

**OPINION UNDER SECTION 74A**

Patent	<b>GB 2269926</b>
Proprietor(s)	Alphameric Leisure Limited
Exclusive Licensee	
Requester	A BET A Technology Limited, on 27 September 2006
Observer(s)	Alphameric Leisure Limited
Date Opinion issued	21 December 2006

**The request**

1. The comptroller has been requested to issue an opinion as to whether GB2269926 ("the patent") is:
  - new in light of non-confidential disclosure and use of the EssNet online games handling system including the E3000 terminal and games handling machine described in a witness statement of Sune Bengt Ingvar Larsson and a brochure for the E3000 terminal annexed to the statement or
  - inventive or excluded in light of the E3000 terminal, US patent No. 4264808 (Owens) or common general knowledge.
2. The request also relies on a witness statement from Martin Collins.
3. Neither the EssNet online games handling system nor US4264808 were considered during the pre-grant examination of the application for the patent.
4. The patent has been the object of several Court actions. Indeed Mr. Larsson's statement was provided in the course of one such action and Mr. Collins refers in his witness statement to being involved in two more such actions. All of the Court actions appear to have been settled before trial and therefore it would appear that the issues in this request have not already been examined by a Court.

## **Observations and observations in reply**

5. Observations in response to the request were received from Nabarro Nathanson, Solicitor for the proprietor of the patent. Observations in reply were received from Stringer Saul, Solicitors for the requester.

## **Discussion**

### **Witness statements**

6. In their observations the proprietor submits that my opinion should not take account of witness statement evidence. The observations contrast revocation proceedings, in which witnesses may be cross-examined on their evidence, with the Opinions procedure, in which such cross-examination is not permitted. The proprietor explicitly states that the contents of Mr. Larsson's and of Mr. Collins' are not accepted in their observations.
7. In observations in reply the requester has pointed out that the form of evidence to accompany a request is not qualified by the Patents Rules 1995 or by the Manual of Patent Practice. The requester goes on to point out that Opinions 3/05 and 14/06 have already taken account of witness statements or opinion evidence.
8. I do not agree with the proprietor that I cannot consider the witness statements. It is true that such statements cannot be tested by cross-examination as part of the Opinions procedure, but this may be one reason why this opinion is non-binding. I shall therefore take both witness statements at face value when forming my opinion.

### **Excluded subject matter**

9. In the statement of grounds the requester submits that any aspect of claim 1 and/or the claim in its entirety "falls within the exclusions from patentability under s1(2) of the Patents Act 1977".
10. Section 74A of the Patents Act 1977 relates to opinions such as this one and states: "The proprietor of a patent or any other person may request the comptroller to issue an opinion (a) as to whether a particular act constitutes, or (if done) would constitute, an infringement of the patent; (b) as to whether, or what extent, the invention in questions is not patentable because the condition in section 1(1)(a) or (b) above is not satisfied." (emphasis added). These are the only matters about which Section 74A gives me the authority to issue an opinion.

11. From this it is clear that Section 74A gives me no power to give an opinion regarding section 1(2) and consequently I decline to do so.

## **The Patent**

12. The patent relates to apparatus for receiving and processing bets, especially in a betting shop. A number of problems are identified with a known betting shop system that includes a camera mechanism for recording an image of a betting slip:
  - board prices must be manually applied to betting slips with the possibility of operator error
  - photographic records of betting slips are not immediately available for checking
  - verification of winning bets is time consuming
  - multiple bets have to be handled several times, increasing the chances of errors
  - security checking of photographic records is delayed until film is processed
  - it takes time to check a winning bet against the camera records as the relevant photograph must be found on the film.
13. The requester accepts the earliest date of the patent, which is the earlier priority date of 12 March 1991.
14. As granted GB 2269926 has one independent claim, as follows:
  1. *Apparatus for receiving and processing a bet, comprising:*
    - (a) *first input means for receiving first input data relating to an event on which bets are to be taken;*
    - (b) *second input means for receiving second input data relating to an individual bet on said event, said second input means comprising an input portion for receiving a slip having characters thereon;*
    - (c) *receipt generating means for generating a receipt for said second input data;*
    - (d) *storing means for storing said first and second input data; and*
    - (e) *calculating means for calculating the payout value of a bet from said first and second input data;*

*wherein:*

*(1) said apparatus further comprises:*

*electrical imaging means for forming an image of at least part of a slip in or at said input portion and generating an electrical image signal representing said image; and*

*output means for receiving said electrical image signal and processing the signal to display the image on a display means and/or print a hard copy of said image;*

*(2) said storing means is arranged to store said electrical image signal together with the respective said second input data; and*

*(3) said receipt generating means is arranged to generate a receipt which comprises either said hard copy or at least part of said slip, together with additional identifying information.*

15. Claims 2 to 22 are directly appended to claim 1, claims 23 to 25 and 30 are omnibus claims, claims 26 to 28 are directed respectively to a combination of at least one apparatus according to the preceding claims together with a slip, a betting shop provided with at least one apparatus according to the preceding claims and a method of receiving and processing a bet using an apparatus of the preceding claims. Claim 29 is appended to method claim 28.
16. Thus claim 1 encapsulates the sole inventive concept of the patent.

## **Novelty**

17. An opinion is sought on the question of novelty in light of the EssNet online games handling system including the E3000 terminal and games handling machine described in a witness statement of Sune Bengt Ingvar Larsson and a brochure for the E3000 terminal.
18. For the E3000 brochure to call the novelty of claim 1 into question it must have been made available to the public before the earliest date of the patent. It is not apparent from the brochure itself to what use it was to be put, i.e. whether it was made available to the public or an internal confidential document, and the brochure is undated, notwithstanding the dates shown in several photographs in the brochure, which I do not consider to establish a publication date. In his witness statement Mr. Larsson states his belief that the E3000 brochure was produced in 1990 and also states that the system described is identical to the one he demonstrated to individuals and on display at a trade show in 1986-

1987. These demonstrations are said to have been made without any requirement of confidentiality. I note that Mr. Larsson's believes that the brochure was produced in 1990, rather than stating definitely that it was made available to the public in 1990. Nevertheless, on the basis of Mr. Larsson's witness statement, I am of the opinion that the subject matter of the E3000 brochure formed part of the state of the art before the earliest date of the patent.

19. Taking each of the integers in claim 1 in turn and corresponding parts of Mr. Larsson's statement and the E3000 brochure:

*1. Apparatus for receiving and processing a bet*

20. The apparatus shown in the brochure is said to be for an online games handling system and no explicit mention is made of the terms bet or bets. The brochure states that the terminal could be used for a wide variety of game types and coupon designs and shows coupons that appear to be for a lottery or a football pool. The question arises whether the skilled man would understand "a bet" in claim 1 to refer to specific types of wager, e.g. bets on racing events and not to other wagers such as a lottery or football pool. The patent does not define the term bet. Some embodiments described in the patent relate to wagers on racing events such as horse or dog races. However, the patent also describes the apparatus used in pool betting and "selection [by the customer] in a manner similar to that ...used on a football pool coupon", although the nature of the event is not discussed. It is my opinion that claim 1 encompasses apparatus suitable for receiving and processing a wager that could relate to one of a variety of event types and that the games shown in the E3000 brochure fall within the limits of that requirement. In any event it is quite clear that the EssNet system described by Mr. Larsson in his statement is for receiving and processing a bet of the kind described in the embodiments of the patent.

*(a) first input means for receiving first input data relating to an event on which bets are to be taken;*

21. Mr. Larsson's statement describes the EssNet system as holding such data centrally and providing that data to networked terminals. The E3000 brochure mentions various input and output means which would be suitable to receive information relating to an event on which bets are to be taken, although this suitability is not explicit.

*(b) second input means for receiving second input data relating to an individual bet on said event, said second input means comprising an input portion for receiving a slip having characters thereon;*

22. The E3000 brochure states that the terminal “accepts all coupon formats, ...” and “prints on the underside of the coupon. This is done when the coupon has been read and is on its way out of the terminal.” (emphasis added). It also describes an optical reader that can read crosses, fonts and barcodes. It is clear from this that means corresponding to the second input means of the patent are disclosed in the E3000 brochure. Similarly in his statement Mr. Larsson is clear that slips were inserted in the terminal and characters on those slips were read in the terminal. I should say that I do not take “characters” to mean only letters or numbers in the context of claim 1, since the on page 22 lines 25 to 27 the patent states “marked with a cross, or other character or mark”. In any case the E3000 brochure makes it clear that the terminal could read crosses or standard fonts.

*(c) receipt generating means for generating a receipt for said second input data;*

23. It is clear from the body of the brochure that the E3000 terminal has the facility to print on the underside of a coupon and there is also a reference to the terminal reader reading the receipt printing and a picture annotated “Receipt printing and handwritten addresses.”. Mr. Larsson also states that the terminal would print a receipt on the back of a betting slip. From all this I take it that the E3000 includes receipt generating means of the kind required by claim 1.

*(d) storing means for storing said first and second input data; and*

24. The E3000 brochure states that the terminal includes a slot for a memory cassette to hold coupon information, which information corresponds to the second input data of claim 1. The brochure is silent on storage of first input data, i.e. data relating to an event on which bets are to be taken. The requester suggests that centrally stored data would satisfy this storage requirement, on the basis that the integers of claim 1 need not necessarily be found within a terminal, but in a larger system and hence could include remote data storage means. I agree with this view: from the description of the embodiments it would appear that various integers of claim 1 can be located in different terminals within the system. For example the receipt generating means and imaging means are clearly to be found within the tills, whereas the storage means and calculating means are found in the settler/payout terminals. Claim 1 is directed to apparatus and it is not entirely clear if this corresponds to the overall bet handling system including a central site. In any event, the memory cassette or the RAM mentioned in the technical information section of the E3000 brochure would be suitable for storing first input data and therefore this integer of claim 1 is shown in the E3000 brochure.

*(e) calculating means for calculating the payout value of a bet from said first and second input data;*

25. The E3000 brochure does not include any reference to a calculating means. Mr. Larsson in his statement says that “the software calculated the winnings on successful bets.”. From this I take it that the EssNet system as a whole contained a calculating means. What is not clear is where in the EssNet system that calculating means was located: at a terminal or centrally. Since claim 1 encompasses apparatus whose integers are not all contained in the same piece of equipment this requirement would be satisfied by having a calculating means anywhere within a bet handling system. In any case, the E3000 certainly contained a computer, as shown in the technical information section of the E3000 brochure which includes a section entitled “Computer performance, configuration” and specifies a processor and both internal and external memory. Therefore I believe that the E3000 discloses a calculating means suitable for calculating payout value, as required by claim 1.

*wherein:*

*(1) said apparatus further comprises:*

*electrical imaging means for forming an image of at least part of a slip in or at said input portion and generating an electrical image signal representing said image; and*

26. The E3000 brochure mentions image capture for storage of handwritten information, as does Mr. Larsson’s witness statement. This would seem to satisfy the electrical imaging means requirement of claim 1.

*output means for receiving said electrical image signal and processing the signal to display the image on a display means and/or print a hard copy of said image;*

27. The E3000 brochure makes it clear that the terminal could include a display screen for “various messages and special offers, controlled from the central office”. It is not clear whether this screen would be suitable to display an image formed by the electrical image means. Mr. Larsson’s statement makes it clear that the E3000 terminal did not display the images taken within the terminal, although he expresses what I take to be the opinion that “it was open to Esselte to link the terminal with a conventional PC in order to display the image ...”. I am not convinced that there is any disclosure of output means satisfying the first option of this integer, i.e. to display the image on a display means. Of course display on a display means is only one of two options covered by this

integer of claim 1. The second option is printing a hard copy of the image. The E3000 brochure states "it can reproduce the player's handwritten name and address for verification in a facsimile-like process.". From the context the "it" in question is the printer in the terminal and I take "facsimile-like" to refer to reproducing the handwritten name and address previously captured as an image, rather than outputting the results of an optical character recognition function. As a result this integer of claim 1 is shown in the E3000 brochure.

*(2) said storing means is arranged to store said electrical image signal together with the respective said second input data; and*

28. I noted above that the E3000 brochure discloses storing means suitable for storing first and second input data and that the memory cassette is said to hold coupon information. I take it that the coupon information includes both the information on the individual bet, i.e. the second input data, and the image capture data.

*(3) said receipt generating means is arranged to generate a receipt which comprises either said hard copy or at least part of said slip, together with additional identifying information.*

29. There is no mention in the E3000 brochure of the hard copy of the image of at least part of the betting slip forming a receipt. However, as noted above, the E3000 brochure makes it clear that the E3000 terminal has the facility to print on the underside of a coupon and Mr. Larsson also states that the terminal would print a receipt on the back of a betting slip. This would seem sufficient to satisfy the requirements of this integer of claim 1: the betting slip itself together with the printing, i.e. additional identifying information, would seem to constitute a receipt of the kind required. Mr. Larsson explains that the E3000 terminal printed a receipt (of unspecified content) on the back of a betting slip as well as a barcode which incorporated details of the bet. Either the information printed on the back of the slip or the barcode would seem to satisfy the "additional identifying information" requirement.
30. From the above I conclude that the E3000 brochure and Mr. Larsson's witness statement disclose all the integers of claim 1 and therefore that claim 1 is not novel.
31. The statement of grounds also requests an opinion regarding the novelty of claims 23, 24, 26, 27, 28 and 30. Claims 23, 24 and 30 are all omnibus claims to apparatus or method "substantially as hereinbefore described with reference to figures ...". Although the limits of such claims are somewhat vague I am of the opinion that the system described in the E3000 brochure and Mr. Larsson's statement is

“substantially as ... described” and hence claims 23, 24 and 30 are not novel. Claim 26 is directed to the combination of an apparatus “according to any of the preceding claims” and a slip with characters representing the second input data, i.e. data relating to an individual bet on an event. This combination is disclosed in the E3000 brochure and Mr. Larsson’s statement and so claim 26 is not novel. Claim 27 is directed to a betting shop provided with at least one apparatus “according to any of the preceding claims” and since neither the E3000 brochure nor Mr. Larsson’s statement mentions such a betting shop this claim is novel. Since claim 28 amounts to a method of receiving and processing a bet using an apparatus “according to any of the preceding claims” it too is not novel in the light of the E3000 brochure and Mr. Larsson’s statement.

### **Inventive step**

32. In the statement of grounds the requester seeks an opinion on two separate matters relating to inventive step: firstly in relation to common general knowledge and secondly in relation to US patent No. 4264808 (Owens). The statement of grounds makes no argument about the obviousness of claim 1 in light of the E3000 terminal, such arguments are found in the observations in reply. I will deal with each obviousness argument in turn using the four step approach from *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd* [1985] RPC 59 to consider obviousness, i.e. the first step is to identify the claimed inventive concept, the second is to identify the common general knowledge known to a skilled but unimaginative addressee in the art at the priority date, the third step is to identify the differences, if any, between the matters cited as being “known or used” and the alleged invention and the final step is then to decide “whether, viewed without any knowledge of the alleged invention, those differences constitute steps which would have been obvious to the skilled man or whether they require any degree of invention”.

### **Obviousness from common general knowledge**

33. The claimed inventive concept is assessed by both the requester and the proprietor as being the apparatus of claim 1 as a whole, I agree with this view.
34. The common general knowledge known to a skilled but unimaginative addressee in the art at the priority date can be derived from a number of sources, including for example the known system acknowledged in the patent. In addition both parties acknowledge as known the information

in Betting Shop 89 and 90 catalogues and an Omron RS3510 retail system terminal brochure, all as appended to the witness statement of Mr. Collins. The common general knowledge known to the skilled man would also include the various systems mentioned in Mr. Collins' statement, that is including the Omron 580 and prototype, Betmatic and Betmatic MK II, Halo system, SIS service, Credit Master and NCR betting tills among others. All of this teaching is from the technical field of betting systems. To my mind the skilled addressee would be an individual or possibly a team with knowledge both of overall betting transaction systems and of the technical requirements of the components within such systems, e.g. the various tills, etc within a system. For this reason I do not feel that the Omron RS3510 retail terminal mentioned by Mr. Collins would be known to a skilled man, although nothing turns on this.

35. Turning to the differences between the common general knowledge and claim 1: integers (a) to (e) of claim 1 would appear to be conventional within the common general knowledge. The use of electrical imaging and associated storage, display and/or printing is shown to be known only in the Omron prototype described in Mr. Collins' statement. The use of a hard copy of an image as a receipt is not shown to be conventional, although this is not a necessary requirement in integer (3) of claim 1, but only an alternative to using at least part of a betting slip as a receipt, which was known.
36. For the requester the only difference between the matters cited as being "known or used" and the alleged invention is the use of electronic imaging in place of a microfilm camera. The proprietor by contrast feels that this trivialises the patent and goes on to state that the embodiments and methods of use of the apparatus of the invention provide differences over the prior art, with examples such as the ability to dispense with hard copies of betting slips in the settling process. It may be true of the embodiments and methods of use that they differ from the common general knowledge, but the third step of the *Windsurfing* test is to identify the differences, if any, between the matters cited as being "known or used" and the alleged invention and not any or all of the embodiments or methods of use for that invention. Therefore I am of the opinion that the use of electrical imaging and associated storage, display and/or printing are the only integers of claim 1 that were not commonly known. I note that another difference between claim 1 and common general knowledge might have been a receipt comprising a hard copy of an image of at least part of a slip together with additional identifying information. However, since claim 1 only requires this as an alternative to a receipt comprising at least part of a slip together with additional identifying information, which is known, there is no difference.

37. The final step is then to decide "whether, viewed without any knowledge of the alleged invention, those differences constitute steps which would have been obvious to the skilled man or whether they require any degree of invention", i.e. whether it would have been obvious to substitute electronic imaging in place of a microfilm camera. Mr. Collins describes such a substitution as "always being there" and indeed illustrates this with the example of an Omron prototype demonstrated at exhibitions in 1989 and/or 1990 and by stating that such imaging was discussed by Ladbrokes and Halo "around 1986/1987", but that both technical and commercial considerations prevented the substitution being made. The requester provides a further prior art example of electrical imaging in an article on page 2 of the Betting Shop 90 catalogue which refers to "an optical retrieval system". The article describes such a retrieval system being worked on by the company RSS and in that system microfilm would be made machine readable to allow individual bets to be identified on film. This seems to me to be distinct from the electrical imaging in claim 1 in which electrical images of slips are formed, which need not be anything more than facsimiles of those slips.
38. I do not feel that the optical retrieval system mentioned in the Betting Shop 90 catalogue article or the discussions between Ladbrokes and Halo demonstrate that it would have been obvious for a skilled man to substitute electrical imaging for a microfilm camera to arrive at the invention of claim 1. However, the Omron prototype described in Mr. Collins' statement does I feel demonstrate that such a substitution would have been obvious.
39. Since it is my opinion that claim 1 is obvious I shall now consider the remaining claims. The requester relies on Mr. Collins' statement to show that claims 2 to 22 and 29 are obvious. However, I do not entirely accept this: claim 5 requires a receipt to comprise a hard copy of an image of at least part of a slip together with additional identifying information and I can find no evidence from Mr. Collins' statement or elsewhere that this was known or would have been obvious. Therefore, based on Mr Collins' statement, it is my opinion that claims 1 to 4, 6 to 22 and 29 are obvious. I am also of the opinion that claims 23 to 28 and 30 are obvious since they add no inventive elements to claim 1.

#### **Obviousness from US4264808**

40. Since it is my opinion (above) that claim 1 at least of the patent is obvious from common general knowledge it should follow that considering further prior art would not change my opinion. However, my opinion from common general knowledge above took into account Mr

Collins' statement regarding in particular the Omron prototype demonstrated at one or more exhibitions. I will therefore consider obviousness from US4262808 without considering any common general knowledge from Mr. Collins' statement except any that is shown elsewhere, e.g. acknowledged in the patent or shown in the Betting Shop '89 or 1990 catalogues.

41. The first step in the *Windsurfing* test to identify the inventive concept has been dealt with above. Similarly the common general knowledge and the skilled man have already been discussed.
42. Turning to the differences between US4264808 and the alleged invention. Firstly US4264808 is concerned with electronic image processing of documents for accounting purposes, especially in a banking environment. There do not appear to be two data input means analogous to the first and second input means of claim 1 of the patent. The only input means appears to be the point of acceptance at which physical documents such as checks (sic) are received. The prior art described in US4264808 includes making a receipt to a customer, although the apparatus of the invention in US4264808 does not appear to generate a receipt and certainly not a receipt of the kind required by integer (3) of claim 1 of the patent.
43. The final *Windsurfing* step is to decide "whether, viewed without any knowledge of the alleged invention, those differences constitute steps which would have been obvious to the skilled man or whether they require any degree of invention". The notion of two data input means and provision of a receipt that might comprise at least part of a betting slip together with additional identifying information were all common general knowledge within the betting industry and acknowledged as such in the patent. Therefore were the skilled man to consider US4264808 relevant it would not require any degree of invention to take the idea of substituting electrical imaging for microfilm and apply it to known betting apparatus. While agreeing that US4264808 concerns a different technical field to the patent, the requester and proprietor differ over its relevance. The proprietor contends that its disclosure is not relevant to the betting industry. On the other hand the requester is of the mind that the skilled person would read US4264808 with interest, not least because the skilled person would have knowledge of the retail and service sectors generally, since manufacturers such as NCR and Omron were active in several such sectors. Indeed it is suggested that Mr. Collins' statement concerning his reaction to an NCR cheque processing device and subsequent efforts to use that as a basis of an automated bet processing system prove the point. I disagree with the requester as to the identity of the skilled man: as I have said previously the skilled person to my mind was an individual or possibly a team with knowledge

both of overall betting transaction systems and of the technical requirements of the components within such systems. This is narrower than the general retail or service sector and is unaffected by the fact that companies such as NCR and Omron might operate in a variety of markets which included the betting industry. I believe that Mr Collins' reaction to the NCR cheque processing device was not the reaction of a notional unimaginative skilled addressee, who to my mind would not appreciate that the teaching of US4264808 might be applied to betting systems. Therefore I do not believe claim 1 of the patent to be obvious from US4264808.

44. Since it is my opinion that claim 1 is not obvious solely in the light of US4264808 it must follow that dependent claims 2 to 22 and claims 26 to 29 which incorporate claim 1 by reference would not be obvious. Similarly I believe that omnibus claims 23 to 25 and 30 would not be obvious

#### **Obviousness from the E3000 terminal**

45. In observations in reply the requester argues that it would be obvious to display the image formed by the electrical imaging means in the EssNet system, notwithstanding their argument that displaying such an image is only an alternative to printing a hard copy of the image. I agree with the argument that it is not necessary to show displaying the image to be known or obvious since it is merely an alternative to printing a hard copy, which is known (see above regarding novelty from the E3000 terminal). I also agree that processing an electrical signal to display it on display means would be obvious, this being one of the principal uses of such images generally.

#### **Opinion**

46. I conclude that:
- claims 1, 23, 24, 26, 28 and 30 of the patent lack novelty having regard to what was common general knowledge at the earliest date and the prior art as acknowledged in the patent and as described in the E3000 brochure and Mr. Larsson's statement.
  - claims 1 to 4 and 6 to 30 are obvious in light of common general knowledge described in Mr. Collins' statement and its annexes.
  - US4264808 does not impugn the inventive step of claims 1 to 30.

### **Application for review**

47. Under section 74B and rule 77H, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.

---

### **NOTE**

*This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Patent Office.*

Karl Whitfield  
Examiner