

physical observation and is referred to as “synchronous” because the client and agent can talk at the same time over the telephone line. In contrast, transactions passing through the internet are for the most part intermittent and the data is created first and then transmitted. These transactions are referred to as “asynchronous”. For example, a transaction involving an email exchange between client and agent may take place over many hours or even days although the actual transmission of the data for each email is virtually instantaneous. Thus it is hard to determine how long and how much effort is involved in an internet transaction before completion.

- 5 The invention relates to a way of measuring an agent’s efforts when handling asynchronous transactions with clients through the Internet which takes account of the type and content of each transmission and compiling a performance report based on that information. This is clearly very useful from a line management point of view.

The claims

- 6 The application as amended on 3 January 2008 comprises a total of 30 claims, including three independent claims (1, 13 and 25):

Claim 1

A method of compiling performance reports in a contact centre serving a plurality of clients through the Internet using a plurality of agents, such method comprising the steps of:

opening a transaction file for saving information about asynchronous transactions occurring through the internet between an agent of a plurality of agents and a client of a plurality of clients;

measuring indicia of activity for the asynchronous transactions between the agent and client including an effort value which represents the effective effort to respond to each transmission within each transaction by extrapolating from a contact of each transmission;

adding the measured indicia of activity to the transaction file; and

compiling a report based upon the transaction file.

Claim 13

Apparatus for compiling performance reports in a contact centre serving a plurality of clients through the Internet using a plurality of agents, such apparatus comprising:

means for opening a transaction file for saving information about asynchronous transactions occurring through the internet between an agent of a plurality of agents and a client of a plurality of clients;

means for measuring indicia of activity for the asynchronous transactions between the agent and client including an effort value which reflects effective effort to respond to each transmission within each transmission by extrapolating from a contact of each transmission;

means for adding the measured indicia of activity to the transaction file; and

means for compiling a report based upon the transaction file.

Claim 25.

Apparatus for compiling performance reports in a contact centre serving a plurality of clients through the internet using a plurality of agents, such apparatus comprising:

a transaction processor adapted to open a transaction file for saving information about asynchronous transactions occurring through the internet between an agent of a plurality of agents and a client of a plurality of clients;

a measurement processor adapted to measure indicia of activity for the asynchronous internet transactions between the agent and client including an effort value which reflects effective effort to respond to each transmission within each transaction by extrapolating from a contact of each transmission;

a transaction file for collecting measured indicia of activity; and

a reports processor adapted to compile a report based upon the transaction file.

- 7 For consistency with claims 1 and 25, I shall assume the underlined word “transmission” in claim 13 should read as “transaction” for the purposes of this decision.

The Law

- 8 Section 1 of the Act sets out the statutory requirements for patentability of inventions and, in relation to excluded matter, the relevant parts of section 1(2) read as follows (emphasis added):

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 purposes of this Act **only to the extent that a patent or application for a patent relates to that thing as such.**

- 9 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 excluded subject matter
 4. Check whether the actual contribution is actually technical in nature.

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

- 10 How the test should be applied is explained in paragraphs 40-48 of the judgment. Paragraph 43 confirms that the contribution to be identified is essentially what in effect the inventor has added to the stock of human knowledge and involves looking at the substance of the invention claimed, rather than the form of the claim. Paragraph 46 indicates that application of the fourth step may not be required as the third step should have covered whether the contribution is technical in nature.

Applying the test

Construe the claims

- 11 The principles of claim construction have been set out by Lord Hoffmann in *Kirin-Amgen Inc v Hoechst Marion Roussel Ltd* [2005] RPC 9. At paragraph 69 he summarized the approach when he said the question to be asked is:

“what would the person skilled in the art have understood the patentee to have used the language of the claim to mean?”

- 12 From the correspondence, neither the applicants nor the examiner have directly addressed the issue of claim construction and I do not think this presents any real difficulty. It seems to me that claims 1 and 13 are directly equivalent method and apparatus claims, whilst apparatus claim 25 differs slightly in its wording. For example, claim 25 uses the wording “...reports processor adapted to compile a report...” as opposed to “...means for compiling a report ...” as used in claim 13; however I am content that there is no difference between claims 13 and 25 in substance, at least as far as assessing excluded matter is concerned.

Identify the contribution

- 13 The agent’s letter of 31 December 2007 argues that the contribution is “directed to a method of measuring the amount of effort an agent spends on each of a number of text transactions in an environment where the agent may handle many tasks simultaneously.” In particular, he notes that page 12 of the specification says: “With text/data (asynchronous) transmission, ... the task is more difficult, as the duration of a data transmission is meaningless because only a few milliseconds are required to transmit a lengthy email”. In his view, the actual contribution is to a new method of measuring agent activity in an asynchronous environment where no previous solution existed.
- 14 The examiner agrees although he expresses the contribution in more detailed terms. In his view, the contribution comprises a method and apparatus for compiling performance reports in a contact centre comprising the step of measuring indicia of activity for the asynchronous transactions between an agent and a client including an effort value which represents effective effort to respond to each transmission within each transaction by extrapolating from a content of each transmission. I also agree that the actual contribution lies in the step of measuring the indicia of activity for the asynchronous transactions.
- 15 The agent argues that the contribution is not a method for doing business because measuring agent activity is not directly related to the business of the

contact centre. He also says that measuring agent activity could be applied to a non-business environment, for example, to measure and generate statistics on how much time the agent spends communicating with friends on a shared or personal computer. The examiner disagrees and argues that a method of measuring the effort or performance of agents in a contact centre is a business method *as such* since it is concerned with the business of managing a contact centre. Even if the method were applied to the non-business environment, in his view, it still remained a method for doing the business of managing a contact centre.

- 16 The agent also submits that the invention is not a computer program because it provides the benefit of measuring agent activity across a mixed set of communication channels. He also says that there is no requirement or need for the claimed process to be performed by a computer and that other devices could perform the claimed steps equally well. Finally, the agent argues that measuring agent activity is technical in nature because it relates to asynchronous transmissions through a contact centre and that the extrapolation of asynchronous transmissions requires consideration of the subject matter of each transaction. In his view, this takes the contribution beyond the section 1(2) computer program exclusion.
- 17 The examiner argues that the contribution identified above does relate to a computer program *as such*. In his view the compilation of performance reports involves only the use of standard hardware components and requires nothing more than a change in the reporting software of the contact centre. He notes that the reference to “measuring agent activity across a mixed set of communication channels” is not a limitation that is present in the claims and thus considers it irrelevant. He also points out that the claims cover embodiments where the process is carried out by a computer and that the description clearly describes the invention being carried out by a computer.

Is the contribution excluded?

- 18 The Court of Appeal considered the business method exclusion in paragraphs 67-70 of the *Aerotel/Macrossan* judgment and took the view that there was no reason to limit the exclusion to abstract matters or completed transactions. Thus it was not limited to methods of conducting entire businesses. I therefore do not accept that the claimed invention cannot relate to a method for doing business simply because the method does not relate directly to the contact centre’s particular business (e.g. online sales, customer services, etc.). In my view, the present invention provides a method for allowing a supervisor to monitor how hard members of his or her staff are working and thus relates to the business of managing a contact centre. I therefore have no doubt the contribution falls wholly within the business method exclusion.
- 19 I am conscious of the warning given in paragraph 22 of *Aerotel/Macrossan* that just because an invention involves the use of a computer program does not necessarily mean it is excluded from patentability. However, although the agent argues that measuring agent activity is technical in nature, I disagree. As far as I can see, “measuring” in this context is nothing more than obtaining or reading digital data that exists in the transaction file using conventional computing

techniques. The data is analyzed to determine the content of the transmissions and transactions in order to give an indication of the effort put into a transaction and this is used to produce a report. There is no suggestion in the application that the invention uses anything other than standard hardware. The contribution lies entirely in the way that data is captured, tagged and manipulated before it is compiled into a report, and in my view points to the contribution being made solely within the meaning of a computer program as set out in section 1(2). Accordingly, I find that the substance of the contribution lies wholly within the computer program exclusion.

Check whether the contribution is technical in nature

- 20 Having determined that the contribution to reside solely in excluded matter, the step (4) check is redundant.

Decision

- 21 I have found that the contribution made by the invention defined by claims 1, 13 and 25 falls solely in excluded subject matter and that the invention defined therein is excluded as a method of doing business and a program for a computer *as such*.
- 22 I have read the specification carefully and I can see nothing in any of the dependant claims or anywhere else in the specification that could be reasonably expected to form the basis of a valid claim. I therefore refuse the application under section 18(3).

Appeal

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

Mrs S E Chalmers

Deputy Director acting for the Comptroller