



## PATENTS ACT 1977

APPLICANT	Thunderhead Limited
ISSUE	Whether patent application GB 1305636.1 complies with section 1(2)
HEARING OFFICER	Dr C L Davies

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### DECISION

#### Introduction

- 1 Patent application GB 1305636.1 ("the application") entitled "Self Adapting Multi Variant Testing" was filed on 27 March 2013. It was published as GB 2512359 A on 1 October 2014.
- 2 Following a number of rounds of correspondence between the examiner and the applicant's attorneys, and amendment of the claims, the examiner remains of the view that the claimed invention is excluded from patentability under section 1(2).
- 3 With the position unresolved the applicant asked to be heard and the matter came before me at a hearing on 20 April 2021. The issue of excluded matter before me was set out in the examiner's examination report of 15 December 2020. The applicant was represented at the hearing by attorney Mr Kevin Parnham of Avidity IP. I thank the attorney for filing skeleton arguments prior to the hearing. I was assisted by Mr Marc Collins.

#### The invention

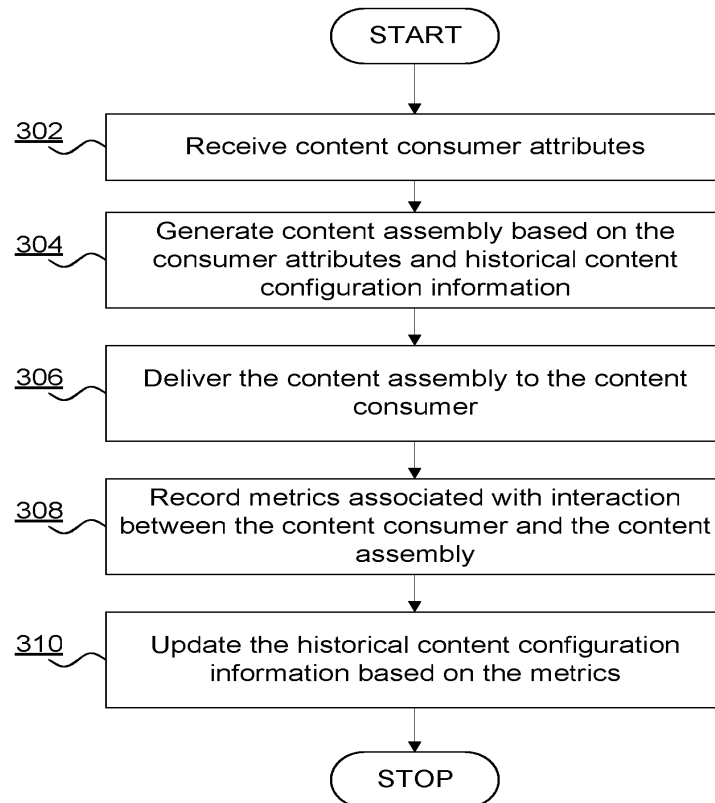
- 4 The present invention relates to testing content for delivery to content consumers. In particular, it relates to multi variant testing.
- 5 Split Testing, or A/B Testing, is an approach to assessing the effectiveness of content, such as web page content, in order to provide improved content. The effectiveness of two versions of content are compared in order to discover which has greater efficacy. Efficacy is measured depending on a purpose of the content. Accordingly, efficacy can be measured in terms of, inter alia, a response rate, a sales conversion rate, a progress through content etc.
- 6 Multi variant testing is a process by which any number of components of content, such as components of a webpage, may be tested. Multi variant testing effectively allows numerous A/B tests to be performed for content comprising an assembly of

content parts, at the same time. Multi variant testing can allow for a large number of possible combinations of content in numerous configurations. In view of the large number of possible variations, multi variant testing is constrained by the available time and population of content receivers (such as users). An example of content for which split or multi variant testing may be performed is the series of steps involved in a purchase on an electronic commerce web site. Any improvements in drop-off rates and failures to convert visitors to sales can represent additional sales for an electronic commerce provider.

- 7 Prior art approaches to multi variant testing require the selection of variations of content elements, such as a component of a web page, for different users. On conclusion of a statistically significant set of tests a preferred content resource can be selected for users based on metrics arising from the multi variant testing process. Disparate content propositions can be provided for comparison, imposing a considerable burden on content providers who prepare content propositions and adjust content provision in response to repeated test results.
- 8 The proposed invention seeks to address these disadvantages by providing a computer implemented method of content assembly. The method comprises receiving content consumer attributes from all content consumers; generating a content assembly based on all content consumer attributes and historical content configuration information for each content consumer; delivering the content assembly to at least one content consumer; recording metrics associated with interaction between the content consumer and the content assembly; and updating the historical content configuration information based on the metrics for that one content consumer, wherein the historical content configuration information includes efficacy information about historical content assemblies for each content consumer attribute in the set of possible content consumer attributes for the at least one consumer and the efficacy information relating to combinations of any modifiable consumer attributes with other consumer attributes for a desired level of efficacy of presentation of the content assembly to the at least one content consumer and defined by the historical content configuration information.
- 9 Figure 3 below is a flowchart of a method of a content assembler in accordance with the invention. Initially, at step 302, attributes associated with the content consumer are received. At step 304, a content assembly is generated based on the content consumer attributes and historical content configuration information. In an exemplary embodiment, the generation 304 includes defining a new content configuration based on an optimisation algorithm applied to the historical content configuration information, such as a machine learning algorithm. Further, in an exemplary embodiment, the generation 304 includes receiving a content assembly template specifying one or more constituent parts of the content assembly. In the exemplary embodiment, a content element for each constituent part of the content assembly as defined by the template is retrieved from a repository of content elements, each content element having modifiable element attributes. The element attributes of each content element are configured in accordance with the new content configuration. At step 306, the content assembly is delivered to the content consumer for interaction. At step 308, metrics associated with the interaction between the content consumer and the content assembly are recorded. At step 310, the historical content configuration information is updated based on the recorded metrics. The updating

310 includes generating efficacy information about the content assembly based on the metrics and storing a definition of the content assembly as a content configuration in association with the generated efficacy information.

**FIGURE 3**



- 10 By conducting an iterative process of assembling content and testing efficacy a content assembly can be optimised. It is said that this can provide advantages in efficiencies in terms of system usage in physical transmission capabilities, the processing time for content assembly adaptation for consumers for a level of response and anticipation of the level of content consumer responses with current content assemblies and potential content assemblies (after processing) in terms of efficiency levels.
- 11 During his argument, Mr Parnham also highlights that the dynamic approach, where the set of attributes for different embodiments of content are changed for best response matching to consumers, eliminates the election by the user themselves.
- 12 The latest set of claims filed with attorney's letter dated 27 October 2020 has sixteen claims including independent method claim 1 and a system claim 8 which are set out below:
  1. *A computer implemented method of a content assembly generator for generating a content assembly for delivery to a specific plurality of content consumers, each content consumer having associated a plurality of content consumer attributes from a set of possible content consumer attributes, the method comprising:*

*receiving the content consumer attributes from all content consumers;*

*generating a content assembly based on all content consumer attributes and historical content configuration Information for each content consumer;*

*delivering the content assembly to at least one specific content consumer;*

*recording metrics associated with interaction between the content consumer and the content assembly; and*

*updating the historical content configuration information based on the metrics for that one content consumer,*

*wherein the historical content configuration information includes efficacy information about historical content assemblies for each content consumer attribute in the set of possible content consumer attributes for the at least one consumer and the efficacy information relating to combinations of any modifiable consumer attributes with other consumer attributes for selection of the content assembly to associate the at least one content consumer and defined by the current or previous historical content configuration information in accordance with a predetermined interaction process.*

*8. A content assembler system for generating a content assembly for delivery to a specific plurality of content consumers, each content consumer having associated a plurality of content consumer attributes from a set of possible content consumer attributes, the system comprising:*

*a receiver for receiving the content consumer attributes from all content consumers;*

*a generator for generating a content assembly based on all content consumer attributes and historical content configuration information for each content consumer;*

*a delivery component for delivering the content assembly to at least one specific content consumer;*

*a metric recorder for recording metrics associated with interaction between that one content consumer and the content assembly; and*

*an updater for updating the historical content configuration information based on the metrics for that one content consumer,*

*wherein the historical content configuration information includes efficacy information about historical content assemblies for each content consumer attribute in the set of possible content consumer attributes for the at least one consumer and the efficacy information relating to combinations of any modifiable consumer attributes with other consumer attributes for selection of the content assembly to associate the at least one content consumer and defined by the current or previous historical content configuration information*

*in accordance with a predetermined instruction process.*

### **The Issues to be decided**

- 13 The issue for me to decide is patentability i.e. whether the claimed invention relates to excluded subject matter, and in particular whether the invention falls into one of the categories set out in section 1(2)(c) of the Patents Act 1977 as a method of doing business and/or program for a computer as such.

### **The law**

- 14 The examiner has raised an objection under section 1(2) of the Patents Act 1977 that the invention is not patentable because it relates inter-alia to one or more categories of excluded matter. The relevant provisions of this section of the Act are shown in bold below:

**1(2) It is hereby declared that the following (among other things) are not inventions for the purposes of this Act, that is to say, anything which consists of –**

*(a) 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.*

- 15 The examiner and the applicant agree that the assessment of patentability under section 1(2) is governed by the judgment of the Court of Appeal in *Aerotel*<sup>1</sup>, as further interpreted by the Court of Appeal in *Symbian*<sup>2</sup>.
- 16 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*

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<sup>1</sup> *Aerotel Ltd v Telco Holdings Ltd and Macrossan's Application* [2006] EWCA Civ 1371, [2007] RPC 7

<sup>2</sup> *Symbian Ltd's Application* [2008] EWCA Civ 1066, [2009] RPC 1

*Step four: check whether the actual or alleged contribution is actually technical in nature.*

- 17 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*<sup>3</sup> and *Lantana*<sup>4</sup>.
- 18 Lewison J (as he then was) in *AT&T/CVON*<sup>5</sup> set out five signposts that he considered to be helpful when considering whether a computer program makes a technical contribution. In *HTC* the signposts were reformulated slightly in light of the decision in *Gemstar*<sup>6</sup>. The signposts are:
- i) Whether the claimed technical effect has a technical effect on a process which is carried on outside the computer.*
  - ii) Whether the claimed technical effect operates at the level of the architecture of the computer; that is to say whether the effect is produced irrespective of the data being processed or the applications being run.*
  - iii) Whether the claimed technical effect results in the computer being made to operate in a new way.*
  - iv) Whether the program makes the computer a better computer in the sense of running more efficiently and effectively as a computer.*
  - v) Whether the perceived problem is overcome by the claimed invention as opposed to merely being circumvented.*
- 19 It should be clear that the signposts are merely guidelines; although they provide a useful aid in assessing the technical character of a claimed invention, they were not intended to provide a definitive test (as Lewison LJ's obiter remarks in paragraph 149 of *HTC* make clear). Several judgments have emphasised this point - John Baldwin QC (sitting as a Deputy Judge) in *Really Virtual*<sup>7</sup> noted that the signposts, although useful, are no more than signposts and that there will be some cases in which they are more helpful than in others. Kitchin LJ made similar remarks in paragraph 51 of *HTC* that their usefulness does not mean they will be determinative in every case.

### **Arguments and analysis**

- 20 The examiner maintains that the claims define an invention which consists of a program for a computer. His position is set out most recently in his examination

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<sup>3</sup> *HTC Europe Co Ltd v Apple Inc* [2013] RPC 30

<sup>4</sup> *Lantana v Comptroller-General of Patents, Designs and Trade Marks* [2014] EWCA Civ 1463

<sup>5</sup> *AT&T Knowledge Venture/CVON Innovations v Comptroller General of Patents* [2009] EWHC 343 (Pat)

<sup>6</sup> *Gemstar-TV Guide International Inc v Virgin Media Ltd* [2010] RPC 10

<sup>7</sup> *Really Virtual Co Ltd v UK Intellectual Property Office* [2012] EWHC 1086 (Ch)

report of 15 December 2020. Detailed arguments against the examiner's position are contained in the applicant's responses to the examination reports, through their attorney. These arguments were elaborated clearly and helpfully at the hearing by Mr Parnham. Taking all these arguments into account, I must determine whether the claimed invention relates solely to excluded subject matter under section 1(2).

#### Step 1: Properly construe the claims

- 21 The examiner and attorney agree that the claims are clear and not difficult to construe. I agree that the claims are clear in light of the description such that their construction poses no difficulty.
- 22 There are two independent claims: claim 1 which defines a computer implemented method of a content assembly generator for generating a content assembly for delivery to a specific plurality of content consumers; and claim 8 which defines a content assembler system for generating a content assembly for delivery to a specific plurality of content consumers. The examiner considers the hardware used in the system of claim 8 to be known networked devices which are entirely conventional and has suggested that in substance the proposed inventive concept relates to a computer implemented method as defined in claim 1. I agree with the examiner on this point. The contribution will be assessed based on the method of claim 1 and all the claims will stand or fall together.

#### Step 2: Identifying the actual or alleged contribution

- 23 As set out in his final examination report, the examiner explains that having considered the application in detail it would appear that the proposed invention seeks to provide improvements in the testing of content for delivery to content consumers, and more particularly to multi variant testing. Further, that any contribution does not reside in the hardware or the system *per se*. The system comprises networked devices which are entirely conventional. Such an arrangement is commonplace and cannot be considered a contribution in itself. Therefore, the examiner considers the contribution of claim 1 to lie in *“a computer implemented method of content assembly/testing wherein a content assembly is generated based on received content consumer attributes and historical content configuration information. The content assembly is delivered to at least one consumer and metrics associated with interaction between the content consumer and the content assembly are recorded. The historical content configuration information is updated based on the metrics. The historical content configuration information includes efficacy information about historical content assemblies for each content consumer attribute in the set of possible content consumer attributes for the at least one consumer and the efficacy information relating to combinations of any modifiable consumer attributes with other consumer attributes for a desired level of efficacy of presentation of the content assembly to the at least one content consumer and defined by the historical content configuration information. The assembly and testing method may provide the advantage of optimising the efficacy of a content assembly when used as an iterative process and may further reduce the level of user input required.”*
- 24 In his skeleton argument Mr Parnham explained the invention can be considered to relate to a method of considering all the attributes of an interaction process e.g. a

website, so a range of different images, a range of texts, positioning images, text GUI icons and buttons etc. and the sequence used by consumers as well as responses such as input of specific as well as combination of credit cards, the history of use of those cards etc. against a predetermined objective such as a sale or commercial transaction referral. Therefore, the attorney considers the contribution to lie in *weighing the attributes and contributions so that an assembly can be determined and/or deduced from a plethora in accordance with a pre-determined efficiency level and so switch/select accordingly.*

- 25 During the hearing Mr Parnham explained that the contribution put forward by the examiner in some respects is close to the one proposed by himself, however the examiner has taken the view that the route between the content and the user is a fixed route, therefore the invention merely looks historically at what has happened on that route and picking the content assembly based on that. Whereas, the attorney considers the route to be dynamic and not fixed and thus the invention is concerned with looking at the history of the dynamic route and switching to the appropriate/best route for the user.
- 26 Mr Parnham explained that the prior art is concerned with a fixed connection between the source and the user and optimising the process based on a static route between the two. Whereas in the real world there is no such thing as a static process route because it changes day by day between source and user. Furthermore, that the prior systems of A/B testing were concerned with optimising a particular route, whereas the present invention is counterintuitive in that a less efficient system may be selected but it's better for the process route.
- 27 At the hearing Mr Parnham defined the contribution as avoiding "process clash" and then switching to the best content assembly for the process/content route. In my view this definition of the contribution is too broad. To my mind, the features of using metrics associated with interaction between the content consumer and the content assembly; updating historical content configuration information based on the metrics and then using this information to select the best content assembly for the process/content route must be included in the contribution.
- 28 I am not convinced by Mr Parnham's argument that the examiner has limited his consideration to the route being fixed rather than dynamic. The examiner's definition of the contribution closely resembles the features set out in claim 1, and I am happy to adopt it.

Steps 3 and 4: Does the contribution fall solely within excluded matter/is it technical in nature?

- 29 What I must now decide is whether the contribution identified above relates solely to a program for a computer as such and/or a method of doing business as such. This corresponds to step three of the Aerotel test.
- 30 The fourth step of the test is 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 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".

### Computer program

31 Mr Parnham contends that the computer implemented method of claim 1 is on all fours with the invention set out in *Lenovo*<sup>8</sup>. Therefore, as the invention in *Lenovo* was considered to not be a computer program or a business method as such and thus allowable, the present invention should also be considered allowable. He considers the present invention to be concerned with avoiding "process clash" which is akin to the issue of card clash overcome by the invention in *Lenovo*.

32 In my view, the key paragraph for consideration from *Lenovo* is paragraph 36 which reads:

*The key question in this case is whether the invention involves a different physical interaction with the world outside the computer, as compared to what had gone before. As I have said already, I would agree with the reasoning at the end of paragraph 26 if the technical effect relied on resided in pressing a button in a computer system because that is a conventional feature of using conventional computer systems. Those features may be technical in a sense, but they cannot add technical character to make a computer program as such patentable. However, again as explained above, the point of this invention is the opposite. It is in US 438 that the user has to press a button to choose which card to use or to split the payment between two cards. In the *Lenovo* invention, this is handled automatically at the point of sale because the user's preferences have already been acquired and stored elsewhere. The automatic nature of the process is recognised in the formulation of contribution identified in the decision at paragraph 21. As a result of this automatic feature, **the card clash problem experienced with contactless payment cards is solved without the user having to take any extra physical step at the point they use their contactless cards.** In my judgment that difference is an effect of the invention which is neither a computer program as such nor a method of doing business as such nor a combination of the two. That difference is technical in character and, in the context of the invention as a whole, it is not just one of the normal incidents of a conventional computer system. [emphasis added]*

33 From my understanding of the invention as set out in the application and as explained to me by Mr Parnham at the hearing, the present invention does not involve a different physical interaction with the world outside the computer, as compared to what had gone before. As outlined by the attorney at the hearing, the invention is concerned with looking at the history of the dynamic route and switching to the appropriate/best route for the user. This is all happening "behind the scenes" to provide the user with the best/most appropriate route to allow for the desired content to be displayed at the user interface. This will hopefully result in user engagement such as a sale of goods.

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<sup>8</sup> *Lenovo (Singapore) PTE Ltd v Comptroller General of Patents [2020] EWHC 1706 (Pat)*

- 34 I agree with the examiner that dynamically selecting a content assembly from a selection of assemblies to optimise for a result such as sales is not the same as automatically solving a card clash problem.
- 35 Therefore, I do not consider the present invention to be allowable for the same reasoning set out in *Lenovo*.
- 36 In this case, as discussed above, it is clear that the arrangement of hardware used to implement the invention is immaterial to the working of the invention. The hardware is all conventional hardware. Given this point, the contribution must therefore be viewed as being embodied purely in a computer program. Whilst the method of the invention undoubtedly uses a computer program for its implementation, 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.
- 37 At this point it is useful to consider the *AT&T/CVON* signposts as they are a helpful aid when considering whether a computer program makes a technical contribution. The examiner has made reference to the signposts in his latest examination report and in his assessment determined the contribution failed to satisfy any of the five signposts. Mr Parnham disagrees and considers all five signposts to be satisfied by the contribution.
- 38 In this case, when considering the five signposts, the reference to ‘the computer’ should be deemed to cover an arrangement or network of computers as was the case in *Lantana* [2]<sup>9</sup>. The network of devices of the current application is entirely conventional and for analysis in relation to the signposts it can be considered ‘the computer’.
- 39 With regard to the first signpost, Mr Parnham submits that the claimed invention has a technical effect on a process which is carried on outside the computer. He argues that the efficiency gain provided by the invention in identifying the best/most appropriate route effects user action carried on outside of the computer. The examiner has argued that the proposed invention assembles content, monitors the efficacy and updates stored information. This process is entirely within ‘the computer’ within the meaning of signpost (i). Further, the examiner refers to Arden LJ in her judgment of the *Lantana* at paragraph 47, the first signpost will not be answered simply by referencing “the fact that a program will have a practical effect outside of a computer”. Whilst the proposed invention may take into consideration a variable outside the computer, this is not a technical effect on a process which is carried on outside the computer. I am minded to agree with the examiner. Whilst the invention does provide the user with the desired content/information this does not result in the invention having a technical effect on a process carried on outside the computer. There is no effect, technical or otherwise, on anything outside the computer. The efficiency gain provided by the invention in identifying the best/most appropriate route, merely resides in data held on the computer. The invention uses updated historical content configuration information based on metrics to select the best content assembly for the process/content route. This process is carried on wholly

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<sup>9</sup> *Lantana v Comptroller-General of Patents* [2013] EWHC 2673 (Pat) [30]

within the computer. Therefore, in my view the first signpost is not met and points away from there being a technical contribution.

- 40 With regard to the second signpost, Mr Parnham argued at the hearing that due to the dynamic nature of the route, the architecture of the system is constantly changing and the invention enables automatic switching to the best content assembly for the current architecture. This may be the case, but I do not agree that this equates to the invention operating at a level of architecture of the computer. The program does not change how the “computer” i.e. any networked computers, runs internally. In practice, this means in the sense of the operation of the processor, the cache memory, or other internal components of the computer. There is nothing that is affected below the application layer of the computer arrangement. In other words, the computer is conventional and runs conventionally. Therefore, in my view the second signpost points away from there being a technical contribution.
- 41 The third signpost emphasises that the effect must be more than just the running of a program or application on a general-purpose computer – the computer itself must operate differently than it did before as a result of the program being run. Mr Parnham considers the computer to operate in a different way in that a normal computer will simply present optimised content option but even if multiple options are made available the invention switches between such options even if the user is not aware of such options. Again, I am not persuaded by this argument. I consider the computer to be operating in the usual way to perform the instructions of the program in the same way as it would for any program. The contribution does not point towards some generally applicable way of operating a computer system, but rather the contribution is a better software program with the purpose of selecting the best content assembly for the process/content route. I agree with the examiner that the proposed invention provides a new method of content assembly, which is new method of handling a particular type of information and not a generally applicable method of operating a computer. Therefore, in my view the third signpost points away from there being a technical contribution.
- 42 The fourth signpost is approached in a similar way to the third. The computer must operate more efficiently and effectively as a result of running the program. Again, this must be the computer as a whole, rather than the individual program. Mr Parnham submits there is a better computer and running better as better content assemblies are provided. Further, the process is clearly more effective and efficient in providing the best content assembly for the process/content route. The examiner has submitted that in several cases, such as *Q Software Global Ltd’s Application* (BL O/120/11) and *JDA Software Group Inc’s Application* (BL O/386/12), it was argued that the program required less processing power to run, or operated faster, and the system was therefore more efficient. This was not considered to meet the signpost, as the system itself remained unchanged – the computer processed the data in the same way as it did before, the program merely made more efficient use of the hardware. I am minded to agree with the examiner. Whilst the invention provides the best content assembly for the process/content route, there is no effect on how the computer itself operates beyond the normal interaction between an application program and a computer or network of computers. In other words, the contribution does not point towards some generally applicable way of operating a computer system, but rather the contribution is a better software program with the purpose of

providing an improved content assembly. I consider the program for the computer to be a more efficient and effective way of providing the best content assembly for a particular route. However, this does not provide a more efficient computer – any potential improvement to efficiency does not apply to the computer itself. The computer itself does not run more efficiently in carrying out the instructions of the computer program. In my view the fourth signpost is not met and points away from there being a technical contribution.

- 43 The fifth and final signpost asks whether the perceived problem is overcome by the claimed invention as opposed to merely being circumvented. The fifth signpost looks at the technical character of an alleged invention by means of the problem addressed. When the problem is a technical one, the alleged invention can be considered to have a technical nature leading to it falling outside the exclusion if (but not only if) it solves the problem. In *Lantana* Mr Justice Briss stated:

*“It 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.”*

- 44 The problem addressed by the method of claim 1 is how to optimise the efficacy of assembled content and provide the best content assembly for the process/content route. This has the aim of providing more bespoke content user/assemblies interaction. This is not a technical problem, such as how to improve the operation of a computer, but a business problem relating to improving the effectiveness of assembled content for its desired purpose, such as sales on an ecommerce website. Further the invention doesn't solve a technical problem lying within the computer or network. It merely provides a software function by which a better content assembly for a process/content route is obtained through use of historical content configuration information. The contribution is not a technical solution, but an exercise in data and information manipulation and selection.
- 45 At the hearing, Mr Parnham argued that the contribution resides in avoiding “process clash” by switching to the best content assembly for the process/content route. In my view, this clearly circumvents the problem of “process clash” rather than solving or eliminating it. Therefore, signpost (v) is not satisfied.
- 46 Looking at the fourth step, as discussed above I do not consider the contribution to be technical in nature.

### **Business method**

- 47 The invention clearly has a commercial context as set out in the application and the effect of the contribution is to provide a user/customer and retailer with a better content assembly. This leads to a more efficient system providing better content for both the customer and retailer. This is achieved through conventional hardware programmed to use historical content configuration information in identifying and providing the content assembly for a process/content route. In *Merrill Lynch*<sup>10</sup> it was

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<sup>10</sup> *Merrill Lynch's Application [1989] RPC 561*

discussed at page 569 that the fact that the method may be an improvement on previous methods is immaterial. The prohibition in section 1(2)(c) is generic and draws no distinction between the method by which the mode of business is achieved. The independent claims are directed to a method and system for providing better content assembly. That is simply a method of doing business.

### **Conclusion**

- 48 Having carefully considered the arguments, I am of the view that the problem addressed by the claimed invention is not technical in nature. That the invention is implemented by a computer, which in itself is technical, does not confer a technical contribution to an invention which would be otherwise lacking in that respect. The contribution falls solely within the matter excluded under section 1(2) as a program for a computer as such and method of doing business as such.
- 49 I find that the claimed invention is excluded under section 1(2)(c) as a program for a computer as such and a method of doing business as such. I therefore refuse this application under section 18(3).

### **Appeal**

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

**C.L. Davies**

Deputy Director, acting for the Comptroller