

- 6 At the time of the hearing, the compliance period expired on 13 May 2017. A request to further extend the compliance date for this application has been received and allowed following the hearing. The compliance date is now 13 July 2017.

The Application

- 7 A note about terminology: The application appears to use the terms “data” and “information” interchangeably, or at least such that data can comprise information and vice versa. See for example pages 16 lines 8-19 which describes “location data” as including “location information” which can be received from a consumer device, and claim 13 which defines location data as latitude, longitude and error margin from a wireless device (claim 12). Page 47 describes obtaining location *data* and then producing location *information*. Location data is described as indicative of a current location (a location at a point in time); “movement information” may be determined by processing successive location data and may for example indicate speed and direction. In this decision I have used the term “data” as it is used in claim 1, to refer to data regarding the location of a consumer at a point in time, returned in response to a request for location data from (or at least indicating the location of) a mobile device. I have used the term “information” to refer to the determination of contextual information about the consumer based on their current location (from data) in comparison with a history of locations of the consumer and/or proximity of the consumer to a known setting. *Information* is obtained by processing *data*. The invention determines how frequently to request location data, given a requirement for location information.
- 8 The application is wide ranging and contains much description about consumer (for which read ‘person’) characteristics and predictions about consumer behaviour. However, as far as the invention as claimed is concerned, the application describes a method for periodically obtaining location data regarding a consumer (person) and processing location information prior to obtaining more location data. In particular, location data for a consumer is periodically obtained after a certain time interval and the interval is continually adjusted based on the proximity of the consumer to a location and a recorded history of locations for the consumer. In effect, this results in the interval between obtaining location data being decreased or increased based on where the consumer is in relation to a known location and the historical record, and therefore either more or less accurate location information is determined within a given period of time, compared with a fixed rate of location determination requests.

The claims

- 9 The most recent set of claims, filed on 7 March 2016, includes a single independent claim as follows:

1. A method for obtaining data regarding locations of a plurality of consumers, the method comprising, for each of the plurality of consumers, the act:

operating at least one programmed processor to perform a set of acts, the at least one programmed processor being programmed with executable instructions identifying the set of acts, the set of acts comprising:

(A) assigning, for the consumer, a time interval between attempts to obtain location data for the consumer;

(B) upon expiration of the time interval:

(i) obtaining location data for a current location of the consumer;

(ii) storing the location data for the current location of the consumer in at least one storage medium, the at least one storage medium storing other location data received for at least one other consumer; and

(iii) adjusting the time interval based at least in part on a proximity of the consumer to a known setting and based at least in part on a history of locations for the consumer; and

(C) assigning the adjusted time interval for the consumer and repeating the act (B)(i) of obtaining to obtain new location data for a new current location, the act (B)(ii) of storing, and the act (B)(iii) of adjusting the time interval for the mobile device associated with the consumer.

The Law

- 10 The Examiner has raised an objection under section 1(2)(c) of the Patents Act 1977 that the claimed invention is not patentable because it relates to a method for doing business and a program for a computer as such. The relevant provisions of this section of the Act are shown in bold 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.

- 11 The starting point for determining whether an invention falls within the exclusions of section 1(2) is the judgment of the Court of Appeal in *Aerotel/Macrossan*¹
- 12 The interpretation of section 1(2) has been considered by the Court of Appeal in *Symbian*². *Symbian* arose under the computer program exclusion, but as with its previous decision in *Aerotel/Macrossan*, the Court gave general guidance on Section 1(2). Although the Court approached the question of excluded matter primarily on the basis of whether there was a technical contribution, it nevertheless (at paragraph 59)

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

considered its conclusion in the light of the *Aerotel/Macrossan* approach. The Court was quite clear (see paragraphs 8-15) that the structured four-step approach to the question in *Aerotel/Macrossan* was never intended to be a new departure in domestic law; that it remained bound by its previous decisions, particularly *Merrill Lynch*³ which rested on whether the contribution was technical; and that any differences in the two approaches should affect neither the applicable principles nor the outcome in any particular case. But the *Symbian* judgment does make it clear, that in deciding whether an invention is excluded, one must ask does it make a technical contribution? If it does then it is not excluded.

13 Therefore, subject to the clarification provided by *Symbian*, it is appropriate for me to proceed on the basis of the four-step approach set out in *Aerotel/Macrossan* namely:

1) *Properly construe the claim.*

2) *Identify the actual contribution (although at the application stage this might have to be the alleged contribution).*

3) *Ask whether it falls solely within the excluded matter.*

4) *If the third step has not covered it, check whether the actual or alleged contribution is actually technical.*

14 The operation of this test 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 46 explains that the fourth step of checking whether the contribution is technical may not be necessary because the third step should have covered the point.

15 In *Symbian*, the Court of Appeal stated that a computer program may not be excluded if it makes a technical contribution. The judgment in *AT&T/CVON*⁴ provided guidance in the form of a number of signposts which may indicate that a computer program provides a technical contribution. The signposts were updated in *HTC v Apple*⁵ and are considered as follows:

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;

³ Merrill Lynch's Application [1989] RPC 561

⁴ AT&T Knowledge Ventures LP and Cvon Innovations Ltd v Comptroller General of patents [2009] EWHC 343 (Pat)

⁵ HTC Europe Co Ltd v Apple Inc [2013] EWCA Civ 451

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.

- 16 Mr Clark agreed that following these precedents and guidance was the correct approach to take.

Arguments and analysis

- 17 The first two steps of the above test are common when deciding whether the application relates to a program for a computer or a method for doing business.

Step 1: Properly construe the claim

- 18 The Examiner set out in the pre-hearing report of 27 March 2017 certain factors he took into account when construing claim 1. There is an antecedent issue (acknowledged by the Applicant in their skeleton arguments filed on 4 May 2017) with the phrase ‘the mobile device’ in step c) of claim 1. This is not considered to obscure the scope of the claim at present. To my mind, it is clear that it is the mobile device whose location is obtained and by inference, the location of the consumer.

- 19 The Examiner has construed the term ‘setting’ to mean a geographic location visited by the consumer which has some attached significance and has referred in his pre-hearing letter to various examples of what the ‘setting’ or locations may be.

- 20 The Examiner has construed the term ‘consumer’ as ‘a person who interacts with an organisation or who may interact with an organisation’. The Examiner was of the opinion that this implied some form of relationship between the consumer and the organisation.

- 21 Mr Clark commented on these constructions. He set out that the claims should be construed purposively and referred to the decision in *Rockwater*⁶ for guidance in construing the claim, in particular paragraph 41 which states:

“...(e) When ascertaining the inventor's purpose, it must be remembered that he may have several purposes depending on the level of generality of his invention. Typically, for instance, an inventor may have one, generally more than one, specific embodiment as well as a generalised concept. It is the latter which matters when construing the claim, particularly the widest claim. Otherwise one is in danger of being unfair to the inventor.”

- 22 Mr Clark explained that the purpose of the invention was to obtain sufficiently accurate location data without undue power consumption. He also stated that it would be common general knowledge that obtaining location data consumes power.

- 23 He stated that ‘known setting’ should be given a broad construction, especially when read in light of the embodiment in figure 7. There should be no particular requirements or characteristics of a setting or a position, For example, one of the

⁶ *Rockwater v. Technip France SA* [2004] EWCA (Civ) 381

embodiments relates to the setting being taken as 'being at work' based on the history of the consumer if they are usually at work between certain times. Another embodiment relates to 'being on a highway' where a consumer would be likely moving at speed and obtaining location data more frequently will add to the accuracy and reliability of the data being obtained. Mr Clark was keen to make it clear that there was no essential link between the 'known setting' and a business. Mr Clark also stressed that the skilled person would realise that the acquisition of location data and the use of the location data were not inextricably linked. This was consistent with the patent specification which refers to many, varied uses of the location data. These embodiments show that there is no requirement for a business related setting or any relationship between a consumer and an organisation

24 Mr Clark submitted that 'consumer' meant nothing more than a person, and that no characteristics or relationship of that person are required by the claim nor, for example, the embodiment in figure 7. Page 5 lines 21-24 of the description was considered to make this explicit.

25 I agree with Mr Clark with regards to the scope of the phrases 'known setting' and 'consumer'. The 'known setting' is considered to mean any particular geographic location visited by the consumer; the scope of the claim does not require any construction narrower than this. With regards to 'consumer', although there may be some inclination to imply a business type relationship based on the use of the term 'consumer', the claims and the embodiment in figure 7 clearly are not limited to such relationships. I thus construe the term 'consumer' broadly and to mean nothing more than a 'user' or 'person'.

Step 2: Identify the actual (or alleged) contribution

26 Paragraph 43 of *Aerotel/Macrossan* explains that the contribution is to be determined by asking what it is - as a matter of substance not form - that the invention has really added to the stock of human knowledge having regard to the problem to be solved, how the invention works and what its advantages are.

27 The Examiner and Mr Clark were unable to wholly agree on a contribution before or during the hearing although there is some agreement between them, which is helpful in making my own consideration.

28 The Examiner has identified the contribution to be:

A computer implemented method of obtaining relevant location data for a consumer whilst making efficient use of their device by adjusting the interval at which location data is obtained. The interval is adjusted based at least in part upon the proximity of the consumer to a known setting and a consumer location history. This provides the advantage of obtaining location data more frequently when the consumer is near a particular location, whilst preserving battery life by sampling less frequently when the consumer is at a location which is less relevant to the purpose for which the data is being obtained.

29 Mr Clark has identified the contribution to be:

An improved method for determining the location of a consumer. The method is improved because the dynamic setting of the time interval enables accurate location information to be obtained, without requiring excessive power usage, which can quickly drain a battery of a portable electronic device.

- 30 Mr Clark added further to this in the hearing stating that the advantage is achieved by adjusting the time interval based on determination of the proximity of a consumer to a known setting, such as their place of work, and also based on a history of locations of the consumer, such as, the consumer typically remaining at work from 9-5. He helpfully pointed out that the contribution lies in part (B)(iii) of the claim.
- 31 Both the Examiner and Mr Clark agree that the contribution is, at least in part, determining information about the location of a consumer including adjusting the time interval between which location data is obtained based at least in part on the proximity of a consumer to a known setting and a consumer location history, thereby reducing power consumption. I agree that this clearly forms part of the contribution, in as much as it is part of how the invention works.
- 32 Mr Clark did not agree with the Examiner that the contribution should include any reference to the 'relevance' of the location data of the consumer. On balance, I am inclined to agree with Mr Clark. The Examiner included this in the contribution as he considered that the adjustment of the time interval was based on the relevance of the current location given the location history. To my mind, this reads too much into how the invention works. The relevance of the location does not form part of claim 1 and including it adds something to the claim which is not within its scope in its current form.
- 33 Both the Examiner and Mr Clark state that the advantage of the invention resides in the reduction of excessive power consumption. Mr Clark referred to parts of the application which relate to this. Page 6, lines 2-6 relates to the intervals being selected to provide relevant information 'without requiring excessive power usage'. Page 47 lines 13-17 was also highlighted which relates to adjustments made to the time interval so that more information about a location of a user is produced when the information is 'useful', and less information about the location of a consumer if produced when the information 'is not as useful'. Page 48 line 31 relates to saving battery power when determining location information and page 48 lines 8-14 refer to a scenario when fewer pieces of location data are collected (than would otherwise be the case).
- 34 To my mind, there appears to be a distinction between these passages of the description. Some of the passages referenced above clearly relate directly to a reduction in power usage. Although there is no clear comparison provided to determine what 'excessive' power would be, I consider that a person skilled in the art would understand this passage to mean a reduction in the power required than would otherwise be the case (that is, if the interval between obtaining location data was fixed at a period which provided data more frequently than was necessary). The second and fourth passages referenced above describe an advantage of producing more information in situations when it would be 'useful' and less information in situations where it 'is not as useful'. Mr Clark explained that a person skilled in the art would recognise that obtaining location data less frequently would provide a reduction in the power consumed and that this effect was common general

knowledge. This knowledge, combined with the teachings in the above passages should mean that the contribution should include the advantage of a reduction in power.

- 35 However, I am not convinced that adjusting the interval *necessarily* has a clear relationship to *reducing* power consumption. There is no doubt in my mind that one of the *potential* advantages of the invention is the reduction of power consumption brought about by the adjustment of the time interval between attempts to obtain location data. However, as is clear from the embodiments, this only arises in circumstances where more accurate location information for a consumer is considered to be 'not as useful' and results in the adjustment being an increase of the interval, and consequently a reduction in the power consumed. Conversely, in situations where obtaining location data for a consumer is considered to be 'useful', the adjustment is a decrease of the interval and consequently gives rise to an apparent increase in the power consumed, than would otherwise be the case.
- 36 I note that claim 1 is silent as to what adjustment is made to the interval. It covers both an increase and decrease to the interval and therefore also covers both potential decrease and increase of power usage respectively. The question has to be asked whether this is sufficient for the person skilled in the art to consider the contribution to *necessarily* include the advantage of a *reduction* in power consumption.
- 37 In its present form, I cannot identify the contribution to essentially include the advantage of reduced power usage. Although I understand Mr Clark's argument that balancing the required accuracy of location information with the efficiency of obtaining location data can result in reduced power usage, this is not how the invention defined by claim 1 necessarily operates. Claim 1 requires there only to be an adjustment to the interval. This could be an increase or a decrease. It could be one followed by the other. It is certainly not clear that there would necessarily be a net reduction in power usage. For the invention to provide a reduction in power, the method would have to essentially obtain location data less frequently than a comparable method which obtains location data more frequently than is necessary e.g. which does not adjust the interval. It is not clear that such a method is essentially defined by claim 1, nor necessarily characterises the contribution.
- 38 Further, although a reduction in power consumption is clearly one possible advantage of the invention, it is not the only one set out in the description. I refer, for example, to page 47 line 23 – page 48 line 4 which sets out that an adjustment to the interval can result in an increase in accuracy of location information e.g. movement of a consumer. This is achieved without mention of power consumption but would seemingly inherently require an increase in power consumption due to a reduction in the interval between determining location data and an increase in the frequency of attempts to obtain location data.
- 39 It is noted that claims 16, 19 and 20 refer to increasing and/or decreasing the time interval. Claims 19 and 20 in particular align themselves closely with the embodiment of the invention and provide a method which may provide the advantage of reduced power consumption, but again any reduction is essentially entirely dependent upon how many times location data is determined compared with a comparable method in which the interval is not adjusted. What is clear is that these claims define an

invention which can operate at least temporarily with an increased time interval between obtaining location data, which a skilled person would understand would result in a consequent reduction in power consumption, compared with the invention operating with a reduced time interval.

- 40 I consider the contribution to be as follows. To my mind the problem which the invention seeks to overcome is how to most efficiently obtain location data about a consumer when location information would be more useful and how to most efficiently obtain location data about a consumer when location information would be less useful. The problem to be overcome is not to produce better location information or reduce power consumption per se but these are benefits which arise from varying the efficiency. The interval between successive attempts to obtain location data is adjusted based on the proximity of the consumer to a known setting (location) and a consumer location history. Adjusting the interval when the consumer is at or near a known location so that the interval is increased or decreased provides less or more location data within a period of time respectively. The contribution of the invention is that the adjustment provides more location data when it is most useful and provides less location data when it is not considered to be useful. The method is therefore more efficient in terms of processing frequency of location data requests.

Step 3 (i) Program for a computer

- 41 Claim 1 is directed to a method and undoubtedly uses a computer program for its implementation. However, the mere fact that the invention is effected in software does not mean that it should be necessarily excluded as a program for a computer as such. What matters is whether or not the program provides a technical contribution.
- 42 The invention is implemented as a network of conventional connected devices and this is considered to form 'the computer' when discussing the signposts of *AT&T/CVON*; systems operating as a network can be considered as 'the computer' for the purposes of this signpost, as emphasised by Birss J in paragraph 30 of *Lantana*⁷.
- 43 With regards to signpost (i) there does not seem, to my mind, to be a technical effect on a process carried on outside the computer. The contribution I have identified arises from adjustment to the interval between attempts to obtain location data for consumers. This is internal to the computer system. Location data is sent internally within the network of the computer system. There is no technical change to the computer network itself, or its capacity, nor to any process outside of the computer system. The invention merely adjusts the frequency of processing steps within the computer with potential consequential benefits for the accuracy of location information and power consumption; a balance which reflects the efficiency of obtaining location data when it would be more or less useful. However, as noted above, these are not essentially defined by the claim and arise only because fewer or more location data requests are performed. The step of determining location data in response to a request and the technical characteristics of the mobile device itself are unchanged. Making fewer location data requests, or processing more location

⁷ *Lantana v Comptroller-General of Patents* [2013] EWHC 2673 (Pat)

data does not constitute a technical effect, it simply makes greater or lesser use of existing resources in dependence on consumer behaviour.

- 44 With regards to signpost (ii), does the program which implements the contribution, when run on the computer, change how the computer runs internally? Does the program affect the internal operation of the computer or its architecture? To my mind there is no effect at this level of operation. The effect is entirely a consequence of the data being processed and the application being run. The program runs within the application layer of the computer and makes no changes to the way the computer itself operates or uses its architectural resources. In other words, the computer is conventional and runs conventionally.
- 45 With regards to signpost (iii), does the program which implements the contribution, when run on the computer, make the computer run in a new way? Does the program do something more than just run on the computer? Does the computer itself operate differently than it did before as a result of the program being run? To my mind, the computer itself does not operate differently; as I observed above, it merely runs the program in the same manner as it would any other program. The computer operates conventionally to effect the instructions of the program.
- 46 With regards to signpost (iv), does the program which implements the contribution, when run on the computer, make the computer a better computer in the sense of running more efficiently and effectively as a computer? To my mind, the program does not make the computer run more efficiently and effectively as a computer. The program itself may make fewer location data requests than other prior art programs when it obtains location data less frequently, but the computer still processes the data in the same manner as before, and the step of obtaining location data is unchanged. The computer itself runs no more efficiently or effectively to effect the instructions of the program.
- 47 With regards to signpost v) does the program which implements the contribution, when run on the computer, overcome the problem to be solved or merely circumvent it?
- 48 To answer this question I must look to the problem. When the problem is a technical one, the alleged invention can be considered to be technical in nature leading to it falling outside the exclusion if (but not only if) it solves the problem. In *Lantana* Birss J stated that
- “[i]t makes sense to think of something which is a solution to a technical problem as itself having technical character because it takes that character from the technical nature of the problem to be solved. But if a thing is not solving the technical problem but only circumventing it, then that thing cannot be said to have taken any technical character from the problem.”
- 49 Circumventing a technical problem does not automatically imply that an alleged invention is excluded, but indicates that one cannot rely on the addressed problem to deduce its technical character.

- 50 At paragraph 51 of the subsequent Court of Appeal decision, *Lantana II*⁸, Arden LJ noted that
- “[c]ircumvention may be the result of truly original linear thinking and may lead to patentability in an appropriate case”.
- 51 This does not happen when circumvention consists of conventional means, as reaffirmed by Kitchin LJ at paragraphs 68 and 70 of the same judgment:
- “[o]verall, the invention avoids the problem...but it does so by using a conventional technique [... i]n other words it does not solve those problems but circumvents them”.
- 52 Similarly, if the problem to be solved is not a technical problem, the solution cannot take technical character from the problem, although it may have some other technical effect.
- 53 The problem I have identified is how to most efficiently obtain location data about a consumer when location information would be more useful and how to most efficiently obtain location data about a consumer when location information would be less useful. This is consistent with Mr Clark’s formulation of the “purpose” above (paragraph 22). Is this a technical problem? To my mind it does not appear to be. The decision to obtain more or less frequent location data is, in essence, a decision based on how useful the information may (or may not) be for a given contextual application. It is not a decision based on a better use of the computer resource for example. The computer itself is operating in the same manner it would if the interval was not adjusted, it is just (potentially) performing the task less frequently. Nor is it a decision based on the way the location data itself is determined in response to a request. This is performed in the conventional manner. I therefore conclude that the problem that the invention seeks to overcome is not a technical problem. As such, the solution to the problem cannot take technical character from the problem, and the contribution is not considered to meet signpost (v).
- 54 For completeness, I will determine whether the alternative contribution identified by Mr Clark (including the advantage of a reduction in power usage) amounts to more than a program for a computer as such.
- 55 Mr Clark did not specifically address signpost (i), but I do not consider the alternative contribution to provide an effect outside the computer. The reduction in power usage is entirely dependent upon the adjustments made inside the computer to the time interval and is a consequence of fewer consecutive processing steps within the network (under certain circumstances), rather than any contribution to the technical capability of the network itself, its architecture or use of resources, or any external benefit thereof.
- 56 With regards to signpost (ii), Mr Clark set out that the technical effect of improved power efficiency is not dependent on the particular data being processed (so in this

⁸ *Lantana v Comptroller-General of Patents* [2014] EWCA Civ 1463,

case, location data). The technical effect is based on the steps of the method that adjust the time intervals between successive computer operations.

- 57 With regards to signpost (iii), Mr Clark set out that the technical effect provided by the steps of the method ensures the computer operates in a new way as it determines changes to the interval which is not disclosed in the prior art.
- 58 With regards to signpost (iv), Mr Clark set out that the technical effect provided by the steps of the method ensures that the method consumes reduced power in more efficiently obtaining location data when compared with the prior art.
- 59 I do not consider the alternative contribution to satisfy any of the signposts (ii)-(iv). The reasoning for this is the same as given in relation to the arguments for my identification of the contribution above. I do not consider the inclusion of a reduction in power usage to change my assessment of the effect of the program on the computer system. The program operates at the application layer off the computer. The way in which the location data is obtained in each step is unchanged and the computer itself is conventional. Its architecture is conventional and operates in a conventional way.
- 60 With regards to signpost (v), Mr Clark set out that the technical effect provided by the steps of the method overcomes the problem of “efficiently (in terms of power consumption) obtaining accurate location data”. The problem with having a fixed interval is that it either provides location data more frequently than required in certain situations or provides location data less frequently than required in other situations. Consequently, determined location information is either more or less accurate than is required.
- 61 I do not consider the alternative contribution to overcome the issues of efficient power usage. The alternative contribution does not improve the efficiency of the computer system. The efficiency of each step is unchanged as the computer, its architecture and resources are conventional. A change in the application program means that under the control of the program, the computer may carry out fewer steps (requests for location data) under certain circumstances. The invention may circumvent the issue of using more than a specified amount of power by increasing the time interval between obtaining location data, but it also may, under certain circumstances, use more power if the interval is decreased for a long period of time. Moreover, there is no alleged improvement, in terms of power usage, to either the step of determining location data itself, the step of processing of the data, or the operation any of the devices on which the method operates. They are all entirely conventional and operate or are determined conventionally under the control of the program which determines the time interval. The only thing that changes is the frequency with which location data is obtained. I do not consider changing the frequency of the interval to be technical, for the reasons discussed above.
- 62 Therefore I consider the contribution identified above to relate to a program for a computer as such.

Step 3 (ii) Method of doing business

- 63 In identifying the contribution and taking into account the construction of the terms 'known setting' and 'consumer', I do not consider the contribution to relate to a business method. The method clearly, and simply, relates to a method for obtaining location data and an adjustment to the rate at which the data is requested. As discussed above, I can see no requirement that the purpose or application for obtaining said data be identified and limited to anything specific (which may or may not be business related). Therefore I do not consider the contribution to relate to a method of doing business.

Step 4: Check whether the alleged contribution is actually technical in nature

- 64 Having considered this issue throughout my assessment of the contribution, as set out above, I conclude that the contribution is not actually technical in nature.

Other matters

- 65 At the hearing, Mr Clark presented a new submission in the form of granted UK application GB2439033. This application relates to a portable monitor for use in a market research study. Unfortunately, it has since come to my attention that this case was granted with an incorrect set of claims published at the "B" stage. Amended claims were filed but were not published when the application was granted. Unfortunately, this means that Mr Clark's argument was based on the misapprehension that the published claims had been granted. There is little I can say about the amended claims except that they relate to a separate application and are not the same as the claims which Mr Clark relied upon. It is regretted that this error misled Mr Clark's argument.
- 66 Mr Clark also set out the EPO Guidelines for Examination, Part G, Chapter 11-5, section 3.6 which relates to the patentability of programs for computers and states that a technical effect may be provided by a computer program if it relates to affecting the internal functioning of the computer efficiency or the management of computer resources required. Although these guidelines are only persuasive, I consider them to be analogous to signposts ii)-iv) above and the arguments against those signposts can also be applied here.
- 67 I can confirm that I have given due consideration to the dependent claims with regards to their relevance to excluded subject matter, in particular, claims 16, 19 and 20. These claims relate to specific examples of the manner in which the interval is adjusted. As such, construing them and identifying the contribution would resolve some of the issues relating to whether the advantage of the invention derives from a reduction in power usage by increasing the time interval between acquiring location data. Claims 19 and 20 in particular defines what appears to be the essential feature of an increase to the interval which *may* provide a decrease in overall power usage. However, following my reasoning with regards to the alternative contribution above, I would not consider the inclusion of any of the features from these claims to be sufficient in themselves to give rise to a technical contribution and overcome the computer program exclusion. Further, I can see nothing in the remaining dependent claims that would affect the actual contribution I have identified.

Conclusion

- 68 I find that the claimed invention is excluded under section 1(2)(c) because it relates to a program for a computer as such.
- 69 Having read the specification I do not think that any saving amendment is possible. I therefore refuse the application under section 18(3).

Appeal

- 70 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

Ben Buchanan

Deputy Director, acting for the Comptroller