

The Application

- 6 The application relates to a system and method for managing data concerning service dispatches. In particular, the current system purports to identify service dispatches that require attention or are overdue for completion. For each service dispatch, a record is generated which includes data relating to the dispatch and a series of service milestones are set out for the completion of the service dispatch. The system monitors the extent to which milestones are met or more particularly are not met, whilst the service dispatch is open. The service dispatch records are sorted for display in a way which assists handling and resolution of the service dispatches. The service dispatch records are sorted for display according to a number of service milestones which have not been completed on time and have therefore been missed (“missed milestones”). The service dispatch records are also sorted according to whether they have missed milestones and also have not been claimed by a customer service representative (“unacknowledged milestones”). The service dispatch records are sorted for display so that those with “unacknowledged milestones” are displayed as a matter of priority.

The Claims

- 7 The current set of claims on file and examined by the examiner were those filed with the applicant’s letter dated 29th June 2007. There are 8 claims in total (including one omnibus claim), with claim 1 being the main independent claim and which reads as follows:

1: A system for managing service dispatch records associated with service calls to a service provider, comprising:

a customer database storing data concerning the service obligation of the service provider for the customer of the products that are the subject of the service calls;

a service provider database storing data concerning service dispatch resources concerning the customer and product associated with the service call;

a service dispatch generation module operable to generate a service dispatch record on the basis of the data from the customer database and service provider database, wherein a generated service dispatch record includes a set of service milestones to be met as part of the completion of the service dispatch associated with the service call; and

a service dispatch sorting module for sorting for display the generated service dispatch records.

8 The applicant however, immediately prior to the hearing filed in an e-mail, an amended independent claim 1 for discussion at the hearing. The amended claim reads as follows:

1. *A system for managing service dispatch records associated with service calls to a service provider, comprising:*

a customer database storing data concerning the service obligation of the service provider for the customer of the products or services that are the subject of the service calls;

a service provider database storing data concerning service dispatch resources concerning the customer and product associated with the service call;

a service dispatch generation module operable to generate a service dispatch record on the basis of the data from the customer database and service provider database, wherein a generated service dispatch record includes a set of service milestones to be met as part of the completion of the service dispatch associated with the service call; and

a service dispatch sorting module for sorting for display the generated service dispatch records,

wherein a count of the number of missed milestones is kept for each service dispatch record, and

wherein the service dispatch sorting module sorts the service dispatch records at least on the basis of whether unacknowledged milestones are associated with the service dispatch record.

9 The amended claim 1 differs from current claim 1 only in respect of the passages that are underlined. These passages qualify the term “milestones” which is present in the current claim 1.

The law and its interpretation

10 The relevant parts of section 1(2) read:

“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 It is not disputed that the assessment of patentability under section 1(2) is now governed by the judgment of the Court of Appeal in *Aerotel Ltd v Telco Holdings Ltd and Macrossan’s Application* [2006] EWCA Civ 1371, [2007] RPC 7 (“Aerotel”). In this case, the court reviewed the case law on the interpretation of section 1(2) and approved a four-step test for the assessment of patentability, namely:

- 1) Properly construe the claim;
- 2) Identify the actual contribution;
- 3) Ask whether it falls solely within the excluded matter;
- 4) Check whether the actual or alleged contribution is actually technical in nature.

12 Operation of this test is explained in paragraphs 40-48 of the judgment. Paragraph 43 confirms that identification of the contribution is essentially a matter of determining what it is that the inventor has really added to human knowledge and involves looking at the substance of the invention claimed, rather than the form of the claim. Paragraph 46 explains that the fourth step of checking whether the contribution is technical may not be necessary because the third step – asking whether the contribution is solely of excluded matter- should have covered that point.

Arguments and analysis

- 13 At the hearing, Mr Howe introduced the amended claim 1 as a “discussion point”, indicating that it brought out key features (missing/unacknowledged milestones) which he considered the current claim 1 on file not to do. He referred to these features as being important when assessing the contribution made by the invention as a whole, urging that they must be taken into consideration when assessing whether or not the invention is excluded. Mr Howe proceeded to take me through the description, explaining fully about the milestones, missed milestones and unacknowledged milestones.
- 14 The analysis which follows, takes account of both claims.

First step: Construe the claim

- 15 The first step in the *Aerotel/Macrossan* test requires me to construe the claims. I note that the examiner expressed no difficulties in construing the current claim 1: having read the claim myself, I also have no difficulties with it. The examiner however, did not have the benefit of fully examining the amended claim 1 filed prior to the hearing but at the hearing expressed no difficulties with its construction and once again, I agree. I note also that Mr Howe had no issues surrounding claim construction.
- 16 Both claims refer to “service milestones”, with the amended claim 1 alone, also referring to “missed milestones” and “unacknowledged milestones”. “Service milestones” are clearly defined on p.9 lines 20-27 of the description; “missed milestones” are self-evident insofar as they refer to service dispatch records assigned service milestones which have missed the time allocated for their completion (p.10 lines 22-25) and “unacknowledged milestones” refer to service dispatch records which have not yet been claimed by a customer service representative and already have missed milestones associated with them (p.12 lines 15-20).

Second step: Identify the actual contribution

- 17 For the second step, it is necessary for me to identify the actual contribution made by the invention. Paragraph 43 of *Aerotel/Macrossan* explains that this is to be determined by asking what it is - as a matter of substance not form - that the invention has really added to human knowledge.
- 18 The examiner considers the actual contribution in respect of the current claim 1 to lie in the sorting of the service dispatch records for display, whilst acknowledging that the use of customer databases and service provider databases when generating service dispatch records including a set of milestones is known. At the hearing, he indicated that his view had not changed in light of the amended claim 1 presented for discussion.

- 19 Mr Howe disagreed with the examiner's assessment of the contribution being merely the sorting of dispatch records for display, arguing that there was a bit more to it than that. In an attempt to define the actual contribution, Mr Howe took time to explain the invention, in particular the concepts of unacknowledged milestones and missed milestones and the way in which service dispatch records having these markers set against them are flagged up for displaying in a specific priority order at a real point in time. He referred to this particular system for managing service dispatch records as being an alerting tool; an alarm - flagging up those service dispatch records which are in need of attention.
- 20 Whilst giving due consideration to both Mr Howe and the examiner's assessment of the contribution, and looking at substance rather than form, I view the actual contribution as a system for managing service dispatch records having a function which enables service dispatch records to be sorted and displayed in a priority order of importance/urgency, the order of priority being determined by monitoring service dispatch records which have missed milestones flagged against them and which records have also not been "claimed" by a customer service representative and simply service dispatch records which have missed milestones flagged up against them and have been "claimed" by a customer service representative, with this particular set of service dispatch records further being prioritised so that the former records are flagged up first for display. This is essentially the same assessment as the examiner but with the extra consideration that records with unacknowledged milestones take priority over those with just missed milestones. A system for managing service dispatch records having this specific way of prioritising the service dispatch records, in my view, is what has been added to human knowledge.

The third step: Ask whether it falls solely within excluded matter

- 21 What I must now do is decide whether the contribution that I have identified resides solely within excluded matter. The examiner objected that the contribution lay in excluded matter, namely method of doing business, program for a computer and the presentation of information, to which Mr Howe provided counter arguments. I will now consider each of these in turn.

Business method

- 22 The examiner objected to current claim 1 as falling within the business method exclusion because organising service dispatch records, which includes sorting them, is an administrative activity. At the hearing, the examiner re-asserted his view, in the light of amended claim 1, that a system for managing service dispatch records, like the applicants, and irrespective of how you are managing those service dispatch records, is always going to be a method of doing business - suggesting that the applicant had come up with a better way of managing the service dispatch records - with that being still just a better business method.

- 23 Mr Howe did not agree that the current invention, a system for managing service dispatch records, with the additional features of monitoring unacknowledged/missed milestones however, was a method of doing business, pointing out that these features were technical ones, which brought it out of this exclusion. Mr Howe pointed out that a one-off list was not being generated (eg. an instruction sheet issued at the start of a shift) - that it isn't a business plan or a timetable and so was therefore not setting a business method. He described the system as operating by devolving real time through an interactive tool and which, in practice, is not going to display a complete list and certainly not a fixed list - but it is going to display things/records that need attention, and in his words, "it is creating alerts".
- 24 Mr Howe explained that the service dispatch records are sorted on the basis of the most recent set of data available, so that the records are continually updated, with the most urgent/problematic ones displayed as a matter of priority. This improves the reliability of the sorting function and helps in the management and monitoring of the service dispatches.
- 25 I am not convinced by Mr Howe's arguments that the features to which he has referred to are technical to the extent that they solve a technical problem and therefore bring it out of the business method exclusion.
- 26 To my mind, what the applicant has proposed is a way of managing service dispatch records to ensure that customer requests are managed efficiently and to the level which the customer has contracted to. The applicant proposes putting in place a system/set of measures to ensure that customers' requests for some form of action/service are not overlooked - putting the "unacknowledged/missed milestones" measures in place simply ensures that problems arising with service dispatch records are appropriately flagged up for action.
- 27 Whilst I recognise that these features would most likely provide a real benefit to the management of such records, I do not believe they are solving a technical problem to the extent which takes the contribution outside the business method exclusion. In my view, putting these measures in place addresses a business need - to ensure that customers' requests for some form of action/service are processed effectively and in line with the level of service which is in place between the customer and the service provider, which would otherwise lead to an unsatisfactory level of service and hence dissatisfied customers. I note also that the description/specification points in its entirety towards a system for managing service dispatch records to ensure that customer's requests for some form of action/service are met.

- 28 This, to me, all points towards a more efficient way of handling service dispatch records and hence a more efficient method of doing business, by providing the service provider with a tool which gives them a way of managing their customer obligations, by means of flagging up those service dispatch records which are in need of urgent attention. In *Aerotel/Macrossan* at paragraphs 67-71, the Court of Appeal held that there was no reason to limit the business method exclusion to abstract matters or to completed transactions, and the fact that an invention provided a new tool did not necessarily dispose of the objection.
- 29 I therefore consider that the actual contribution made by the invention is in substance, a method of doing business as such.

Computer program

- 30 The examiner objected to current claim 1 as falling within the program for a computer exclusion because the sorting of the service dispatch records into priority order is set by computer programming.
- 31 Mr Howe disagreed. Whilst he acknowledged that the invention would be implemented on a computer, he argued that this alone did not mean that it was excluded as a program for a computer. He argued that the “unacknowledged/missed milestones” features took the invention beyond what is a computer program.
- 32 Whilst I acknowledge that involvement of a computer to implement an invention does not necessarily mean that an invention is excluded, I do not believe that the features of “unacknowledged/missed milestones” are technical in the sense that they solve a technical problem and therefore I do not accept that they take the contribution outside of the program for a computer exclusion.
- 33 In my view, the program is designed/configured to identify (in real time) service dispatch records which match criteria which, by way of sorting according to specific criteria so as to prioritise the records for subsequent display, alerts customer service personnel to those service dispatch records which are problematic and in need of attention.
- 34 To my mind, this is nothing more than a computer program which sorts and displays the service dispatch records according to set criteria, to provide an alerting tool (in the words of Mr Howe) which is used in a business method to provide a more efficient/reliable way of handling service dispatch records. The software has been configured so as to sort service dispatch records according to “unacknowledged/missed milestone” criteria and then display the records so that ones with missed/unacknowledged milestones are displayed, priority being given to those which have unacknowledged missed milestones. Problematic requests are thus flagged up so they can be dealt with accordingly.

- 35 Furthermore, whilst the software enables data associated with the service dispatch records to be updated in real time, which has the effect of continually updating the status of the records, this provides, in my view, a better tool for managing service dispatch records and is a function of the computer program - once again, not solving a technical problem but addressing a business need.
- 36 I gather from the description and from discussion at the hearing, no special arrangement of hardware is required and the software carrying out the proposed invention is run on conventional equipment.
- 37 In view of the above, I consider that the actual contribution made by the invention is also in substance, a program for a computer as such.

Presentation of information

- 38 Mr Howe acknowledged that the proposed system is clearly going to display the service dispatch records in priority order on a computer screen and of course, I agree. However, he argued that this was not presentation of information in the sense of the exclusion because the proposed system works out which things (records) need to be warned/flagged up and the warning happens to be in the form of a display.
- 39 It is clear to me that the proposed system will display service dispatch records which have been sorted according to the criteria of "unacknowledged/missed milestones" and display the records in priority order on a computer screen, thereby presenting information to customer service personnel so they can then take appropriate action.
- 40 This, to my mind, is clearly a function of the computer program - sorting of the records into a priority order for subsequent display on a computer screen.
- 41 Like Mr Howe however, I am not convinced that this display of information on a screen - the order of which has been prioritised according to criteria set by computer software - falls foul of the presentation of information exclusion. However, having found that the contribution does fall foul of the business method and computer program exclusions, I do not need to decide this issue.

The Fourth Step: Check whether the contribution is technical in nature

- 42 Having found the contribution to lie solely in excluded matter, I do not need to apply the fourth step of the test.

Conclusion

- 43 After taking into full consideration the applicant's case presented by Mr Howe at the hearing, the examiner's objections and also the patent specification, I am satisfied that the inventions of both current claim 1 and the proposed amended claim 1 presented by the applicant for discussion at the hearing, define non-patentable inventions which fall within the business method as such and program for a computer as such exclusions of section 1(2)(c). I can see nothing in the remaining claims or the rest of the specification that could form the basis of a valid claim. I therefore refuse the application under section 18(3) for failing to comply with section 1(2)(c).

Appeal

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

C L Davies

Deputy Director acting for the Comptroller