



PATENTS ACT 1977

APPLICANT Bandai Namco Entertainment Inc.

ISSUE Whether application GB 2214412.5 complies with
Sections 1(1)(b) and 1(2) of the Patents Act 1977

HEARING OFFICER Dr Stephen Brown

DECISION

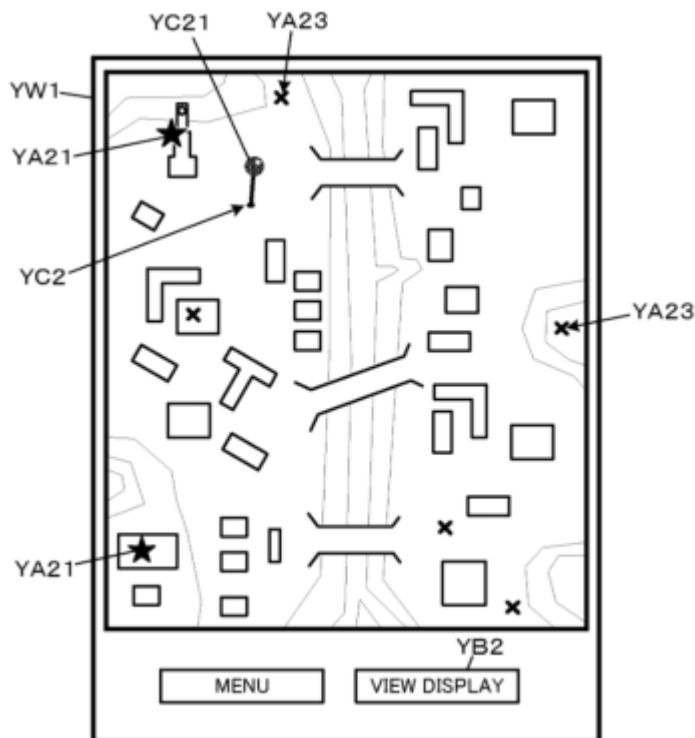
Introduction

- 1 Patent application GB 2214412.5, entitled “Server System & System”, is the national phase of a PCT application published as WO 2021/200073. It claims a priority date of 30th March 2020. It was subsequently republished as GB 2608548 on 4th January 2023. Despite several rounds of correspondence, the applicant has been unable to convince the examiner that the application is allowable under Section 1(2) of the Act. Notwithstanding that, the applicant has also been unable to convince the examiner that the application presents an inventive step. As a consequence, the applicant requested that a Hearing Officer make a decision based on the papers on file including amended claims filed at the time of the request.

The Application

- 2 The application concerns a type of online video game known as an ‘open world’ game, in which characters controlled by players can move freely in a game space and meet other characters. A problem with this type of game is that, during play, distances between the positions of players’ characters can increase, leading to decreased opportunities for encounters between characters. This can result in reduced enjoyment of the game. The invention seeks to address how this problem can be overcome.
- 3 In a particular embodiment of the invention, players use augmented reality (AR) or mixed reality (MR) devices, with an objective of the game being for players to gather at a particular place existing in real space, such as a restaurant, a retail store, a station, a school or a sight-seeing area. A player taking the role of ‘directing user’ initiates a request for other players (the ‘participating users’) to gather at a specified real world place.

- 4 Figure 27 illustrates the map screen displayed to players on their personal devices during play. The gathering place YC2 is identifiable by the display pin YC2I located thereon. The markers YA21 indicate user (player) positions and the markers YA23 indicate the positions of enemy characters.



The Claims

- 5 The amended claim set of 5th December 2024 includes one independent claim and dependent claims 2 - 13. Claim 1 reads as follows:

A server system configured to establish communication connections with terminals of a plurality of users, the server system comprising:

a start control section that controls a start of a gathering event that gathers a directing user and a participating user at a given gathering place existing in a real space, upon acceptance of a gathering request operation from the terminal of the directing user;

a display control section that controls a display of a map image displaying the gathering place in an identifiable display mode on the terminals of the directing user and the participating user;

a success/failure determination section that determines a success/failure of the gathering event; and

a giving section that gives a given reward to the directing user and/or the participating user when the gathering event is determined to be a success in the event success/failure determination, wherein

the terminals of the plurality of users each have a positioning function,

the server system further comprises a position acquisition section that acquires a user position that is a position of each of the terminals,

the display control section controls the display of the map image related to the real space,

the success/failure determination section determines a success/failure of the event using a gathering condition set based on the user position of the participating user and the directing user, wherein

the gathering condition includes a fulfillment condition of the gathering event relating to whether the user position of the participating user and the directing user arrives at the gathering place, and

the success/failure determination section determines whether the participating user and the directing user satisfies the fulfillment condition, and

the start control section sets the fulfillment condition for each user based on a positional relationship between the participating user and the directing user.

Format of the Decision

- 6 There are ostensibly two issues on which I need to come to a view. However, it appears to me that the most fundamental question I have to answer is whether the invention is a scheme, rule or method for playing a game, or a computer program, as such (or both). If it is, then the question as to whether or not it demonstrates an inventive step is moot. As such, I believe the most efficient way to take matters forward is to consider the excluded subject matter objection first and then, and only then, the inventive step argument should I find that the application is not excluded under Section 1(2).

The Law - Section 1(2)

- 7 Section 1(2) of the Act concerning inventions excluded from patentability reads as follows:

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 -

...

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

...

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.

8 In order to decide whether an invention relates to subject matter excluded by Section 1(2), the Court of Appeal has said that the issue must be decided by answering the question of whether the invention reveals a technical contribution to the state of the art. The Court of Appeal in *Aerotel/Macrossan*¹ set out the following four-step approach to help decide this issue:

- 1) Properly construe the claim;
- 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.

9 The operation of the approach is explained at paragraphs 40-48 of the judgment. Paragraph 43 confirms that identification of the contribution is essentially a matter of determining what it is the inventor has really added to human knowledge, and involves looking at substance, not form. Paragraph 47 adds that a contribution which consists solely of excluded matter will not count as a technical contribution.

10 The case law on computer implemented inventions has been further elaborated in *AT&T/CVON*² which provided five helpful signposts to apply when considering whether a computer program makes a relevant technical contribution. In *HTC v Apple*³, Lewison LJ reconsidered the fourth of these signposts and felt that it had been expressed too restrictively. The revised signposts are:

- i) whether the claimed technical effect has a technical effect on a process which is carried on outside the computer;*
- ii) whether the claimed technical effect operates at the level of the architecture of the computer; that is to say whether the effect is produced irrespective of the data being processed or the applications being run;*
- iii) whether the claimed technical effect results in the computer being made to operate in a new way;*
- iv) whether the program makes the computer a better computer in the sense of running more efficiently and effectively as a computer; and*
- v) whether the perceived problem is overcome by the claimed invention as opposed to merely being circumvented.*

¹ *Aerotel Ltd v Telco Holdings Ltd (and others) and Macrossan's Application* [2006] EWCA Civ 1371

² *AT&T Knowledge Venture LP and CVON Innovations Limited v Comptroller General of Patents* [2009] EWHC 343 (Pat)

³ *HTC v Apple* [2013] EWCA Civ 451

Application of the Aerotel Test

- 11 The first step of the Aerotel test requires me to properly construe the claims. The attorney states in their letter of 5th December 2024 that:

“Independent claim 1 relates to a system for initiating and assessing gathering events for a plurality of users (i.e., real people) existing in a real space. The system initiates a gathering event that is sent to user terminals alongside a map directing to the gathering location. The system then determines the success or failure of the gathering event based on gathering conditions and rewards the users if the gathering event is deemed a success, wherein the determination of success is based on the positions of the users.”

- 12 The examiner agrees in their letter of 4th March 2025 that this is a fair interpretation of the features of independent claim 1.

- 13 I too am broadly in agreement with the attorney’s construal of claim 1, although I note that the gathering conditions specifically require that a directing user and a participating user arrive at the gathering location.

- 14 The next step of the Aerotel test is to identify the contribution. In their letter of 5th December 2024, the attorney proposes that the contribution can be identified as follows:

“The contribution of the claimed invention is a system that determines the location of multiple users (i.e., real people) in the real world, initiates a gathering event to motivate the movement of users, and determines the success/failure of the gathering event based on the positions of the users.”

- 15 The examiner states in their letter of 4th March 2025 that:

“It is considered that the actual contribution of your application appears to be a system for initiating and running a gathering event in a real space and providing rewards to users based on the success or failure of the event to meet a fulfilment condition which is based on user positional data.”

- 16 Again, there seems to be agreement, namely that the contribution includes the system initiating and running the gathering event in the real world and retrieving information on the positions of users in the real world to determine the success or failure of the gathering event.

- 17 I do not agree with the examiner’s assertion that the provision of rewards forms part of the contribution. In my view, providing rewards, for example in the form of points, to players who successfully achieve an objective of a game is well known in online games.

- 18 I therefore consider the actual contribution of claim 1 to be:

a system arranged to run a gathering event for a number of players in real space (the real world), wherein the system determines whether the gathering event has taken place successfully by checking whether enough players have reached the gathering location.

- 19 It is clear to me that this contribution is achieved using computer programs running on a server system and a plurality of user terminals (most likely smart phones). Having read the application carefully, I can see nothing beyond the usual in any of this hardware and so I do not consider that it forms any part of the contribution.
- 20 I also note that the players are provided with maps displayed on their personal terminals to enable them to locate the real world gathering location. However, systems for navigating oneself to a particular place using a map displayed on an electronic device are well known in the art. Thus, I also do not consider that this forms part of the contribution.
- 21 The locations of the players in the real world are determined by the system receiving user location information from the terminals. Systems that use means such as GPS transmitters/receivers for locating user terminals during game play are known, for example from document US 2019/0070510 A1. (Document US 2019/0070510 A1 is a family member of document JP 2019042352 A, which was cited against the present application in the international phase). I therefore do not consider that locating players by the position of their terminals in the real world forms part of the contribution either.
- 22 The next step is to decide if the contribution lies entirely within matter excluded under Section 1(2). As previously stated, I consider the potentially relevant exclusions to be a scheme, rule or method for playing a game, and a program for a computer. I will consider these in turn.
- 23 The attorney argues in their letter of 5th December 2024 that a contribution relating to the location of multiple users (real people) in the real world does not fall solely within subject matter excluded under Section 1(2), due to occurring outside of the computer. Meeting in the real world is, however, the objective of the game in which the users are participating and so, to my mind, this part of the contribution amounts to a method of playing a game. Likewise, determining the success/failure of the gathering event based on the positions of the users is also part of the game play and nothing more. There is no technical effect of the gathering being successful, or not.
- 24 I will now turn to the computer program exclusion. As mentioned above, the contribution is achieved using computer programs running on standard hardware. The effect of these programs is to facilitate the gathering event by providing the maps on the users' terminals and monitoring the locations of the users to determine success or failure. I can see nothing in this contribution beyond computer programs as such except for their effects on the gathering game.
- 25 While I am confident in this conclusion, I will briefly consider the AT&T signposts for completeness. Regarding the first signpost, I can see no effect outside the computer, technical or otherwise, beyond the playing of a game. The programs do not run at the level of computer architecture. Nor do they result in any computer operating in a new way or running more efficiently and effectively as a computer. Finally, the problem overcome is one of game play and that is overcome using known hardware and software.
- 26 I will now consider the fourth Aerotel step. In relation to this, the attorney argued that:

“The contribution requires the identification and monitoring of the physical positions of users (i.e., real people) in real space in response to a gathering event, wherein success/failure of the gathering event is based, at least in part, on a positional relationship between the participating user and the directing user, and whether the user position of the participating user and the directing user arrives at the gathering place. This contribution involves a technical process lying outside the computing device and is carried out by technical means. It concerns the classification of real-world terminal sensor data as a determined movement/position of the corresponding user.”

- 27 Whilst I consider the use of real world sensor data to determine the position of a user to be a technical process, this cannot be part of the contribution as it is very well known indeed. It forms the means by which the actual contribution is achieved, rather than being part of the contribution itself. In my view, the actual contribution of the gathering of users at the specified gathering location in real space is not technical in nature.
- 28 Overall, the contribution fails the Aerotel test, and I thus conclude that it is no more than a combination of programs for computers and a method for playing a game.

Inventive Step

- 29 Having decided that the claims are excluded under Section 1(2), I see no need to consider the issue of inventive step.

Decision

- 30 I have decided that the invention defined in the independent claim falls solely within matter excluded under Section 1(2) as a combination of a program for a computer and a method for playing a game, as such. Having reviewed the application, I do not consider that any saving amendments are possible. I therefore refuse the application under Section 18(3).

Appeal

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

Dr Stephen Brown

Patent Examination Group Head