

**PATENTS ACT 1977**

APPLICANT Innoplexus AG

ISSUE Whether patent application GB1804914.8 is  
excluded under section 1(2)

HEARING OFFICER H Jones

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**DECISION**

**Background**

- 1 Patent application GB1804914.8, now published as GB2572362, was filed in the name of Innoplexus AG on 27 March 2018.
- 2 The examiner is of the view that the application clearly relates to a method for doing business and a computer program and has issued examination reports setting out his objection in detail. The application has not been searched. Arguments from the applicant have not persuaded the examiner to change his opinion. The applicant accepted the examiner's offer of a hearing but chose not to attend the hearing. My decision is based on the papers.

**The invention**

- 3 No amendments have been submitted. There are independent claims to a system, a method, and a computer program but they do not differ in substance. Claim 1 is as follows:

1. A system that generates an optimum marketing mix model for an entity, wherein the entity is operable to transact with a plurality of marketing intermediaries using one or more marketing channels corresponding to each of the plurality of marketing intermediaries, wherein the system includes a computer system, characterized in that the system comprises:

- a database arrangement operable to store data sources relating to the entity, and existing data sources;

- a processing module communicably coupled to the database arrangement, the processing module operable to:

- obtain historical data, for each of the plurality of marketing intermediaries, from data sources relating to the entity;

- calculate an effectiveness score for the one or more marketing channels corresponding to each of the plurality of marketing intermediaries, wherein

the effectiveness score is calculated using data obtained from existing data sources;

- determine a realizable potential, for each of the plurality of marketing intermediaries, based on a predefined set of parameters;

- determine a marketing mix model for allocating resources of the entity to each of the one or more marketing channels, based on the obtained historical data, calculated effectiveness score and determined realizable potential;

- monitor outcomes of the one or more marketing channels corresponding to each of the plurality of marketing intermediaries; and

- optimize the determined marketing mix model for the entity based on the monitored outcomes.

- 4 Some explanation of the terminology in this claim will aid in the understanding of the invention. An “entity” is an individual or organisation involved in producing or selling a product - a trader, for instance. A “marketing intermediary” facilitates the sales of the product of the entity to a consumer; the intermediary could be a distributor, dealer, broker, wholesaler or retailer, for example. A “marketing channel” is a means by which the entity transacts with the intermediary in order to introduce the product to the intermediary; examples are advertising, public relations, direct selling and sales campaigning.
- 5 The point of the system is to determine a model which will enable the entity to allocate their resources to an optimum mix of the available marketing channels so as to increase sales output of their marketed product. The optimum marketing mix model is determined by taking three things into account: historical data for the marketing intermediaries, a calculated effectiveness score for the marketing channels, and a determined realizable potential for the marketing intermediaries.

### **The law**

- 6 The relevant provision is section 1(2)(c) of the Patents Act 1977, which says that certain things cannot be protected by a patent:

*1. It is hereby declared that the following (among other things) are not inventions for the purposes of this Act, that is to say, anything which consists of -*

*(a) ...*

*(b) ...*

*(c) a scheme, rule or method for...doing business, or a program for a computer;*

*(d) ...*

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

- 7 There is well-established case-law providing guidance on determining whether an invention falls within this exclusion. In *Aerotel Ltd v Telco Holdings Ltd & Ors Rev 1*<sup>1</sup>

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<sup>1</sup> [2006] EWCA Civ 1371, [2007] RPC 7

the Court of Appeal set out the following four-step test for determining whether a proposed invention is excluded under section 1(2):

- 1) properly construe the claims;
- 2) identify the actual or alleged 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.

and in *Symbian Ltd's Application*<sup>2</sup>, the Court made it clear that when determining whether a proposed invention is excluded, it does not matter whether the question of "whether the contribution is technical" is asked at step (3) or (4).

- 8 The examiner has based his analysis on *Aerotel* and *Symbian*. He has also made use of the set of signposts of *AT&T v CVON*<sup>3</sup> and *HTC/Apple*<sup>4</sup>. There is no disagreement between the examiner and the applicant as to the relevant law.

### Arguments and analysis

- 9 The examiner's objections are set out very clearly in his letter of 20 January 2021 in which he addresses in detail the points raised by the applicant in their observations of 20 November 2020. I have considered this carefully, along with the earlier correspondence on file.
- 10 While the examiner has made one or two minor observations about the claim construction, there is no significant disagreement over the first two *Aerotel* steps. I agree with the examiner and the applicant that the contribution may be identified as:

"A method that includes obtaining historical data, for each of a plurality of marketing intermediaries, from data sources relating to an entity, calculating an effectiveness score for one or more marketing channels corresponding to each of the plurality of marketing intermediaries, wherein the effectiveness score is calculated using data obtained from existing sources, determining a realizable potential, for each of the plurality of marketing intermediaries, based on a predefined set of parameters, determining a marketing mix model for allocating resources of the entity to each of the one or more marketing channels, based on the obtained historical data, calculated effectiveness score and determined realisable potential, monitoring outcomes of the one or more marketing channels corresponding to each of the plurality of marketing intermediaries, and optimizing the determined marketing mix model for the entity based on the monitored outcomes."

- 11 The applicant's argument is primarily based upon the first of the *AT&T* signposts, at least in their letter of 20 November 2020. In simple terms they have argued that their method is automated and reduces the need for a user to physically input data values, and as such it is technical in character. The examiner struggled to understand how this can be said to amount to an effect on a process outside a computer, and I have some sympathy with his struggle. I think what the applicant is suggesting is that the

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<sup>2</sup> [2008] EWCA Civ 1066, [2009] RPC 1

<sup>3</sup> [2009] EWHC 343 (Pat)

<sup>4</sup> [2013] EWCA Civ 451

effect outside the computer is the effect upon the user, i.e. they no longer need to enter data.

- 12 The examiner rightly makes the point that reducing labour is exactly the sort of effect one expects from a computer program, with reference to *Fujitsu Limited's Application*<sup>5</sup> in which Aldous LJ stated (lines 38-44, page 618):

*"Mr Birss is right that a computer set up according to the teaching in the patent application provides a new "tool".....which avoids labour and error. But those are just the sort of advantages that are obtained by the use of a computer program. Thus the fact that the patent application provides a new tool does not solve the question of whether the application consists of a program for a computer as such or whether it is a program for a computer with a technical contribution."* [emphasis added]

- 13 The applicant relied upon *Lenovo (Singapore) PTE Ltd*<sup>6</sup> to support their argument. In *Lenovo* the court decided that automating a step which would otherwise have involved a user having to press a button had the effect of solving the technical problem of 'card clash' when reading multiple contactless cards. The examiner points out that the current application has nothing analogous to the card clash problem. I agree with that; the problem solved in *Lenovo* is quite different to that in the current application. There is no such technical problem here. Moreover, *Lenovo* cannot be taken to mean that the automation of any process necessarily results in a technical effect.
- 14 Having fully considered the agent's arguments, I am in agreement with the examiner's conclusion that there is no technical effect on a process carried on outside a computer. The first of the *AT&T* signposts does not point towards a technical contribution.
- 15 While the applicant's most recent arguments rely only upon the first *AT&T* signpost, I note that previous correspondence also made reference to the fourth and fifth signposts. I have considered the examiner's response to those arguments, set out in his letter of 20 January 2021. I agree entirely with the examiner's reasoning. The fourth and fifth signposts do not assist the applicant, nor does anything else in the applicant's submissions.
- 16 Having reviewed the examiner's objections and the applicant's arguments, I am not persuaded that the application relates to anything beyond a computer-implemented business method. I do not see how the contribution can be characterised as anything other than a method for doing business and/or a program for a computer.

## **Conclusion**

- 17 The application is refused under Section 18(3).

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<sup>5</sup> [1997] RPC 608

<sup>6</sup> [2020] EWHC 1706 (Pat)

## **Appeal**

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

**Huw Jones**

Deputy Director, acting for the Comptroller