



PATENTS ACT 1977

APPLICANT	Celligence International LLC
ISSUE	Whether GB2117919.7 is excluded under Section 1(2)(c) of the Patents Act 1977
HEARING OFFICER	Peter Mason

DECISION

Introduction

1. This decision concerns application GB 2117919.7, published as GB 2599534 A dated 6th April 2022. The application is entitled “Systems and methods for generating criteria-based events within a geographical area” and the decision concerns whether the invention, as defined in the claims, is excluded from patentability under Section 1(2)(c) of the Patents Act 1977.

2. The application is the GB national phase of international application PCT/US2020/034373 which has an earliest priority date 22nd May 2019. There have been several rounds of correspondence, but the applicant has thus far been unable to persuade the examiner of the patentability of the claims. In their letter dated 27th February 2023 the examiner invited the applicant to request a hearing, in the absence of any such request the examiner subsequently forwarded the application for a hearing to be conducted with respect to the documents on file. The applicant submitted amended claims and skeleton arguments, which I am grateful for, 27th June 2023. I will therefore make a decision based on the papers available on file, taking into account the applicant’s latest submissions.

Preliminary matters

3. The only substantive matter before me is whether the invention is excluded from patentability under section 1(2)(c) of the Patents act 1977. I note that the search is incomplete and several aspects of the examination, including full consideration of patentability, support and added matter have been deferred. Therefore, if the claimed invention is allowable I will return the application to the examiner for further examination.

4. The Section 20 date expires 22nd November 2023.

The invention

5. The application is generally related to organizing events, and more particularly to a system and method for restricting access to an organized to suitable participants within a geographical area.

6. The system comprises an event application configured to generate an event based on a first user request wherein the event has a set of user-specific parameters including event location, event time, type of event and event participation requirement. The event application receives an event enrolment request from a second user, wherein the event enrolment request includes data specific to that second user that will, upon comparison with the user-specific parameters, render that person eligible to enrol on the event.

7. The claims have been amended since filing and are now as presented, as filed on 7th August 2023. There are two independent claims relating to a system and method as set out in claims 1 and 8, respectively. The claims are as follows;

1. A system for generating event requests, the system comprising: one or more processors configured by machine-readable instructions to: receive, via an event application, event information corresponding to an event, the event information specifying a set of user-specific parameters comprising an event location, an event time, and event type, and a participation requirement; generate, via the event application, an event based on the set of user specific parameters; generate, via the event application, a notification to a first user, the notification comprising the event information; receive, via the event application, an enrollment request from the first user, the enrollment request requesting participation in the event, the enrollment request comprising demographic information of the first user, user location information specifying a location of the first user, an event time specifying preferred event time by the first user, an event type specifying preferred event type by the first user, and skill level of the first user, the skill level of the first user specifying a level of skill required to participate in the event; determine, via the event application, event eligibility of the first user by comparing the event location specified by the event information to the location of the first user, the event time specified by the event information to the event time of the first user, the event type specified by the event information to the event type of the first user, and participation requirement specified by the event information to the skill level of the first user; and upon determining the first user is eligible to enroll in the event, enroll, via the event application, the first user in the event;

wherein the event information is received from a second user that is different from the first user. *[sic]*

8. A method for generating event requests, the method comprising: receiving, via an event application, event information corresponding to an event, the event information specifying a set of user-specific parameters comprising an event location, an event time, and event type, and a participation requirement specifying a level of skill a participant is required to have to enroll in the event; generating, via the event application, an event based on the set of user specific parameters; generating, via the event application, a notification to a first user, the notification comprising the event information; receiving, via the event application, an enrollment request from the first user, the enrollment request requesting participation in the event, the enrollment request comprising demographic information of the first user, user location information specifying a location of the first user, an event time specifying preferred event time by the first user, an event type specifying preferred event type by the first user, and skill level of the first user, the skill level of the first user specifying a level of skill required to participate in the event; determine event eligibility of the first user by comparing the event location specified by the event information to the location of the first user, the event time specified by the event information to the event time of the first user, the event type specified by the event information to the event type of the first user, and participation requirement specified by the event information to the skill level of the first user; and upon determining event eligibility of the first user, enrolling the first user in the event; *[sic]*

8. It is noted that claim 8 ends abruptly; I understand that the semicolon ending claim 8 ought to be replaced with a period.

The law

9. The examiner raised an objection under Section 1(2) of the Act that the invention is not patentable because it relates to one or more categories of excluded matter. The relevant provisions of this section of the Act are shown with added emphasis below:

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.

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*, 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. *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.*

10. The Court of Appeal in *Symbian* made it clear the four-step test in *Aerotel* 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* 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* that the question of whether the invention makes a technical contribution can take place at step 3 or step 4.

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

1. *whether the claimed technical effect has a technical effect on a process which is carried on outside the computer;*

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

³ *AT&T Knowledge Venture/CVON Innovations v Comptroller General of Patents* [2009] EWHC 343 (Pat), paragraph 8.

2. *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;*
3. *whether the claimed technical effect results in the computer being made to operate in a new way;*
4. *whether the program make the computer a better computer in the sense of running more efficiently and effectively as a computer; and*
5. *whether the perceived problem is overcome by the claimed invention as opposed to merely being circumvented.*

12. The relevance of the legislation and legal precedent has gone uncontested throughout the proceedings.

Arguments and analysis – Applying the Aerotel test

13. The examiner finds objection in claim 1 and has observed, throughout their correspondences, that a similar reasoning applies to later claims *mutatis mutandis*. There is no contention from the applicant and throughout their correspondences both the applicant and the examiner have considered the two independent claims together.

14. Claim 1 is restricted to a system comprising a processor configured by machine-readable instructions whilst claim 8 is directed towards a computer implemented method. Claim 8 does not explicitly require a processor configured by machine-readable instructions however this is fundamental to any computer implemented method therefore it is clear to me that the claims cover a similar scope for a system and method, respectively. Therefore I will restrict my consideration to independent claim 1, wherein claim 1 and 8 will stand or fall together.

Step 1 - Properly construe the claim

15. The applicant is generally in agreement with how the examiner has construed the claim, which I have set out below;

4. *Claim 1 defines a system for managing events via an event application, comprising; receiving event information, from an organiser, which specifies attendee parameters for the event; generating an event on the application; generating a notification to a potential attendee; receiving an enrolment request from the potential attendee; enrolling the potential attendee on the event if they are determined to be eligible.*

5. *Furthermore, the event information parameters comprise an event location, time, type and participation requirement. The enrolment request comprises information about the potential attendee, including location information, preferred event time and type, and an attained skill level. Determining whether the potential attendee is eligible for the event involves comparing the event information to the potential attendee information to check that the event and potential attendee are suitably matched.*

16. The claims were amended 13th February 2022 to include, amongst other things, the passage; “... *the skill level of the first user specifying a level of skill required to participate in the event; determine event eligibility of the first user by comparing... participation requirement specified by the event information to the skill level of the first user*”. The examiner has identified issue with this particular passage although has deferred further consideration, particularly in respect of 14(5)(c) and 76(2) of the Act. It is, however, necessary for me to consider what is meant by the passage when construing the claim. It seems that, on the one hand the first user (the participant) specifies the skill level to participate in an event, and on the other hand the second user (the organiser), who generates the event information, specifies the skill level of the user. Therefore there is internal conflict within the claims which causes ambiguity.

17. I am unable to identify anything in the specification that supports the first user being able to specify a skill level to participate in an event, wherein that skill level is used to determine that first user's eligibility to participate in the event when compared against a set of user-specific parameters specified by second, different user.

18. It is my understanding that event eligibility of a first user is determined by comparing the information provided by the first user in the enrolment request, including their skill level, with the user-specific parameters included in the event information generated by the second user. Furthermore, it is those user-specific parameters that are used to specify the parameters of the event, including user skill level, rather than the first user specifying the user skill level. This is consistent with the teachings of the whole specification and does not alter the way in which the examiner has construed the claim. .

Step 2 – Identify the actual contribution

19. Paragraph 43 of Aerotel suggests that the contribution can be assessed from the point of view of the problem to be solved, how the invention works and what the advantages are, stating “What has the inventor really added to human knowledge perhaps sums up the exercise”. Knowledge of the prior art plays a role in assessing the contribution, and as Lewison J noted , the examiner should have some notion of the state of the art. This does not necessarily mean however that the contribution is defined by what is new and inventive in the claim.

20. The examiner sets out in the pre-hearing hearing report what they contend the contribution be;

A computer-implemented method of receiving event information from an organiser; posting that event so its details are accessible and notifying a potential attendee; receiving enrolment requests from the potential attendee including information about their location, preferences and skill level; checking the eligibility of the potential attendee by comparing their information with the event information; enrolling the potential attendees if they are eligible.

21. The applicant argues that the examiners statement of contribution omits any determination of the event information based on a potential attendee's information, and specifically their skill level, wherein eligibility of further users is reviewed based on that determined event information. The applicant further asserts that the computational power to assess subsequent users is reduced, and user safety is improved by specifying a level of skill.

22. The problem that the application attempts to solve is set out at paragraph [0003] of the specification which reads;

"...an ongoing need for improved systems and methods to allow users to organize events by not only specifying event planning details such as time, location, and activity type, but also specifying entry requirements by specifying participant skill level and determining participant eligibility based on information provided by participants."

23. If the user-specific parameters specified by the organiser could be updated by the participant, whether that be a first participant or subsequent participant, then the problem outlined above could not be solved as the skill level would be entirely variable. As discussed in paragraph 18 above, it is clear to me that the event information, which specifies the set of user-specific parameters, is used as a benchmark to which the information provided by the first user during the enrolment request is compared. Therefore it is the event information that governs eligibility rather than any information provided by the first user. Consequently I can find no basis for the applicant's argument with respect to any additional contribution.

24. I therefore support the examiners assessment of the contribution as recited above.

Steps 3 and 4 Ask whether it falls solely within the excluded matter and check whether the actual or alleged contribution is actually technical.

25. The third and fourth steps of the Aerotel test involve considering whether the contribution falls solely within excluded categories, and then checking whether the contribution is technical in nature. It is appropriate to consider these two steps together because whether the contribution is technical in nature will have a direct impact on whether it falls solely within excluded matter.

26. Although the contribution is implemented using a computer program, that does not mean that it should immediately be excluded as a computer program as such. In *Symbian*⁴, the Court of Appeal stated that a computer program may not be excluded if it makes a technical contribution. In order to determine if the contribution is technical in nature I will consider the AT&T signposts as set out in paragraph 11 above.

27. The applicant's arguments are restricted to the first and fourth signpost only. It is clear to me that the remaining signposts are not relevant here therefore, similarly, I will restrict my consideration to the first and fourth signpost also.

⁴ *Symbian Ltd v Comptroller-General of Patents [2009] RPC 1*

The first signpost - whether the claimed technical effect has a technical effect on a process which is carried on outside the computer;

28. The applicant argues that that an interaction with an end user is sufficient to meet the first signpost, in doing so the applicant relies on HTC v Apple⁵ where Lewison LJ stated;

'The claimed invention has a technical effect on a process carried out outside the computer. At one end, it makes the writing of software easier. I do not agree with the judge that this is simply a redistribution of labour. It is a reduction of labour, because once the device is programmed with the claimed invention software writers can use it over and over again. ... At the other end, it interacts with the end user who touches the screen. This too is a process happening outside the computer.'

29. The applicant alleges that the invention provides a technical effect wherein suitable participants only are added to an enrolment list. The applicant additionally claims that the invention improves the safety of an event which occurs outside of the computer

30. In HTC v Apple the invention is characterised by transitioning the device from a locked state to an unlocked state when a predefined gesture is detected thereby governing access to the electronic device. The present invention is directed to a system that enrolls, or denies enrolment, to an event; there is no restriction as such to any device in response to a user input. I am content that present invention is somewhat different to that discussed with respect to HTC v Apple.

31. The effect that the invention provides is one of updating a register either by enrolling suitable participants, or by denying enrolment to unsuitable participants. The effect is therefore exclusively limited to compiling or updating a registry. This is a purely administrative task bearing no technicality. The invention fails the first signpost.

whether the program make the computer a better computer in the sense of running more efficiently and effectively as a computer; and

32. The applicant argues that a computer, operating the system of the invention, will operate in a more efficient manner due to the specific information requested which can be used to actively filter prospective participants.

33. For the fourth signpost to be met there must be more than a change to the data which is being processed; there must be a change to the way the data is processed that makes the computer operate more efficiently. Furthermore, it must be the computer that operates more efficiently rather than the individual programme. It is well established that a most efficient computer programme which merely makes better use of any associated hardware does not meet the fourth signpost.

Conclusion

⁵ HTC v Apple [2013] EWCA Civ 451

34. The invention claimed in GB 2117919.7 falls solely within matter excluded under Section 1(2) as a program for a computer as such. I therefore refuse the application under Section 18(3).

Appeal

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

Peter Mason

Deputy Director, acting for the Comptroller