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February 2006

Patentability of Games – New UK Patent Office Practice

The practice of the UK Patent Office in relation to patents for games has changed following the decision of the High Court in the recent "Shopalotto" case.

The case was an appeal from a Patent Office decision, that the subject of a UK patent application filed by Shopalotto.com Limited ("Shopalotto") was excluded from patentability.

Shopalotto's application was originally broadly directed [emphasis added] to "a lottery played over the internet…", but was later amended [emphasis again added] so as to claim an apparatus for providing a lottery game playable via the internet, in which a player selects a number of brands (rather than, for example, numbers) from a larger group of brands, with the player's selection then being compared to a randomly-generated winning selection.

The Patent Office's decision was that as the invention was so close to conventional lottery games, with the exception of the use of brands to identify players' selections, it consisted merely of the presentation of brand information, and as such was not patentable in view of Section 1(2)(d) of the UK Patents Act 1977.

Shopalotto appealed, arguing that their invention was no different, in principle, from a board game, and pointing out that inventions comprising a playing board marked in a particular manner, playing pieces and a set of rules had previously been accepted as patentable, following an "Official Ruling" made in 1926.

Pumfrey J, sitting in the High Court, rejected this argument, stating that a 1926 ruling could not provide a valid guide to practice under the current law, particularly as the 1977 Act is to be interpreted with regard to the provisions of the European Patent Convention.

Instead, he decided that the correct approach to take was similar to that which has been adopted in cases relating to computer programs and business methods, namely to assess whether the claimed invention made any inventive contribution which did not fall within one of the categories of excluded subject matter.

On the specifics of the Shopalotto case, Pumfrey J held that the contribution to the art was only in the provision of new web pages to players of the internet lottery game, which was a simple example of "the presentation of information". Any effect of reinforcing a brand selected by a player fell into the category of "a method of doing business", also excluded from patentability. The appeal was therefore rejected.

In the light of this judgement, the UK Patent Office has revised its practice in cases relating to games such that they will now use the approach outlined above.