



PATENTS ACT 1977

APPLICANT Fitzgerald Stenneth Sylvester Blake.

ISSUE Whether patent application number
GB 0515996.7 complies with section 1(2)

HEARING OFFICER B Micklewright

DECISION

Introduction

- 1 Patent application GB 0515996.7 was filed on 3 August 2005 and published as GB2428833 on 7 February 2007.
- 2 The examiner argued that the claimed invention is excluded from patentability under sections 1(1)(d) and 1(2)(c) of the Patents Act 1977 (“the Act”) as it relates to a program for a computer and a method of doing business. The applicant disagreed. The Examiner also reported that search would serve no useful purpose under Section 17(5)(b) of the Act and consequently no search report was issued and no searching has been done subsequently. No amendments to the claims have been offered by Mr. Blake.
- 3 The examiner and the applicant could not reach agreement and the matter therefore came before me at a hearing on 24 February 2011 held over the telephone with Mr. Blake. The examiner Ben James also attended as did Gareth Lewis who was assisting me.

The Invention

- 4 The invention relates to a management system suitable for use as a medical and/or dental practice management system which makes it easier for users of the system (including medical and/or dental practices) to share information with each other.
- 5 The claims comprise independent claim 1 and dependent claims 2 to 28. Claim 1 reads :

1. A management system for standardising and sharing data from a plurality

of data providers for a computer system, the method comprising: sending data to a user; and receiving data from a user.

I also note in particular the following dependent claims:

3. A method of claim 1, further comprising: storing data in a particular format in a data store; linking the stored data in a custom data scheme; selectively using the data stored in the data store; and displaying data to the user.

10. A method according to any of the preceding claims, in which a user is registered, the method comprise: receiving data from the user; verifying data from the user; and creating a profile for the user.

The remaining claims relate to the use of the system for managing medical information and describe how the user may be a medical practitioner or a patient, and that patient record data may be accessed by either. These claims also introduce the concept of associating users and records with medical practices, possibly by use of a user profile. The final claims describe how a user, such as a practitioner, may control the creation of user profiles and patient records. I note that some claims also mention that a user may be verified and that data may be verified and validated.

- 6 An example set out in the description relates to a number of different dental practices that can each use the data management system to manage at least their patient records. There do not appear to be any technical details of a specific software implementation of the system. I note that the figures show a number of schematic diagrams but that these do not appear to show clear flow diagrams of processes nor do they define data structures in an unambiguous way. The description further provides a high level overview of some conventional technical features of networked general purpose computers and also mentions conventional features of graphical user interfaces that might be used to present information to a user of the system.

The Law

- 7 Section 1(1)(d) of the Patents Act 1977 (“the Act”) states that a patent may be granted only for an invention in respect of which the grant of a patent for it is not excluded by subsections (2) and (3) or section 4A. Section 1(2)(c) states that things which consist of “a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer” are not inventions for the purposes of the Act, but only to the extent that a patent or application for a patent relates to that thing as such.
- 8 There is a large amount of case law in relation to these provisions. The most significant recent judgments of the Court of Appeal on the matter are *Aerotel Ltd v Telco Holdings Ltd Ors Rev 1* [2007] RPC 7 and *Symbian Ltd’s Application* [2009] RPC 1. In *Aerotel* the Court of Appeal reviewed all the previous case law and specified the following four-step test as a methodology of determining whether an invention was excluded from patentability under section 1(1)(d):

(1) Properly construe the claim;

(2) Identify the actual contribution;

(3) Ask whether it falls solely within the excluded subject matter;

(4) Check whether the actual or alleged contribution is actually technical in nature.

- 9 In *Symbian* the Court of Appeal confirmed that the above four-step test is intended to be equivalent to the prior case law test of “technical contribution”. In the present case I will therefore use the *Aerotel* test and ensure in my consideration of steps (3) and (4) that I determine whether the invention makes a technical contribution.

Assessment

- 10 Claim 1 is extremely broad with just about any networked computer system falling within its scope. I will therefore consider features of a number of the dependent claims in my assessment.

(1) Properly construe the claim(s)

- 11 Claim 1 refers to ‘*sharing data from a plurality of data providers*’ which given the context of the description I have construed as meaning that data may be input from and output to more than one user. Thus the invention of claim 1 relates to a system that can share standardised data between a number of users by sending and receiving the data in a way that is suitable for implementation on one or more computers.

- 12 Claim 3 refers to ‘*linking the stored data in a custom data scheme*’ which I have construed to mean that data sets are organised so that there can be at least some kind of cross references between data elements or sets. Thus the invention of at least claim 1 and 3 considered together is for system that stores standardised data according to a format and provides cross-referencing of the data according to a scheme and allows sharing of this data between a number of users by sending and receiving the data in a way that is suitable for implementation on one or more computers.

(2) Identify the actual contribution

- 13 I asked Mr. Blake if, in the context of the four step test, he could tell me what he considered the contribution of his invention to be. He replied that his invention was broadly a way for different parties to interact with each other and that it enabled information to be given to a wider audience. This is in my view a rather broad definition of the contribution made by the invention which lacks precise features. I will look at claim 1 and the various dependent claims when determining more precisely the contribution made by the invention. For the purposes of identifying the contribution the claims fall into four groups and I will look at each of these groups in turn.

- 14 The alleged contribution of claims 1 to 9 is a data management system comprising a network of computers executing software programs so that multiple users may input data, that data being stored in organised way that includes

cross-referencing within the data such that the system allows a user to retrieve a chosen subset of that data.

- 15 The alleged contribution of the additional features of claims 18 to 20 and 24 is that the system provides for validating data, copying data and securing data.
- 16 The alleged contribution of the additional features of claims 17 and 26 to 27 is that the system provides for verification of the user and consequently may grant access rights for editing a subset of the data stored or the input of a subset of data.
- 17 The alleged contribution of the additional features of claims 10 to 16, 21 to 23, 25, 27 and 28 is to specify that some of the data may be structured and input to relate to medical practitioners and their disciplines, patients, practices, and patient records, and that the input may define cross references within the data.

(3) Ask whether it falls solely within the excluded subject matter;

- 18 The alleged contribution of claims 1 to 9 is to the systematic management of data records using a computer program. The computer hardware is conventional and thus the contribution lies in the computer program running on the hardware. As the contribution relates to the management of records, the computer program is not solving any technical problems that might exist within the computer or with the way a user interacts with the computer; it does not make the computer a better one. Further, the data that is output from the system is not used to solve a technical problem outside of the computer. The particular nature of the data input and output is irrelevant for these claims so there can be no contribution outside of managing data or data records as such. Thus the alleged contribution of claims 1 to 9 falls solely within the excluded field of a program for a computer.
- 19 The alleged contribution of claims 10 to 16, 21 to 23, 25, 27 and 28 relates to specifying that the data stored represents medical management information and patient records and specifying some ways that this data may be cross-referenced. This data is not used as part of a technical process, nor does the manipulation of this data represent a technical process. Further, the data output is not used for controlling any technical process. Storing and retrieving medical management data or medical records and the presentation of this information as such is part of administering a medical business, such as might be required by a dental practice for example. Embodying this as a computer program does not provide any technical contribution.
- 20 I note that Mr Blake, when corresponding with the Examiner, stated that he considered his invention related to a specific data structure and that this lent his invention its technical nature. At the hearing I asked Mr. Blake to elaborate on why he considered that his data structure or way of organising data was not excluded as the examiner had argued. Mr. Blake said that his invention related to the concept of managing information rather than being just a computer system and that it could be implemented in a mechanical or a manual process. He went on to say that his invention related to a new way information could be structured and had applications wider than just a computer system. I also asked Mr. Blake why he considered his invention to be more than merely a business method as

such. Mr. Blake said that his invention was not just for financial gain, and that it could be used by charities for example and that it was not limited to the specific example that he gives in his application of a dental practice.

- 21 Regarding Mr. Blake's comments about a mechanical or manual process that could use his data structure, I can not find support for any implementation other than that which uses computers. The claims can not be construed as being anything other than computer implemented. In relation to Mr. Blake's comments about his invention not just being used for financial gain, the courts have made it clear that financial gain is not a defining requirement for a contribution to be an excluded business method; organising and managing any type of organisation can still be excluded as a business method.
- 22 I have considered carefully how the claims might define a data structure, but there is very little detail present; they only refer to a few aspects of how the data might be organised. This second group of claims, 10 to 16, 21 to 23, 25, 27 and 28, are the most relevant to this matter. They however only reflect the broad interrelationships between patients, practitioners and the basic management information that this would produce or require. The advantages of arranging data in such a manner are merely those gained from managing medical practices and allowing users, including practitioners and patients, to access that data electronically. These advantages do not make any contribution outside of the excluded fields of a program for a computer and a method of doing business. Consequently I find these claims provide no contribution outside of the excluded fields.
- 23 The alleged contribution of claims 18 to 20 and 24 relates to validating, copying and securing data. This requires no additional hardware or any rearrangement of the conventional computer hardware already required, and thus any contribution will only be made by the computer program that is running. There is no technical problem solved within the computer, nor is there any problem solved in the manner in which a user interacts with the computer. The advantages provided relate solely to managing data or data records as such. No technical advantages are evident to any method of validation, copying or securing data, and I note that there are no technical details provided of any such method. Thus the contribution of claims 18 to 20 and 24 falls within the excluded fields of business methods and a program for a computer.
- 24 Regarding the contribution of claims 17 and 26 to 27, a computerised data management system that provides for verification of a user and consequent control of access rights again does not solve any technical problems with hardware or software, and the advantages gained lie squarely within the program for a computer and business method exclusions.

(4) Check whether the actual or alleged contribution is actually technical in nature.
- 25 In my consideration of step (3) of the Aerotel test above, I have concluded that the contribution is not technical in nature.

Conclusion

- 26 I have found that the contribution of the invention as defined by the set of claims originally filed lies solely within excluded fields, in particular a program for a computer as such and a method of doing business as such. No amendments to the claims have been offered prior to or during the hearing. I have carefully read the whole specification to see if any saving amendment to the claims is possible by the inclusion of features which would provide a non-excluded technical contribution. I have not found any matter that would provide such a technical contribution, and thus there appears to be no possibility for any saving amendment. The application therefore fails to comply with section 1(2) and I refuse the application.

Appeal

- 27 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

B MICKLEWRIGHT

Deputy Director acting for the Comptroller