



hearing on 10<sup>th</sup> December 2004, at which the applicant was represented by Mr Bill Neobard and Mr Mick McLaughlin of Kilburn & Strode.

### **The applications**

5 The two applications are broadly concerned with networked interactive wagering on the outcomes of events, with particular emphasis on reducing processing delays to a minimum so that in circumstances where prices are changing continuously, a client is provided with the most up-to-date information before placing a bet. For example, where the wagering is associated with the movement of stock market or other indices, there is provision for real-time client credit management, real-time online corroborated wager prices, real-time interactive transaction confirmation, automatic price-spread adjustments, automatic client and dealer-defined wagering limits and multiple-price wagering.

6 The parent application has 46 claims, eighteen of which are independent. At the hearing, Mr Neobard indicated that he intended addressing only the invention as defined in claims 1-9 of the parent application and that if the decision went in the applicant's favour, claims 10 to 46 would be deleted. Therefore, for the purpose of this decision, I need only consider claim 1 of the parent application, which reads as follows:

“1. A wagering system for wagering on event outcomes related to financial markets, the system comprising:

a plurality of client workstations and a remote wagering processor;

wherein the plurality of client workstations are connectable to the remote wagering processor to allow communication therebetween,

wherein each client workstation is operable to allow a respective client to login to the system, and operable to receive a client selection of an event outcome displayed thereon, characterised by:

the client workstation being operable to display information supplied from the processor including pricing information, market data, event outcomes based upon said pricing information and market data, and wager prices for the event outcomes;

a plurality of electronic data feeds connected to the wagering processor and in use supplying data of pricing information and market data from a corresponding plurality of data sources; and

the processor being operable to synchronise unsynchronised data from the feeds, to compare the displayed pricing information and market data with pricing information and market data from the synchronised data of said data feeds in real time and to amend the information supplied to the workstations if data from multiple sources do not agree with each other after synchronization.”

7 The divisional application has three independent claims, claims 1-3, where claim 1 reads as follows:

“1. A wagering system having a population of wagerable event outcomes, each of said outcomes having a minimum wagering amount, the system comprising a wagering

processor, a plurality of client workstations connectable to the wagering processor; and a database storing credit for each client; wherein in response to a login by the client at a workstation the processor makes available for display on the workstation the credit available for the client and in accordance with the stored credit selects from the population for display on the workstation a list of wagerable event outcomes having minimum wagering amounts that do not exceed the credit for the client:

said wagering processor being operable to receive a client selection from a client workstation so as to wager on said wagerable event outcome; and

in response to the client selection, to reduce substantially immediately the stored credit for the client and make available for display on the workstation the client's updated credit and to select from the population an updated list of outcomes having minimum wagering amounts that do not exceed the updated credit.”

- 8 Claims 2 and 3 of the divisional application differ from claim 1 only in whether the system responds to a reduction in the stored credit of a client, to an increase in such a stored credit, or to either.

### **The law**

- 9 The examiner has maintained that the claimed invention relates to subject matter excluded from patentability under section 1(2) of the Act, in particular to a method of doing business under section 1(2)(c). The relevant parts of this section 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.*

- 10 These provisions are designated in section 130(7) as being so framed as to have, as nearly as practicable, the same effect as Article 52 of the European Patent Convention (EPC), to which they correspond. I must therefore also have regard to the decisions of the Boards of Appeal of the European Patent Office (EPO) that have been issued under this Article in deciding whether the present invention is patentable.

### **Interpretation**

- 11 It has been established by the Courts that an invention will not be excluded from patentability by the above subsection if it makes a technical contribution, e.g. *Fujitsu Limited's Application* [1997] RPC 608 at page 614. The principles to be applied under UK law in deciding whether an invention makes a technical contribution have been rehearsed repeatedly

in various decisions of the comptroller's hearing officers in recent times. These can all be found on the Patent Office website at <http://www.patent.gov.uk/patent/legal/decisions/index.htm>. For the purpose of this decision, I consider it necessary only to restate the principles I have applied, not their origin.

12 First, it is the substance of the invention which is important rather than the form of claims adopted. Second, whether an invention makes a technical contribution is an issue to be decided on the facts of the individual case. Third, it is desirable that there should be consistency between the Patent Office's and EPO's interpretation of the exclusion in the Patents Act and the EPC. Finally, any doubt over the patentability of the invention should be resolved in favour of the applicants.

13 In deciding whether the present invention is excluded from patentability I shall consider two specific questions:

- does the invention relate to a business method? If yes,
- does the invention make a technical contribution?

14 At the hearing, Mr Neobard accepted that this was the correct approach to follow.

### **Argument**

15 In the divisional application, the wagering system is able to update in real-time both the credit limit available to the client and also the list of possible events that the client can afford, such that when the credit limit is raised, the list of affordable events is likely to increase, and vice versa. At the hearing, Mr Neobard accepted that the hardware components of the wagering system were entirely conventional but pointed to the functionality of the operating system as providing the technical contribution. He referred to the Merrill Lynch patent, GB2180380B, as an example of a patent granted in the field of automated securities trading, where, even after consideration by the Court of Appeal (*Merrill Lynch Inc's Application* [1989] RPC 569), a technical contribution was found in the functionality of the operating system.

16 I agree with Mr Neobard that a technical contribution can be found in the functionality of an operating system regardless of whether the invention is made in a non-technical field such as securities trading or online gambling. However, before moving on to consider whether a technical contribution is made by the invention of the divisional application, I need to be satisfied firstly that the invention does relate to a business method. The invention relates to an improved transactional process implemented by way of software which allows for the real-time update of credit information and affordable wagers at the client side. This improved transactional process is clearly a business consideration relying on software implementation, and I am satisfied that this falls within the exclusion of section 1(2)(c).

17 In addressing the question of whether the invention makes a technical contribution, Mr Neobard sought to highlight the technical problems overcome by the invention. Firstly, the dynamic filtering of affordable wagers allows for less data to be transmitted to the client than would normally be the case. As Mr Neobard put it, when put in a business perspective, a person who has £1 worth of credit on this system would not wish to spend £2 worth of

network charges getting the information downloaded whereas a person with £100,000 worth of credit might not care. The reduction of data traffic on a communications network is a well known technical problem, and the dynamic filtering of data prior to transmission provides a solution to that problem. Secondly, dynamic filtering of wagers ensures that only affordable wagers are presented to the client as available options, thereby avoiding the need for a further credit check after a wager has been placed. This, again, reduces the amount of traffic on the network, whilst also allowing for faster transactions.

- 18 I agree with Mr Neobard that the consequences of the applicant's invention would be to ensure faster processing of client transactions and to reduce the amount of data traffic crossing the network, both of which I accept are technical problems. However, it seems to me that the invention is able to achieve this merely by circumventing the technical problems rather than solving them by technical means. In other words, data traffic is reduced by modifying the wagering system in such a way that it avoids the transmission of redundant data in the first place, rather than any technical processing of the data prior to transmission. Network transactions are faster because the credit verification is carried out before the client decides to wager rather than afterwards, and certainly not because of any technical improvements to the transmission network or communication protocols. This assessment of technical contribution is consistent with the conclusion of the EPO Board of Appeal in *Hitachi* [T258/03]. All of which reinforces my view that the invention of the divisional application does not provide a technical contribution.
- 19 In the parent application, the wagering system accepts time dependant market information from a number of data sources and processes this information to derive a price that is presented to the client. The processing step involves synchronizing the market information in order to check whether they mutually agree and, if not, averaging or spreading the resulting information presented to the client. This acts to validate the input data and to minimise the risk of financial loss to the house. This invention, again, relates to a transactional process implemented by way of software and I am satisfied that this also falls within the exclusion of section 1(2)(c).
- 20 As to the issue of whether the invention makes a technical contribution, Mr Neobard argued along similar lines to the divisional application in that that the invention provides a solution to the technical problem of inconsistent/inaccurate data feeds. Although I accept that there could be a technical problem arising from the nature of the data feeds where the information is not synchronized or disagrees, there is no detail of any technical solution provided by the application other than an increase in the spread of prices presented to the client. This spreading of prices as a way of minimizing risk is exactly the sort of processing step that human operators currently perform manually. In my view, automating the process previously done manually would be a matter of conventional programming and, in itself, this automation does not provide the required technical contribution.

## **Conclusion**

- 21 I have found that the inventions claimed in both the parent and divisional applications are excluded from patentability under section 1(2)(c). I have reviewed both applications fully, including claims 10-46 of the parent, and have been unable to find any basis for a claim

incorporating a technical contribution. I therefore refuse the applications under section 18(3).

### **Appeal**

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

**H JONES**

Deputy Director acting for the Comptroller