

the system platform coupled to the one or more user interfaces by one or more communication networks; wherein

the memory is operable to store information associated with a field of participants for an event, each participant associated with particular odds for the event; and

the processor is operable to:

receive a request for a customized odds bet from the one or more user interfaces, the request including an identification of a lead participant from the field of participants for the event and customized odds indicating the odds the bettor desires for the customized odds bet;

select one or more additional participants from the field of participants to add to the bet such that the odds associated with the lead participant combined with the odds associated with the one or more selected additional participants at least approximates the customized odds for the customized odds bet; and

send to at least one of the user interfaces notification of the participants that have been selected to form the customized odds bet.

- 4 Briefly explained in terms of a bet on a horse race, the system allows a punter to specify his overall stake, the odds he would like to benefit from and a horse he wants to include in his bet. The system then considers the individual odds for each of the runners, selects additional runners to also be included in the bet and divides the punter's stake between the lead and additional participants such that if any of those horses wins, the stake and odds for the winning horse are such that the punter's winnings reflect his overall stake and the approximate odds he has chosen.

The Law

- 5 Section 1 of the Act sets out the requirements that an invention must fulfil for it to be patentable including, in section 1(2), a list of things for which patent protection is not available. The relevant parts of section 1(2) read:

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)
- (b)
- (c) a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer;
- (d)

but the foregoing provision shall prevent anything from being treated as an invention for the purpose of this Act only to the extent that a patent or application for a patent relates to that thing as such.

6 The test for deciding whether an invention is excluded was set out by the Court of Appeal in its judgment in *Aerotel/Macrossan*¹. That test comprises four steps:

(1) properly construe the claim

(2) identify the actual contribution;

(3) ask whether it falls solely within the excluded subject matter;

(4) check whether the actual or alleged contribution is actually technical in nature.

7 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 claim. Paragraph 46 explains that the fourth step of checking whether the contribution is technical may not be necessary because the third step should have covered that.

Applying the test

8 From the correspondence, neither the examiner nor the Applicants consider construing the claims to cause any problem. I agree, enabling me to move straight onto the remaining steps of the test and over which there is disagreement.

9 In support of their formulation of the contribution made by the invention, the Applicants say that in the prior art the punter would have had to calculate each bet individually which would be extremely onerous and impractical. They say that each bet would need to be transmitted separately with consequent heavy load on the communication network. Even if able to carry out all the required calculations, they say that changes to the odds would require repeated re-calculation and to avoid that punters would all try to bet early risking breakdown of the system.

10 They say the invention mitigates this problem by having a processor that is able to receive a customized odds bet. Thus in their opinion the contribution made by the invention is

“a reduction in network traffic by having a processor of a system platform operable to receive a request for a customized odds bet from the one or more user interfaces, the request including an identification of a lead participant from the field of participants for the event and customized odds indicating the odds the bettor desires for the customized odds bet, and select one or more additional participants to add to the bet such that the combined odds at least approximates the customized odds”.

¹ *Aerotel Ltd vs Telco Holdings Ltd & Macrossan's Patent Application* [2007] RPC 7

- 11 They say that this contribution does not fall solely in excluded subject matter. The contribution in the Applicants' view is in how the network is set up so that requests for a customized odds bet are communicated across a network to achieve a reduction in network traffic. It is not, they say, solely concerned with the provision of a bet having the odds desired by the user but also comprises features concerning communication across a network which are not excluded. In their view the reduction in network traffic achieved by the invention provides a contribution that does not fall into the business method, mathematical method or playing a game exclusions.
- 12 Moreover whilst the invention is implemented as programmed hardware, the Applicants say it is not excluded as a computer program. They say that it is clear from the case law that the involvement of a computer program does not mean that an invention is necessarily excluded as a program for a computer. They say that a reduction in network traffic is not an inevitable result of the invention being embodied as a program but "is a result of the manner of communication across a network, namely the transmission of a customized bet".
- 13 I do not agree with the Applicants' assessment of the contribution made by the invention. First, it is abundantly clear from the description that none of the hardware used to implement the invention is new. The computing resources involved are conventional computer hardware communicating over conventional networks. The Applicants say that in identifying the contribution, the invention must be viewed as a whole and that it is not correct to strip out items that may be known in isolation. I agree with that, but the fact remains that the contribution does not reside in the hardware itself. Any contribution must reside in what that hardware is programmed to do. Moreover, any reduction in network traffic achieved does not result from the network communicating in a new way (as the Applicants suggest). What the Applicants have contributed is a new way of allowing a punter to generate a bet at the odds he desires using a conventional networked computer system. It makes no odds that the claims are drafted in terms of a system for communicating the bets – the contribution remains the same.
- 14 Turning to step 3 of the test, I have no doubt that that contribution falls solely in excluded matter. Offering different types of bets and calculating odds are fundamental processes in the business of bookmaking. The contribution made by this invention is one to the business of bookmaking, not to communication. Thus I have no doubt that the contribution falls solely within the business method exclusion.
- 15 Furthermore, whilst I agree that the involvement of a computer does not necessarily mean that an invention is excluded, since the contribution made by the present invention resides in what the known hardware is programmed to do, and that is an excluded activity, the contribution must also fall solely within the computer program exclusion.
- 16 Having found the contribution to reside solely in excluded matter, I do not need to consider step 4 of the test.

Decision

- 17 I have found that the contribution made by the invention defined in claim 1 falls solely in excluded matter and that the invention defined therein is excluded as a method of doing business and a program for a computer as such. The remaining claims are concerned with features such as the type of bet being laid and the type of event being bet upon. I can see nothing in any of these claims or anywhere else in the specification that could form the basis of a valid claim. I therefore refuse the application under section 18(3).

Appeal

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

A BARTLETT

Deputy Director acting for the Comptroller