

**PATENTS ACT 1977**

APPLICANT Innoplexus AG

ISSUE Whether patent application GB1722305.8 is  
excluded under section 1(2)

HEARING OFFICER H Jones

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**DECISION**

**Background**

- 1 Patent application GB1722305.8, now published as GB2569952, was filed in the name of Innoplexus AG on 30 December 2017.
- 2 The examiner is of the view that the application relates to a computer program as such, and despite a number of rounds of correspondence, the applicant has failed to persuade the examiner otherwise. The application has not been searched. This decision relates to the fourth of four applications filed by the same applicant for which I have been asked to issue a decision on the papers. All four applications relate to very different subject matter even though an objection under section 1(2) is common to all.

**The invention**

- 3 The most recent set of claims includes independent claims to a method, system and a system, but they do not differ in substance. Claim 1 reads:

A method of identifying key terms in a digital document, characterised in that the method comprises:

- providing the digital document, wherein the digital document includes a first text in a first language;
- developing an ontology using at least one curated database by:
  - applying conceptual indexing to plurality of terms stored in the at least one curated database;
  - identifying semantic associations, between the plurality of terms, established in the at least one curated database; and
  - identifying at least one class tagged with the plurality of terms in the at least one curated database; and

- analysing the digital document to identify the key terms in the digital document, wherein analysing comprises:
  - translating the first text in the first language to obtain a second text in a second language;
  - translating the first text in the first language to obtain a third text in a third language;
  - translating the obtained second text in the second language to obtain a fourth text in the third language;
  - comparing at least one pair of first text, second text, third text and fourth text to identify at least one set of similar text between the compared at least one pair; and
  - processing the at least one set of similar text by validating the at least one set of similar text based on the ontology to obtain key terms in the digital document.

- 4 This application is about identifying key terms in digital documents. The presence of key terms in a document helps a user performing a search to assess the relevance of that document. A key term, as used in this application, is a significant word or phrase that remains equivalently comparable in multiple languages. By way of example, the term “cancer” in English translates as “cancer” in French and “cancr” in Welsh. The applicant’s method involves directly translating the original text of the document into two other languages, and also translating one of the translated texts into the other of the translated languages. The translations are compared to identify any text which is similar. An ontology is developed and used as a base to determine if the similar text is a key term of interest. An ontology is a set of concepts in a subject matter field that details types and properties of the set of concepts and semantic association thereof. The claim includes details of how the ontology is developed.

### **The law**

- 5 The relevant provision is section 1(2)(c) of the Patents Act 1977, which says that certain things cannot be protected by a patent:

*1. 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...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.*

6 There is well-established case-law providing guidance on determining whether an invention falls within this exclusion. In *Aerotel Ltd v Telco Holdings Ltd & Ors Rev 1*<sup>1</sup> the Court of Appeal set out the following four-step test for determining whether a proposed invention is excluded under section 1(2):

- 1) properly construe the claims;
- 2) identify the actual or alleged 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.

and in *Symbian Ltd's Application*<sup>2</sup>, the Court made it clear that when determining whether a proposed invention is excluded, it does not matter whether the question of “whether the contribution is technical” is asked at step (3) or (4).

7 The examiner has based his analysis on *Aerotel* and *Symbian*. He has also made use of the set of signposts of *AT&T v CVON*<sup>3</sup> and *HTC/Apple*<sup>4</sup>. There is no disagreement between the examiner and the applicant as to the relevant law.

### **Arguments and analysis**

8 The applicant has set out a lengthy argument in its letter of 30 December 2019. The examiner has comprehensively addressed the applicant’s arguments in his examination report of 14 January 2021. I have considered these carefully, along with all other correspondence on file.

9 The applicant has alleged that the examiner has misapplied the *Aerotel* test in this instance and that the Office has an illogical and inconsistent policy across different fields of technology, but I do not take the applicant to have argued that *Aerotel* is the wrong approach for assessing whether an invention relates to matter excluded from patentability under section 1(2). I note that the examiner addressed the applicant’s concerns about Office policy. I do not need to say any more.

10 With regard to the first *Aerotel* step, the examiner has correctly pointed out that the step of “comparing” is not limited to the use of a numerical statistic. He mentioned this because the applicant’s discussion in their letter of how the claim should be construed suggests that the method does use such a technique. In any case, I do not think this would make a material difference to my decision. There are no other issues with construing the claims.

11 The applicant’s assessment of the contribution is:

“[a] method [that] enables ... the computer (such as the processing module) to identify key terms associated with a digital document, by subjecting the text corresponding to the digital document through multiple language translations and subsequently, identifying similar (unchanging/recurring terms) text therefrom. Furthermore, the method enables development of the ontology for ... the computer to identify the key terms corresponding to the digital document.”

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<sup>1</sup> [2006] EWCA Civ 1371, [2007] RPC 7

<sup>2</sup> [2008] EWCA Civ 1066, [2009] RPC 1

<sup>3</sup> [2009] EWHC 343 (Pat)

<sup>4</sup> [2013] EWCA Civ 451

I share the examiner's view that this is entirely reasonable assessment of the contribution.

- 12 The applicant is of the view the decision of the hearing officer in *Gene Onyx Limited*<sup>5</sup> is directly relevant to their application. I have reviewed this decision. *Gene Onyx* is concerned with a method of genetic analysis to assess the suitability of active ingredients in skincare, cosmetic, cosmeceutical or nutricosmetic products for use by an individual. The current application is quite clearly concerned with very different subject-matter. The most significant difference is that the contribution in *Gene Onyx* includes a technical process carried out in a laboratory, which the hearing officer held to be something carried on outside a computer. There is no comparable technical process carried on outside a computer in the current application. I do not accept the applicant's submission that the development of their ontology is analogous to the step of identifying a set of "weights" at a laboratory in *Gene Onyx*.
- 13 The applicant also submits that the IPO regularly grants patents in the field of digital signal processing, such as digital filters, and that there is no difference between such inventions and their method so far a technical effect is concerned. The examiner was rightly unpersuaded by such a line of argument, not least because the applicant's method is in an entirely different field of endeavour. The applicant has not actually identified any particular granted patents but even if they had then drawing analogies with cases decided by courts or hearing officers, or patents granted by examiners, is unlikely to have assisted them<sup>6</sup>. This applicant's case must be determined on its merits.
- 14 The applicant says that the first of the *AT&T* signposts is met. Their argument is that there is a technical effect of teaching a computer to compare texts in different languages to identify similar terms, and that the computer is taught to process the identified similar terms to identify key terms. I cannot see how any of this can be said to be carried on "outside the computer", as the first signpost requires.
- 15 The second, third and fourth *AT&T* signposts are sometimes collectively referred to as the "better computer" signposts, and relate to there being a technical effect at the level of architecture of the computer, a technical effect resulting the computer operating in a new way, or making the computer run more effectively or efficiently. The applicant has done little more than to submit that their method meets these three signposts. The examiner could see nothing which hinted at a "better computer", and I agree. The second, third and fourth signposts do not assist the applicant.
- 16 Finally, the applicant submits that their method overcomes a problem rather than circumventing it, i.e. the fifth *AT&T* signpost is met. The problem, they suggest, is the simplification of understanding of a digital document, and that this has a technical problem associated with it, namely how to teach the computer to identify similar terms from text in different languages and thus identify key terms associated with the document. The examiner was of the view that this was an intellectual problem rather than a technical problem, the solution to which involves only linguistic and semantic considerations. I agree; there is no technical problem to be solved, and there is

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<sup>5</sup> BL O/435/14

<sup>6</sup> See Pumfrey J's comments in paragraph 186 of *Research In Motion UK Ltd. v Inpro Licensing SARL* [2006] EWHC 70 (Pat) - "The test is a case-by-case test, and little or no benefit is to be gained by drawing analogies with other cases decided on different facts in relation to different inventions."

nothing in the solution to the problem that points towards there being a technical contribution.

- 17 Having reviewed the examiner's objections and the applicant's arguments I cannot see any sense in which the contribution can be characterised as technical. Therefore, I am not persuaded that the application relates to anything beyond a computer program as such.

### **Conclusion**

- 18 The application is refused under section 18(3).

### **Appeal**

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

**Huw Jones**

Deputy Director, acting for the Comptroller