



PATENTS ACT 1977

APPLICANT	Semitel Limited
OPPONENT	Snapchat Inc.
ISSUE	Application under section 74B for review of Opinion 30/14 in respect of GB2466994B
HEARING OFFICER	H Jones

DECISION

Introduction

- 1 Opinion 30/14 is concerned with the question of whether the popular social media application Snapchat (RTM) infringes UK patent GB2466994B. The Opinion sets out the examiner's view that the method of providing messaging embodied in the Snapchat application does not infringe the claims of the patent. Semitel Limited, an exclusive licensee of the patent, requests a review of the Opinion under section 74B and asks for it to be set aside. Snapchat Inc. oppose this request. The matter came before me at a hearing held on 7 October 2015 at which Semitel Limited was represented by Mr Henry McGuire and Snapchat Inc. was represented by Mr Akash Sachdeva of Cooley (UK) LLP.
- 2 The grounds for a review of an Opinion are set out in rule 98(5) of the Patents Rules 2007:
*98(5). The application may be made on the following grounds only -
(a) that the opinion wrongly concluded that the patent in suit was invalid, or was invalid to a limited extent; or
(b) that, by reason of its interpretation of the specification of the patent in suit, the opinion wrongly concluded that a particular act did not or would not constitute an infringement of the patent.*
- 3 The nature of a review under section 74B was considered by the Patents Court in *DLP Limited*¹, in which Kitchen J said:
"22.....I believe a Hearing Officer should only decide an opinion was wrong if the examiner has made an error of principle or reached a conclusion that is clearly wrong."
- 4 As Mr Sachdeva put it to me, this is not a matter of whether the Hearing Officer might disagree with the examiner's construction but rather whether the examiner's

¹ DLP Limited [2007] EWHC 2669

construction was wrong, i.e. that it was an entirely unreasonable construction.

Arguments & analysis

- 5 Both sides agree that the examiner directed himself as to the appropriate law with regard to claim construction and infringement, i.e. a purposive construction of the claims and their interpretation in the light of the description and the drawings (paragraphs 13, 17 and 18 of the Opinion). Semitel's argument is that the examiner misconstrued steps 2 and 3 of claim 1 in the light of the description, and in doing so he reached the wrong conclusion with regard to infringement. Claim 1 is set out below:

A method of providing flexible messaging between a sender and receiver, wherein the method comprises the steps of:

sender selects sending device; (step 1)

sender selects messaging mode; (step 2)

sender selects, without limitation which it is possible to incorporate, send and receive using the selected device:

any standard or non standard content and features;

any standard or non standard functions and/or cross-platform coding;

which define how the flexible message will be sent, received and presented on the, or each, receiving device; (step 3)

generating flexible message incorporating the content and features and functions and/or cross-platform coding selected by the sender; (step 4)

flexible message sent, received and presented on receiving device(s) as selected by sender without limitation which it is possible to send, receive and present using the sender selected message mode messaging system and the receiving device. (step 5)

- 6 With regard to step 2 of claim 1, Semitel's argument is that the messaging mode selected by the sender is not limited to the modes of messaging referred to at lines 1-5, page 7 of the description ("The sender selects mode of message 105. Such modes may include; SMS text message, multimedia message, email and instant messaging, voicemail or any other mode without limitation by which messaging is possible."). Mr McGuire argued that the term "mode" should be construed as any existing mode/method/type of electronic message or messaging system that has been enhanced by the incorporation of flexible messaging. He added that this would have been clear from the further reference to the flexible message being "single-mode", "mixed-mode" or "multimodal" elsewhere in the description.
- 7 It is clear that the examiner had difficulty understanding the meaning of step 2 of claim 1 and needed to refer back to the detailed description for assistance in interpreting the meaning of the words. The examiner quite rightly focussed his attention towards the top of page 7 of the description for assistance, and in my view came to an entirely reasonable conclusion as to the meaning of these words.
- 8 With regard to step 3 of claim 1, Semitel's argument is that the examiner should not

have construed the way in which the content, features, functions and/or cross-platform coding received by the selected device define the way in which the flexible message will be sent, received and presented; Mr McGuire argued that this step could also be interpreted to mean the way in which the flexible message will be sent, received or presented. With due respect to Mr McGuire, the wording of step 3 of claim 1 is quite clear in its grammatical construction such that it excludes the functions of sending, receiving and presenting as being alternatives.

Conclusion

- 9 I conclude that the examiner did not make an error in principle or reach a conclusion that is clearly wrong. I therefore make no order to set the opinion aside.

Costs

- 10 Having given a preliminary indication of my conclusion at the hearing, Mr Sachdeva said that he did not wish to pursue the matter of costs. I therefore make no order in this regard.

Appeal

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

H Jones

Deputy Director, acting for the Comptroller