**FORM B10** (Official Form 10) (4/01)

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF NEW YORK

**PROOF OF CLAIM**

| Name of Debtor | Case Number |
|---|---|
| FLEMING COMPANIES, INC | 03-10945 |

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A "request" for payment of an administrative expense may be filed pursuant to 11 U S C § 503

Name of Creditor (The person or other entity to whom the debtor owes money or property)
SOUTH OGDEN ASSOCIATES

Name and address where notices should be sent
SOUTH OGDEN ASSOCIATES
50 LAKEFRONT BOULEVARD, STE 200
BUFFALO, NEW YORK 14202-4361

Telephone number

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars

☐ Check box if you have never received any notices from the bankruptcy court in this case

☐ Check box if the address differs from the address on the envelope sent to you by the court

FILED
SEP 15 2003
BMC

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor
FLEMING COMPANIES, INC

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated _____

**1 Basis for Claim**

☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☑ Other Rental,space damages, utilities

☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages, salaries, and compensation (fill out below)
Your SS # _____ _____ _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

**2 Date debt was incurred** May 2003

**3 If court judgment, date obtained**

**4 Total Amount of Claim at Time Case Filed** $ 766,337 35

If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

**5 Secured Claim**

☐ Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral
☐ Real Estate ☐ Motor Vehicle
☐ Other_____

Value of Collateral $_____

Amount of arrearage and other charges at time case filed included in secured claim, if any $_____

**6 Unsecured Priority Claim**

☐ Check this box if you have an unsecured priority claim

Amount entitled to priority $_____

Specify the priority of the claim

☐ Wages salaries or commissions (up to $4 650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier 11 U S C § 507(a)(3)

☐ Contributions to an employee benefit plan 11 U S C § 507(a)(4)

☐ Up to $2 100* of deposits toward purchase lease or rental of property or services for personal, family or household use 11 U S C § 507(a)(6)

☐ Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)

☐ Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)

☐ Other Specify applicable paragraph of 11 U S C § 507(a)(____)

*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

**7 Credits** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

**8 Supporting Documents** *Attach copies of supporting documents* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous, attach a summary

**9 Date-Stamped Copy** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim

THIS SPACE IS FOR COURT USE ONLY

FILED
SEP 15 2003
BMC

Fleming Companies Claim
13533

| Date | Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) |
|---|---|
| 9/12/03 | |

*Penalty for presenting fraudulent claim* Fine of up to $500,000 or imprisonment for up to 5 years or both 18 U S C §§ 152 and 3571

# Worksheet for Proof of Claim

**In Re FLEMING COMPANIES, INC**
**03-10945**

| | | | | |
|---|---|---|---|---|
| 1 | Rent | | May 2003-October 2003 | $60,000 00 |
| 2 | Fire Sprinkler | | October 2002-May 2003 | $263 75 |
| 3 | Water | | October 2002-May 2003 | $96 60 |
| 4 | Common Area Maintenance | | | |
| | | 10/02-3/03 | Snowplowing charges | $7,200 00 |
| | | 3/03 | Trash Removal 3/03 | $1,339 00 |
| | | | Sprinkler Service | $216 27 |
| 5 | Interior Damages | | 2001-May 2003 | $697,438 00 |
| | (SEE ATTACHED FOR ITEMIZATION) | | | |
| TOTAL CLAIM | | | | $766,337 35 |

South Ogden Associates
50 Lakefront Boulevard
Suite 200
Buffalo, New York 14202
O- (716) 855-3700
F- (716) 855-3725

September 4, 2003

Mail Bankruptcy Management Corporation
P O Box 900
El Segundo, CA 90245 – 0900
Overnight Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

To Bankruptcy Management Corporation

The following costs are submitted to Bankruptcy Management Corporation for unpaid invoice items incurred by the Fleming Corporation for leased space located at 690 South Odgen St , Buffalo, New York 14206 An active lease had been in effect until May 31st 2003 when South Ogden Associates released Fleming Companies of any further responsibilities for monthly rent fees or utility charges

The following are past due charges up to the termination date of June 1st, 2003 are as follows

| Item | Charge Period | Cost |
|---|---|---|
| Rent | Unpaid May rent | $ 10,000 00 |
| Fire sprinkler | October 02 thru May 03 | 263 75 |
| Water | October 02 thru May 03 | 96 60 |
| CAM | Snowplowing charges 10/02 – 03/03 (maintain fire lane access to building perimeter) | 2,800 00 |
| (common area maint ) | Trash removal from behind store 3/03 | 1339 00 |
| | Fleming tenant sprinkler service | 216 27 |
| Interior / Exterior Damages 2001, 2002, May – 2003 (tenant neglect & imposed vacancy) | | 697,438 00 |
| | **Total** | $ 712,153 62 |

In the total of $712,153 62, interior and exterior damages reflect $697,438 00 These costs were prepared by CB Richard Ellis, Buffalo New York , property management group for South Ogden Associates Photographs and associated costs represents the cost of repairs to return the property to condition in a ready to lease condition As an aside, this property was severely neglected as it was frequented by vandals and numerous break-ins

Just prior to the bankruptcy of Fleming Companies, South Ogden Associates and the Fleming Companies were within weeks of settling towards a compensation amount for damages Fleming Companies representatives included Brian Lake, phone contact (405) 840-7200, (972) 906-8000, ext 62264, Tyler Stevens, phone contact (972) 906-2238, Tray Golage, phone contact (972) 906-2353 and inspection personnel for Fleming Companies, Dennis Grotke , phone contact (716) 523-2699 The above information is considered last known regarding Fleming Company personnel and contact numbers

Please contact our office should you have any questions regarding the above information We may be reached at (716) 855-3700

Thank you

Sincerely,

Dennis Cannon
Property Manager
enc

South Ogden Associates
50 Lakefront Boulevard
Suite 200
Buffalo, New York 14202
(716) 855-3700

**Date:** September, 04, 2003

**Invoice** Fleming Companies – 690 South Ogden St , Buffalo, New York

| | | | |
|---|---|---|---|
| Rent | $ | 10,000 00 | (May 20003) |
| Utility Water Charges | | 360 35 | |
| CAM charges | | 4,355 27 | |
| Interior / Exterior Damages | | 697 438 00 | |
| **Total** | $ | 712,153 62 | |

Invoice payable to South Ogden Associates
50 Lakefront Boulevard
Suite 200
Buffalo, New York 14202

| Photo | Description | Compensation Damage Value |
|---|---|---|
| 1 | Front (east) facade of building Exterior needs to be repainted Repairs to exterior walls necessary due to signage Store front glass in areas requires repair Door controls replaced or activated | $ 11,850 |
| 2 | Side (north) view of building Masonry repairs Repairs to overhead door Service doors require replacement Painting | $ 4,700 |
| 3 | Side view (north) of building in rear section Highlighted area indicates area where an addition to the main building was once attached The foundation and concrete floor with vinyl tile is all that remains Removal of foundation from site Paint and masonry damage to walls Service doors require replacement | $ 38,400 |
| | **Subtotal** | **$ 54,950** |

| Photo | Description | Compensation Damage Value |
|---|---|---|
| 4 | East rear side of building Area requires masonry repair to joints (pointing) Painting Service doors require replacement | $ 6,800 |
| 5 | South side of building Area shows where an addition to building was once attached Addition no longer exists Removal of foundation from site Masonry work requires pointing and block repair Repaint exterior walls Service doors require replacement | $ 37,400 |
| 6, 7 & 8 | North west corner Loading dock area Dock area flooded and frozen due to winter weather conditions and sump not operational Paint and masonry work Overhead and service doors require replacement Bumpers around doors require replacement Concrete surface of exterior dock ramp severely damaged due to heaving cracking, spalling | $ 18,400 |
| | **Subtotal** | **$ 62,600** |

| Photo | Description | Compensation Damage Value |
|---|---|---|
| 9 | North Side overhead raised dock door requires repair, masonry repair | $1600 |
| 10 thru 18 | Photos show front east side of building Damage to ceiling tiles, doors, glass, electrical etc | $ costs covered in other line totals |
| 19 thru 25 | Photos show damage to various areas in store where ceiling is damaged, water damaged destroyed and vandalized Costs include replacement, repair to ceiling tiles, grid systems paint finish, misc | $ 48,438 |
| | **Subtotal** | **$ 50,038** |

| Photo | Description | Compensation Damage Value |
|---|---|---|
| 26 | Sample photo of wall damage throughout leased space | $ costs covered in other line totals |
| 27 thru 32 | Sample photo of electrical which requires extensive service work Panels, open wire Replacement of 50 percent of lighting fixtures included in this estimate | $ 66,706 |
| 33 & 34 | Plumbing Tanks are defective and leaking Other pipes throughout building require service Sewer discharge lines subject to video inspection | $ 16,400 |
| | **Subtotal** | **$ 83,106** |

| Photo | Description | Compensation Damage Value |
|---|---|---|
| 35 | Sump Pump replacement | $ Cost covered in other line totals |
| 36 | Exterior damaged service door | $ Cost covered in other line totals |
| 37 | Floor tile damage in store Tiles damaged due to equipment removed, water damaged uniformity of tile etc | $ Cost covered in other line totals |
| | **Subtotals** | $ 000 00 |

| Photo | Description | Compensation Value Damage |
|---|---|---|
| 38 & 39 | Ceiling and floor tile damage | $ Costs covered in other line totals |
| 40 & 41 | Damage to offices | $ Costs covered in other line totals |
| 42 | Ceiling, soffit wall damage | $ Costs covered in other line totals |
| | **Subtotals** | $ 000 00 |

| Photo | Description | Compensation Damage Value |
|---|---|---|
| **43, 44, 45, 46, 47, 48, 49** | | |
| | Extensive floor tile damage Concrete floor chase ways need to be filled | $ 4,700 |
| 50 | Interior wall and plumbing Pipes damaged, wall surfaces and drywall damage | $ Costs covered in other line totals |
| 51 | Chase ways need to be filled Electrical exposed | $ Costs covered in other line totals |
| | **Subtotals** | **$ 4,700 00** |

| Photo | Description | Compensation Damage Value |
|---|---|---|
| **52, 53, 54, 55** | Floor tile damage throughout leased space | $127,500 |
| 56 | One of 20 lights globes damaged | $ Costs covered in other totals |
| **57 & 58** | Office Vandalism | $ Costs covered in other totals |
| | **Subtotals** | **$ 127,500** |

| Photo | Description | Compensation Damage Value |
|---|---|---|
| 59 60, 61, 62. 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 | The above listed numbered photos show evidence of the damage throughout the facility Walls have been stripped, doors blocked for egress, electrical considered unsafe and deficient / defective for use Extensive electrical wiring will be required Ceilings, paint work, plumbing, electrical fixtures, floor repair, demolition, debris removal, general labor costs, environmental concerns, H V A C and all other construction disciplines that may be associated in the rehab and renovation of leased space left vacant by the Fleming Companies The amount of $128,180 has been assigned for expense not included in any other compensation damage amount Includes fees and permits | $ 128,180 |
| 107, 108, 109, 110 | Interior of Bathrooms destroyed by vandals and vacancy by Fleming Companies | $ Costs covered in other line totals |
| | **Subtotal** | **$ 128,180 00** |

| Photo | Description | Compensation Damage Value |
|---|---|---|
| **No Photo** | Roof rework – see contractor estimate | $ 139,764 00 |
| **No Photo** | Parking lot Due to the covering of snow on the parking lot, pictures are not available at this time Parking lot requires extensive patching, sealing and stripping with placard signage and surface applied stencils Includes replacement of electrically powered entrance signage | $ 37,350 00 |
| **No Photo** | Parking lot light poles ( 3 units) | $ 9,250 00 |
| | **Subtotal** | **$ 186 364 00** |
| | **Total from all pages** | **$ 697,438 00** |

# ROOFING CONSULTANTS INC.

1720 MILITARY RD , KENMORE, NY 14217

716-875-5884 • Fax 874-4042


South Ogden Associates
C/O CB Comvest
90 Lakefront Blvd STE 200
Buffalo New York 14202
Attn Dennis Cannon, Property Mgr

## Proposal & Contract

Date January

Job New Roof Vacant Bldg
Approx 60,000 sq ft

We propose to do the following work

1. Power broom to remove loose gravel stone Blisters, splits and surface irregularities shall be removed and patched to create a smooth even surface as necessary to achieve an acceptable substrate for new roof installation
2. Remove existing flashing from roof curbs and parapet walls down to roof surface as necessary Prime all masonry concrete and metal with Asphalt Primer to assure good adhesion of new roof flashing
3. Mechanically fasten to primary roof deck over existing substrate Celotex ½ high density fiberboard insulation and Tamko Ply IV fiberglass base sheet with Trufast coated deck screws and 3" galvanized steel stress plates per Factory Mutual I-90 wind uplift specification
4. Directly over base sheet and existing roof, install one ply smooth surface Polybond polyester reinforced APP torch applied modified bitumen membrane roof system according to manufactures specifications including all necessary flashing
5. Fabricate and install new galvanized drip edge/gravel stop Flash to new roof system
6. Install aluminum roof breather vents at one unit per 1,000 square feet of roof surface
7. Roller apply on full coat of FBC Chemical aluminum roof coating according to manufactures specifications at the coverage rate of 5 gallons per 1,000 square feet of roof surface

12 Year Manufactures Warranty/10 Year Contractors Labor Warranty

| | |
|---|---|
| | $ 138 000 00 |
| City of Buffalo Permit | 1 764 95 |
| | $ 139 764 95 |

Roofing Consultants Inc will provide all necessary labor material, equipment, supervision insurance, incidentals and disposal of all debris

We Propose hereby to furnish material and labor — complete in accordance with above specifications for the sum of One Hundred Thirty Nine Thousand Seven Hundred Sixty Four Dollars and 95 100 dollars ($ $139,764 95 )

Payment to be made as follows

~~To Be Negotiated~~

All material is guaranteed to be as specified All work to be completed in a workmanlike manner according to standard practices All agreements contingent upon strikes accident or delays beyond our control Owner to carry fire tornado and other necessary insurance Our workers are fully covered by Workman s Compensation Insurance

(PLEASE SIGN AND RETURN ONE COPY SO THAT WORK MAY BE SCHEDULED)

Acceptance of Proposal — The above prices specifications and conditions are satisfactory and are hereby accepted You are authorized to do the work as specified Payment will be made as outlined above

Authorized Signature _____

Thomas Tiedemann Vice President

Note This proposal may be withdrawn by us if not accepted within 90 days

Accepted by _____ Date _____

***CONSULTANTS • APPRAISERS • INSPECTORS • INDUSTRIAL AND COMMERCIAL ROOFING • ENGINEERING***

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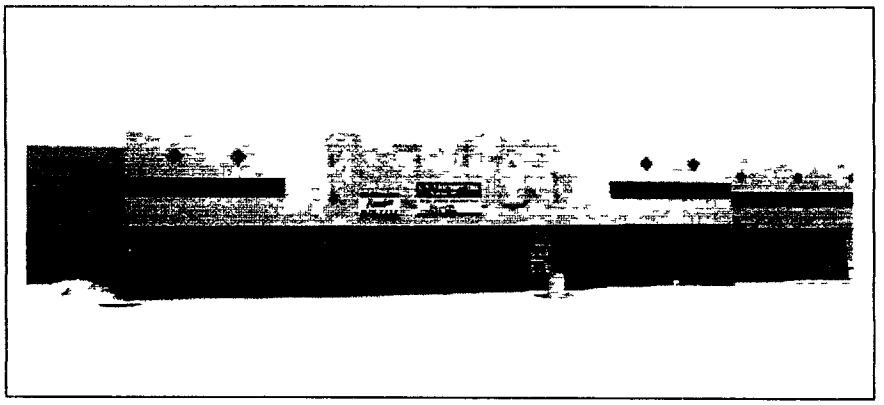

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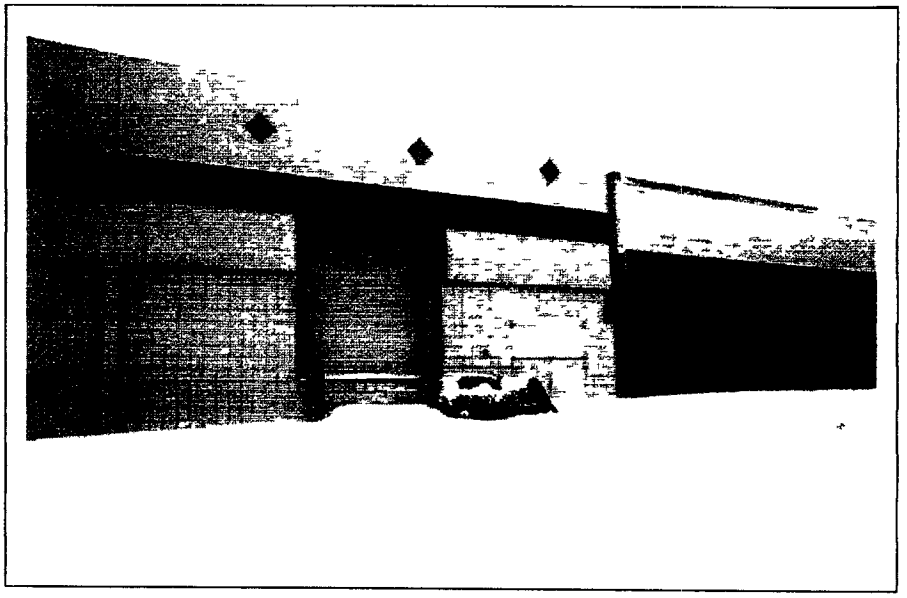

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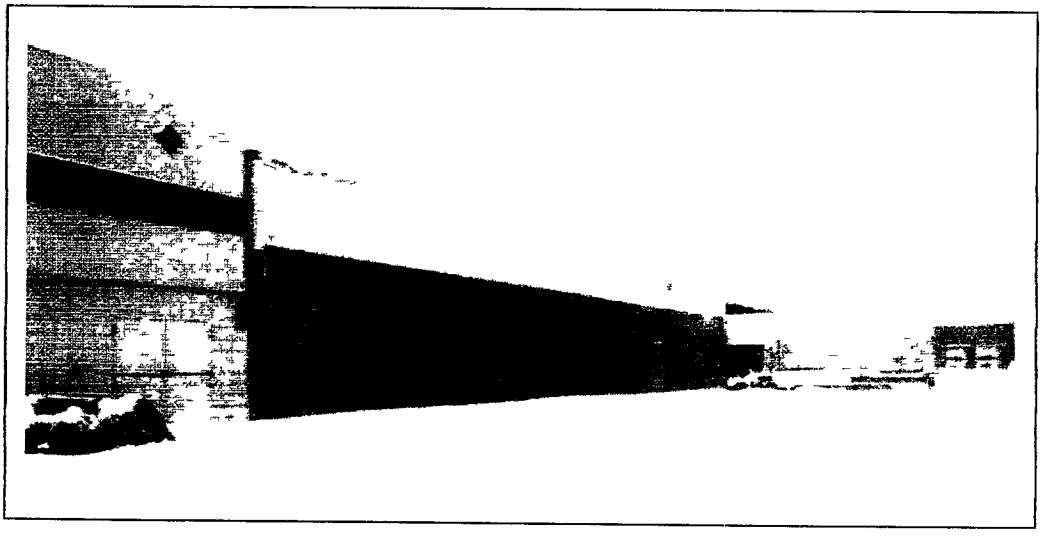

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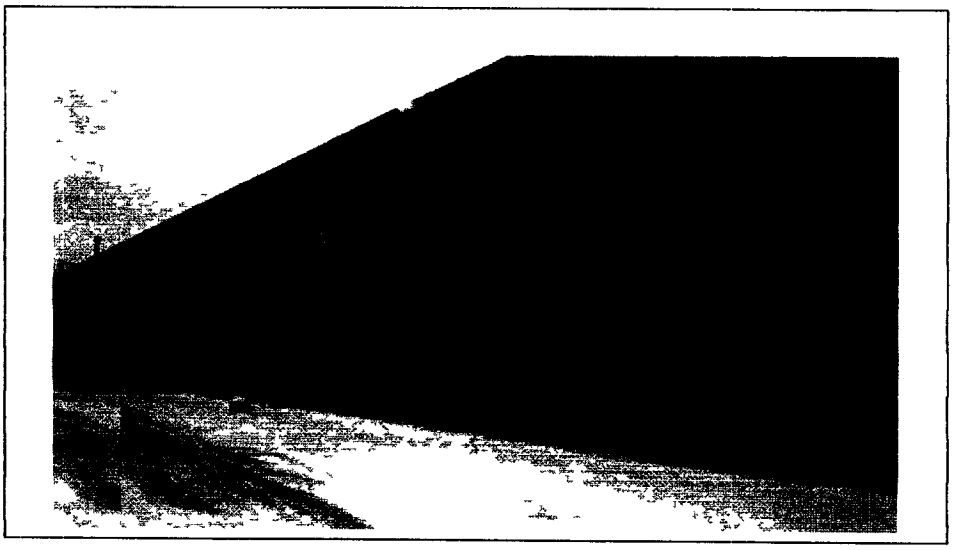

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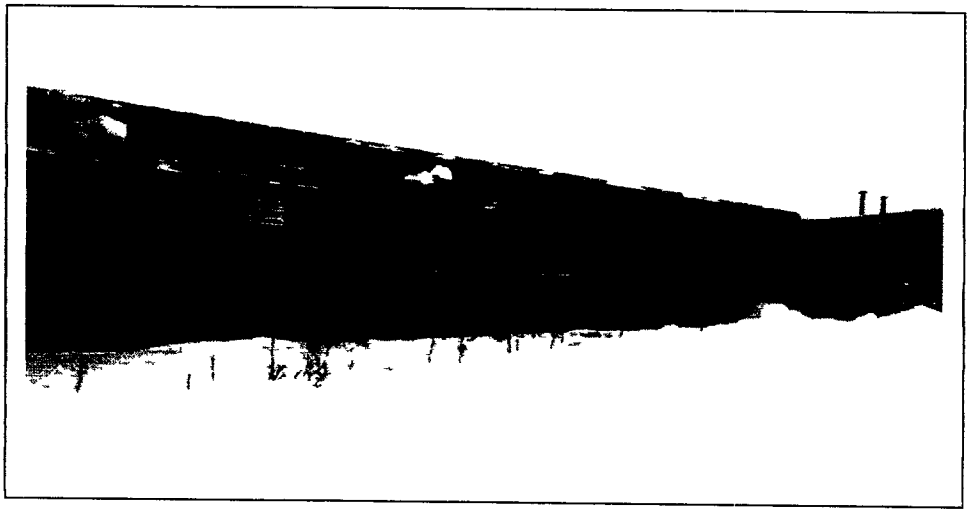

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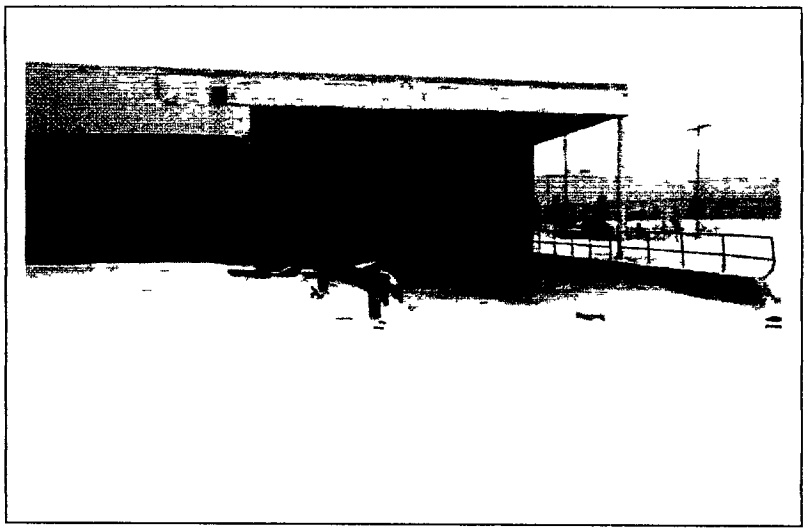

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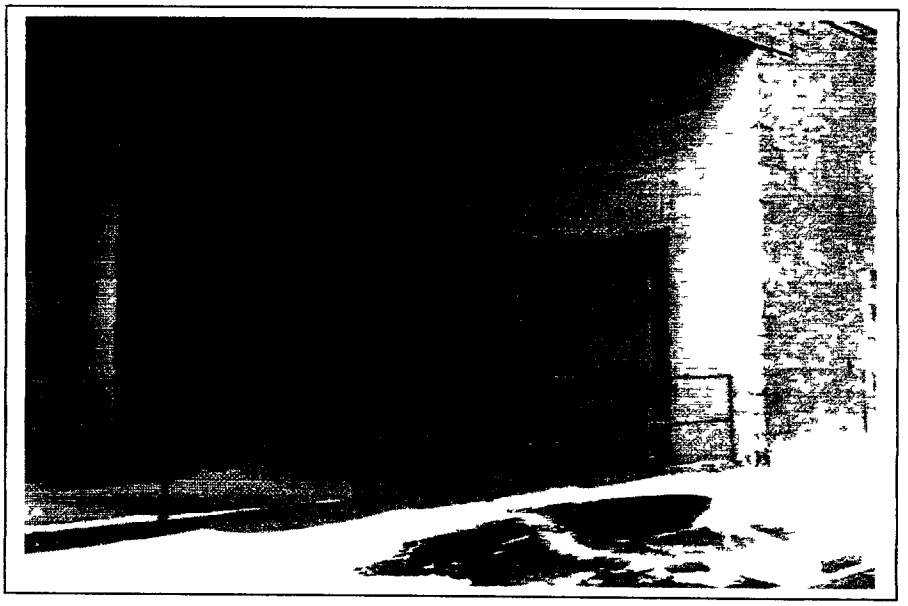

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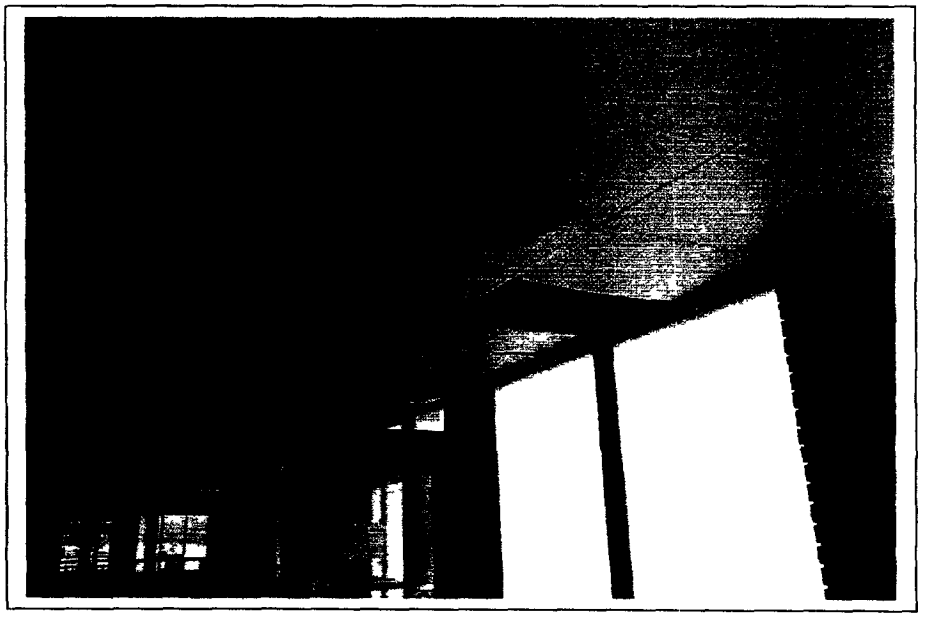

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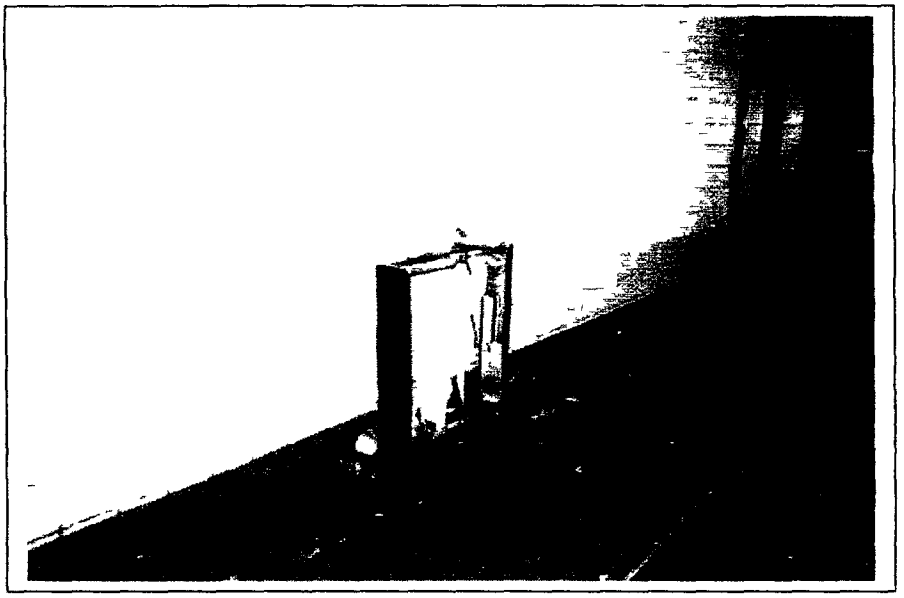

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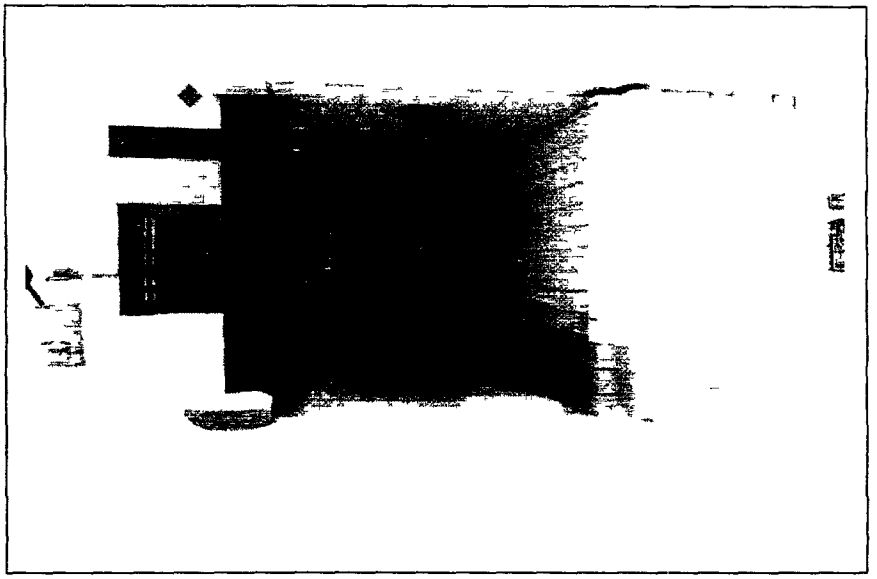

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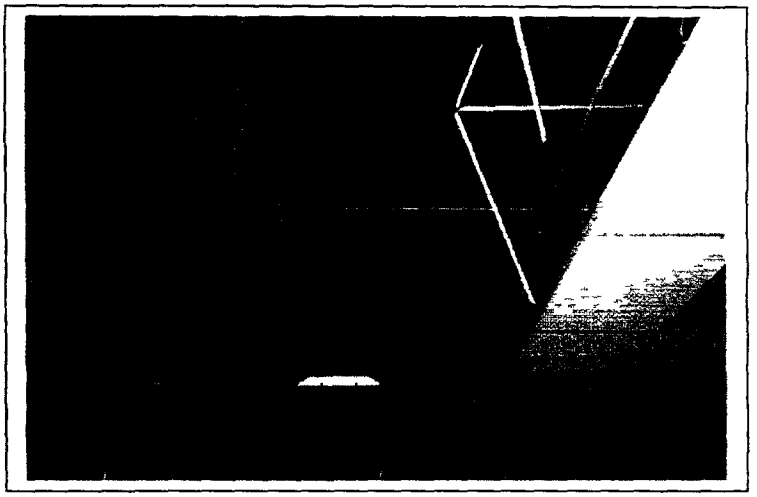

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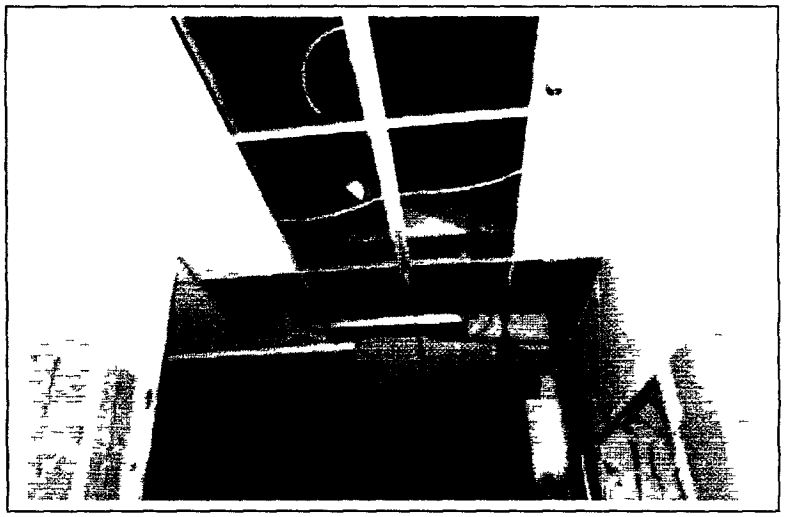

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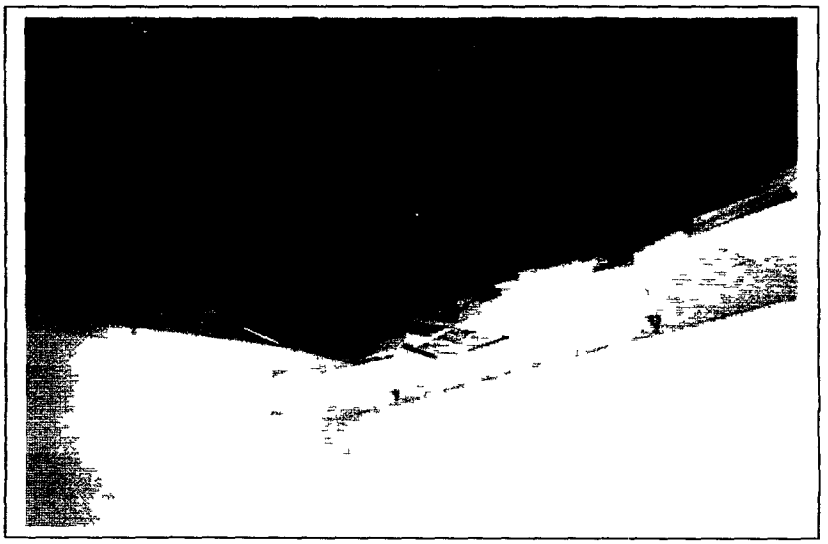

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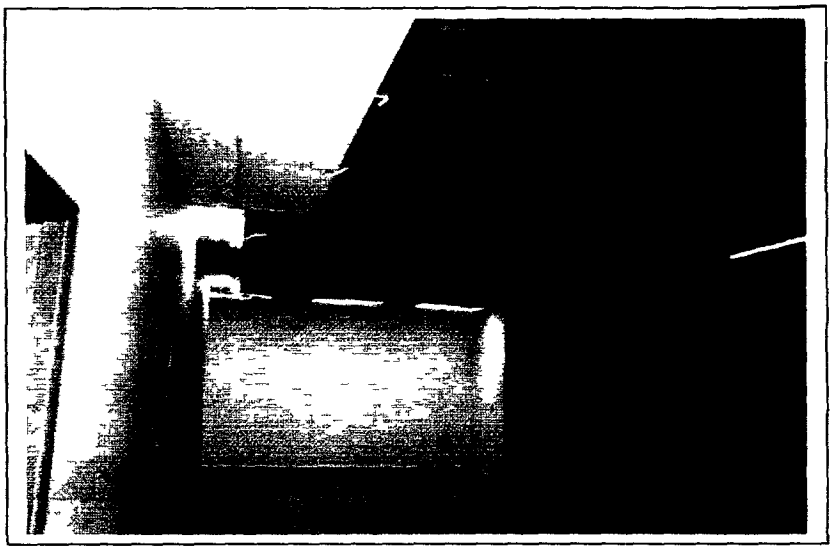

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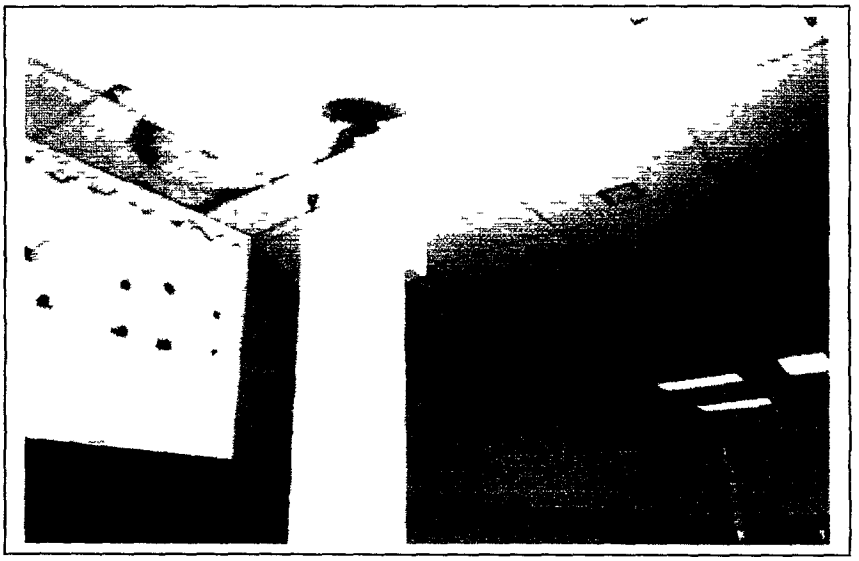

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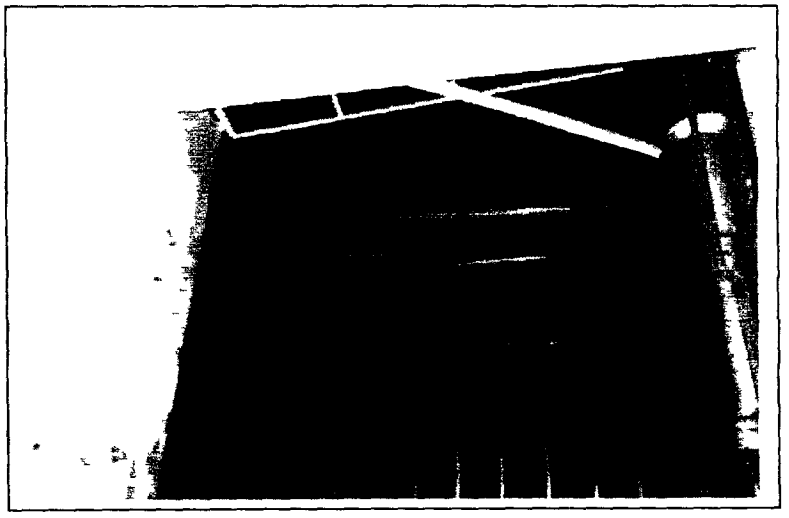

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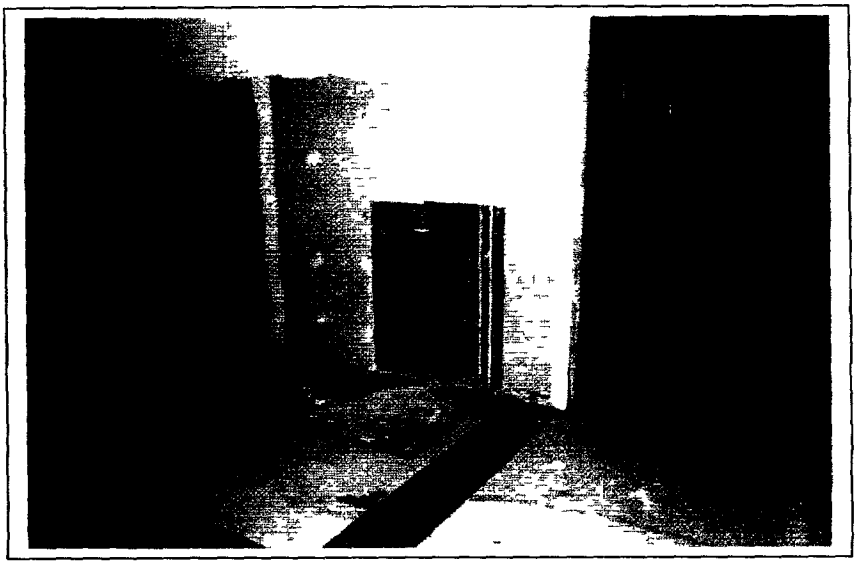

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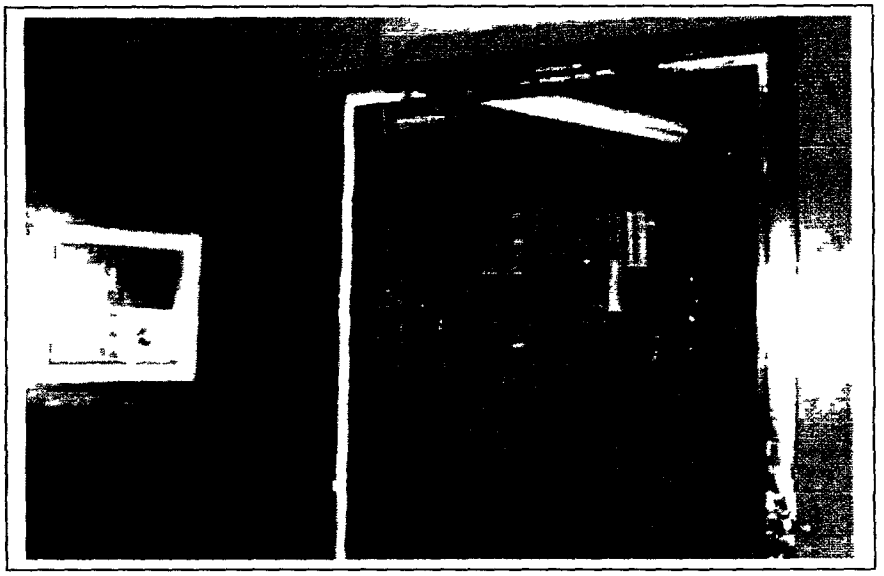

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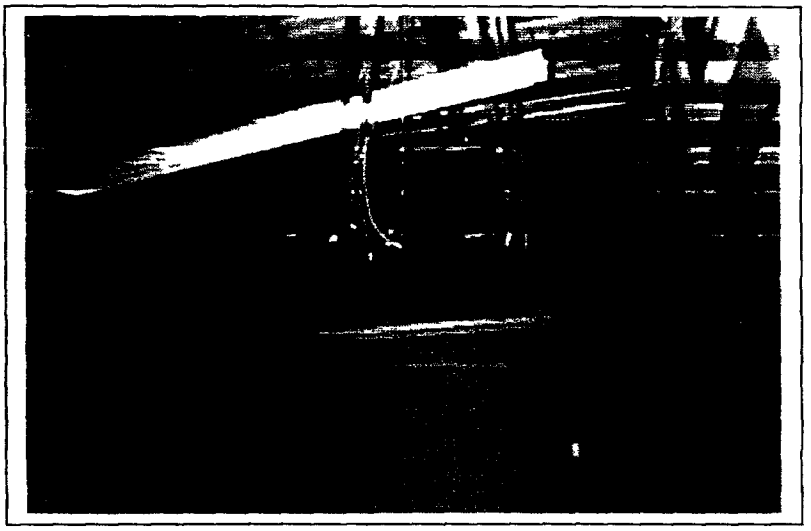

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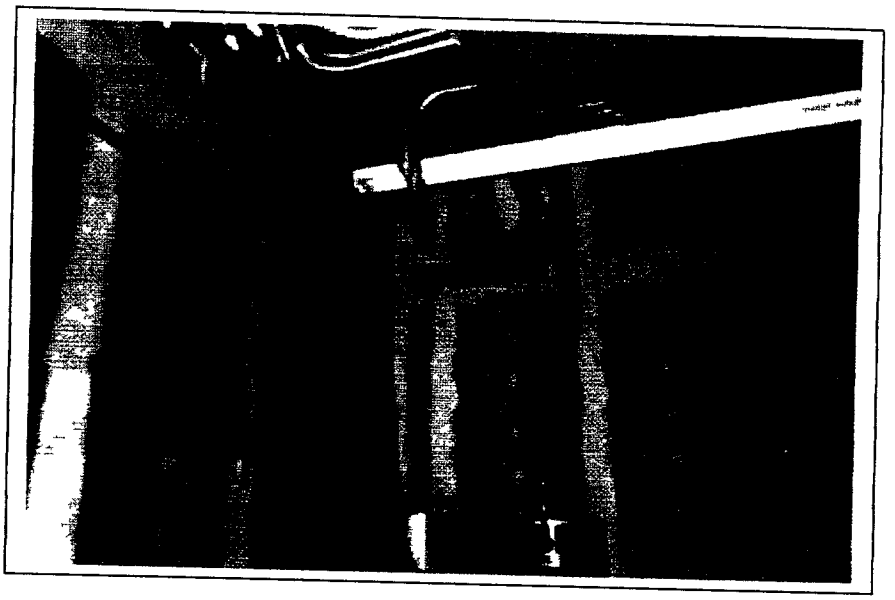

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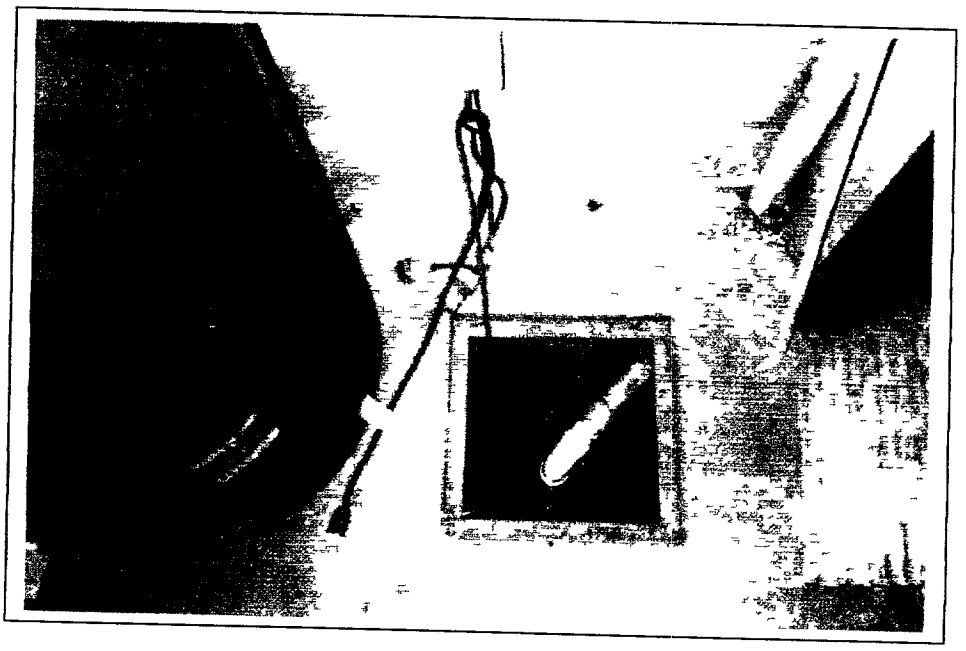

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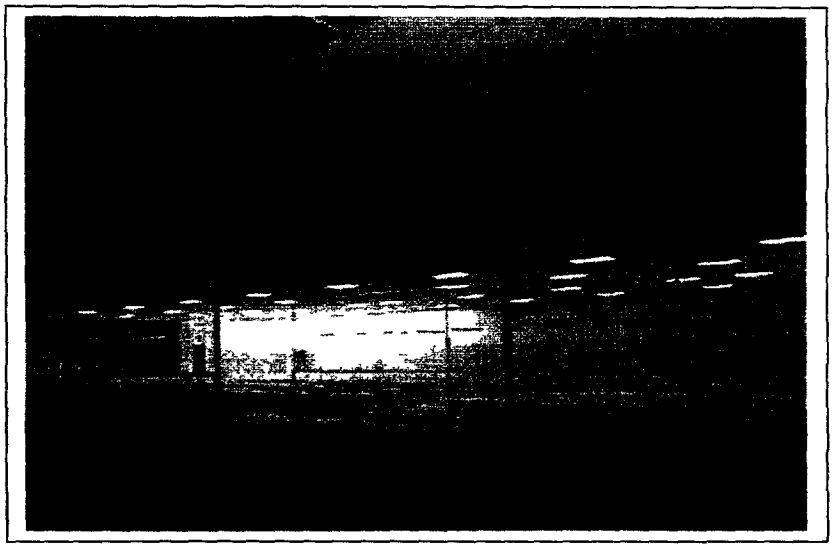

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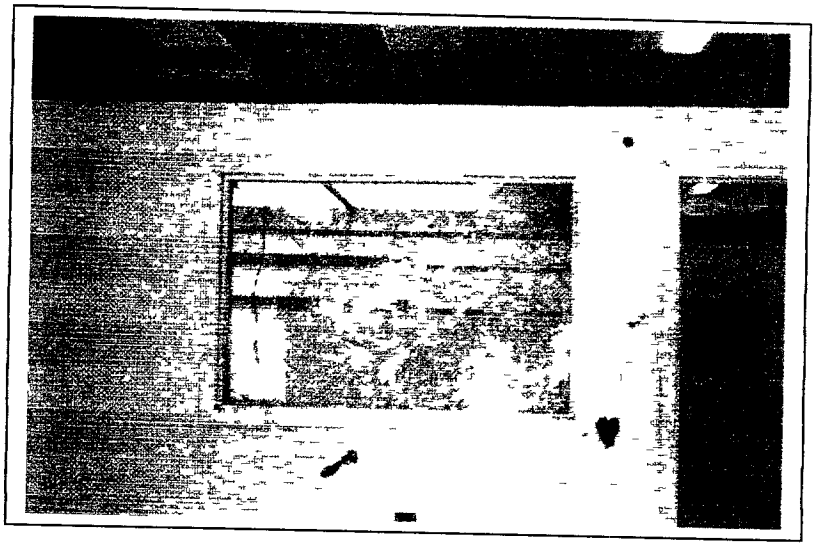

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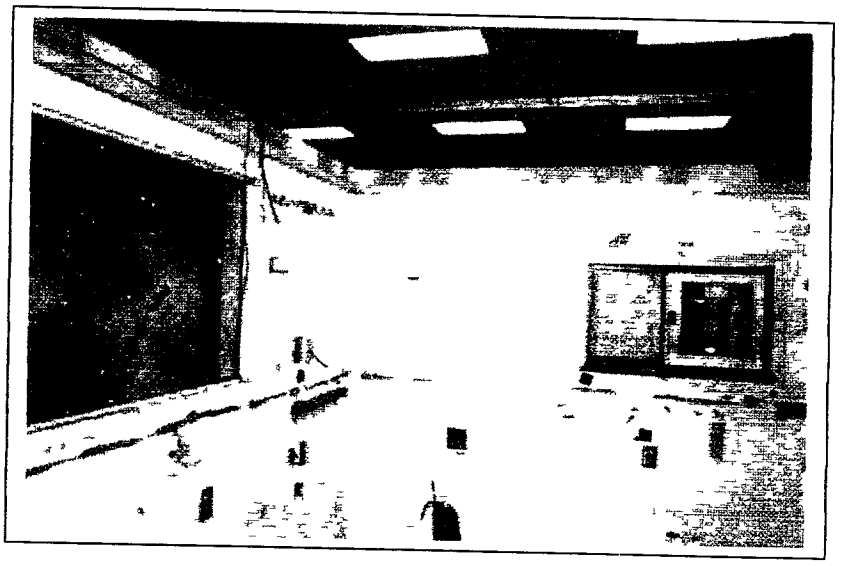

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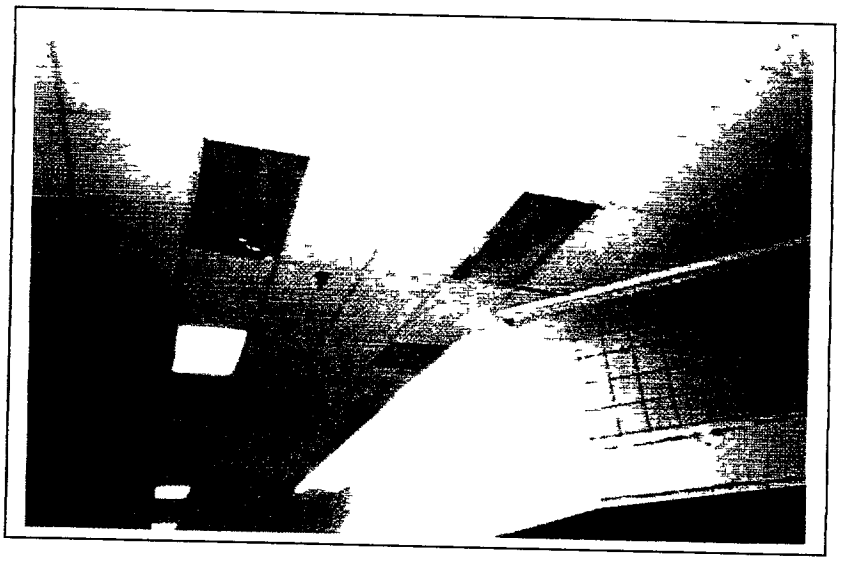

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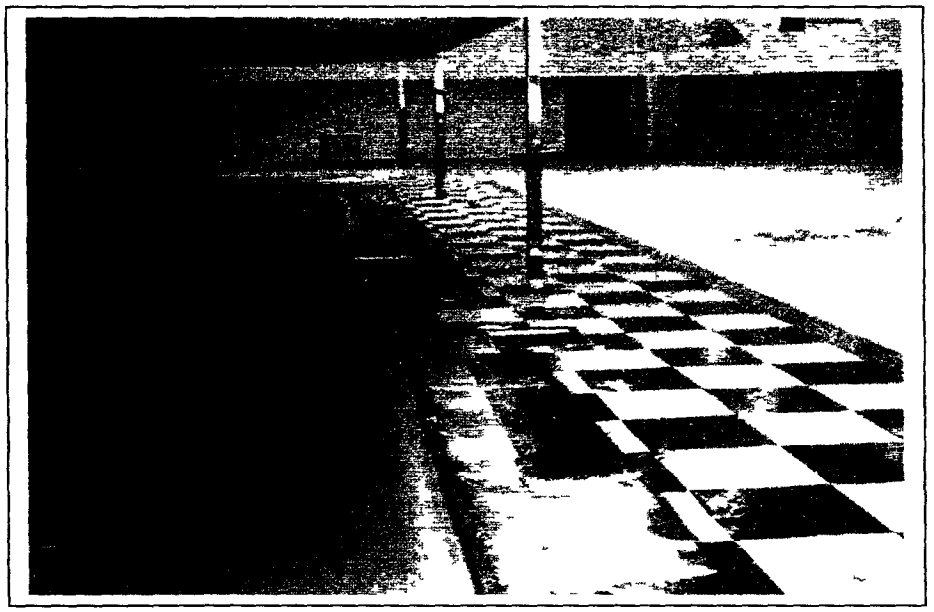

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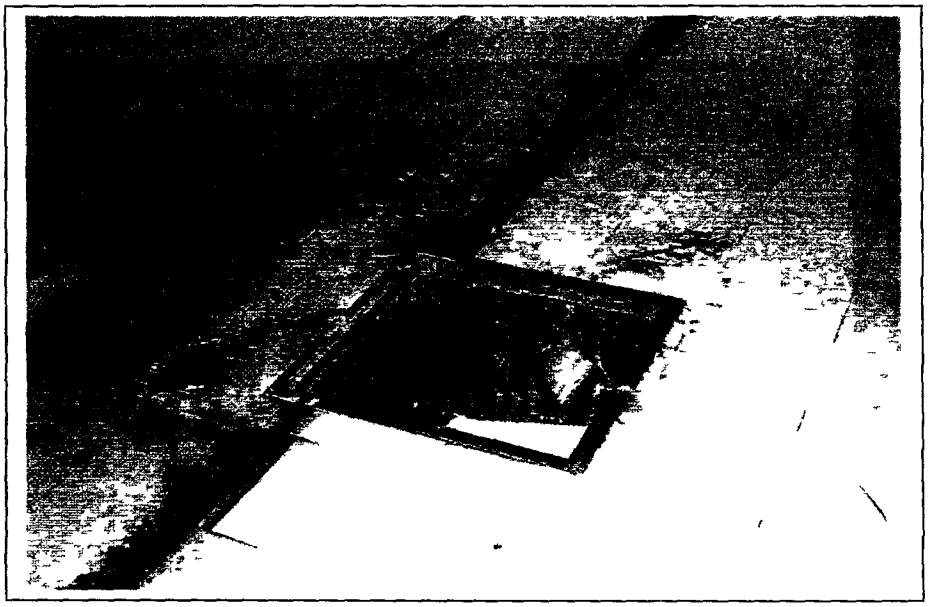

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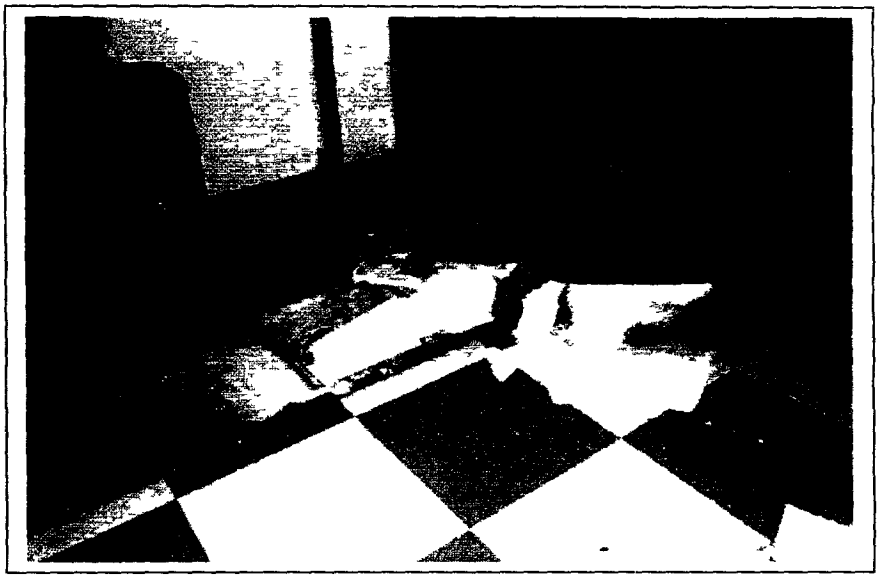

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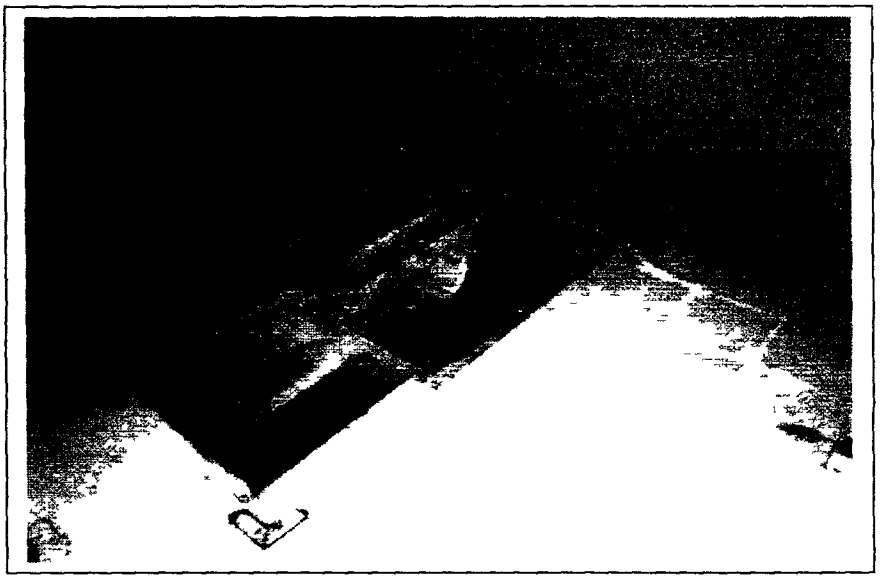

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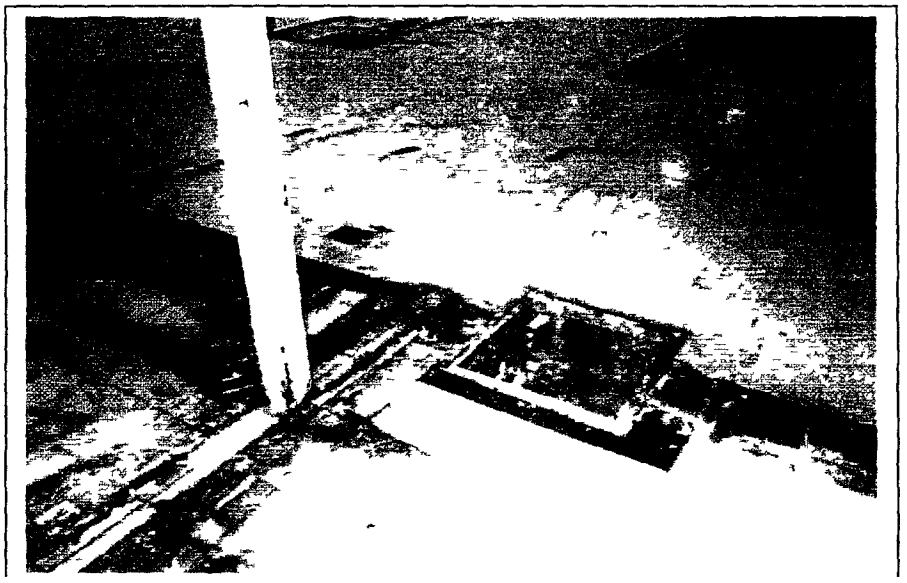

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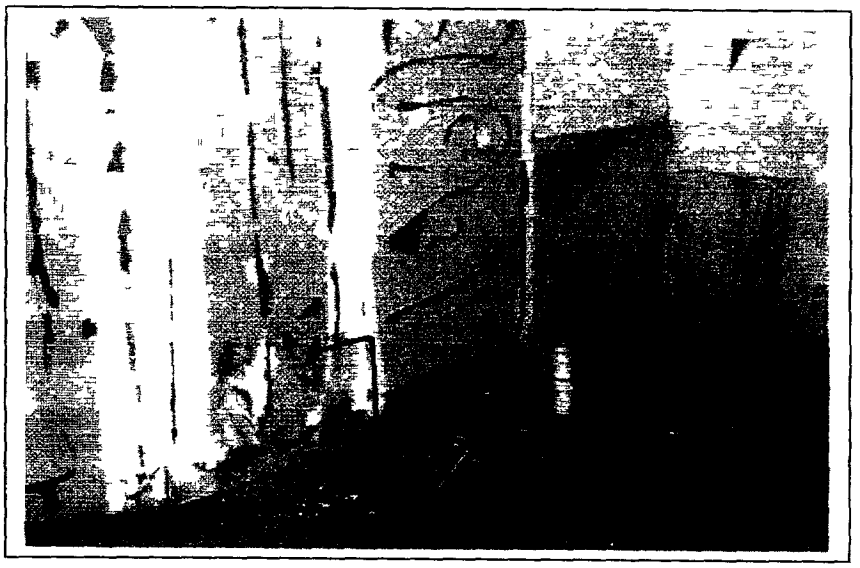

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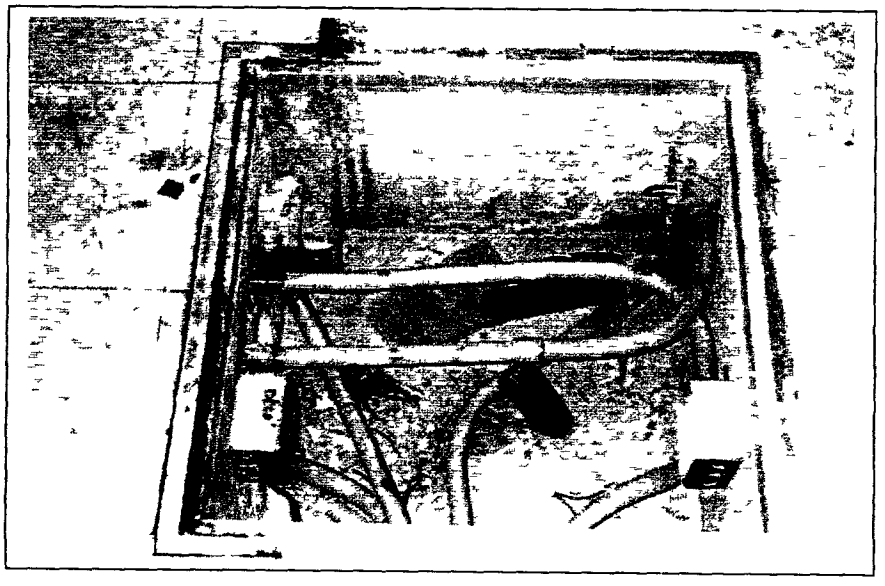

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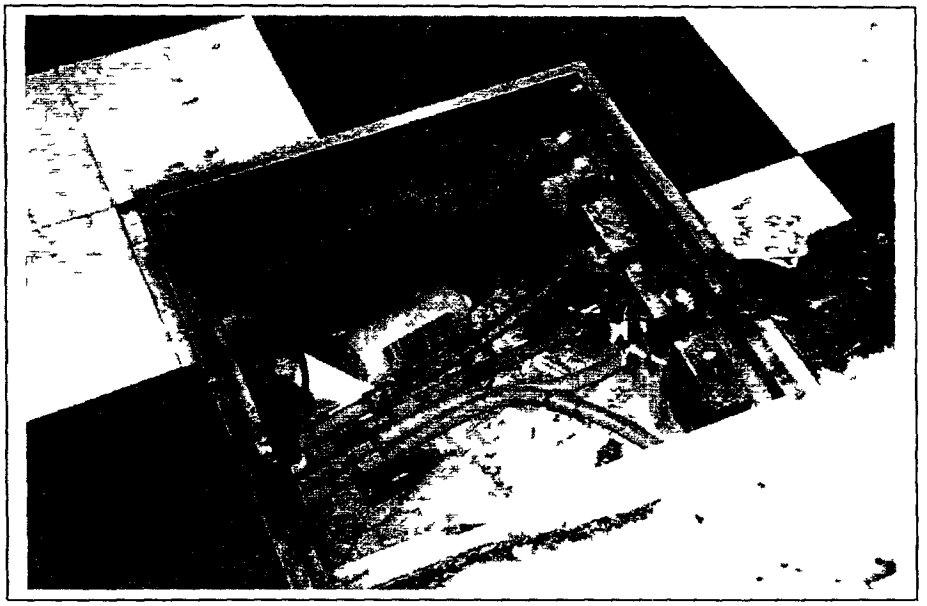

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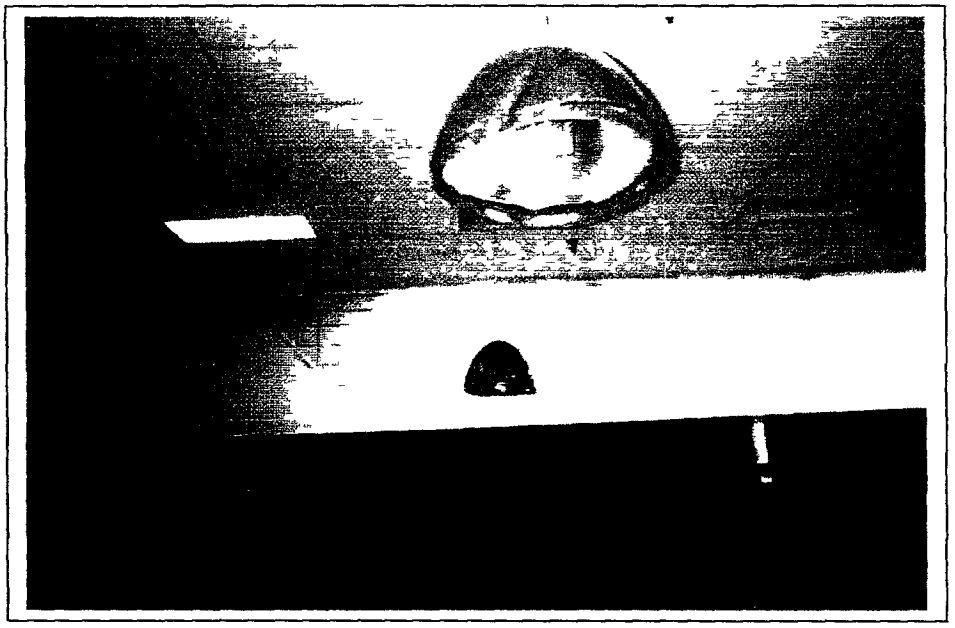

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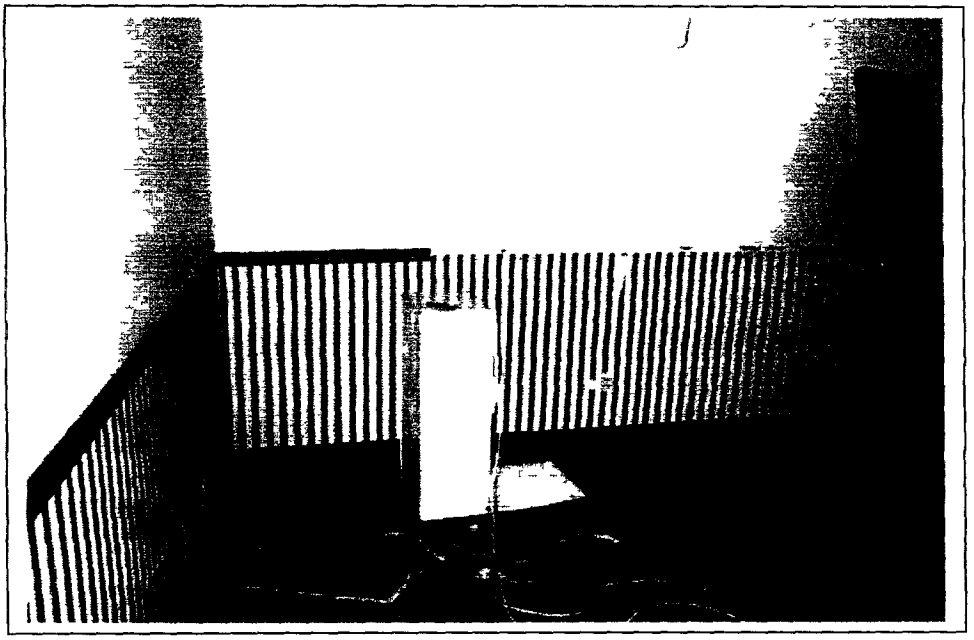

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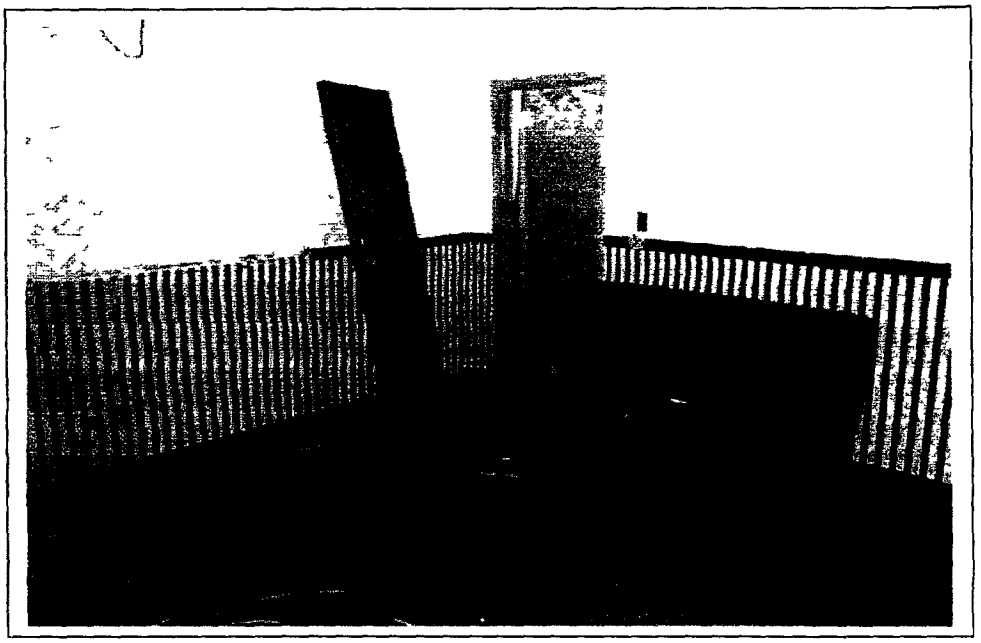

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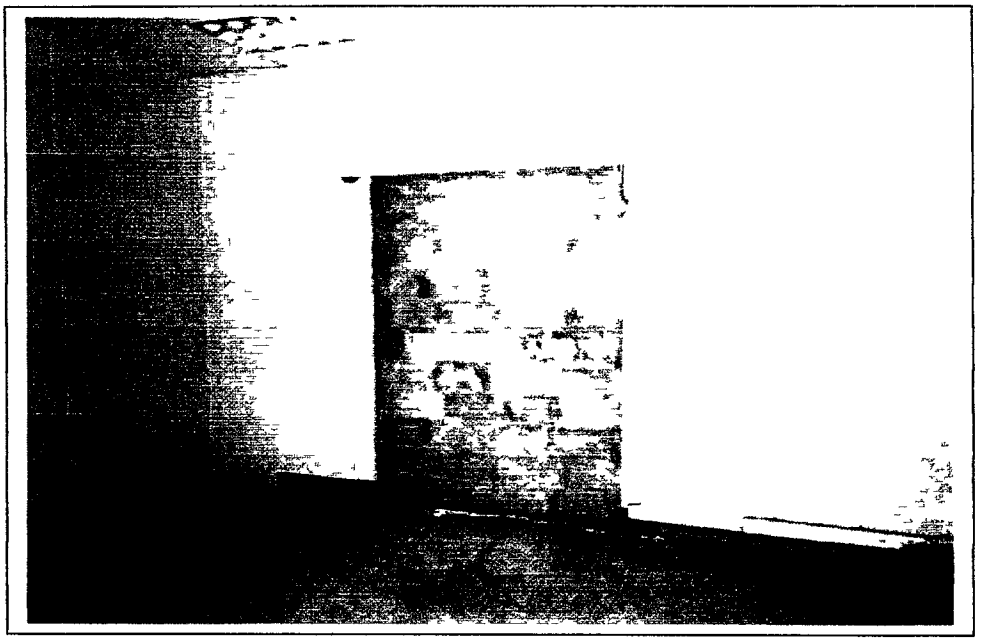

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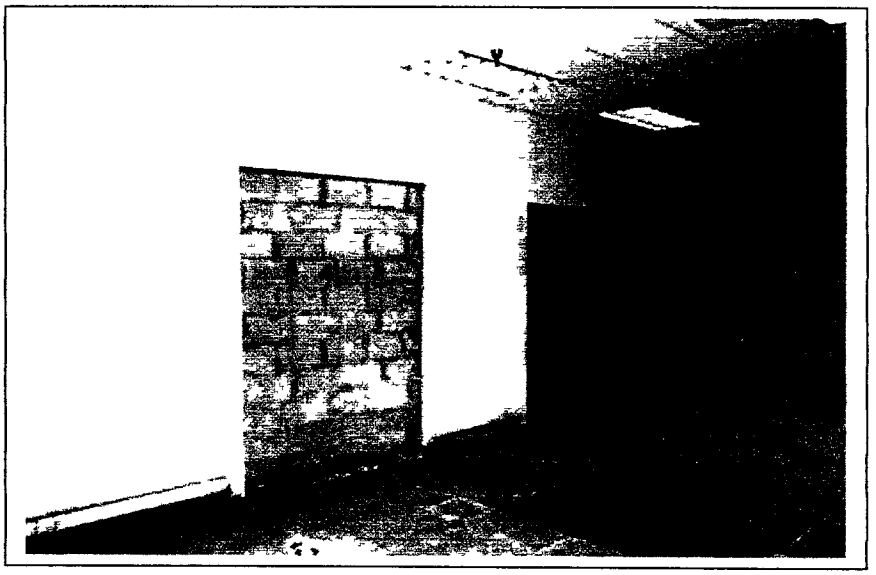

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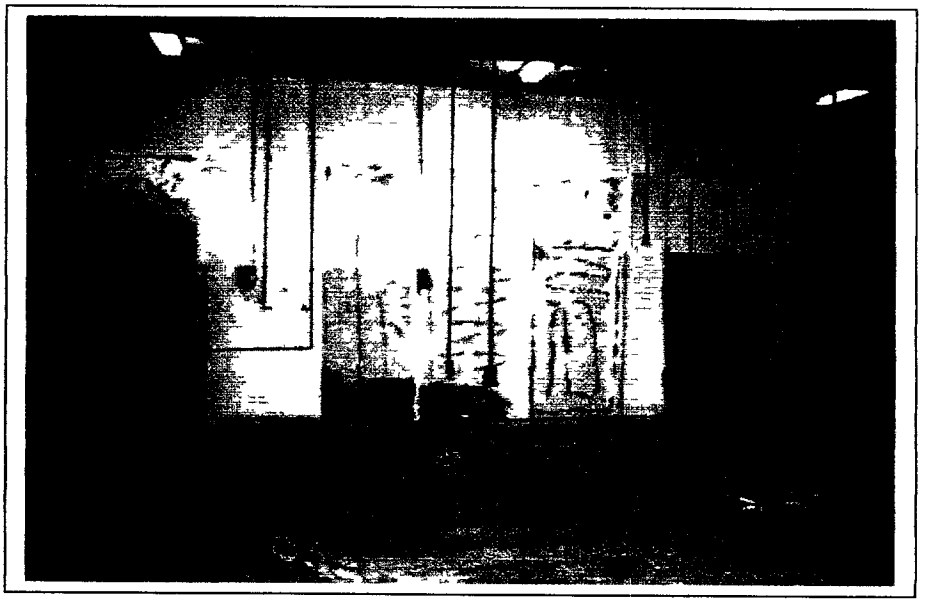

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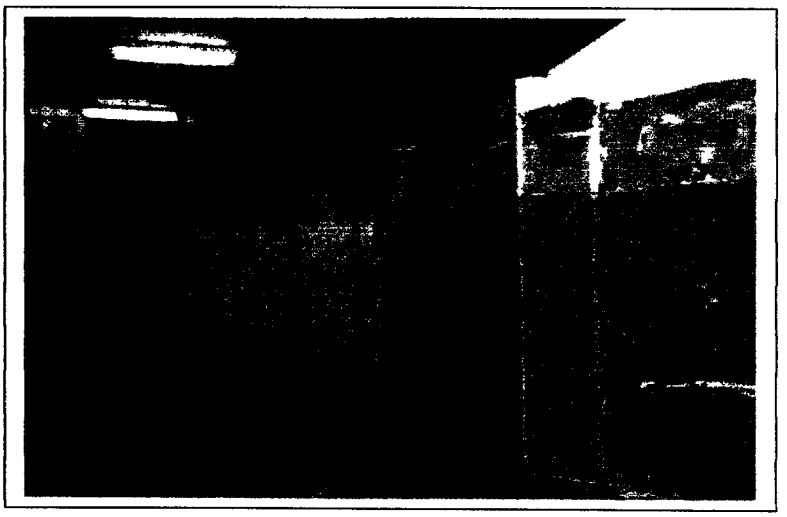

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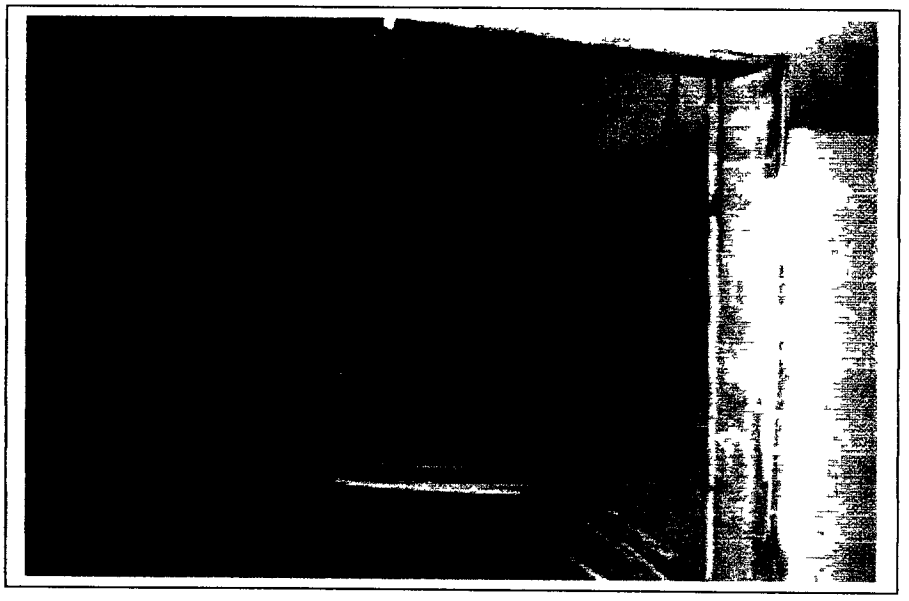

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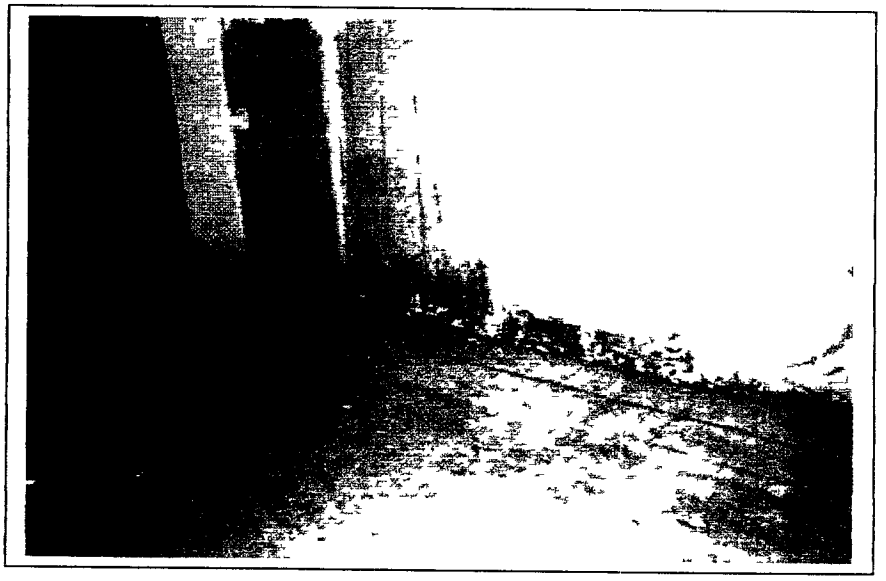

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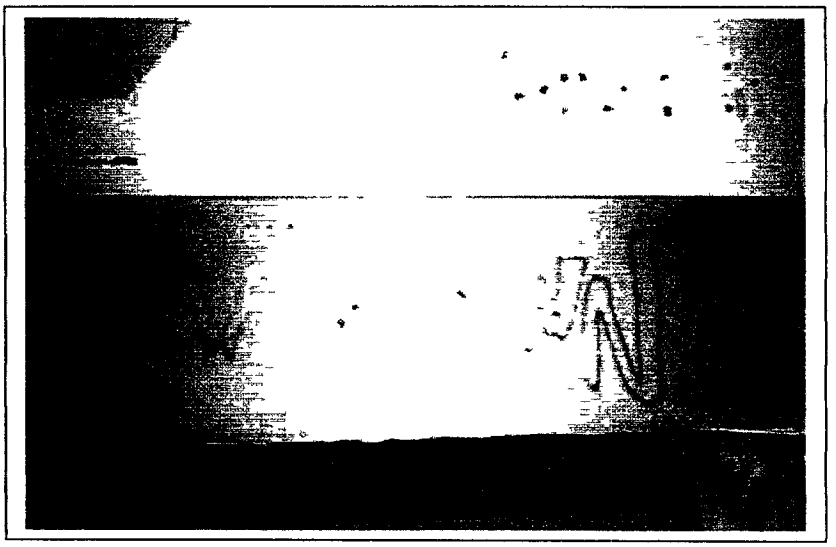

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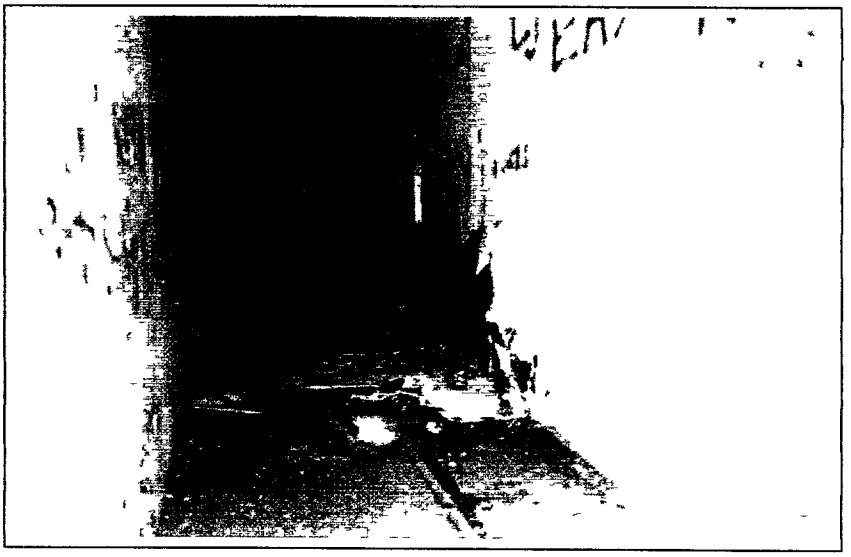

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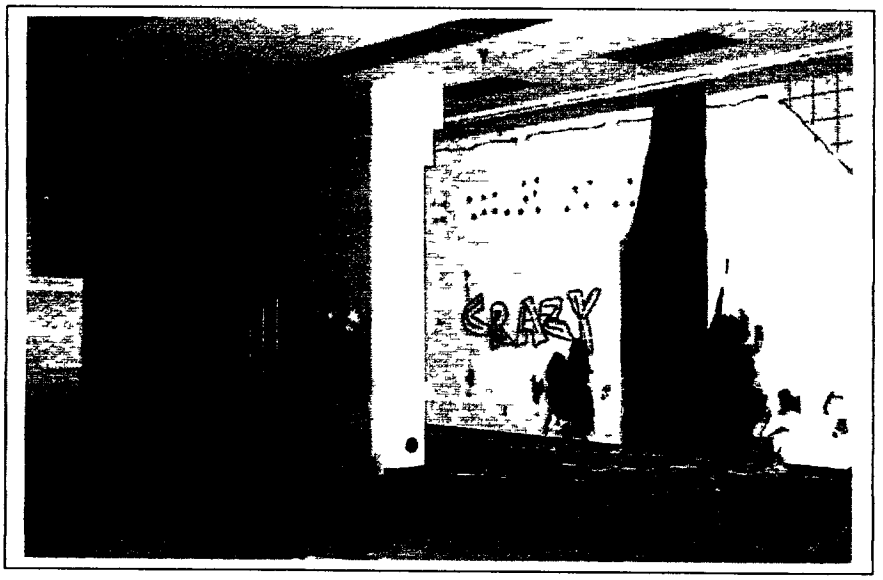

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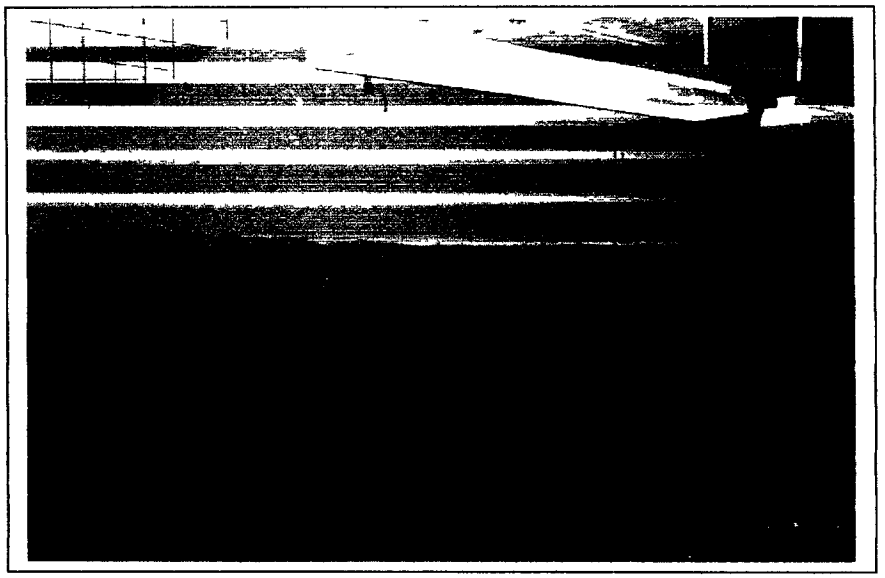

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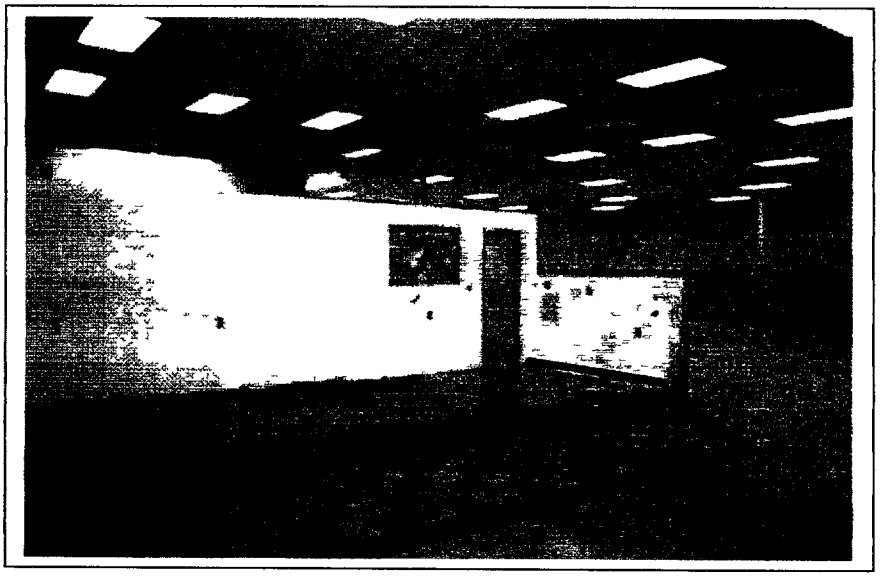

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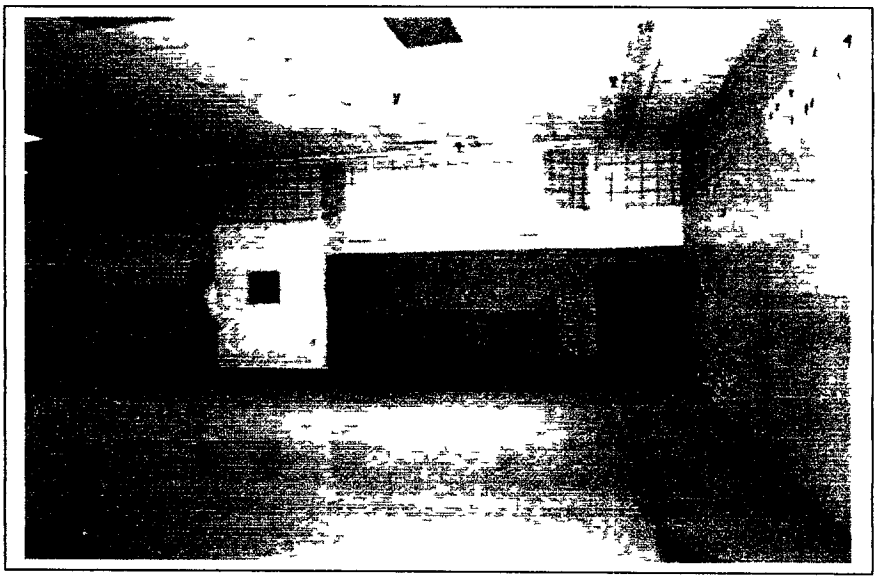

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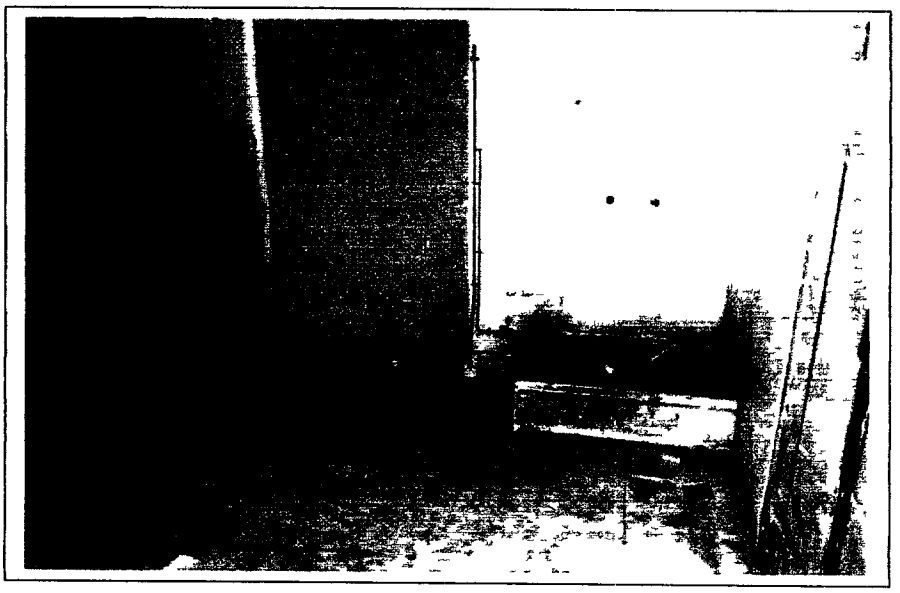

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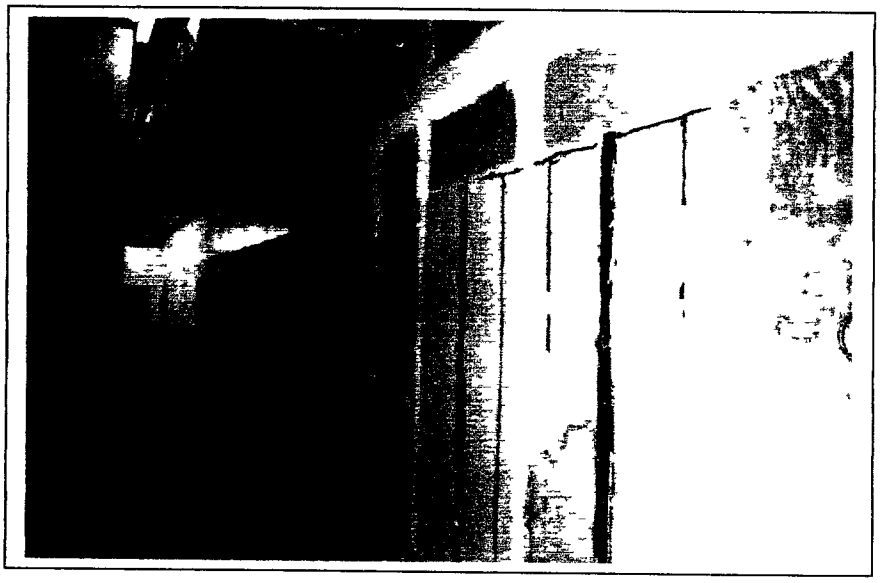

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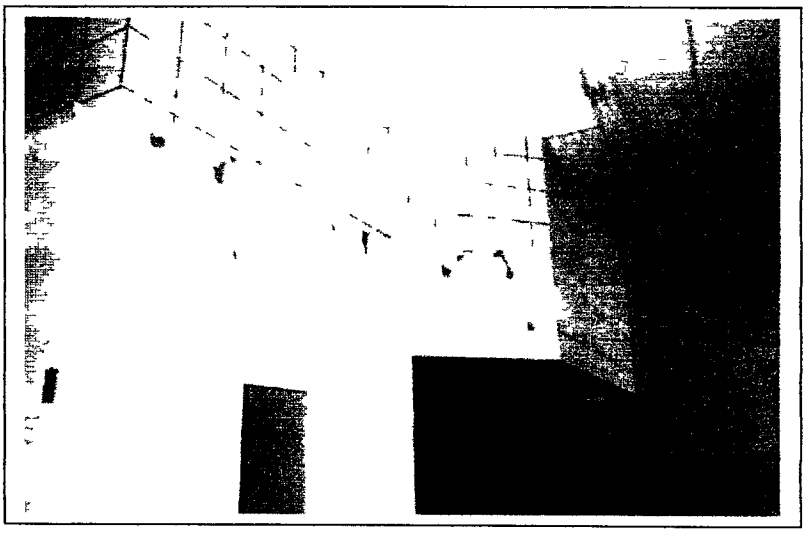

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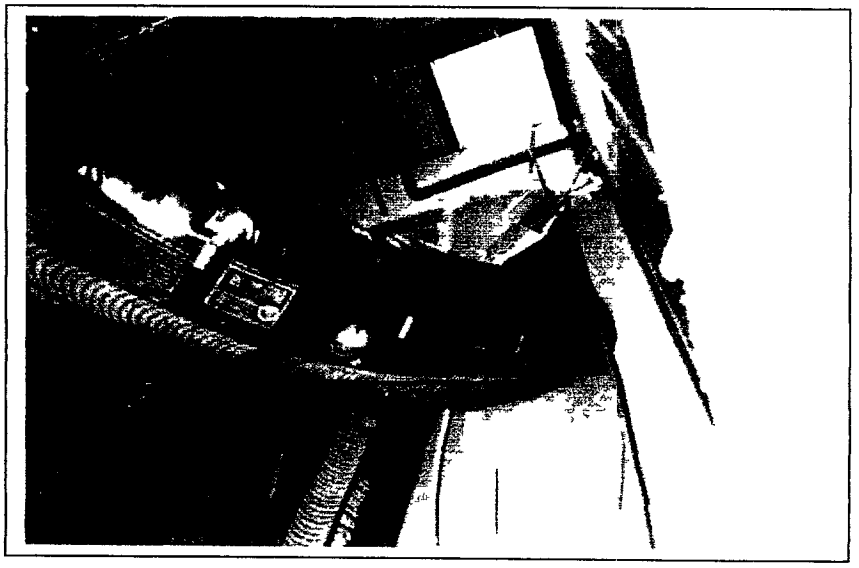

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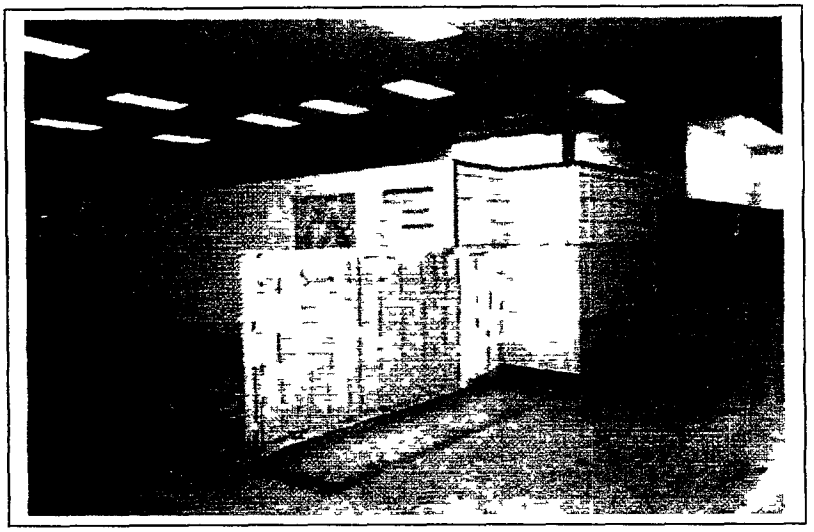

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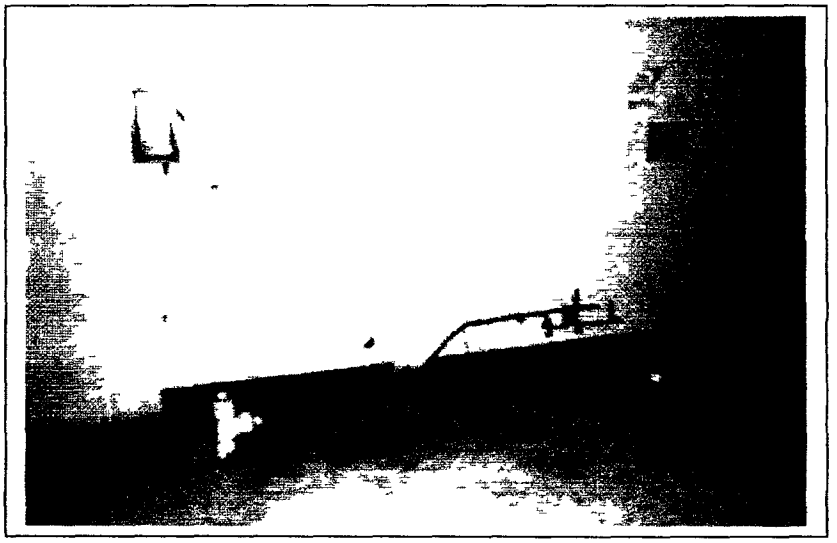

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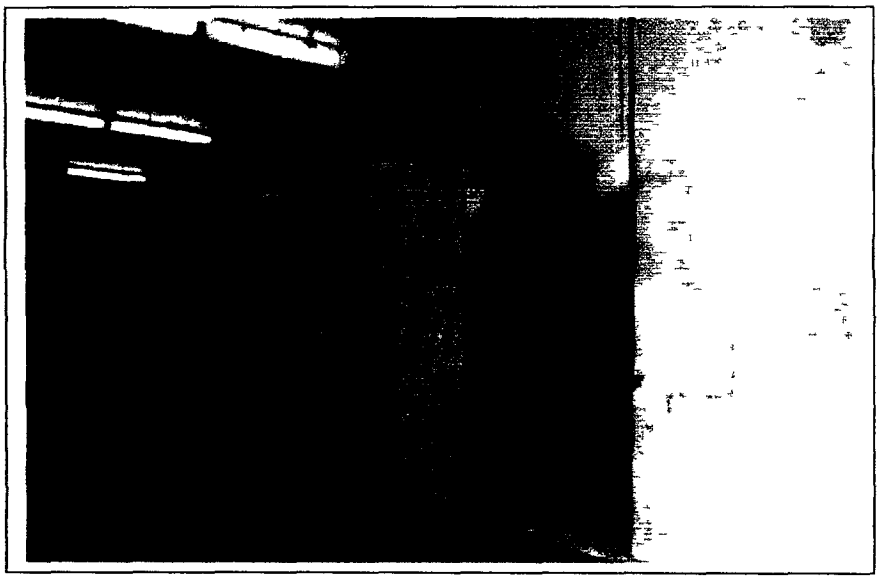

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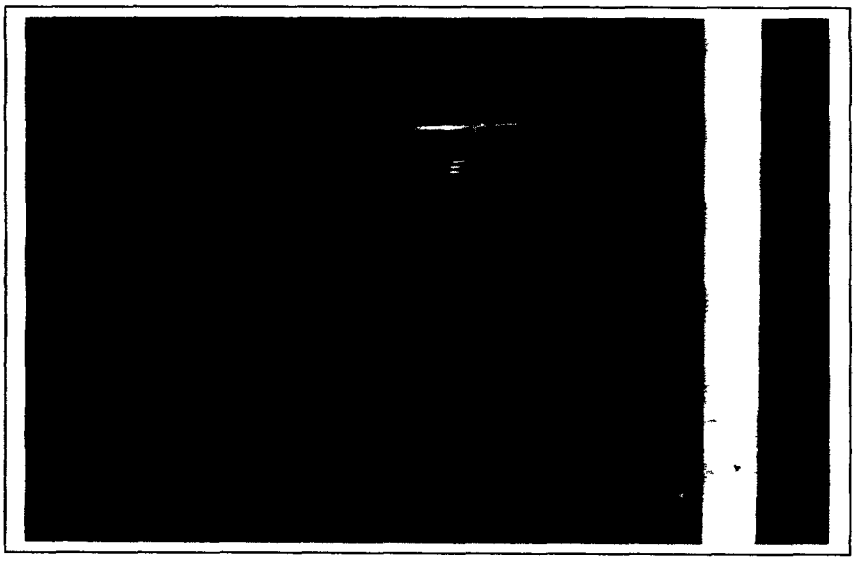

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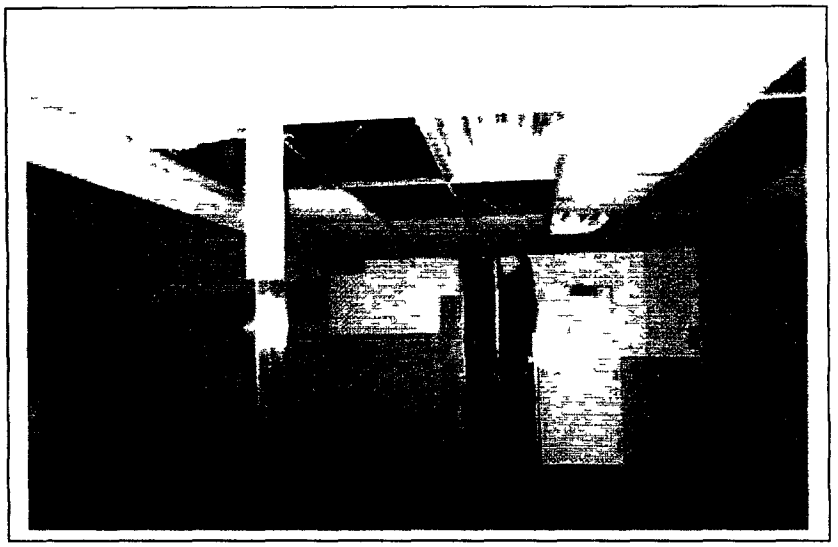

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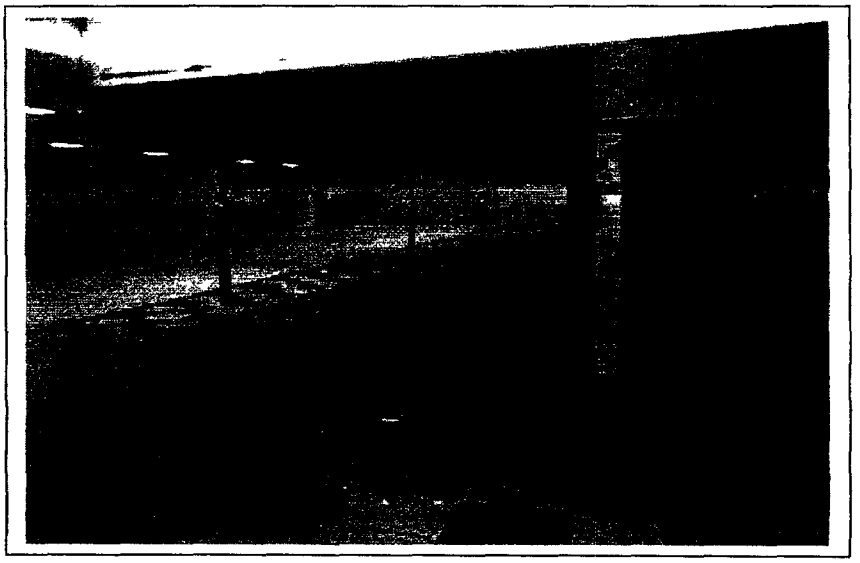

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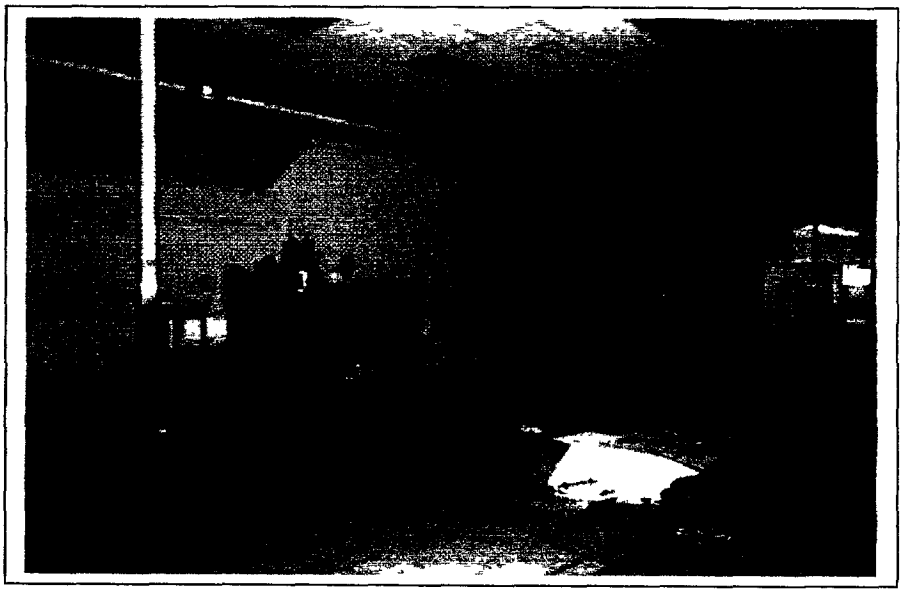

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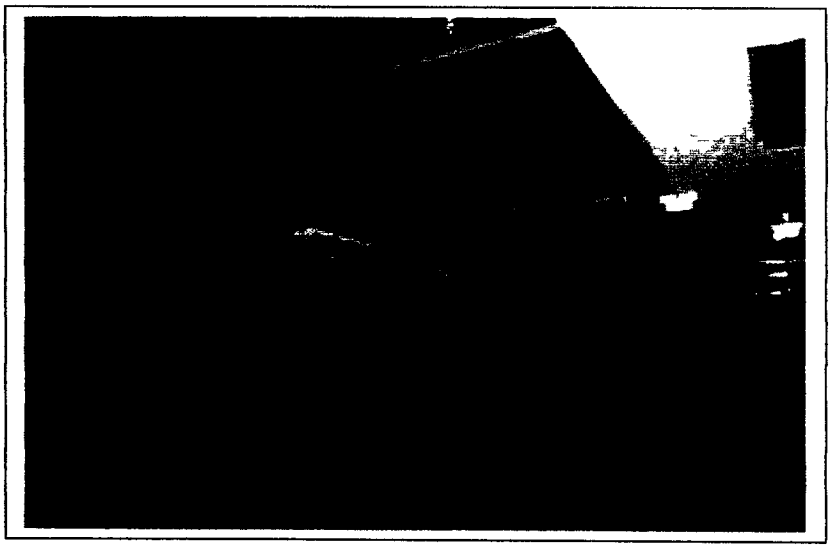

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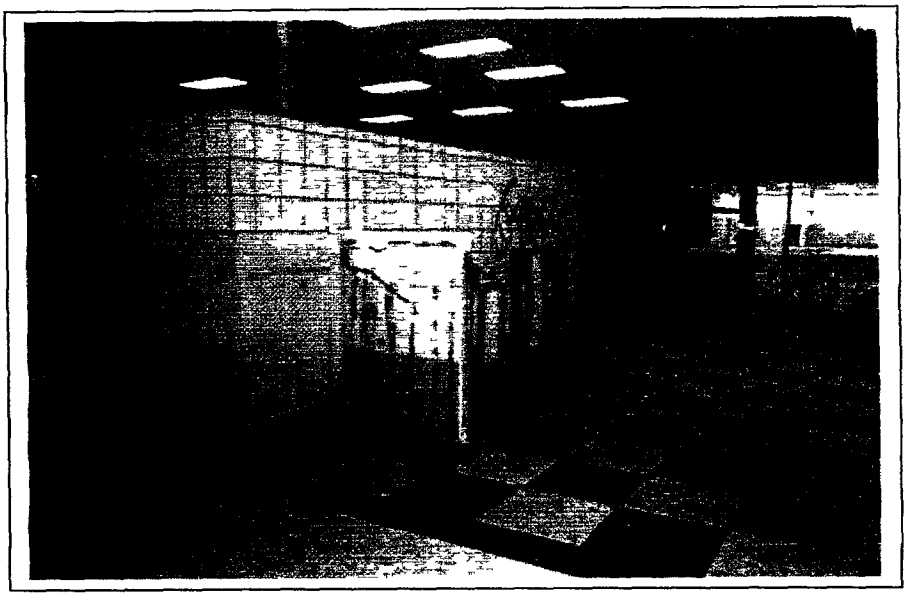

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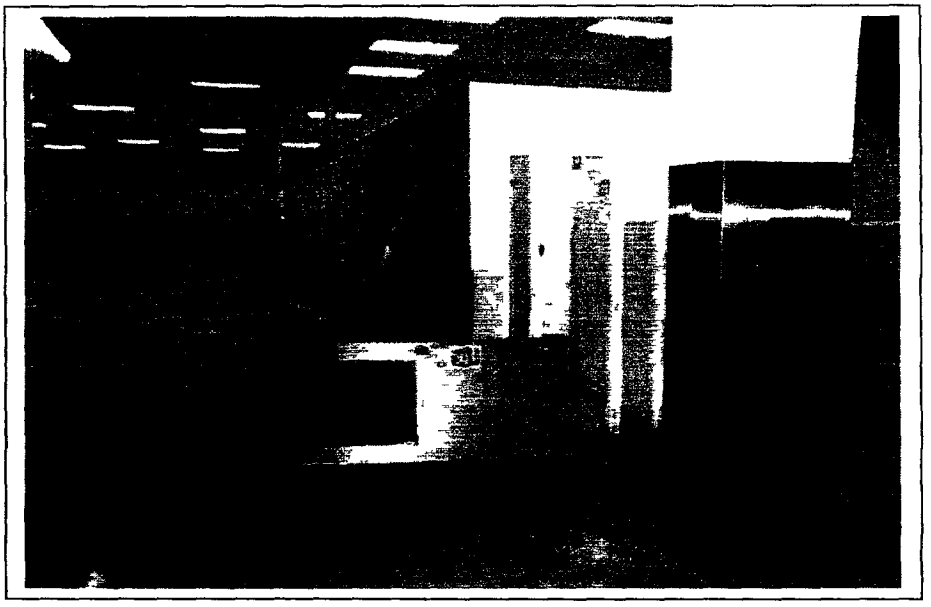

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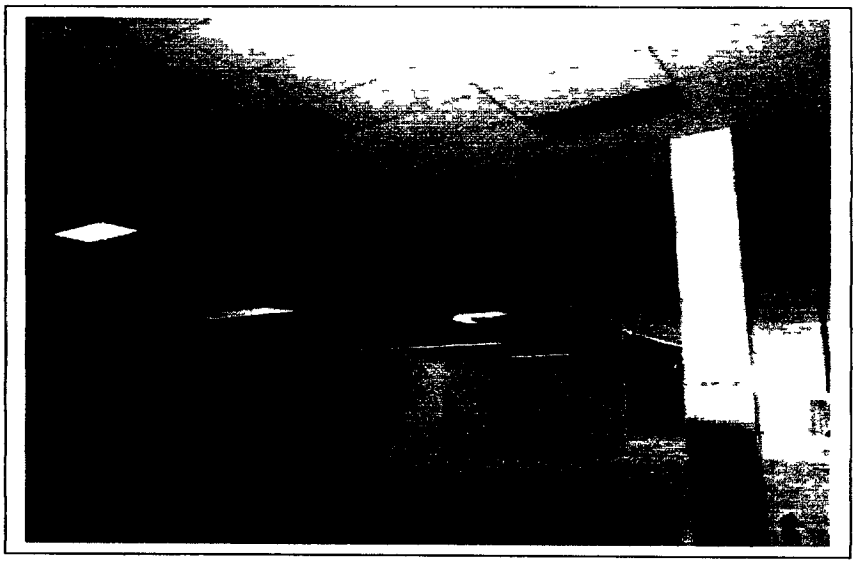

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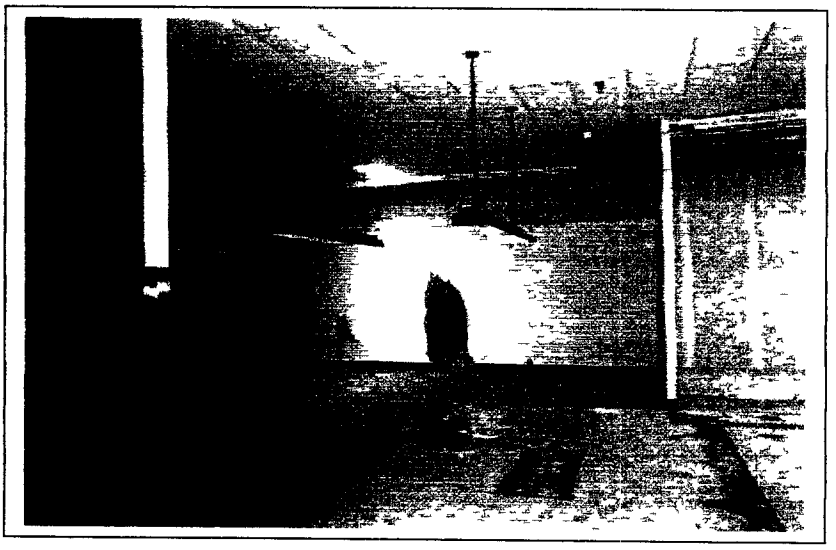

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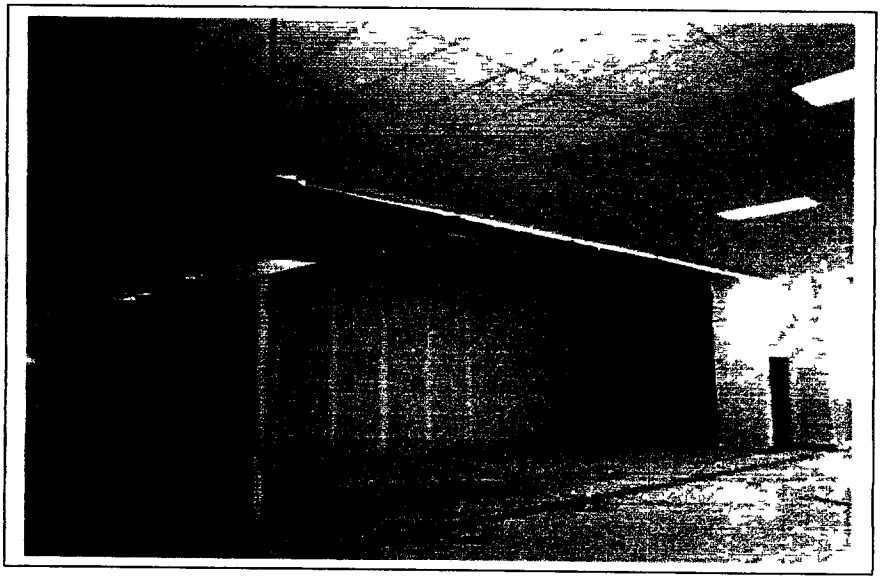

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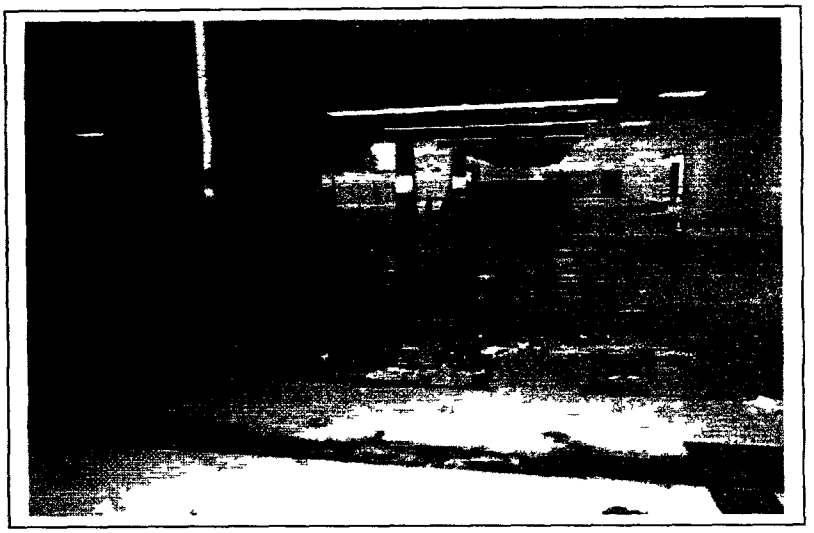

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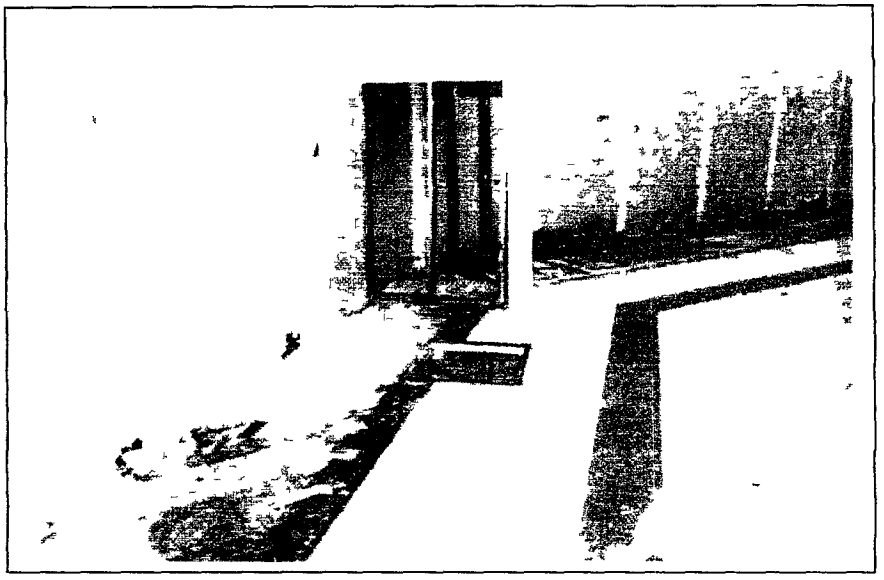

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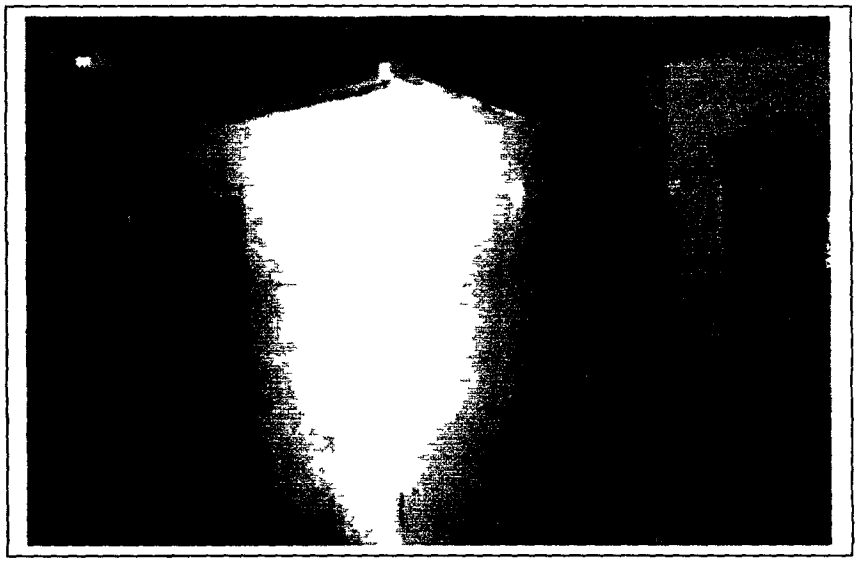

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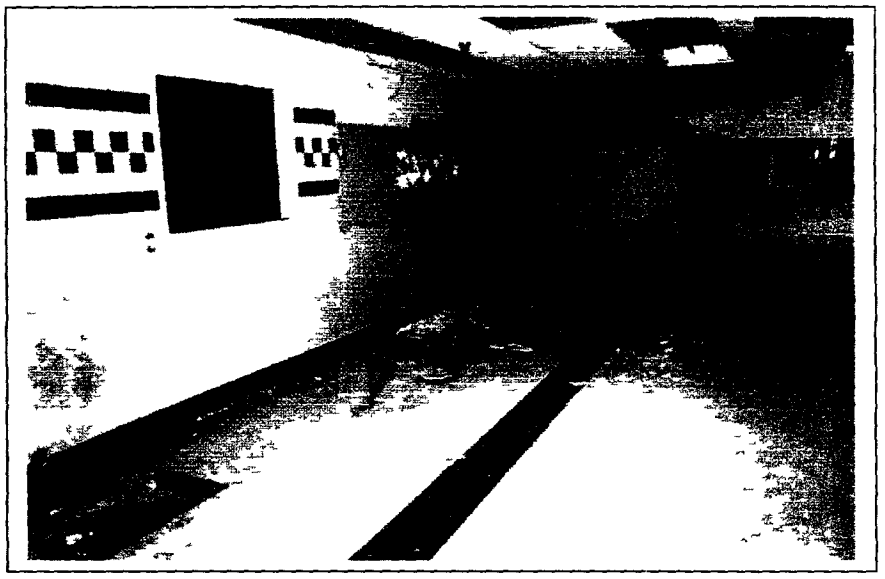

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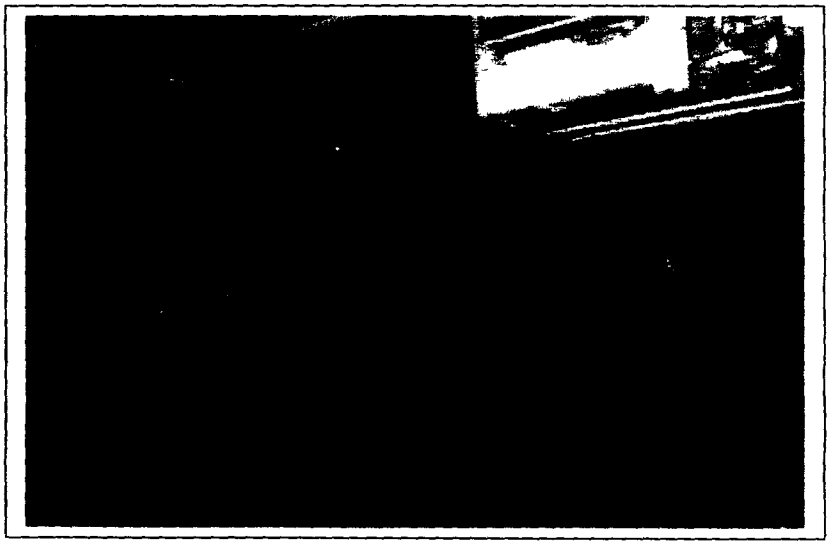

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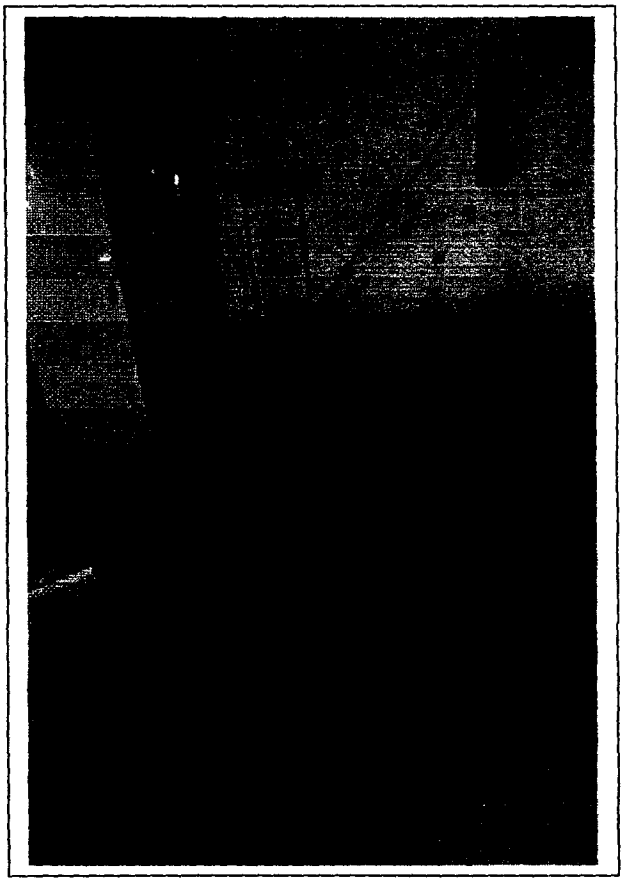

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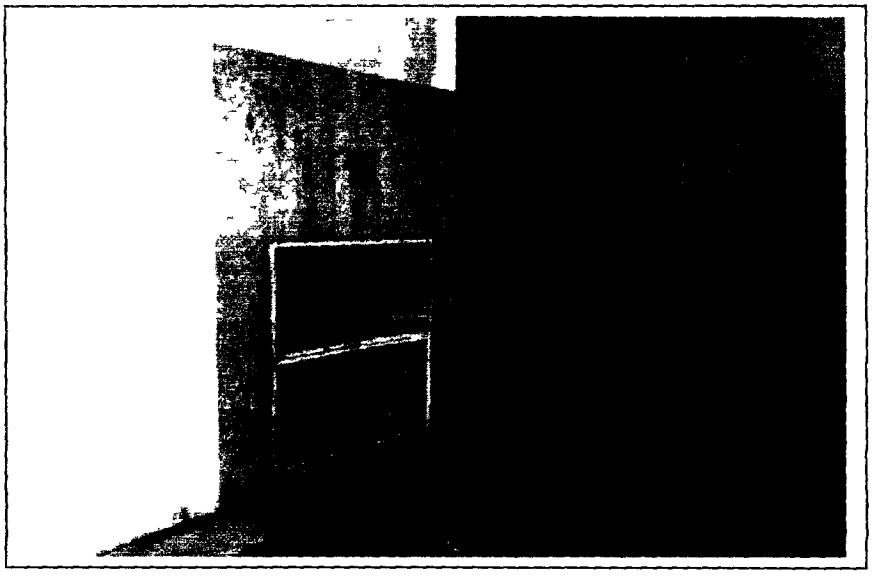

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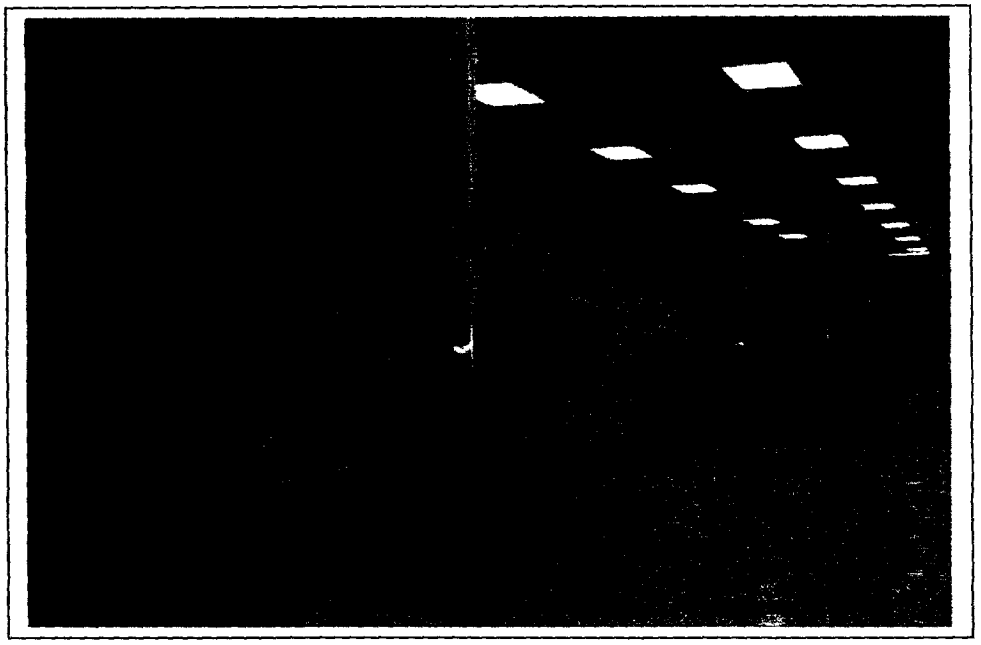

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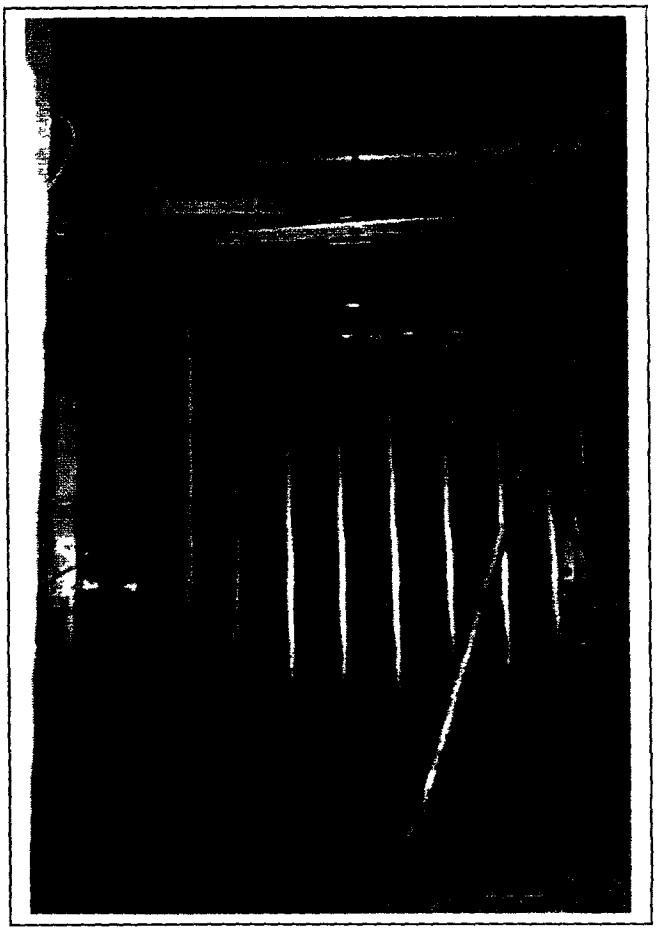

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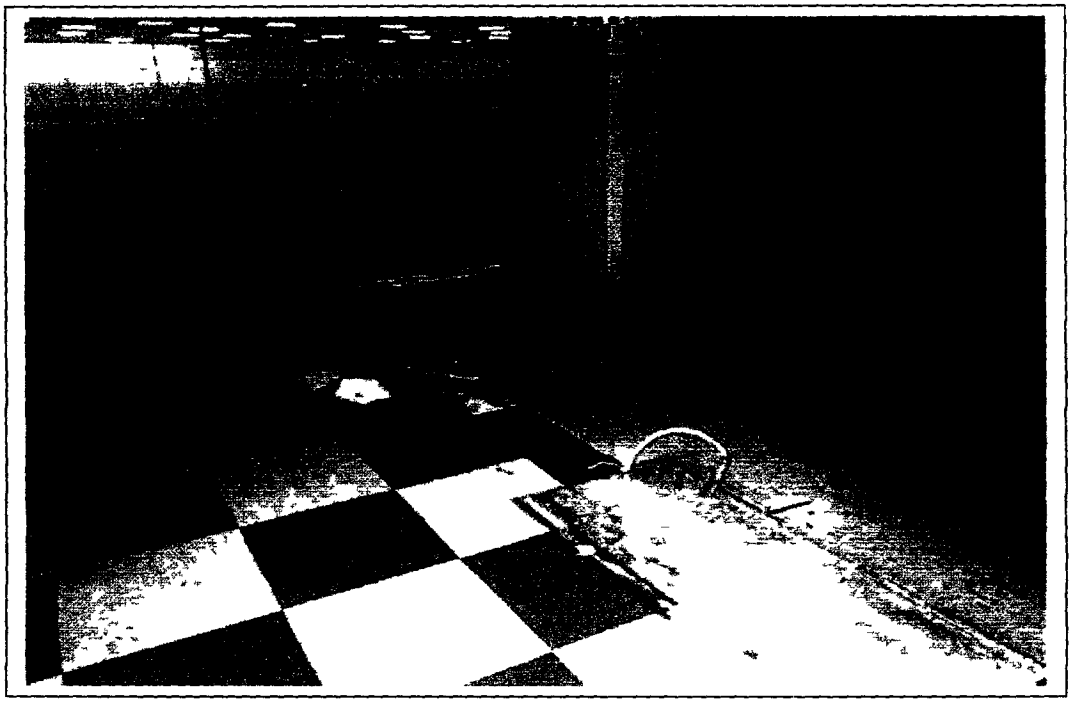

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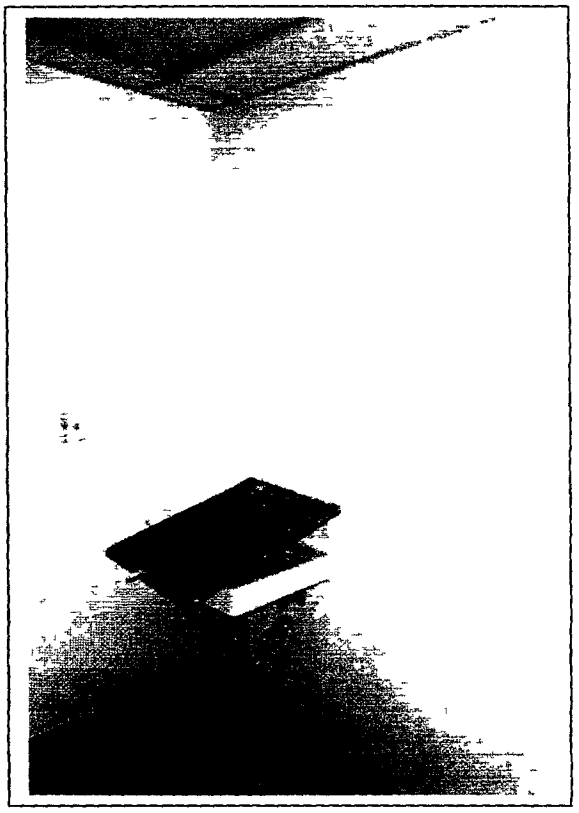

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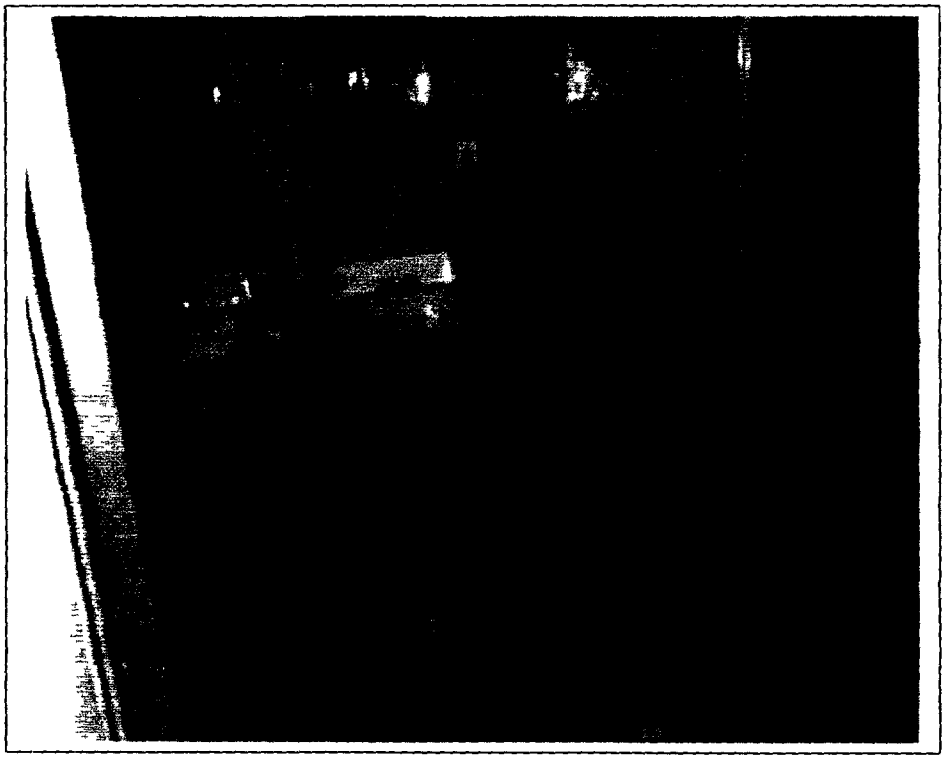

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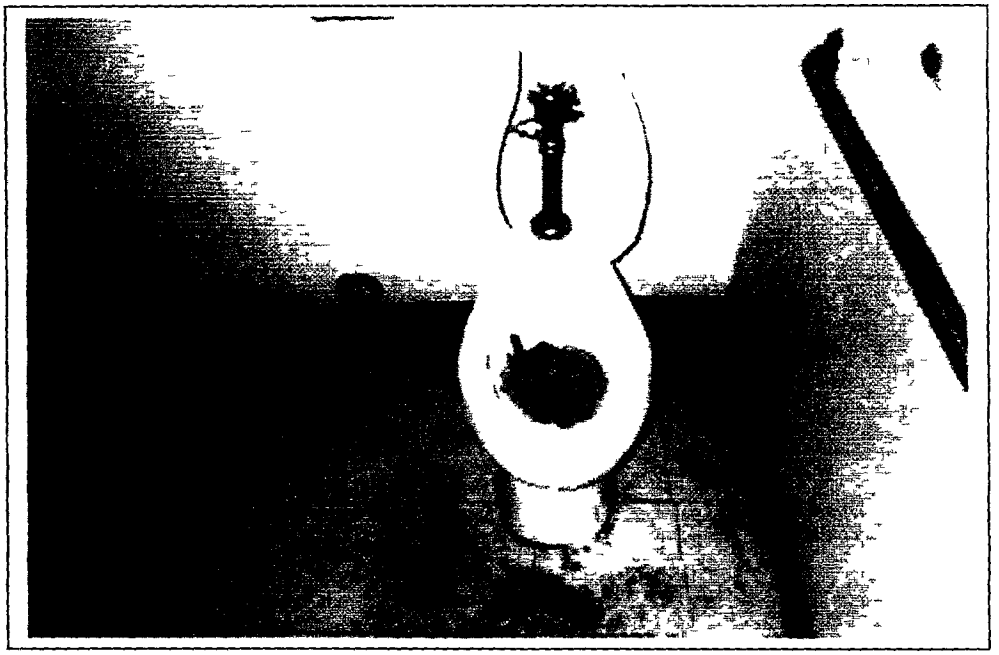
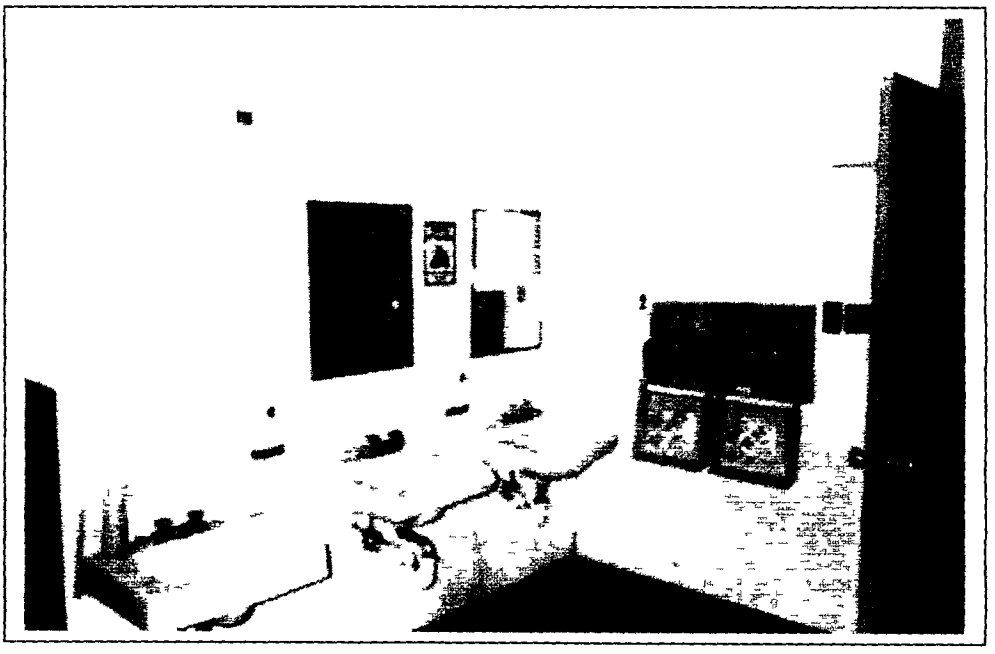
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