 1.5 => the lanes define a space or area by defining it on 3 sides
‡ clear (there is an alternative interpretation that each floor bounds the space, but this makes less immediate sense and regardless, has the same result). See also B:6:25.
- 1.6 => the space being provided for ramps
‡ the roadways are said to inter connect between floors (B:6:25). These roadways inter-connect floors one above another since they are '*inclined*' (B:6:16) therefore roadways = ramps. As previously stated, roadways not part of floor.
- 1.7 => the ramps connect adjacent floors (in the vertical) by extending from one side of the quadrilateral on one floor to the opposite side on the adjacent floor
‡ this is the only interpretation that makes sense. The alternative construction (where roadways interconnect either side of same level) would not allow for ascent/descent. Although unclear, further clarity is provided by 1.8, therefore this interpretation is by far the most appropriate.
- 1.8 => so vehicles may move between levels.
‡ clear.
- 2.1 => the garage with all the features of C1.
‡ clear.
- 2.2 => where the three lanes are connected at right angles so that two are parallel to one another and of the same length and interconnected at the same respective ends at right angles by the third lane e.g. **** Insert drawing ****
‡ clear.
- 2.3 => there are two ramps that "belong" to each floor.
‡ this can be confusing as technically there are four ramps connected to each floor (a pair of ramps each for ascending and descending traffic, the pair connecting to levels above and below respectively). Inferring that two ramps 'belong' to each floor allows for ease of interpretation when describing the garage on a floor-by-floor basis. Otherwise, one would have to say that every second floor has four ramps, the floors in between having none. It should be understood by the PSITA that this description does not hold for top and bottom levels which will be deemed to have one ramp each, not two.
- 2.4 => one ramp is situated on the fourth side of the rectangle defined in 2.2 and the other ramp is parallel to this in the centre of the rectangle.
‡ clear.
- 3.1 => a garage that has all the features of either C1 or (C1 and C2).
‡ clear.
- 3.2 => the floor includes (but is not limited to) two parallel sections that are substantially level horizontally, and are interconnected along the same perspective end by a further substantially horizontal section. These sections include both parking spaces and traffic lanes.

‡ 'substantially level' as described in B:6:21-22. As per C1 +/ C2, there is a quadrilateral/or rectangle defined. Parallel galleries take up part of this with the crossover forming the third part. In paragraph B:6:21-25, it is described that galleries and crossover define the ramp space therefore galleries = buses and parking spaces.
- 4.1 => a garage with all the features either of claims 1 and 3 or claims 1, 2 and 3.

‡ clear.

4.2 => where one of the galleries and therefore the lane in that gallery is connected to ‡ as per 3.2, gallery = lane and parking. It makes little sense if ramp connected to gallery but only to parking spaces and not lane since traffic would not necessarily flow in this case therefore connected to lane.

4.3 => a ramp for traffic that is incoming (i.e. coming onto this level) from the level below. ‡ confusing – does ‘outgoing’ mean exiting car park, or just the level? Since it is envisaged as a design for both multi-storey above ground and subterranean (where ↓= exit and ↑ = exit respectively), former would have differing meaning in differing context. Therefore must be latter – outgoing = leaving level. Outgoing used with respect to second gallery (4.5-4.7) therefore incoming used with respect to this first gallery (per B:6:34).

Therefore in this context, ascending traffic coming on to this level = incoming.

4.4 => and another ramp for traffic that is incoming from the level above ‡ per above reasoning at 4.3.

4.5 => the other gallery and therefore lane on that gallery connected to ‡ as per 4.2 reasoning.

4.6 => a ramp for traffic leaving this level for the level below ‡ clear in the light of reasoning at 4.3.

4.7 => a ramp for traffic leaving this level for the level above. ‡ clear in light of reasoning at 4.3.

Infringement

There are a number of embodiments described at A, and our client has not told us which they are already in the process of building. Primary embodiment is as per Fig. 1, with alternative embodiment as per Fig. 2.

Either of these may have a mirroring structure adjoining (per A:4:15-19). Don’t have time to consider infringement independently for this, but it is sufficient to say if primary embodiment infringed, so is ‘mirror’. Therefore will only consider infringement of ‘mirror’ where other embodiments not infringed. The embodiment of Fig. 2 does not appear to distinguish over Fig. 1 significantly, so will only consider if have time.

Figure 1 (main) embodiment infringement:

Y = Infringement N = No infringement

- 1.1 Y present: a ‘*multi storey car park*’ described falls within my construct of 1.1.
- 1.2 Y As per the above quote, multiple storeys envisaged, therefore present.
- 1.3 Y Lanes/paths for traffic to be seen where parking spaces (53) not shown.
- 1.4 Y As we have said (I have said) in my construction, ramps not part of floor. Can see from Fig. 1 (of A) that lanes (i.e. areas free of parking markers) exist in sections 15, 15a & 15b). Therefore lanes along three sides.

- 1.5 Y 15, 15a & 15b define a space composed of 20A, 20B, 17a and 17b. This satisfies my construction.
- 1.6 Y At least part of this space is used by 17a and 17b which are defined in A as ‘ramps’ therefore satisfy my construction. Is the path in Fig. 2 defined by arrows 48 that cross 20A and 20B also to be viewed as a ramp? Yes. See A:4:7-8. “20A and 20B in conjunction with ... provide ramp structures”.
- 1.7 Y 17a in Fig. 1 will connect with 17b and 20B of floor below. Necessary that ramp goes right from one side to other per my construction. Embodiment of Fig. A shows that 17a and 17b (from level below) do so, even if the main traffic path does not travel all the way long this length (it instead goes along some of 17b and then turns onto path on 20B).

Therefore claim infringed by primary embodiment of A ‘mirror’ embodiment also infringed provided set against 17a/17b wall. If mirrored section instead set against 15b or 15a, would not have ramp extending all way from one side to other.

- 2.1 Y Claim 1 infringed.
- 2.2 Y As per the Fig. 1 embodiment at any rate, it appears the lanes define 3 sides of a triangle.
- 2.3 Y It can be argued that 17a and path defined by 48 on 20A are separate ramps as they point in different directions. As per my construal, while technically therefore have 4 ramps connecting per floor, will only consider it 2 per floor.
- 2.4 N These two ramps are not parallel. The 48/20A ramp may be inside the rectangle, but is at right angles to the 17a ramp.
- 3.1 Y When dep of C1
- 3.2 N Crossover link will not be level (apart from top and bottom layers).
- C4 N The complex arrangement of conjoining traffic flows by arranging galleries to either receive arriving traffic from above and below or stage departing traffic is not disclosed.

Novelty

Doc C

- 1.1 Y a car park is disclosed
- 1.2 Y it is also a multi-storey
- 1.3 Y routes defined by dotted lines in C Fig. 1
- 1.4 N per my construction, floor taken not to include portions, defined as ramps which extend between floors. Accordingly, sloping floor portion 4 of C is a ramp and not part of the floor. Accordingly “floor” lanes per my construction only extend along sides of car park 2 and 3.

- 1.5 N per above, my interpretation of lanes does not include a sloping section therefore not present
- 1.6 Y lanes defined to define a space for sloping ramps
- 1.7 Y these ramps do connect adjacent floors
- 1.8 Y this does allow vehicles to ascend and descend.

Could argue that on balance, the section of floor 4 does further comprise lanes and therefore 1.4 and 1.5 are anticipated. Will assess potential novel features of dependent claims in light of this possibility.

- 2.1 Y as above (assume that it does)
- 2.2 Y as can be seen from the figs of C, a rectangle is defined
- 2.3 Y arguably again, there are 4 ramps, but 2 per floor
- 2.4 N the 2 ramps extend from opposing sides of rectangle, one doesn't extend from centre.

- 3.1 Y as above (assume it is anticipated by C1 – note not by C2).
- 3.2 N the 'crossover' is not substantially parallel.

- 4.1 N claim 3 not anticipated
- 4.2 - 4.7 N the two galleries in C have 2 lanes each, one just for ascending and one for descending. Not the same arrangement as B, which has each gallery designed for arriving (above and below) and departing (to above and below).

Therefore Claim 1 not anticipated by C. Dep claims 2-4 all appear to have further novel features.

Novelty in light of D

- 1.1 Y As per my construction, a 'building' where cars may be left. This would conceivably include a warehouse per the desc in D. On a narrower construal of parking garage, this would not be disclosed as not explicitly defined. However it is likely that a warehouse of the desc D could be used as a car park without any modification (provided there is no shelving built in).
- 1.2 N D discusses stepped floors, not superimposed. While it does suggest floors may overhang, does not at any point explicitly state "*one above another*" and '*overhanging*' does not suggest sufficient proportions of flooring above one another to meet my interpretation.
- 1.3 N It does not appear that lanes or parking spaces are envisaged, rather, arrows 5,5', A-B suggest traffic may approach from any direction.
- 1.4 N No lanes, if talking about 'galleries'/sides only two that define the floor without becoming part of ramp.

1.5-1.8 If take 1/2 of the embodiment as described, have same arrangement as Fig. 1 of A. Therefore those features are present in D.

2.1 N Not all features

2.2 Y}

2.3 Y} See corresponding reasoning in infringe. section. Features in question same for both.

2.4 N}

3.1 N

3.2 N Crossover link not level

4.1- 4.7 N Arrangement of lanes as described not present.

Therefore does not anticipate any of claims 1-4.

Inventive Step

Applying Windsurfer/Pozzoli

- 1a) The person skilled in the art is a designer of parking garages. The field is narrowly defined both in the preamble and the beginning of the only independent claim.
- 1b) The PSITA would have as his CGK knowledge relating to structural arrangements in large buildings designed to bear heavy loads. It is conceivable that their knowledge in this regard would extend to warehousing.
- 2) The inventive concept of the present invention appears to be a revamp of car park architecture to make the most efficient use of space and to ensure the minimum distance is required to travel between entry and parking or leaving the parking spot and exiting. With above ground car parks (the orientation is reversed with subterraneans) it is typically the case that traffic moving into the structure moves in a helical manner, as does traffic departing. Prior art systems (e.g. "C") have provided separate helical paths for these two traffic flows. The present invention enables these flows to be merged (i.e. run along a common path) along 3 sides of a four-sided structure. This saves space and ensures all parking spaces are closer to the entrance and exit than many spots in other arrangements.
- 3) This features of conjoined ascent/descent on three sides is also the difference between the invention and either C or D. C defines two separate helical paths for entry and exit while D – insofar as one would apply lanes to it would require separate helical paths in the embodiment shown, or if taken as 1 half of this embodiment 2 lanes beside one another defining a single helix, w/traffic flow in opposing directions. However this particular design is only explicitly described in Claim 4. Claim 2 (and 3 when dependent therefrom) also may disclose this arrangement. However, claim 1 does not discuss the number of ramps connecting each floor. Therefore Claim 1's difference over prior art C and D is that there are 3 lanes along 3 sides of each floor.
- 4) It would be obvious to a skilled person to take doc C and to move the helical paths so that they were flush against one wall of the car park. This is an obvious modification and would anticipate claim 1.



As can be seen from the diagram, 3 lanes (A,B,C) was defined.

While this would render obvious the 3-sided limitation of C2, it would not render obvious the ramp arrangement of C2.

Therefore C2 would be considered inventive as would C3 when dependent therefrom.

C4 gets closer to the inventive concept of the invention and nothing in the prior art suggests conjoining the traffic flow of entering and departing vehicles. Therefore C4 is inventive.

Letter

Dear client,

First of all I need to know exactly which arrangement you have described in A you are currently managing the construction of.

It appears from our construal of the claims that you may be guilty of infringing B's claim 1. The limitations of C2, C3 and C4 mean you may not be infringing these claims.

Infringing Acts

The making of a patented invention constitutes an infringement and in the present case, we believe you may – as project managers rather than designers of the building – may be seen to be doing just this.

While we feel B's patents might be novel over the prior art, we think there may be a case that at least claim 1 (the only one you infringe) is obvious. We would be circumspect about asserting this in communications with B due to the subjective nature of the obviousness test.

We note however the similarities between your own invention and doc D. There is a chance that if sufficiently similar (once you provide further info) that you may avail of the *gilette* defence.

We recommend you offer to take licence from B at a reasonable rate as we note you are keen to avoid litigation.

File caveat.
