Intellectual Property Office

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16 December 2022

**PATENTS ACT 1977**

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| APPLICANT | Michael Oluwaseun Bamidele |
| ISSUE | Whether patent application GB 1615704.2 complies with section 1(2) of the Patents Act 1977 |
| HEARING OFFICER | J Pullen |

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**DECISION**

**Introduction**

1 Patent application GB 1615704.2, entitled "User Customised Apps based on a plurality of Existing Apps", was filed 15 September 2016. It was published as GB 2553814 A on 21 March 2018 and the compliance date for the application is 15 February 2023.

2 On 3 March 2017 a letter was issued to Mr Bamidele informing him that the matter of the application as a whole was not directed to technical subject matter and the application was not patentable. After a telephone call on 14 March 2017, a search report under Section 17(5)(b) was issued on 21 March 2017 informing Mr Bamidele that a search had not been performed because the invention was excluded from patentability under Section 1(2) of the Patents Act 1977 since the invention related to a computer program. Subsequently, on 21 March 2018, substantive examination was requested.

3 On 15 February 2022, an examination report was issued which had a single objection to excluded matter under section 1(2). In the following correspondence and reports, this remains the only objection raised. Once it was apparent that an impasse had been reached, with no amendments filed in response to the examination reports, Mr Bamidele was offered the opportunity to be heard or have a decision on the papers. He opted for the latter and this is the matter before me.

4 The examiner has deferred completing the search and full examination. If I find the claims to be allowable it will be necessary to remit the application to the examiner for further processing.

5 I confirm that in reaching my decision I have considered all documents on file, particularly the submissions filed in the letters of 18 February 2022, 11 May 2022 and 1 October 2022.

**The invention**

6 The “Background” section of the description recites:

*“The invention particularly relates to gaming apps or gaming applications currently available for download on the aforementioned app platforms. The invention enables users to create unique apps which are user defined or user customised gaming apps or gaming applications by adopting the method defined in this disclosure. The method employs the use of a plurality of existing apps to enable the user customisation described in this disclosure.”*

7 The specification is relatively brief. Although the above paragraph mentions gaming apps or gaming applications, these are the only references to gaming in the specification. The invention is best considered in conjunction with Fig 2 of the drawings.

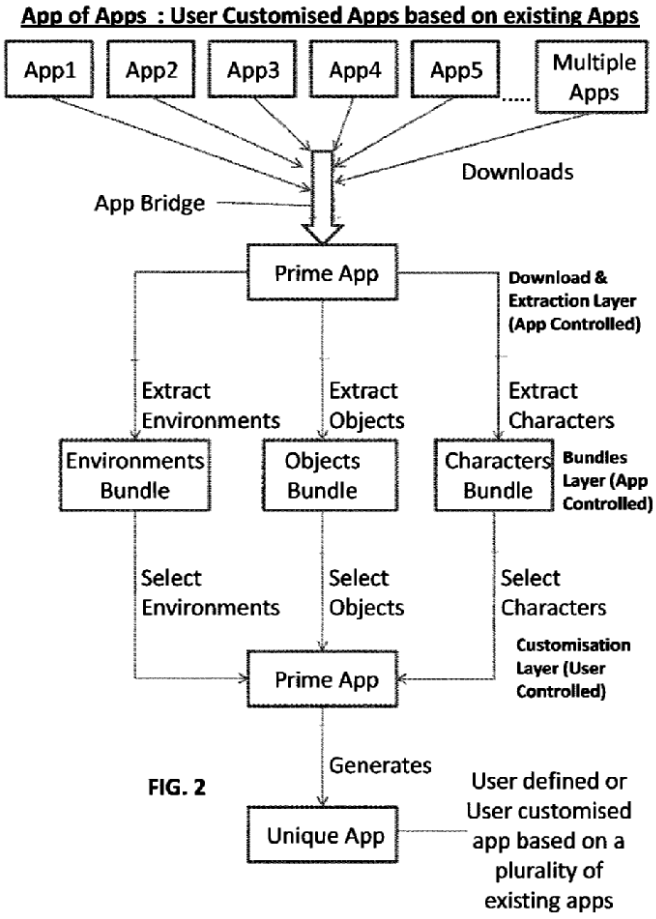


FIG. 2

8 The invention is a computer-implemented method which allows a user to download a number of existing computer applications or apps, automatically breaks each of those apps down into various parts and then extracts environments, objects and characters. The invention then forms an environments bundle, an objects bundle and a characters bundle from the extracted parts. The user can then use a user interface to select environments, objects and characters and the invention then forms a customised app based upon the selections.

9 The invention uses an “app bridge” and a “prime app” and produces a “unique app”. The app bridge controls the downloading of existing apps into the prime app.

Although not claimed and not fully explained, the app bridge seems to be user controlled, with the user selecting the required existing apps and the app bridge downloading them and providing the existing apps to the prime app. The prime app itself is said to comprise three layers: a download and extraction layer, a bundles layer and a customisation layer. The prime app controls the majority of the functions of the invention and provides the customisation layer via a user interface. The functions of receiving downloads of existing apps and extracting the various environments, objects and characters is undertaken by the download and extraction layer. The bundles layer uses the outputs of the download and extraction layer and forms the bundles of environments, objects and characters. The customisation layer includes a user interface and uses the bundles of the bundles layer. The customisation layer allows the user to select the environments, object and characters they require. The prime app then generates a customised app based upon the user selections.

10 There are a large number of independent claims which are somewhat unclear in scope. Claim 1 is recited here:

> A method for generating user defined or user customised apps based on a plurality of existing apps, the method comprising an app bridge (for enabling multiple downloads of existing apps) and a prime app for facilitating the download and extraction layer (extracts of environments, objects and characters), bundles layer (bundles of environments, objects and characters) and customisation layer; the first two layers being controlled by the prime app and the last layer being user controlled with the assistance of the prime app to generate a unique app which is customised to user specifications consisting of user selected environments, user selected objects and user selected characters.

11 There are claims to the app bridge, the prime app, the unique app, the download and extraction layer, the bundles layer and the customisation layer all “based on the method of claim 1”. The clarity of these claims is questionable and will require attention if I find in Mr Bamidele’s favour.

12 For the sake of brevity, I will only assess claim 1 in detail as the scope of this claim is clearest.

**The law**

13 The examiner has objected that the invention is excluded from being patented as a program for a computer, as such. The relevant section of the Act is s.1(2), the most relevant provisions of which are shown below with my emphasis added:

> *1(2) 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 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.***

14 The Court of Appeal has said that the issue of whether an invention relates to subject matter excluded by Section 1(2) 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 the issue:

> *(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.*

15 The operation of the approach is explained at paragraphs 40-48 of the judgment. Paragraph 43 confirms that identification of the contribution is an exercise in judgment involving the problem said to be solved, how the invention works and what its advantages are; essentially, what it is the inventor has really added to human knowledge, looking at substance, not form. Paragraph 47 adds that a contribution which consists solely of excluded matter will not count as a technical contribution.

16 In *Symbian*[2] the Court of Appeal reaffirmed the *Aerotel* approach while considering a question of "technical contribution" as it related to computer programs emphasising the need to look at the practical reality of what the program achieved, and to ask whether there was something more than just a "better program".

17 The case law on computer implemented inventions was further elaborated in *AT&T/CVON*[3] (*AT&T*) which provided five helpful signposts to apply when considering whether a computer program makes a relevant technical contribution. In *HTC v Apple*[4], Lewison LJ reconsidered the fourth of these signposts and felt that it expressed too restrictively. The 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;*
> *v. whether the perceived problem is overcome by the claimed invention as opposed to merely being circumvented.*

18 I must bear in mind that the signposts are helpful guidelines for a technical contribution and should not be applied in a prescriptive manner. I also note that the paragraph after signposts in the *AT&T* judgment cautions me to consider if the claimed technical effect lies solely in excluded matter if I decide that there is a

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[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 Ventures/Cvon Ltd* [2009] EWHC 343 (Pat)
[4] *HTC Europe Co Ltd v Apple Inc* [2013] EWCA Civ 451

technical effect based upon the signposts. I must, however, decide whether the claimed invention makes a technical contribution when considered on its own merits.

**Assessment**

***(1) Properly construe the claim***

19 The invention defined in claim 1 is a computer program that consists of the app bridge and the prime app and these produce the unique app. The claim is not particularly clear in scope as it lacks detail concerning the interplay between the layers.

20 The app bridge controls the downloading of pre-existing apps into the prime app. The prime app comprises three layers: a download and extraction layer, a bundles layer and a customisation layer. The extracting of various environments, objects and characters is undertaken by the download and extraction layer. The bundles layer provides bundles of environments, objects and characters. The customisation layer includes a user interface. The customisation layer allows the user to select the environments, object and characters they require. The prime app then generates a unique app based upon the user selections. It should be noted that the unique app need not actually be unique as two different users could create the same "unique app" given the same existing apps and the same selections. "Unique" effectively means "customised".

21 In submissions, Mr Bamidele has stated that the app bridge is a hardware element. I have considered this but can find no evidence that the application as filed supports this submission. It is unambiguously stated within the "App Bridge" section of the description that the "app bridge is executable" on various computer-controlled devices. It is not a hardware element of itself, though it is executed on hardware.

22 In light of the above I construe the invention defined in claim 1 as:

A computer-implemented method for generating customised apps based on a plurality of existing apps, the method using an app bridge, for enabling multiple downloads of existing apps, and a prime app to provide a download and extraction layer which extracts of environments, objects and characters from existing apps, a bundles layer, which bundles extracted environments, objects and characters, and a customisation layer which provide a user interface to allow the user to select environments, object and characters from the bundles; the first two layers being automatically controlled by the prime app, the prime app generating a customised app consisting of user selected environments, user selected objects and user selected characters.

***(2) Identify the actual contribution***

23 Mr Bamidele has submitted that the contribution made by the present invention relates to novel processes, novel hardware and novel software. However, it is trite law that the requirements of section 1(1)(a) and section 1(1)(c) of the Act are separate and distinct – an invention is not automatically rendered patentable because it is new. The submissions based upon novelty are therefore not relevant.

24 In his submissions, Mr Bamidele maintains that the app bridge, in one embodiment, can be construed as novel hardware and embedded software. It is submitted that it

can be connected to a computing device wirelessly or via a wired connection. As noted above, the application as filed provides no such embodiment that I can identify; only purely software-based embodiments are found. Therefore, this submission is not persuasive.

25 Another of Mr Bamidele's submissions is that the invention allows non-skilled users to create unique apps from existing apps without any coding or software development expertise. This does appear to be a benefit of the claimed invention – the customisation layer of the prime app would seem to allow this.

26 There is no doubt that the invention works by means of software – the app bridge and the prime app are both computer-implemented. I note that the application is brief on technical detail regarding how either of these applications function, both individually or together. No clear problem appears to be addressed by the invention other than providing software that allows a user to create their own customised apps.

27 Taking the above into account I consider the contribution of the claimed invention, as construed, to be:

> A computer-implemented method for generating customised apps based on a plurality of existing apps, the method using an app bridge and a prime app, having the claimed functionality, which enables unskilled users to create customised apps.

***(3) Ask whether it falls solely within the excluded subject matter, and (4) Check whether the actual or alleged contribution is actually technical in nature***

28 The examiner was of the opinion that the invention did not provide a technical contribution with reference to the *HTC v Apple*/*AT&T* signposts, listed above. Mr Bamidele has not provided any submissions regarding the signposts. Given that they are a useful guide to deciding if an invention provides a technical contribution, I will consider them here.

29 Signpost i) does not apply. The invention works only within a single computer. Though it interacts with an external computer to download the existing apps, the result of the invention remains within the executing computing device and has no technical effect on a process external to the computer.

30 Signpost ii) also does not apply. The invention only relates to the functioning of apps and not the underlying computer itself. The apps of the invention download and extract environments, objects and characters from pre-existing apps, bundle environments, objects and characters together and allow a user to create their own customised app from those bundles. The invention only concerns the data being processed in terms of the apps downloaded and created.

31 In terms of signposts iii) and iv), the computer does not operate in a new way and there is no increase in speed or reliability of the computer. Although the applications of the app bridge and prime app might be new, this is not enough to satisfy this signpost. What is required is the computer working in a fundamentally new fashion as a computer, rather than only executing a new program in a conventional manner. There is no suggestion in the application as filed that the computer would have any increased speed or reliability from the invention.

32 Given that the invention does not propose to resolve a particular problem as such, it would appear that signpost v) does not apply. The benefit of the invention, allowing unskilled users to create customised apps, circumvents the lack of knowledge of these unskilled users by providing apps they can use to create a customised app. This is not considered to be a technical benefit.

33 None of the signposts are satisfied. This points to the invention of claim 1 lacking a technical contribution. Considering the invention of claim 1 as a whole, I believe this is correct: the invention relates only to computer programs which download and manipulate existing apps to form a customised app based upon user input. There is no relevant technical effect provided by the claimed programs, regardless of how clever or convenient they may be. Any contribution relates solely to a program for a computer, as such, and so the invention is excluded from patentability.

34 I have also considered the other claims. These all relate to aspects of the invention of claim 1, or the result of the invention of claim 1. However, no new or different functionality is introduced by any of these claims. Therefore, these claims are all also excluded from patentability as a program for a computer, as such, for the same reasons as provided for claim 1.

**Conclusion**

35 The application does not comply with section 1(2) as it relates to a program for a computer, as such. I therefore refuse the application under section 18(3).

**Appeal**

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

**J Pullen**

Deputy Director, acting for the Comptroller