

IN THE HIGH COURT OF JUSTICE
High Court Appeals Office (PAT)
Room WG07
West Green Building
Royal Courts of Justice
Strand
WC2A 2LL

From Decision Case No: BL 0/033/09
(Patents Office)

Claimant

Rajesh Kapur

V

COMPTROLLER GENERAL OF PATENTS DESIGNS
AND TRADEMARKS

Ist Defendant

AND

[Please see Overwritten Statement of Facts and Grounds]

2ND Defendant

**PLEASE NOTE THE OVERWRITTEN STATEMENT OF FACT AND GROUNDS TO BE
USED WITH THESE GROUNDS ONE HAD THOUGHT TO SAVE THEIR
EMBARASSMENT BUT PERHAPS KEEPING THINGS PRIVATE HAS CAUSED THE
APPEALANT MORE MISERY. CLAIMANT reserves the right to ake it all public.**

DETAILED STATEMENT OF FACTS AND GROUNDS

Introduction & Summary of Claim & Statement of Facts

Parties

1. The claimant is an Engineer with a degree in Eectrical/ Elecronic Engineering, obtained [Thames Polytechnic] a Masters Degree in Computing Science obtained {Newcastle University}.

The claimant also started but did not complete a Post Graduate Research Associate (Phd) at Hertfordshire University in the Electronic Research and Development Unit (on a combination of HTML (Hypertext Markup Language used extensively in the internet) and SGML (Standard General Markup Language) this is a standard that allows the different formats of different word processor's to talk effectively with one another defining elements and sub elements of formats and representations in Data type Definitions.

The research at that time was to develop and prove a combination of the two above standards. Today, we have XML which is exactly that it does not however. use all of the features of SGML. After the hearing on the 8th of September 2008 the Claimant started law school at the College of law in late September 2008.

2. The 1st Defendant is the United Kingdom Intellectual Property Office a public body that confers public monopoly rights within the United Kingdom. As reward for a disclosure for something **new**, something **secret** that could contribute to the betterment of the Nation, Mankind and the public good.
3. The second Defendant [Please see Overwritten Statement of Facts and Grounds] .(Private Matter for now)

The Base Advance ‘ 374 ‘

4. Claimant wants to paint a picture in your mind Your Lordship Imagine you are writing a Judgment on a computer in say a word document you can either delete the word document or overwrite it, effectively when you write over it you are deleting it. This can also happen on a paper document. **Then you think, no you want that what was overwritten back or at least part of it. In fact you’d like them both.**
5. All of the deletes and overwritten deletes go into one bin currently. The advance therefore was to identify and separate them.
6. Supposing many people were contributing to a document management system such as a public library, if your Lordship wanted something that you had once seen a reference in a book, however, now you cannot see that reference any more in the book on the shelf. Or your Lordship looks it up and the book you get back doesn’t contain the right reference, how would the librarian know which was deleted or overwritten deleted unless there was a process to identify and physically separate them, into deleted and deleted overwrites. This would mean **separating types of** metadata (data describing them adding that they were overwritten) and then the physical files. Note that Claimant is separating the same thing, this is useful if you want to use two different ideas on the same thing in combination.
7. Or indeed the other way around 238.
8. The base advance therefore your Lordship is **the separation** of deleted from deleted overwritten metadata basically whether this be in a computer the advance itself is not in a computer. Claimant is not just simply claiming a indexing system. Although a completely new indexing system (or as I would prefer document recovery system library) is indeed the by-product, but a *completely new process or concept of identification and separation of the type of deletes, being*

the separation of a deleted document from an overwritten deleted document in its index, i.e. its position both physically and in time.

9. In other words: Claimant is storing the original before the re-write as one type of delete and the normal delete as another type of delete, i.e. identifying and physically separating defining the difference between is the advance over that of the prior art on which this application depends (in its simplest form).
10. It is in this light that Claimant has made a contribution to the art above by increasing the accuracy of what can be returned and has nothing to do with a computer system as such. In fact it would give greater accuracy than the accuracy in a computer.
11. The object of all of this is so a user(s) of a system could get back their or other peoples deleted and overwritten files at any time.

Application '365' GB519365.1

12. The **second advance** being the new special disk that would be produced on which the deleted / deleted overwritten files were placed in separate areas. Allowing archiving and retrieval. There is a reason why you would need to store things separately, and again it is to do with the principles of physics.
13. So why is it not just an ordinary disk your Lordship well the answer lies in the overwriting if you overwrite music on a tape recorder eventually or after the first couple of times it loses its magnetism, that is why it would have to be copied to a new location a separate location. Hence the special purpose disk was **the second advance**.
14. Finally the **third advance** as Claimant envisaged would be a Shared Modification system that would alter the process in a current document management system or a Computer. For example currently your Lordship in a computer or on the internet both examples of document management systems there is no way of two people amending a document at the same time. When one person amends the other can only read it. For example a exam paper sent to the computer 's of students each completing the empty the single empty exam paper at the same time. The teacher being able to bring them up at the same time with his answers. Or an internet system of computers where people can not only read but write to the same document then search on others. Without having this enabling save and separation of deletes and deleted overwrites, how could you catch the inserted overwrite.

The Challenge

15. The Challenge relates to the Offices' failure to confer such a right upon the claimant in accordance with the Patents law 1977 (1),(2) which for all intentions and purposes are deemed to be the same as 52 (2) 52 (3) of the European Patent convention in regards to his applications for letters Patent, and failure to provide an equitable solution as suggested by the Learned Judge Floyd J in Neutral Citation Number: [2008] EWHC 649 (Pat).
- (1) A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say—
- (a) the invention is new;
 - (b) it involves an inventive step;
 - (c) it is capable of industrial application;
 - (d) the grant of a patent for it is not excluded by subsections (2) and (3) [or section 4A . and references in this Act to a patentable invention shall be construed accordingly.
- (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.**
- (3) A patent shall not be granted for an invention the commercial exploitation of which would be contrary to public policy or morality.
- Your Lordship will see that section (2) excludes computer programs but only to where they relate to that thing as such. It is the **as such** qualification that was the subject of much discussion with the office especially early on. Claimant also contends the **reasoning did not follow the interpretation of the law as laid down by the Courts with regards to the Patents Act 1977 (as amended).** The Courts interpret the will of Parliament.

16. For points relating to the private matter please see the overwritten grounds

The Facts and Points of Law

17. The Claimant has to agree that they have correctly applied Lord Dennings Estoppel of record **insofar as it does not apply to the remains.** The claimant sites [Ground of Error of law twice in regards to the remains and exceeding power failure to regard the Judgments both in the Patents Court and more importantly the Court of Appeal [Ultra Vires] at Ground 1
18. The claimant's has already made a Sacrifice to appease Estoppel of record and the Claimant is a great believer in the law and as Socrates once said even though one is wrongly accused the law must stand. Luckily however, the Law is on the side of my remains.

19. The Claimant feels your Lordship that there were remains and that the Judge did not ask the Claimant to change his claims in order for there to be remains ? [Error of Fact] [Ultra Vires] At Ground 2
20. The Claimant feels that the office are confused your Lordship perhaps you can make them see ?

Back to the Office

21. The ratio or the conclusion of the Judgment is as follows
22. It seems to me that all these applications are simply applications of the computer's ability once programmed to manipulate and store data. The contributions made by each of them were correctly analysed by Mr Bartlett as lying solely within excluded matter insofar as they were computer implemented. Insofar as the claims are wider I do not think he was right to rely on the mental act exclusions. So the Office must go on to examine them to see whether anything remains.
23. The result is that the appeal is allowed, but only to the extent that it relates to the mental act exclusion.
24. 1ST Defendant set about to examine the remains in all of the applications why would they do this if there were no remains ?
25. Claimant believes perhaps 1ST Defendant was also confused by the Judgment
26. Nevertheless Claimant tried repeatedly to explain to the office and to the new Examiner in regards to the remains that a computer was an example of where it can be applied **and the application refers to it as an example**. The advance could equally be implemented in a library. Therefore the advance itself could not be said to be in a computer as such. The claims were broad and the Claimant tried to explain this to the office that they didn't need changing. The examiner (acting for the Defendants) seemed to think that they **did** need changing, even though his Lordship the Learned Judge clearly wrote in his Judgment that he would treat them as being broad. The letters of correspondence can be seen in the bundle(to be supplied)
27. Claimant tried to explain that the advance was outside a computer, it would only appear as if it were in a computer a sort of technical effect but again this fell on deaf ears.

The Second Hearing 8th September 2008

28. Claimant **sacrificed** the first ones in 365 the ones that he took to court, in order to make them see and because he knew he would only be able to take the remains back to court **and concentrated on the remains of 365 (third advance)** which

- was the special disk produced. [point 12 above] [point 13 above] and what was more the shared modification
29. Your Lordship the noble and learned Judge in *Kapur v Comptroller General of Patents* had proposed an Equitable Solution.
 30. All the claimant wanted was the Fruit of his own Labour, and so could not agree with the Judge but had to accept.
 31. There was a transformation like in *Bilsky* (American case).
 32. Something that could not be done before a modification of a document at the same time by two people because of the special disk the inserted overwrite became **more**.

From the Transcript

33. RAJESH KAPUR: Can I just point you to one more law ?
34. HEARING OFFICER : Yes
35. MR RAJESH KAPUR: And now I want to go back to ***Aerotel***. And this is the supreme judgment, the one that you currently use. And I just want to point out to you paragraph number 33 –
36. "But suppose the hard drive specified were itself new and inventive? Then a claim to such a drive loaded with a piece of music would be allowable. It would not be the individual piece of music (even if new) which caused the claim to escape Art. **52 (2)** but the newness of the kind of hard drive on which the music was loaded. Of course in practice an inquiry as to what is old may not be difficult - indeed it will generally be self-evident".
37. And furthermore, can I just ---
38. THE HEARING OFFICER: Can I just say something about that paragraph 33?
39. MR RAJESH KAPUR: Can I just take you to the holding of the cases, please? –
40. because paragraphs 53 and **54** are very important - "The important point to note is that the system as a whole is new" - and you said that it was new earlier on, if I remember - "And it is new in itself, not merely because it is to be used for the business of selling 'phone calls. So, moving on to step two, the contribution is a new system. It

is true that it could be implemented using conventional computers, but the key to it is **a new physical combination of hardware**".

41. The key to mine is a **new physical separation**.

"It seems to us clear that there is here more than just a method of doing business as such". Therefore it cannot be a method of doing business. "That answers the third step. Finally the system is clearly technical in nature".

And somewhere else it says - he was saying in 56 -
"create a new overall combination . . . "

He actually said something - let me check it in **54** perhaps -

"Turning to the method claims, they are essentially to the use of the new system. Given that that is free of a s. 52(2) objection, then the narrower claim to its use must be too.

Again the contribution is not just a method of doing business but the use of a new apparatus for such a method. So there is more than just a business method. And the method involves the use of apparatus and so is technical".

And therefore there is a technical contribution, sir, because it is a new system.

And that paragraph is also in the judgment of - now then, *Merrill Lynch*, which is the definitive law of the country.

42. Please see overwritten Statement of Facts and Grounds.

43. Claimant at least could never win for the sake of winning, (He reserves the right to make it all Public).

44. Claimant wishes to state that in the Symbian case in the Court of appeal they did not state it was a new argument they said it was more why then do they say the Claimant has put a new argument because he has said more this irrationality Your Lordship would surely lead to even the Wednesbury Principle to be breached . The test laid down by Lord Greene MR in the landmark Court of Appeal case of Associated Provincial Picture Houses LTD v Wednesbury Corporation [1948] 1 KB 223 was whether a decision maker came to a conclusion so unreasonable that **no reasonable authority could ever have come to it in that instance**.

45. *It would also be illegal in regards to the court of appeal Judgement on Symbian and Areotel.*

46. Res Ipso Loquitur 'The thing speaks for itself'

GROUNDS

1. Authority quoted Lord Wilberforce *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 Lord Wilberforce. Please see overwritten The House of Lords decided that whenever a public authority misunderstood the law regulating its power to make decisions its decision must be declared a nullity.
2. Nor your lordship do computer patents fail in the European Patent Office The Office have consistently failed to follow the literal rule i.e. the rule of the Dictionary.
3. Please see Overwritten Grounds.

DETAILS OF REMEDY BEING SOUGHT

The Claimant seeks

- (a) An order quashing the 1st Defendant decision to fail the Claimant Remains Applications .
- (b) An equitable solution to compensate Claimant for his loss of first applications if so deemed by this court.
- (c) An equitable solution to compensate Claimant for his time in regards to the wrongful prosecution of the remains.
- (d) An order requiring the Defendant to help the Claimant correct the claims in the light of the decisions being quashed and to proceed the claimants remains applications to grant.
- (e) An declaration that the Decisions, Judgments were issued in breach of the duty to act fairly and the Defendants by their acts failed to uphold the Claimants rights in Breach The first Protocol Article 1 of the Human Rights Act 1998 and that the decisions were illegal and irrational, if the court so deems.
- (f) A declaration that the Defendant failed to use it position of authority to protect the intellectual property of the Claimant and /or that it acted illegally.
- (g) An injunction restraining the Defendant(s) by itself its servants or agents or otherwise howsoever from breaching the said Rights of the Claimant in such manner as to cause an interference in his home, family and private life, or peaceful enjoyment of possessions, or such as to discriminate against or obstruct him.
- (h) General and or special damages pursuant to Section 8 (1) (2) (3) and (4) Human Rights Act 1998 such as to afford just satisfaction as the Court may think fit.

- (i) Interest pursuant to Section 35A Supreme Courts Act 1981 on the sums found to be due to him at such rate and for such period as the Court may think fit.
- (j) Costs in relation to pursuing the above matters, the quantum or scale of which to be decided by the Court
- (k) Any other order the Court deems appropriate in the circumstances to secure for the Claimant, justice under any provision, principle or rule of law.

Directions

1. The decisions actions and behaviour of the Defendants obviously has had financial consequences for the Claimant, and more importantly the loss of his time **however, it has also not only serious consequences of how the Patent System in the UK is viewed It also has more importantly serious consequences for how the Law is viewed.**
2. In light of the issues at stake, the Claimants ask the Court to certify the claim as urgent and to direct that a rolled up oral hearing take place as soon as possible due to the question of Estoppel by Record with appropriate abridgement for service of the Defendants's evidence and detailed rounds for resistance.
3. In accordance with the CPR Guidelines r 1.1 for the court to give any directions necessary to the claimant and limit costs of the Defendant such that the case on an equal footing basis in regards to this case proceeding on Equal Footing and so that Justice be done.
4. To direct that the UKIPO search examine properly applications in the future and apply exclusions correctly.
5. That the UKIPO give correct reasons why an application should fail upon exclusion.