Intellectual Property Office

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PATENTS ACT 1977

APPLICANT	Jethro Bennett
ISSUE	Whether patent application GB1314647.7 complies with section 1(1)(b) and 1(2)
HEARING OFFICER	J E Porter

DECISION

Introduction

1 Patent application GB1314647.7 was filed on 15 August 2013, with a claim to priority of 15 December 2012. It was published as GB 2 508 950 A on 18 June 2014. Following examination and correspondence with the applicant, the examiner remains of the view that the claimed invention is not inventive and concerns nothing more than an aesthetic creation and the presentation of information. The matter therefore came before me at a telephone hearing on 12 April 2017. The applicant, Mr Jethro Bennett, represented himself. The examiner Mr Conal Clynch and an observer Mr John Hewet were also present, and I was assisted by Ms Eleanor Wade.

The application

2 The invention concerns branded eyewear. The eyewear takes the general form of a pair of glasses, but in place of lenses it has strut members which extend horizontally across the left and right orbital frames. The eyewear also has oversized wings (or arms) providing space for branding to be applied. The eyewear is designed to be branded with colours, logos, patterns or typefaces which represent or are associated with a particular brand, team, event, company, character or sports personality.

3 Amended claims 1 to 17 were filed on 16 March 2015. Additional claims 18 to 28 were filed on 15 June 2016, to be considered in addition to the existing claims on file. In total, there are five independent claims. Claim 1 reads:

> A shutter eyewear apparatus, comprising:
>
> an orbital frame, the orbital frame itself comprising a left orbital aspect and a right orbital aspect;
>
> multiple strut members within the orbital aspects; and
>
> two oversized wings, the wings having a width of at least 12mm at any point along a length of the wings;
>
> wherein there is provided a longitudinal worded element along one wing, wherein the longitudinal element is a player name, the player name provided in a font substantially mimicking player name font on a team strip.

4 The other four independent claims are all directed to shutter eyewear apparatus with largely similar features to those in claim 1, including the presence of a longitudinal worded element along one wing of the eyewear. However, there are some variations. Thus independent claim 9 states that the longitudinal element along one wing is "a sports team name", there is no mention of font, and the eyewear apparatus is "coloured in a colour or colours associated with the team". Independent claim 13 states simply that the longitudinal element along one wing is "a franchise worded element", and claim 15 states simply that it is "bespokably choosable by a buyer". Independent claim 18 states that "the eyewear is coloured in colouration relevant to a team franchise" and "the longitudinal element is worded element relevant to the franchise."

The law

5 In terms of inventive step, section 1(1) says:

> A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say -
>
> (a) the invention is new;
>
> (b) it involves an inventive step;
>
> [other provisions not relevant].

6 Section 3 then sets out how the presence of an inventive step is determined. It says:

> An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).

7 Matter which "forms part of the state of the art by virtue only of section 2(2)" is all matter which was made available to the public before the priority date of the application in question.

8 It is well-established that the usual approach to adopt when assessing whether an invention involves an inventive step is to work through the steps set out by the Court of Appeal in *Windsurfing*[1] and restated by that Court in *Pozzoli*[2]. These steps are:

> (1)(a) Identify the notional "person skilled in the art";
>
> (1)(b) Identify the relevant common general knowledge of that person;
>
> (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;
>
> (3) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed;
>
> (4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?

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[1] *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd* [1985] RPC 59
[2] *Pozzoli SpA v BDMO SA* [2007] EWCA Civ 588, [2007] FSR 37

9 There was no suggestion that the applicant disagreed with this approach, and I agree that it is the correct one to take.

10 Section 1(2) then declares that certain things are not inventions for the purposes of the Act, as follows:

> 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) a discovery, scientific theory or mathematical method;
>
> (b) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever;
>
> (c) a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer;
>
> (d) the presentation of information;
>
> 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.

11 The examiner has stated that the assessment of patentability under section 1(2) is governed by the judgment of the Court of Appeal in *Aerotel*[3], as further interpreted by the Court of Appeal in *Symbian*[4].

12 In *Aerotel*, the court reviewed the case law on the interpretation of section 1(2) and approved a four-step test for the assessment of what is often called "excluded matter", as follows:

> Step one: properly construe the claim
>
> Step two: identify the actual contribution (although at the application stage this might have to be the alleged contribution)
>
> Step three: ask whether it falls solely within the excluded matter
>
> Step four: check whether the actual or alleged contribution is actually technical in nature.

13 Subsequently, the Court of Appeal in *Symbian* made clear that the *Aerotel* test is not intended to provide a departure from the previous requirement set out in case law, namely that the invention must provide a "technical contribution" if it is not to fall within excluded matter. The *Aerotel* test has subsequently been endorsed by the Court of Appeal in its decisions in both *HTC*[5] and *Lantana*[6].

14 Both before and at the hearing, Mr Bennett made some wider points about the purpose of the intellectual property system and the commercial desirability of what he termed a “branding invention”. He gave his view of the difficulties in protecting such inventions under either the patents or designs system, and referred to a “blind spot” in the UK system. While I note his policy views, I must of course apply the law as set out in legislation and relevant case-law. Mr Bennett helpfully made clear at

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[3] *Aerotel Ltd v Telco Holdings Ltd and Macrossan’s Application* [2006] EWCA Civ 1371, [2007] RPC 7
[4] *Symbian Ltd’s Application* [2008] EWCA Civ 1066, [2009] RPC 1
[5] *HTC Europe Co Ltd v Apple Inc* [2013] EWCA Civ 451; [2013] RPC 30
[6] *Lantana v Comptroller-General of Patents* [2014] EWCA Civ 1463; [2015] RPC 16

the hearing that he understood and accepted that I must "work within the law as it stands" and that the above case-law sets out the approach I must follow.

Analysis

15 In respect of claims 1 to 17, the examiner has set out his position regarding inventive step and excluded matter in his examination reports of 29 July 2015 and 15 February 2016, and in his pre-hearing report of 24 November 2016. The pre-hearing report also covers the examiner's view of the later-filed claims 18 to 28. The applicant's views are set out in his submissions received on 16 March 2015, 30 November 2015 and 15 June 2016, and he also made a number of points during the hearing. I consider all of the submissions to the extent necessary in my analysis which follows.

I. Inventive step

16 The examiner contends that the invention as defined in all of the claims is lacking in inventive step. His view is that the skilled person would know of shutter eyewear with oversized wings, and would be aware that information about sporting events could be added to such eyewear. In his view, providing specific wording, colours, fonts or logos would not require inventive skill. The applicant contends that the combination of features represents a significant step over the prior art. I will follow the established *Windsurfing/Pozzoli* approach in order to determine this point.

Step 1 – identify the notional skilled person and their common general knowledge

17 In the pre-hearing report, the examiner defined the skilled person as "a designer of advertising and promotional headwear, especially in relation to spectacles". We touched on this at the hearing, and Mr Bennett did not have any specific submissions on this definition other than to emphasise that the skilled person is an unimaginative "skilled automaton" and he could not see how that person could make the leap involved in the present invention. That point goes to step four, and so I will return to it later. I am thus content to adopt the examiner's definition of the skilled person.

18 In the examiner's view, this skilled person would be aware of shutter eyewear with oversized wings, would know that such wings facilitated the use of logos and messages, and would also be aware that information relating to sporting events may be added to spectacles to allow fans to show their allegiance. I understand the examiner's view to be that these are things which form part of the skilled person's common general knowledge, and I did not detect any disagreement from Mr Bennett.

19 I am content that the skilled person would know of various designs and styles of eyewear, encompassing designs with frames and wings which are thick or wide, as well as frames and wings of a thinner design. I note what the application in suit refers to as "oversize" wings. The claim specifies that this means they have a width of at least 12 mm, and the drawings show them to be of a relatively wide style but certainly nothing unusual in terms of the design of everyday eyewear. On that basis, I am content that the skilled person's knowledge of various designs and design options would encompass the thicker style of wing shown and referred to as "oversize" in the application in suit.

20 It is also reasonable to conclude that the skilled person would know and understand that a key aspect of designing advertising or promotional headwear (including eyewear) is for that headwear to incorporate in some way the colours, logos, patterns or typefaces which represent or are associated with the brand, team, event, company, character or sports personality being advertised or promoted.

Step 2 – identify the inventive concept

21 The examiner identifies the inventive concept of claim 1 as the application of a player name to shutter spectacles with oversize wings, in a font mimicking the player name font on a team strip. Mr Bennett agrees that the inventive concept of claim 1 is the branding of the eyewear with the player name, mimicking the particular font used on the player's strip. I am thus content to adopt the definition. As already noted, the claims state that "oversize" in this context means a width of at least 12mm.

22 Similarly, it follows that the inventive concept of independent claim 9 is the application of a sports team name to shutter eyewear with oversize wings, where the eyewear use one or more colours associated with the team.

23 The inventive concept of independent claims 13 and 18 is the application of a worded element (relevant to a franchise) to shutter eyewear with oversize wings. For claim 18, as Mr Bennett said at the hearing, the inventive concept also includes the eyewear being coloured with one or more colours relevant to the franchise.

24 As agreed by Mr Bennett at the hearing, the inventive concept of independent claim 15 is the application of bespoke wording (chosen by the buyer) to shutter eyewear with oversize wings.

Step 3 – identify the differences between state of the art and the inventive concept

25 The examiner has identified a number of documents which are said to be relevant, all of which were published before the priority date of the present invention. These include published patent applications but also online articles.

26 In terms of shutter eyewear, the examiner points to the disclosure in an online article in *Clutter* magazine "*Boris Bidjan Saberi x Linda Farrow Shutter Shades*". The article shows shutter eyewear with an oversized wing of a width which matches, at the front end of the wing, the height of the main frame around the eyes. There is no branding shown on the item, which is said to be available in black or silver.

27 The examiner also points to online articles entitled "*Seen(through)@GDC: The official shutter glasses*" and "*Eye Need to Know Who Invented Shutter Shades?*" as showing various types of shutter eyewear, including ones with the *GDC* letters on a wing. Neither article shows what could convincingly be said to be shutter eyewear with oversized wings.

28 In terms of non-shutter eyewear, the examiner relies on the datasheet for the *Optoma DLP Link 3D Glasses*, which shows 3D glasses for use with computers, having oversize wings of height 1.8 inches (equal to 45.7mm), bearing the *Optoma* logo. He also cites a number of patent applications which concern features of regular spectacles. In particular, EP 0 052 494 A2 (*Ad Glass*) discloses low-cost

souvenir or novelty spectacles for special events, sporting events or advertising, and bearing the name or logo of a sports team or player – albeit not on a wing. DE 202 11 548 U (*Hartmut*) discloses "sportsglasses" or sunglasses with wording shown on a wing referring to "World Championship 2006". WO 2010/098902 A1 (*Oakley*) discloses glasses with wings having the width of the frames' height, and where a decorative component in the wing can be incorporated to personalise the glasses with the initials of the wearer or other words, phrases or designs. US 2008/0165317 A1 (*Wilson*) discloses eyewear with wings containing transparent compartments used to display and vary customisable wording or emblems.

29 A number of other patent documents cited by the examiner show souvenir, novelty or other glasses where additional frames, supports or components are attached to glasses in order to contain or display advertising, promotional or sporting messages or logos. In particular, US 5 775 018 (*Steinborn*) shows removable (or, in figure 4, integral) frames mounted on the frames or wings of glasses, contained phrases such as "Go Tigers" or "Vote Jones".

30 At the hearing, Mr Bennett confirmed that he did not take issue with the examiner's assessment of the cited prior art and what it shows. He emphasised that the key difference between the prior art and the inventive concept of claim 1 is the use of the specific team strip font, rather than any other font or writing style, in applying the player name to the shutter eyewear in question.

31 It seems appropriate to me to start from the disclosure of the *Saberi/Farrow Shutter Shades*, which shows shutter eyewear with oversize wings. As Mr Bennett said, there is no branding on this eyewear. The difference between that disclosure and the inventive concept of claim 1 is the application of branding in the specific form of a player name in a font mimicking that used on the team strip. The difference between that disclosure and the inventive concept of the other independent claims is the application of specific branding and colours identified in those claims.

Step 4 – is the difference obvious to the skilled person?

32 Mr Bennett's view is that the designed product is "heavily evolved" beyond that shown in the prior art, such that – even when taken in combination – the prior art disclosures fail to get to the invention. Thus he contends that there is a significant inventive step shown over the prior art. In particular, he argues strongly that the unimaginative skilled person could not have come up with the "very specific and very elegant solution" he puts forward in terms of branding. The skilled person would be incapable of deciding to identify the font on a player's shirt and apply it to the eyewear because this is "innately thinking outside the box" and "needs imagination".

33 I have already found that the skilled person is a designer of advertising and promotional headwear, especially in relation to eyewear, and that they would know and understand that advertising or promotional headwear can incorporate the colours, logos, patterns or typefaces which represent or are associated with the brand, team, event, company, character or sports personality being advertised or promoted. On that basis, I think it would be immediately apparent to them – on seeing the *Saberi/Farrow* disclosure – that some form of advertising or promotional branding or logo could be applied to that shutter eyewear just as it is applied to any other design of eyewear. This would not, in my view, require them to take an

inventive leap. In case there were any doubt about that, they would have the disclosures mentioned above which show the wing-branded GDC shutter eyewear as well as other eyewear with branding, promotional or sporting material on wings.

34 However, as noted above, Mr Bennett's strongly argued point is that it would not be obvious to apply a player name in the font used by the team strip, which he says would be beyond the ability of the unimaginative skilled person, irrespective of their field. He argues in particular that, just because it may be obvious to apply other branding, it is not obvious to apply the particular specific branding defined in claim 1.

35 However, my view is that the skilled person would well understand that successful branding and promotional material needs to reflect and incorporate the colours, wording, logos and fonts associated with the brand, team, event or personality being promoted or advertised. They would know that a great deal of promotional sporting merchandise replicates player or team names and their team strip or logos, and this includes replicating the distinctive logos and fonts used by those players and teams. The skilled person would understand that using relevant colours, fonts and logos on a promotional item is a very common way to make the desired link between that item and the brand, team, event or personality being promoted.

36 Therefore, despite Mr Bennett's firmly-held conviction, I am not convinced that the choice of the branding on the shutter eyewear to match a player name written in the team strip's font involves any inventive skill or ingenuity on the part of the skilled person. That renders claim 1 lacking in an inventive step.

37 Following the same reasoning, I am not persuaded that making other specific design branding choices – namely, to reproduce a team or franchise name, or to use particular colour(s) – involves any invention on the part of the skilled person. That renders independent claims 9, 13 and 18 lacking in an inventive step.

38 Finally, I am not convinced that there is any invention in allowing the buyer to choose bespoke wording. This commercial variation would be well within the ambit of the skilled person I have identified. If there were any doubt about this, I note that the skilled person would be aware of the disclosures discussed above in *Oakley* and *Wilson*, relating to bespoke messages or designs on eyewear. That renders independent claim 15 lacking in an inventive step.

39 The dependent claims set out additional details concerning colour, and also further details about the location and type of different possible icons or logos, and team, franchise or player information. None of these branding features assist in bestowing an inventive step – for the reasons I have already set out.

40 My analysis has taken as its starting point the *Saberi/Farrow Shutter Shades* and looks at whether it is inventive to add particular branding or marketing material. For completeness, it seems to me that another starting point would be the disclosures set out in paragraphs 28 and 29 – which show various styles of non-shutter eyewear carrying some form of logo or other sporting or marketing branding, sometimes bespoke or customisable. These include eyewear with oversize wings, and where the logo or branding is related to sporting events or teams, and is on the wings.

41 From this alternative starting point, the relevant difference is that the logo, branding or other information of the invention is applied not to various designs of sunglasses or spectacles but to shutter eyewear. Given the existence of shutter eyewear as a known type of novelty or fashion eyewear (see "*Eye Need to Know Who Invented Shutter Shades?*" for example), I do not think that the skilled person would be exercising any inventive ingenuity by applying the teachings of the various disclosures discussed above to shutter eyewear.

42 Mr Bennett's main point then comes into play here too. He says there is no teaching specifically pointing the skilled person to apply the player's name in the font used on the team strip. But my view remains (for the reasons already explained) that there is no inventiveness in the skilled person making particular design branding choices, by choosing particular colours, logos or fonts which differ in some way from the colours, logos or fonts shown in the prior art. In doing so, the skilled person would arrive at the invention of the various independent claims. Thus from this alternative starting point, the claims lack an inventive step.

II. Excluded matter

43 The examiner says that the invention relates to no more than an aesthetic creation and the presentation of information, and so is excluded from patentability. The applicant disagrees, arguing that the invention is technical in nature. Taking the arguments into account, I must determine whether the claimed invention relates solely to excluded subject matter, following the established *Aerotel* test.

Construing the claims

44 Mr Bennett agreed at the hearing that there is no difficulty here. The independent claims are directed to shutter eyewear apparatus, comprising an orbital frame with left and right orbital aspects, multiple strut members within the orbital aspects, and two oversized wings having a width of at least 12mm at any point along their length. There is a longitudinal worded element along one wing.

45 For claim 1, this longitudinal element is a player name in a font substantially mimicking the player name font on a team strip. For independent claim 9, the longitudinal element is a sports team name, and the eyewear apparatus is coloured in a colour or colours associated with the team. For independent claim 13, the longitudinal element is wording relevant to a franchise. For independent claim 15 the buyer can choose the wording of the longitudinal element. For independent claim 18, the longitudinal element is wording relevant to a franchise and the eyewear apparatus is coloured relevant to the franchise.

Identifying the contribution

46 In paragraph 43 of *Aerotel*, it is made clear that identifying the contribution is probably best summed up as determining what the inventor has really added to human knowledge, and this involves looking at the substance and not the form of the claims (as construed in step one). However, the court in *Aerotel* acknowledged that, for a patent application (as opposed to a granted patent), it may only be possible to identify the alleged, and not the actual, contribution.

47 The examiner says that, since shutter glasses with oversize wings are known, the contribution is the addition of the player name to the wing of such eyewear. His view is that the other independent claims are "variations on a theme" and so the contribution in those claims varies only in terms of the information provided.

48 However, I must bear in mind that it does not necessarily follow, when a particular aspect of an invention is known, that any contribution made by that aspect can be dismissed. What I must do is assess the contribution made by the claimed invention as a whole, and so the interaction between the various aspects (known or otherwise) needs to be considered when making that assessment.

49 Mr Bennett argues that a "branding invention" should be taken as seriously as inventions in other fields, and that he has created something new which adds to the existing stock of human knowledge. He also looks at the contribution in terms of the problem solved, saying that the invention addresses the "branding of eyewear apparatus in a field where no solution has been provided" and where almost all other types of wearable item have been successfully branded. At the hearing, he emphasised this point by saying that many different branded promotional goods may often be seen at a football match, but not a branded eyewear product. He goes so far as to say that his invention is "the 'holy grail' in the…field of sports eyewear merchandising" since it provides a commercially viable product. He reiterates his argument that "a lot of features come together to make this possible" in a specific way not envisaged by the prior art.

50 I agree with Mr Bennett that the particular branding choices set out in the description and claims – such as choosing to brand the eyewear with a player name in a particular font – form part of the contribution within the meaning of step two. The question is whether the contribution goes wider than that.

51 Clearly the description and drawings set out various designs of shutter eyewear, and the claims are directed to shutter eyewear apparatus. Stylistically, the shutter eyewear described and claimed has relatively thick wings but, as noted above, the degree of thickness of the wings or frame is nothing unusual in terms of the design of everyday eyewear. Furthermore, branding choices aside, I cannot see that the claimed invention brings out any other features of the eyewear apparatus itself which could be said to make a contribution to the sum of human knowledge. Neither, in my view, is there a contribution made by an interaction between the branding and the physical features of the apparatus. I am not persuaded that the contribution made by the invention – what has really been added to the sum of human knowledge – is overall an improved type of shutter eyewear.

52 The contribution is therefore the application of certain specific branding, logos, wording, fonts and colours to shutter eyewear – in particular, the application of a player's name in a font mimicking the player name font on a team strip.

Does the contribution fall solely within excluded matter / is it technical in nature?

53 What I must now decide is whether the contribution identified above relates solely to an aesthetic creation or the presentation of information. This corresponds to step three of the *Aerotel* test. The fourth step of the test is then to check whether the contribution is technical in nature. In paragraph 46 of *Aerotel* it is stated that

applying this fourth step may not be necessary because the third step should have covered the question. This is because a contribution which consists solely of excluded matter will not count as being a "technical contribution" and thus will not, as the fourth step puts it, be "technical in nature". Similarly, a contribution which consists of more than excluded matter will be a "technical contribution" and so will be "technical in nature".

54 In the present case, I think it makes sense to consider whether the contribution is excluded alongside the question of whether the contribution is technical in nature. I have therefore considered the third and fourth *Aerotel* steps together.

55 The examiner's view is that the contribution is no more than the presentation of information and an aesthetic creation, and that there is no technical effect involved in adding a player's name in a particular font (or adding other branding).

56 One of Mr Bennett's lines of argument is that the intention of the excluded matter provisions is to guard against the patenting of unworthy inventions which "clearly do not involve an inventive step". He gave an example of such an invention (discussed in the *Manual of Patent Practice*) and contrasted it with the present case, which he contended was both novel and inventive.

57 Under UK law, the question of whether an invention is novel and inventive is entirely distinct from the question of whether it falls solely within excluded matter. The two points must be determined separately, and I do not agree with Mr Bennett's reasoning based on a conflation of those two points. In particular, I do not agree with his contention that a novel and inventive invention must necessarily not fall within excluded matter. For that reason, it is not necessary for me to address the comparison Mr Bennett made with the other invention in his example.

58 Mr Bennett argues that his invention is "of physical shape and form" and can be "seen by the human eye and touched by human hand". It is not an abstract idea or business method, and should not be discriminated against on that basis. He also points out that his invention requires a manufacturing step.

59 I agree that the claimed eyewear can be seen and touched, but I do not think the point assists him. The exclusions in section 1(2) are not limited to abstract things or business methods. For example, a sculpture or painting is a physical object which can be seen and touched. It is neither purely abstract nor a business method, but is still excluded from patentability under section 1(2). Whilst I agree that the claimed eyewear could be manufactured, I must focus on the contribution made by the invention, and whether that contribution falls within the exclusions.

60 Mr Bennett's main contention is that there is (wrongly) a very high bar set in terms of what is considered to be technical within the meaning of patent law. His view is that this invention and the field of branding should properly be regarded as technical, and he emphasised this by saying that his invention used a "technical branding feature" and provides "highly technical results". At the hearing, he emphasised that he considered the application of a player name in a font mimicking the font on a player's shirt to be a technical feature – it required "technical thinking" as it was a "technical, precise solution". His submissions also refer to the specific technical effect of

bringing commercial viability to an eyewear product which will have a unique attraction to consumers.

61 I am not persuaded. It is my view that no technical effect is provided by the contribution of the claimed invention. The contribution as identified concerns making and applying branding design choices as regards font, logo, colour and wording – and I cannot see how those particular branding and design choices carry with them anything which can be said to be technical in nature. There is no scientific, engineering or similarly technical aspect to those choices. They are design and branding choices, influenced by (amongst other things) commercial and sporting considerations. There is nothing wrong in those choices, nor in considering what branding options may bring commercial success, but it does not follow that those choices are technical in their nature.

62 It is clear that the contribution falls wholly within the scope of a branding or design choice. It concerns no more than the use of certain specifically-identified branding styles – a chosen font to match a player's name on a strip, for example – or colours, names or other information. This seems to me clearly to be a matter of design aesthetics. To the extent the branding, logo or other wording may be said to impart information, the contribution concerns the presentation of that information in particular ways. The fact that some branding choices may be commercially successfully does not alter that position.

63 Finally, Mr Bennett made some submissions regarding the discussion in the *Manual of Patent Practice* of some excluded matter case-law. His view was that the *Manual* gives a confused representation and in particular that it "wrongly presumes" that certain cases were refused for being concerned with the presentation of information, when the inventions were really lacking in inventive step or an enabling disclosure. To an extent, these points led Mr Bennett back to his criticism of what he called a "black and white" or "blanket approach" to excluded matter under UK law.

64 Having considered Mr Bennett's points carefully, I have concluded that they do not assist in the process of applying the relevant law to the facts of this case. I have already noted that Mr Bennett understands that I must apply the law as it stands. It is also worth being clear that I am bound by the various court decisions referred to above, and I am not bound by anything written in the *Manual*. My analysis applies the law and the relevant court decisions themselves to the facts of the present case.

65 The contribution amounts to no more than an aesthetic creation and, to the extent that the branding may impart information, to the presentation of information. It is not technical in nature, and fails to meet steps three and four of the *Aerotel* test.

Conclusion

66 The claimed invention lacks an inventive step and so is not patentable by virtue of section 1(1)(b). It is also excluded from patentability under section 1(2) because it consists of no more than an aesthetic creation and the presentation of information.

67 I cannot identify any material in the specification that could reasonably be expected to form the basis of a patentable claim. I refuse the application under section 18(3) for failure to comply with section 1(1)(b) and 1(2).

Appeal

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

Deputy Director, acting for the Comptroller