



PATENTS ACT 1977

APPLICANT	Equinedge LLC
ISSUE	Whether patent application GB 2104012.6 is excluded under section 1(2)
HEARING OFFICER	J Pullen

DECISION

Background

- 1 Patent application GB 2104012.6 ("the application") entitled "Horse race betting graphical user interface" was filed on 1 October 2019, with an earliest declared priority date of 1 October 2018, in the name of Equinedge, LLC. It was published as GB 2591402 A on 28 July 2021.
- 2 On 28 March 2022, the examiner issued an examination report under section 18(3), setting out an objection that the invention relates to a method of doing business, a method of playing a game and a program for a computer as such and is excluded from patent protection under s.1(2).
- 3 The applicant responded by filing a set of amended claims with their agent's letter of 29 July 2022. The applicant also disagreed with the examiner's objection and argued that the invention was not excluded under s.1(2). The examiner maintained the objection in a second examination report dated 11 October 2022. In his second examination report the examiner further set out an objection that the invention also relates to the presentation of information.
- 4 On 15 December 2022 the applicant's agent wrote to the Office to request a decision based on the papers on file. The issue of excluded matter before me was set out in the examiner's pre-hearing report of 9 February 2023.
- 5 I confirm that I have considered all papers on the file in reaching my decision.

The invention

- 6 The application relates generally to pari-mutuel horse race betting and, more particularly, to a user interface for generating a ticket for horse race betting. Typically, a bettor has a large amount of information to digest when placing a bet, and this is seen as being problematic. The application explains that in the case of

more exotic bets, such as daily double or pick 3, 4, 5, 6, the bettor's decision-making process may become even more complex as they simultaneously consider multiple races. In view of the difficulty of making well-informed bets in one's head or with pencil and paper, various computer-implemented betting tools exist in the marketplace which allow a user to construct a ticket for placing various types of bets. However, while such conventional betting tools may display published information, such as morning line (M/L) odds, to assist the user in choosing horses they do not provide any real advantage to the user beyond convenience.

- 7 The invention aims to address the drawbacks with the prior art tools by generating a graphical user interface (GUI) for horse race betting comprising an automatic ticket generation button which marks horses as selected to win a race based on predicted win percentages of the horses and constraints set by the user of the bet amount and a maximum ticket price. The ability to generate such an automatic ticket makes it easier for a user to place numerous bets on a horse race based on predicted win percentages of the horses.
- 8 Figure 1 below shows an example horse race betting GUI 100 according to an embodiment of the invention. Using the GUI, a user wishing to generate a horse race betting ticket may, in addition to manually selecting horses to win, automatically generate a combination of selections that maximizes a function of a predicted ticket win percentage 170 within defined constraints. By supporting the automatic generation of a ticket, the GUI may serve an advising function that is absent in conventional betting tools. Figure 1 represents a ticket generator page of the GUI, which may include one or more lists 110 of horses, a race selection portion 120, a list information portion 130 corresponding to each list 110, a bet amount selector 140, a maximum ticket price selector 150, a ticket cost 160, a predicted ticket win percentage 170, a clear ticket button 180, and an automatic ticket generation button 190.

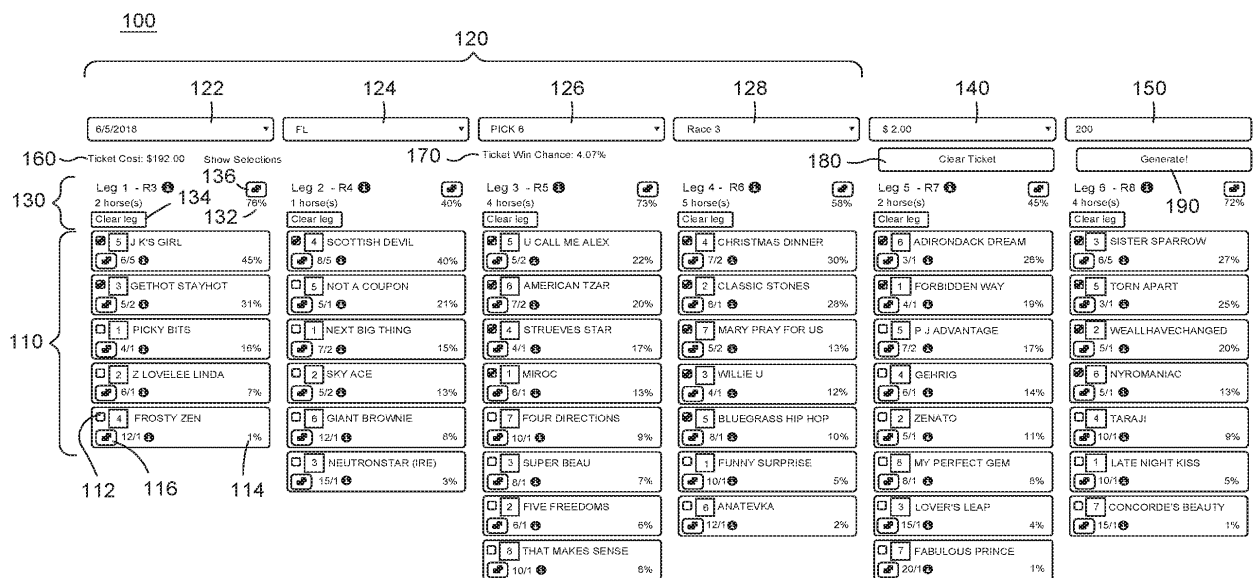


FIG. 1

- 9 In the example of Figure 1, six lists 110 of horses are shown: a first list including horses named “J K’S GIRL”, “GETHOT STAYHOT” etc. Each of the six lists may represent the horses scheduled to run a particular horse race. The lists may be displayed following the user’s selection of race(s) using the various selectors in the race selection portion 120. The user may select the date using the date selector 122, select the track using the track selector 124, select the bet type using the bet type selector 126, and select the starting race for consecutive races using the starting race selector 128. The user may further input a bet amount using the bet amount selector 140 and a maximum ticket price using the maximum ticket price selector 150.
- 10 If the user would like advice on which horses to select for an optimal ticket, the user may click the automatic ticket generation button 190 to request an automatic selection of horses. In response, the GUI may mark one or more horses of each of the first, second, third, fourth, fifth, and sixth lists as selected to win based on the predicted win percentages of the horses. The automatically generated selections may maximize the predicted ticket win percentage without causing the number of bets times the bet amount to exceed the maximum ticket price. So, in the example shown in Figure 1, where the user has input \$2.00 as the bet amount and \$200 as the maximum ticket price, the GUI may select a combination of horses that maximizes the predicted ticket win percentage without exceeding 100 bets (since more than 100 bets times \$2.00/bet would exceed \$200).

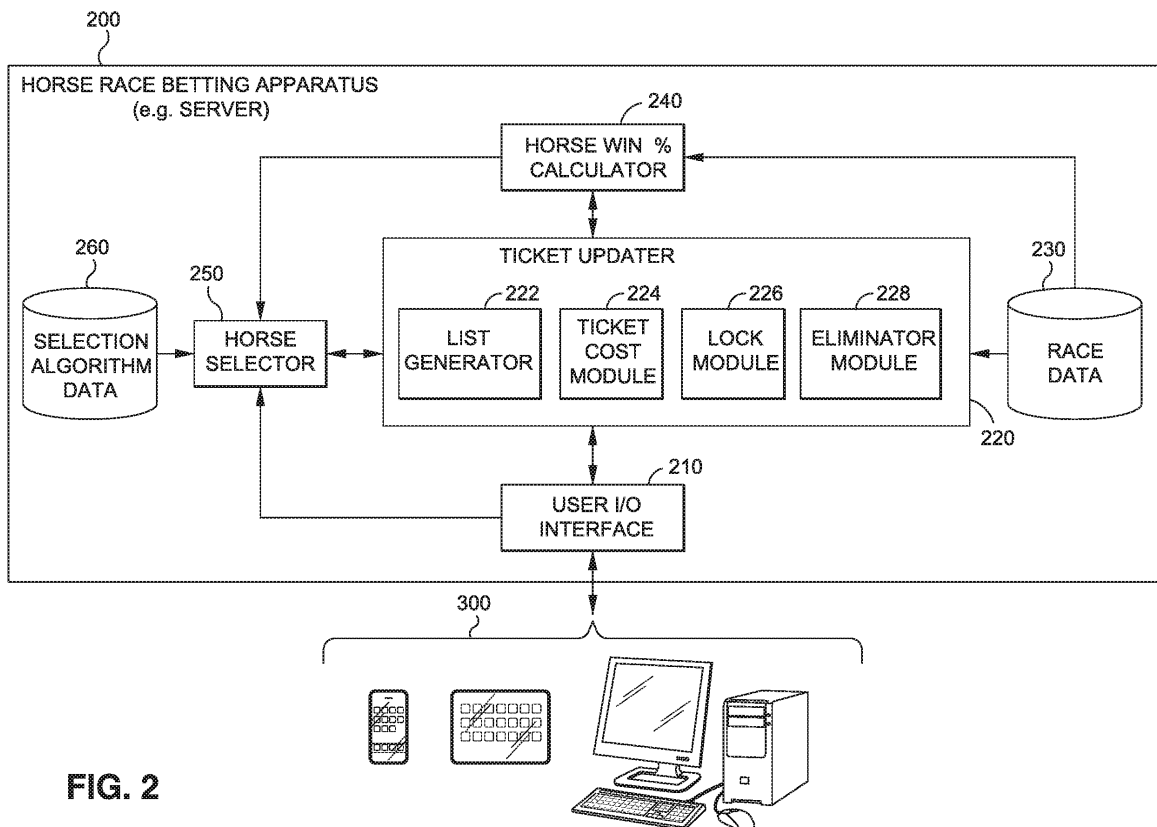


FIG. 2

- 11 Figure 2 shows an example horse race betting apparatus 200 according to an embodiment of the invention. The horse race betting apparatus 200 may be a server or a combination of networked servers that interacts with a web browser or mobile application of a user device 300 in order to generate the horse race betting GUI 100

described above. The horse race betting apparatus 200 may include a user I/O interface 210, a ticket updater 220, a race data storage 230, a horse win percentage calculator 240, a horse selector 250, and a selection algorithm data storage 260.

12 The latest set of claims filed with agent's letter of 29 July 2022 has seventeen claims including three independent claims directed to a non-transitory program storage medium (claim 1), a method (claim 16) and a system (claim 17) which are set out below:

1. *A non-transitory program storage medium on which are stored instructions executable by a processor or programmable circuit to perform operations for generating a graphical user interface for horse race betting, the operations comprising:*
displaying a first list of horses scheduled to run a first race from among a plurality of horses;
displaying, in association with each horse of the first list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the first race;
displaying an automatic ticket generation button by which a user may request an automatic selection of horses; and,
in response to a user interaction with the automatic ticket generation button, marking one or more horses of the first list of horses as selected to win the first race based on predicted win percentages of the horses of the first list, and wherein the operations further comprise:
displaying, adjacent to the first list of horses, a second list of horses scheduled to run a second race;
displaying, in association with each horse of the second list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the second race;
displaying, adjacent to the second list of horses, a third list of horses scheduled to run a third race;
displaying, in association with each horse of the third list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the third race; and,
in response to the user interaction with the automatic ticket generation button, further marking one or more horses of the second list of horses as selected to win the second race based on predicted win percentages of the horses of the second list and marking one or more horses of the third list of horses as selected to win the third race based on predicted win percentages of the horses of the third list, and wherein said marking one or more horses in response to a user interaction with the automatic ticket generation button is further based on constraints imposed by a bet amount and a maximum ticket price, and wherein the one or more horses marked in response to a user interaction with the automatic ticket generation button maximizes a function of a predicted ticket win percentage without causing a number of bets times the bet amount to exceed the maximum ticket price, the predicted ticket win percentage being a likelihood that a horse from among the horses marked to win the first race will win the first race, a horse from among the horses marked to win the second race will win the second race, and a horse from among the horses marked to win the third race will win the third race.

16. *A method of generating a graphical user interface for horse race betting, the method comprising:*
displaying a first list of horses scheduled to run a first race from among a plurality of horses;

displaying, in association with each horse of the first list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the first race;

displaying an automatic ticket generation button by which a user may request an automatic selection of horses; and,

in response to a user interaction with the automatic ticket generation button, marking one or more horses of the first list of horses as selected to win the first race based on predicted win percentages of the horses of the first list. and wherein the method further comprises:

displaying, adjacent to the first list of horses, a second list of horses scheduled to run a second race;

displaying, in association with each horse of the second list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the second race;

displaying, adjacent to the second list of horses, a third list of horses scheduled to run a third race;

displaying, in association with each horse of the third list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the third race; and,

in response to the user interaction with the automatic ticket generation button, further marking one or more horses of the second list of horses as selected to win the second race based on predicted win percentages of the horses of the second list and marking one or more horses of the third list of horses as selected to win the third race based on predicted win percentages of the horses of the third list, and wherein said marking one or more horses in response to a user interaction with the automatic ticket generation button is further based on constraints imposed by a bet amount and a maximum ticket price, and

wherein the one or more horses marked in response to a user interaction with the automatic ticket generation button maximizes a function of a predicted ticket win percentage without causing a number of bets times the bet amount to exceed the maximum ticket price, the predicted ticket win percentage being a likelihood that a horse from among the horses marked to win the first race will win the first race, a horse from among the horses marked to win the second race will win the second race, and a horse from among the horses marked to win the third race will win the third race.

17. A system for generating a graphical user interface for horse race betting, the system comprising:

a server in communication with a user device; and

a program storage medium on which are stored instructions executable by the server to perform operations for generating a graphical user interface accessible by the user device via a web browser or mobile application of the user device, the operations comprising:

displaying a first list of horses scheduled to run a first race from among a plurality of horses;

displaying, in association with each horse of the first list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the first race;

displaying an automatic ticket generation button by which a user may request an automatic selection of horses; and,

in response to a user interaction with the automatic ticket generation button, marking one or more horses of the first list of horses as selected to win the first race based on predicted win percentages of the horses of the first list. and further comprising:

displaying, adjacent to the first list of horses, a second list of horses scheduled to run a second race;

displaying, in association with each horse of the second list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the second race;

displaying, adjacent to the second list of horses, a third list of horses scheduled to run a third race;

displaying, in association with each horse of the third list of horses, a win selection element by which a user of the graphical user interface may mark the horse as selected to win the third race; and,

in response to the user interaction with the automatic ticket generation button, further marking one or more horses of the second list of horses as selected to win the second race based on predicted win percentages of the horses of the second list and marking one or more horses of the third list of horses as selected to win the third race based on predicted win percentages of the horses of the third list, and wherein said marking one or more horses in response to a user interaction with the automatic ticket generation button is further based on constraints imposed by a bet amount and a maximum ticket price, and

wherein the one or more horses marked in response to a user interaction with the automatic ticket generation button maximizes a function of a predicted ticket win percentage without causing a number of bets times the bet amount to exceed the maximum ticket price, the predicted ticket win percentage being a likelihood that a horse from among the horses marked to win the first race will win the first race, a horse from among the horses marked to win the second race will win the second race, and a horse from among the horses marked to win the third race will win the third race.

The law

- 13 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.

- 14 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*¹, as further interpreted by the Court of Appeal in *Symbian*².
- 15 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

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

- 16 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*³ and *Lantana*⁴.
- 17 Lewison J (as he then was) in *AT&T/CVON*⁵ 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*⁶. 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.

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

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

³ *HTC Europe Co Ltd v Apple Inc* [2013] RPC 30

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

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

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

- 18 Paragraph 41 of AT&T/CVON emphasises that consideration of the signposts should properly reflect both stages 3 and 4 of the Aerotel approach:

If there is a technical effect in this sense, it is still necessary to consider whether the claimed technical effect lies solely in excluded matter.

- 19 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*⁷ 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 Whilst independent claims 1, 16 and 17 relate to different categories of protection, they do not differ in substance so they will stand or fall together.
- 21 The examiner maintains that the claims define an invention which consists of a method of doing business, a method of playing a game, a program for a computer and the presentation of information. Their position is set out in his examination reports. Detailed arguments against the examiner's position are contained in the applicant's response to the first examination report through their agent. Taking all these arguments into account, I must determine whether the claimed invention relates solely to excluded subject matter under section 1(2)(c) of the Patents Act 1977 as a method of doing business, a method of playing a game, a program for a computer and the presentation of information as such.

Step 1: Properly construe the claims

- 22 The first step of the test is to construe the claims. I do not think understanding the meaning of the claims presents any real problem and I consider them to be clear. There is no dispute between the applicant and the examiner as to how the independent claims should be construed.

Step 2: Identifying the actual or alleged contribution

- 23 Jacob LJ outlined the considerations to be applied when identifying the contribution made by the claims in paragraph 43 of *Aerotel* – the critical factors for the examiner to consider are emphasised:

“The second step – identify the contribution - is said to be more problematical. How do you assess the contribution? Mr Birss submits the test is workable – it is an exercise in judgment probably involving the problem said to be solved, how the invention works, what its advantages are. What has the inventor really added to human knowledge perhaps best sums up the exercise. The formulation involves looking at substance not form – which is surely what the legislator intended.”

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

- 24 The examiner considers the hardware used in implementing the method of the invention to be conventional. In other words, the present application does not contribute a 'new arrangement of hardware'. I agree with the examiner's view.
- 25 The examiner has identified the contribution made by the present invention to be:

A computer implemented method of generating a graphical user interface for horse race betting; the graphical user interface comprising an automatic ticket generation button which marks horses as selected to win a first, second and third race based on predicted win percentages of the horses, wherein the marked horses maximizes a function of a predicted win percentage without causing a number of bets times the bet amount to exceed the maximum ticket price; thus allowing a user to easier place numerous bets on the first, second and third horse race.

- 26 The applicant has not explicitly disagreed with the examiner's view of the contribution. In summarising their position, the applicant explained that the present invention contributes user interface functionality for generating a ticket. This is combined with a tool for making automatic selections based on predicted win percentages of the horses.
- 27 The invention provides an apparatus, system and method for generating a graphical user interface for horse race betting. The contribution made by the graphical user interface resides in the automatic generation button which selects horses based on predicted win percentage of the horses and constraints set by the user of the bet amount and a maximum ticket price. The summary set out by the applicant does not include the requirement that the automatic generation button in selecting the horses does so within the constraint set by the user such that the number of bets times the bet amount to exceed the maximum ticket price. In my view, this forms part of the contribution made by the invention. Consequently I agree with the contribution identified by the examiner above.

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

- 28 What I must now decide is whether the contribution identified above relates solely to excluded subject matter. This corresponds to step three of the *Aerotel* test.
- 29 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".
- 30 In this case, the arguments concerning whether the invention is excluded are very much wrapped up with the question of whether the contribution is technical in nature. Given that, I have considered the third and fourth steps together.

- 31 As explained by the examiner in his pre-hearing report, it is worth noting that it is not the case that the contribution must fall wholly within one of the exclusions to be excluded. If the contribution falls wholly within two or more excluded categories, it is nevertheless excluded. I refer you to paragraph 34 of *Raytheon Company*⁸:

In considering step iii) I would make the following preliminary observations. First, a convenient way of approaching the step is to ask whether there is any aspect of the contribution which does not fall within any of the exclusions. If there is then the invention does not relate to any excluded subject matter as such and is potentially patentable. Second, it is possible that the technical contribution does not fall wholly within any one of the exclusions but does fall wholly within two or more. Mr Birss submitted and Mr Fernando accepted that the invention would nevertheless be excluded. I agree. In such a case the contribution would still fall wholly within excluded subject matter. It would not be an invention within the meaning of Art. 52 of the EPC or s.1 of the Act.

Business method

- 32 The examiner considers the contribution of the proposed invention to relate to marking horses as selected to win a race based on predicted win percentages, i.e., marking elements of a graphical user interface based on pre-obtained information. This is argued to be an administrative task and therefore a purely business consideration which does not make any fundamental technical improvement to the underlying computer system.
- 33 The applicant argues that the claims are not directed to a method of exchanging and resolving financial obligations, a wagering game, or a practice of wagering. Indeed, while the specification contemplates an option to “submit/purchase the ticket (e.g. via a link to a third-party website or a third-party API providing direct bet placement functionality),” such functionality for making a wager is not even mentioned in the claims, let alone required.
- 34 I am not persuaded by this argument. Whilst the claims may not be directed to a method of exchanging and resolving financial obligations, a wagering game, or a practice of wagering, the invention is clearly directed to betting on horse racing and, in particular, to providing the user with a tool for the automatic generation of a ticket having horses selected to win a race based on predicted win percentages and to maximize the predicted ticket win percentage without causing a number of bets times the bet amount to exceed the maximum ticket price set by the user. Furthermore, as highlighted by the applicant, the tool may include a feature of the user being able to submit/purchase the ticket in order to place bets.
- 35 The Court of Appeal in *Aerotel* expressly rejected the interpretation placed upon this exclusion by Mann J in *Macrossan’s Patent Application*⁹ – that a method of doing business should be a way of conducting an entire business, rather than a tool to facilitate business transactions or procedural steps having administrative or financial character – and instead took a wider view of what constitutes a business method. It found that there was no reason to limit the exclusion in the way Mann J had, and

⁸ *Raytheon Company v The Comptroller General of Patents, Designs and Trade Marks* [2007] EWHC 1230 (Pat)

⁹ *Macrossan’s Patent Application* [2006] EWHC 705

confirmed this by looking at the French and German versions of EPC Article 52(2), which are not limited to methods of conducting entire businesses. Therefore, the exclusion is to be interpreted as encompassing such tools or steps, and not merely abstract matters or completed transactions.

- 36 The gambling industry, including gambling on horse racing, is clearly a business and placing bets a business transaction. I agree with the applicant that the claimed invention is not directed to a method of exchanging and resolving financial obligations, a wagering game, or a practice of wagering. However, as explained in the specification and discussed above the graphical user interface may be used to produce a ticket having horses marked for winning a particular race(s) as part of a process to place bets. Whilst the claimed invention does not relate to a way of conducting an entire business, in my view, the present invention provides a tool which facilitates the placing of bets. Therefore, I consider the claimed invention to provide a tool, method and system which facilitate business transactions.
- 37 The graphical user interface automatically generates a ticket which has horses marked as selected to win a race based on predicted win percentages and maximizes the predicted ticket win percentage without causing a number of bets times the bet amount to exceed the maximum ticket price set by the user. This is achieved through the use of conventional hardware programmed to automatically generate the ticket. I agree with the examiner's argument that this also relates to procedural steps having administrative character.
- 38 In my opinion, the contribution identified above is simply a method of doing business.

Computer program

- 39 In this case, 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 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.
- 40 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 examination reports. In his assessment of the five signposts the examiner determined that the contribution failed to satisfy any of the signposts.

Signpost (i)

- 41 The first signpost asks whether the claimed technical effect has a technical effect on a process which is carried on outside the computer. The contribution of the invention resides in a graphical user interface which can automatically generates a ticket having horses selected to win a race based on predicted win percentages and to maximize the predicted ticket win percentage without causing a number of bets times the bet amount to exceed the maximum ticket price set by the user. I agree with the

examiner that there is no technical effect on a process which is carried on outside the computer. Any effect imparted outside of the computer resides in the user being provided with a selection of horses to win races based upon predicted win percentages. As such, no technical effect is imparted. The automatic selection of horses may have advantages to the user but it is not solving a technical problem nor is it having a technical effect on a process carried on outside of the computer. Therefore, in my view the first signpost is not met and points away from there being a technical contribution.

Signposts (ii)-(iv)

I agree with the examiner's assessment of signposts (ii)-(iv) and do not consider these signposts to be of assistance to the applicant.

Signpost (V)

- 42 The fifth and final signposts 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 may be considered to have a technical nature leading to it falling outside the exclusion. However, in this case I am minded to agree with the examiner that the problem to be solved is not technical in nature. The contribution relates to making it easier for a user to place numerous bets on a horse race.
- 43 The invention doesn't solve a technical problem lying within the computer or network. It provides a software function by which horses may be automatically selected in win horse races. The contribution is not a technical solution, but an exercise in data and information manipulation and selection. Therefore, signpost (v) is not satisfied.
- 44 Therefore, I consider the contribution identified above to relate to a program for a computer as such.

Scheme, rule or method for playing a game

- 45 The examiner has argued that the contribution relates to generating a graphical user interface specifically for the purposes of horse race betting and is therefore considered to fall within the scope of a method for playing a game. The examiner has highlighted four Court judgments that he believes are particularly relevant to the present application in relation to the method for playing a game exclusion. These are *Shopalotto*¹⁰, *IGT*¹¹, *Oneida Indian Nation*¹² and *Cranway*¹³. All of the inventions contained in the applications at suit in these judgments were excluded.
- 46 I consider that betting on a horse race may be considered a game and so the invention clearly involves an aspect of playing a game, but does the contribution reside in a scheme, rule or method of playing a game?

¹⁰ *Shopalotto.com Ltd, Re Patent Application GB 0017772.5* [2005] EWHC 2416 (Pat)

¹¹ *IGT v Comptroller General of Patents* [2007] EWHC 1341 (Pat)

¹² *Oneida Indian Nation* [2007] EWHC 954 (Pat)

¹³ *Cranway Ltd v Playtech Ltd & Ors* [2009] EWHC 1588 (Pat)

47 The provision of the graphical user interface comprising an automatic ticket generation button which marks horses as selected to win races based on predicted win percentages of the horses facilitates the selection of several horses across multiple races. However, being able to make those multiple selections is something which a bettor was already in a position to do. Therefore, the identified contribution lies in providing the auto-select button itself, rather than changing how the 'game' works. This makes it easier for the bettor to select multiple horses across multiple races based on predicted win percentages, rather than allowing them to do something within the 'game' which they couldn't do before. I consider that making it easier for the bettor to automatically select multiple horses is a gaming consideration which would fall under the scheme, rule or method of playing a game exclusion. In other words when you consider a patentable invention it must be a solution to a concrete technical problem, as set out in paragraph 7 of *Shopalotto*, in this case the problem is how do we make it easier for a bettor to automatically select multiple horses across multiple races based on predicted win percentages, which is considered to be a 'gaming' problem rather than a 'technical' problem. Therefore, I consider the contribution identified above to relate to a scheme, rule or method of playing a game as such.

Presentation of information

48 The examiner has also argued that the invention relates to generating a graphical user interface for horse race betting, which he also considers to fall within the scope of the presentation of information exclusion. As explained by the examiner in his report, the presentation of information relates to a manner, means or method of expressing information. As emphasised by Mann J in *Gemstar* the exclusion is not solely confined to the content of information, and that, in order for the exclusion not to apply, there must be some technical effect beyond the information being presented. A new user interface was not considered to be a relevant technical effect and the examiner considers the current application, which relates to generating a graphical user interface for horse race betting, to be similarly excluded. Have decided above, when considering the computer program exclusion, that there is no technical effect I agree with the examiner's assessment and consider the contribution identified above to also relate to the presentation of information.

Conclusion

49 For all the reasons set out above, I find that the claimed invention is excluded under section 1(2) as a method of doing business, a program for a computer, a method of playing a game and the presentation of information as such. I refuse this application under section 18(3).

Appeal

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

J Pullen

Deputy Director, acting for the Comptroller