



PATENTS ACT 1977

APPLICANT	TV Squared Limited
ISSUE	Whether application GB1508949.3 complies with Section 1(2)(c)
HEARING OFFICER	Peter Mason

DECISION

Introduction

- 1 This decision relates to patent application GB1508949.3 entitled “Method and apparatus for media event analysis”. The application was filed on 26th May 2015 in the name of TV Squared Limited and claims earlier priority from application GB1420191.7. The application was published on 18th May 2016 as GB 2532301 A.
- 2 The examiner concluded a search would serve no useful purpose on this application and issued a report under Section 17(5)(b) of the Patents Act (the Act). In the examiner’s view the invention was excluded by section 1(2)(c) for being a method of doing business as such. A detailed examination opinion was included as a supplement to the search report.
- 3 Following the request for substantive examination, an abbreviated examination report under Section 18(3) was issued which directed the applicant to the earlier examination opinion. The abbreviated examination report also stated the examiner’s view that the application should be refused; and depending upon how the applicant responded, set out how the application would proceed. In particular the examiner’s letter dated 21 January 2020 informed the applicant that should they not request a hearing the application would be passed for a decision on the papers on file. In responding to that report (letter dated 24 July 2020), the applicant filed observations on their invention along with amendments to the claims but the applicant did not request a hearing in person; The examiner informed the applicant in their letter dated 27 October that the application would be passed to a hearing officer for consideration, and invited the applicant to a hearing in person and/or an opportunity to submit further arguments. No response to this letter was received; and as such it has now been passed to me for a decision on the papers.
- 4 **Matters to be decided**
- 5 In the examiner’s view the amendments submitted on 24 July 2020 include additional matter not allowed by Section 76(2). Furthermore, the examiner maintained their

view the invention is excluded and should be refused. The examiner set out their reconsidered view in a letter dated 27 October 2020. In that letter the examiner also states the question of added matter is not critical to determining if the invention is excluded under Section 1(2). As such, I appreciate their suggestion that I only consider the issue of Section 1(2). If I decide the invention is not excluded I will return the application to the examiner for further processing.

The Invention

- 6 The invention relates to determining the effectiveness of TV or radio adverts by determining subsequent user actions. The invention classifies user actions by when they happened relative to the advert and may determine other factors such as baseline customer activity, time when the purchase or enquiry was made, or geographic area where the advert was available, for example.
- 7 When filed, the application included 29 claims consisting of an independent method claim with 26 further dependent claims, along with an independent claim to each of an associated system and apparatus. The claims have subsequently been amended and currently comprise a single independent method claim with 18 further claims dependent therefrom. The main method claim is reproduced in the annexe.

The Law

- 8 Section 1(2) of the Act sets out certain categories of invention that are excluded from patentability as follows (my emphasis):

1(2) It is hereby declared that the following (amongst other things) are not inventions for the purpose of the Act, that is to say, anything which consists of

—

(a)

(b)

*(c) a scheme, rule, or **method for performing a mental act, playing a game or doing business**, or a program for a computer;*

(d)

*but the foregoing provisions shall prevent anything from being treated as an invention for the purposes of the Act only to the extent that a patent or application for a patent relates to that thing **as such**.*

- 9 The assessment of patentability under Section 1(2) is governed by the judgment of the Court of Appeal in *Aerotel*¹, as further interpreted by the Court of Appeal in *Symbian*². In *Aerotel*¹, the court reviewed the case law on the interpretation of Section 1(2) and set out a four-step test to decide whether a claimed invention is patentable:

¹ *Aerotel Ltd v Telco Holdings Ltd and Macrossan's Application* [2006] EWCA Civ 1371; [2007] RPC 7

² *Symbian Ltd v Comptroller-General of Patents*, [2009] RPC 1

1. *Properly construe the claim.*
2. *Identify the actual contribution (although at this stage it is an alleged contribution).*
3. *Ask whether that contribution falls solely within the excluded matter.*
4. *If the third step has not covered it, check whether the actual or alleged contribution is actually technical.*

- 10 The Court of Appeal in *Symbian*² made it clear the four-step test in *Aerotel*¹ was not intended to be a new departure in domestic law; it was confirmed that the test is consistent with the previous requirement set out in case law that the invention must provide a “technical contribution”. Paragraph 46 of *Aerotel*¹ states that applying the fourth step of the test may not be necessary because the third step should have covered the question of whether the contribution is technical in nature. It was further confirmed in *Symbian*² that the question of whether the invention makes a technical contribution can take place at step 3 or step 4.
- 11 The Court of Appeal in *Aerotel*¹ made clear that the business method exclusion is not concerned only with abstract or generalised activity. The business method exclusion is generic, as discussed in *Merrill Lynch*³, and providing a better way of conducting business, as confirmed in *Halliburton*⁴, will not confer patentability.
- 12 In carrying out the analysis for excluded matter, I am bound to follow the Court of Appeal judgement in *Aerotel*¹ and apply the four-step test outlined therein.

Analysis

Step 1: Properly construe the claim

- 13 In their letter of 27 October 2020, the examiner explains how they construe the claim in light of the impact of their assessment of added matter. Beyond this, the examiner states that there are no particular difficulties in construing the main claim. I agree with that assessment and there is no benefit in rephrasing the claim here.

Step 2: Identify the actual (or alleged) contribution

- 14 In their letter of 27 October 2020, the examiner has reformulated their assessment of the contribution taking into account the amended scope of the claims and the applicant’s comments on their own interpretation of the invention’s patentability. I note the applicant’s comments were not directed to the steps of the *Aerotel* test and that they have not provided any further response to the latest letter.
- 15 The examiner assesses the alleged contribution to be:

A method of analysing user data relating to advertisements, including collecting data about user actions, determining which actions are in response to particular advertisements and which are not, creating a baseline indicative

³ Merrill Lynch’s application [1989] RPC 561.

⁴ Halliburton Energy Services Inc’s Applications [2012] RPC 129

of user general activity at predetermined times, and dynamically adapting the baseline over time. This has the advantage of providing more accurate and detailed information concerning the links between user actions and particular advertisements, to more reliably identify the effectiveness of the advertising campaign and associated investment.

- 16 In reflecting the core steps of the invention and being directed to the problem being addressed, this assessment of the contribution appears entirely appropriate.
- 17 At this point it is worth me stating my view on those features the examiner has argued add matter. Whether those features are included or not, they do not appear to significantly shift the contribution the invention might make to the stock of human knowledge. I believe this is the point the examiner is making when they suggest I do not need to decide if matter is added or not.

Steps 3 and 4: Ask whether the contribution falls solely within the excluded subject matter and whether it is technical in nature

- 18 The contribution relates wholly to using user data to understand the impact of advertising events.
- 19 I note the applicant's argument in their letter of 24 July 2020 that the invention is *"more than being directed to the abstract idea of collecting and evaluating event data related to visual and/or audible media."*⁵
- 20 I tend to agree with the examiner's response to this observation: *"Whether or not the invention is more than the abstract idea of collecting and evaluating event data related to visual and/or audible media, the question to be asked is whether the contribution identified above falls solely within the excluded subject matter."*⁶
- 21 Furthermore, I will reiterate the Court of Appeal's view in *Aerotel*¹ where at the conclusion of paragraph 68 they state:

"Whether as an abstract or generalised activity or as a very specific activity, if it is a method of doing business as such it is excluded."

- 22 The applicant's argument in the letter of 24 July 2020 goes on to discuss an apparently analogous invention from another industry:

"As such if one was to compare the current invention to another industry, such as the packaging of pharmaceutical products then, in the current invention the user response data is the equivalent to a volume of tablets which have to be collected together. When the tablets have been collected the same would be tested and checked to ensure that the tablets were of the correct type and, if so, they would then be passed for further processing in the form of packaging the tablets. In the current invention the same occurs in that the collected user response data is checked."

⁵ Agent's letter 24 July 2020, page 4, first full paragraph

⁶ Examiner's letter 27 October 2020, paragraph 19

- 23 It appears to me there is a clear flaw in this analogy. In the example, the product must be measured before and after the packaging process; notwithstanding that each invention must be considered on the merits of its contribution to the stock of human knowledge, the example appears to be an inherently technical process. In contrast, the present invention appears to be inherently a business process concerned wholly with a business's advertising data.
- 24 In my view there is no doubt that the present invention's contribution resides solely within the field of business; is a method of doing business as such; and falls wholly within the exclusion of Section 1(2)(c). Confirming the fourth step, the contribution is not technical.

Decision

- 25 I find the invention claimed in GB1508949.3 to fall solely within matter excluded under Section 1(2)(c) as a business method as such. I can find no amendment in the specification that will render the claims patentable. I therefore refuse the application under Section 18(3).

Appeal

- 26 Any appeal must be lodged within 28 days after the date of this decision.

Peter Mason

Deputy Director, acting for the Comptroller

Annexe

Claim 1:

A method of utilising data relating to one or more advertisements connected to an organisation which occur in at least one television channel or channels, radio channel and the internet, presented on a television, display screen and/or speakers, said method comprising identifying a specific URL, landing website, phone number or a coupon utilized by one or more users, for collecting data from one or more sources including an internet site, phone access, smartphone application or a physical purchase of a product, which data relates to one or more actions with said organization by one or more users with respect to the said one or more advertisements, allocating the data which has been collected, to predefined time intervals, storing data indicating the occurrence of the advertisements in terms of time at which the one or more advertisements were displayed to one or more users via said television channel or channels, radio channel and the internet via television, display screens and/or speakers and geographical accessibility of said television channel or channels, radio channel and the internet on which said advertisements are displayed; displaying on an electronic display the one or more advertisements and the geographical accessibility of the one or more advertisements; wherein the said actions identified in the collected data are determined to have been caused by and be a response to the said one or more advertisements; classifying the actions identified in the collected data which are identified as not having been caused by the advertisements by analysing and filtering the collected data in combination with the stored data; and creating a base line, using a computer processing unit, which is a sequence of time related values which indicate a level of the collected data which is indicative of user general activity at the predefined times or time intervals and which is not attributable to the said one or more advertisements, the baseline value being dynamically adapted over time by using a scalable modulated window for a particular time interval and time shifting the position of said window and for each time shifted position the appropriate baseline value for that time interval is calculated so that there are calculated different baseline response levels for different time intervals to thereby create a collection of time-scale representations with selected resolutions for the user response to said one or more advertisements placed by said organization and the method includes identifying the length of a time lag between the occurrence of the advertisement and the user response data relating thereto being collected and taking said measured timelag into account in said classifying step.