

PATENTS ACT 1977

APPLICANT Innoplexus AG

ISSUE Whether patent application GB1804913.0 is
excluded under section 1(2)

HEARING OFFICER H Jones

DECISION

Background

- 1 Patent application GB1804913.0, now published as GB2572361 was filed in the name of Innoplexus AG on 27 March 2018.
- 2 The examiner has objected that this application relates to a method of doing business and a computer program, and has determined that a search would serve no useful purpose. The applicant has provided arguments in response, but these have not persuaded the examiner who accordingly offered a hearing. The applicant has waived their right to be heard and has instead requested a decision on the basis of the correspondence on file.

The invention

- 3 There are independent claims directed towards a system, a method, and a computer program, but in substance they relate to the same idea and will stand or fall together. Claim 1 reads:

A system that determines allocation of sales force for an entity, wherein the sales force is allocated to primary intermediaries, wherein the system includes a computer system, characterized in that the system comprises:

- a database arrangement operable to store information related to a plurality of intermediaries, data sources related to the entity, at least one predefined parameter associated with the sales force of the entity; and
- a processing module communicably coupled to the database arrangement, the processing module operable to:
 - receive at least one user-input;
 - identify, from the plurality of intermediaries, the primary intermediaries based on the received at least one user-input, wherein each of the plurality of intermediaries has attributes associated therewith;

- determine a base score of each of the primary intermediaries based on at least one of the associated attributes;
- identify relations of each of the primary intermediaries with at least one of the plurality of intermediaries, wherein a relation is identified between a primary intermediary and at least one of the plurality of intermediaries having at least one similar attribute therebetween;
- determine a weightage score of the identified relations of each of the primary intermediaries;
- calculate a diffusion centrality score of each of the primary intermediaries, wherein the diffusion centrality score of a primary intermediary is calculated by processing base score of the corresponding primary intermediary and the weightage scores of identified relations of the primary intermediary;
- extract a prescription score of each of the primary intermediaries from the data sources related to the entity; - determine influence factor for each of the primary intermediaries based on the prescription score and the diffusion centrality score;
- generate at least one cluster of primary intermediaries based on the at least one predefined parameter associated with the sales force of the entity; and
- determine the allocation of the sales force to the primary intermediaries, based on the at least one cluster and the influence factor of each of the primary intermediaries.

- 4 The invention relates to a computer-based technique for allocating a sales force to intermediaries (e.g. dealers, retailers, distributors or wholesalers). It seeks to overcome problems inherent in conventional manual techniques of developing marketing strategies. Such problems include errors due to a failure to take account of changing scenarios, and a lack of an experienced workforce to conduct market research. By way of example, the technique is said to be useful for sculptors and pharmaceutical companies and accordingly is directed towards increasing the sales of products such as sculptures or drugs.

The law

- 5 The relevant provision is section 1(2)(c) of the Patents Act 1977, which says that methods of doing business or computer programs, as such, cannot be protected by a patent.
- 6 The examiner has based their objections on well-established case-law¹ which provides guidance on determining whether an invention falls within this exclusion. There is no disagreement between the examiner and the applicant as to the relevant law, only on how it should be applied in this instance.

¹ *Aerotel Ltd v Telco Holdings Ltd & Ors Rev 1* [2006] EWCA Civ 1371, [2007] RPC 7; *Symbian Ltd's Application* [2008] EWCA Civ 1066, [2009] RPC 1; *AT&T v CVON* [2009] EWHC 343 (Pat); *HTC/Apple* [2013] EWCA Civ 451

Arguments and analysis

- 7 The examiner has correctly pointed out that it is not entirely whether the claim is limited to allocation of a sales force in a pharmaceutical setting; the step of extracting a “prescription score” certainly suggests that it is, especially when read in light of the definition of the term in the application. However, nothing turns on this; the product or service that the sales force is selling is immaterial to the question of patentability.
- 8 The examiner characterises the contribution as:

“A computer-implemented method of allocating a sales force for an entity, wherein the sales force is allocated to primary intermediaries, wherein the allocation depends on the primary intermediaries’ attributes, primary intermediaries’ common attributes with other primary intermediaries and sales score of the primary intermediaries with the entity. This provides a less time-consuming, reliable (because there is no chance of human-error) and cost-effective method for determining allocation of sales force as part of a marketing strategy”
- 9 The applicant has highlighted the storage of the specific information that is used to determine the sales force allocation as being important to the contribution, but otherwise appears to accept the examiner’s formulation. The examiner is entirely correct in my view.
- 10 The examiner’s [pre-hearing report of 29 March 2022](#) has dealt comprehensively with the applicant’s arguments and it is neither necessary nor useful for me to set out his analysis in depth here, but I have fully reviewed the examiner’s objections and the applicant’s arguments in reaching my decision.
- 11 One strand of applicant’s argument relies upon the three *AT&T* signposts which are sometimes referred to as the “better computer” signposts. They say that they have contributed a faster, more reliable computer, made possible at least in part by the selection and storage of pertinent information which allows optimal allocation of a sales force. The examiner has rightly not been persuaded by this. The applicant may well have devised a better, faster, more reliable technique for determining the allocation of a sales force, but there is absolutely no sense in which programming a computer to perform the technique provides any inherent improvement in the computer *per se*. On the contrary, they have contributed no more than a way of programming a computer to undertake a business activity.
- 12 Equally unconvincing is the applicant’s argument that their invention is on all fours with that held to be patentable in *Halliburton Energy Services Inc*². While one might possibly squint at the current application and say that the contribution is about simulating or designing something, *Halliburton* was about simulating altogether more technical – a drill bit, not a marketing strategy.
- 13 The applicant also alludes to a number of alleged technical problems which are said to be solved. One such problem is that of being able to accurately determine a number of patients authorised to be issued with a particular medicine. I am not convinced that the application contains any teaching about this (the method simply extracts this number from a data store), but even so this does not strike me as a

² [2011] EWHC 2508 (Pat)

technical problem. In fact, the application does not address or solve any technical problem. The only problem that exists lies firmly in the field of business practices. It is merely about how to direct the efforts and activities of a sales force.

Conclusion

- 14 There can be no doubt that the contribution falls entirely within the excluded fields. The application relates to a computer implemented business method and is refused under section 18(3).

Appeal

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

Huw Jones

Deputy Director, acting for the Comptroller