

OPINION UNDER SECTION 74A

Patent	GB2466994 B
Proprietor(s)	Henry McGuire
Exclusive Licensee	Semitel Limited
Requester	Semitel Limited
Observer(s)	Snapchat Inc. represented by JCIP Limited
Date Opinion issued	18 March 2015

The request

1. The requester has asked for an opinion on whether Snapchat (RTM) infringes GB2466994 (the patent). The requester has supplied accompanying evidence comprising exhibits 4a, 4b, 4c, 4d and support information comprising exhibits 5a and 5b. Exhibits 4a to 4d appear to be printouts of web pages from the Snapchat (RTM) website explaining features of Snapchat (RTM). Exhibit 5a comprises a list of YouTube (RTM) tutorial videos for Snapchat (RTM):

Video (1):

https://www.youtube.com/watch?v=wddb_bH5Kys

Video (2)

<https://www.youtube.com/watch?v=TMxTyFjEus4>

Video (3):

<https://www.youtube.com/watch?v=UvhiRIT5DvU>

Video (4):

<https://www.youtube.com/watch?v=BLPaAXx0cHg>

Video (5):

<https://www.youtube.com/watch?v=dfiPtYRsR2c>

Exhibit 5b comprises a list of online news articles about Snapchat (RTM):

<http://www.digitaltrends.com/social-media/british-police-force-first-arrive-snapchat/>

<http://www.standard.co.uk/news/london/snapchat-launches-london-specific-photo-filters-9709518.html>

Observations

2. Observations were submitted by JCIP Limited on behalf of Snapchat Inc. The observations comprise arguments as to why the request should be refused.

Observations in reply

3. Observations in reply were filed by the requester responding to the points made in the observations.

The Patent

4. The patent was filed on 17 January 2009 and granted on 14 August 2013 and is still in force. It relates to a method of flexible electronic messaging, in the field of telecommunications, whereby a sender has greater control over the message, its delivery mode, content, features, functions and coding. There is a single independent claim which reads as follows:

A method of providing flexible messaging between a sender and receiver, wherein the method comprises the steps of:

- *sender selects sending device;*
- *sender selects messaging mode;*
- *sender selects, without limitation which it is possible to incorporate, send and receive using the selected device:*
 - *any standard or non standard content and features;*
 - *any standard or non standard functions and/or cross-platform coding;**which define how the flexible message will be sent, received and presented on the, or each, receiving device;*
- *generating flexible message incorporating the content and features and functions and/or cross-platform coding selected by the sender;*
- *flexible message sent, received and presented on receiving device(s) as selected by sender without limitation which it is possible to send, receive and present using the sender selected message mode messaging system and the receiving device.*

5. The sender selects the various message attributes, sends the message to the receiver where it is presented according to the sender's selections. The default settings on the receiver device can be overridden.

Snapchat (RTM)

6. Snapchat (RTM) is an application (app) suitable for smartphones and the like which allows users to send messages comprising text, images or video. Images (usually pictures taken using the smartphone camera) can be customised with overlaid text and graphics drawn or added by the sender. Two way real-time video calling ("videochat") is also possible. The sender can set a time limit on viewing a message at the receiver (for example up to ten seconds) after which the message is automatically deleted.

Allowance of the request

7. The observer has argued that the request should be deemed frivolous and vexatious and so refused under Rule 94(1)(a) which states:

94.—(1) The comptroller shall not issue an opinion if— (a) the request appears to him to be frivolous or vexatious; or (b) the question upon which the opinion is sought appears to him to have been sufficiently considered in any relevant proceedings.

8. A number of reasons are given by the observer, which are refuted by the requester in the observations in reply. I shall consider each in turn.

The request contains insufficient detail to enable the examiner to form an opinion

9. The observer argues that the request does not identify any specific product or process that might infringe the patent. The requester argues that the infringing product is a messaging application known as Snapchat (RTM). I agree with the requester that the Snapchat (RTM) application can form the basis of an opinion request. In particular it is the process or method of messaging embodied within it which might infringe claim 1.

The evidence submitted does not comprise evidence that would meet any legal standard and is lacking in relevant detail

10. The evidence submitted is in the form of YouTube (RTM) videos and printouts of web pages. YouTube (RTM) videos and webpage printouts have been accepted as evidence in previous opinions and I have no reason not to do the same here. Whether the evidence is lacking in relevant detail is something I will address in considering the question of infringement. Put simply, if the evidence put before me does not clearly disclose all the features of claim 1 then the claim will not be infringed.

The URLs and YouTube (RTM) videos described as "support information" is

not evidence under any definition

11. The observer argues that “it is not sufficient in a Request for an Opinion simply to direct the UK IPO to information available on the Internet, thereby requiring additional investigations to obtain information in these links”. As I have already stated, evidence of this type has previously been accepted and considered by the UK IPO. I do not consider this to be “additional investigation”.
12. In summary, I consider that there is sufficient information to form an opinion and the request should not be refused under Rule 94(1)(a) as being frivolous and vexatious.

The law on infringement

13. Section 60(1)(a) of the Act states that:

Subject to the provisions of this section, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say –

(a) where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;

(b) where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;

14. The requester states their belief that the patent pre-dates both the incorporation of Snapchat Inc and the creation of the Snapchat (RTM) messaging system. The observer has not commented on this, and although the evidence is not clearly dated, I shall for the purpose of this opinion assume the requester is correct.
15. Exhibit 5b shows that Snapchat (RTM) is or has been used in the United Kingdom and this has not been disputed by the observer.
16. In order to determine whether the claims of the patent would be infringed, I must first construe the claims and then determine whether the evidence shows that the method of messaging in Snapchat (RTM) falls within the scope of the claims.

Claim construction

17. In construing the claims I shall use the standard principles of claim construction as set out in *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others [2005] RPC 9*. I must put a purposive construction on the claims, interpret them in light of the description and drawings, as instructed by Section 125(1) of the Act and take account of the Protocol to Article 69 of the European Patent Convention. Put simply, and as emphasised by Hoffmann LJ in that judgment, I must decide what a

person skilled in the art would have understood the patentee to have used the language of the claims to mean.

18. In this case the person skilled in the art would be an engineer working in the field of telecommunications and in particular the design and development of messaging systems and software. That person would be familiar with most conventional types of messaging such as email, SMS, and instant messaging.
19. The language of claim 1 is generally straightforward to construe. However there are certain elements of claim 1 which require clarification in terms of construction.
20. Examples of messaging modes given on page 15 lines 2 to 3 of the patent include *"SMS text message, multimedia message, email and instant messaging, voicemail"*. The term *"messaging mode"* would therefore be understood by the skilled person to mean the type of messaging system or technology used, which may include a specific protocol or set of protocols, a specific type of network or network elements and the way in which the message is constructed and handled by the network.
21. The phrases *"without limitation which it is possible to incorporate, send and receive using the selected device"* and *"without limitation which it is possible to send, receive and present using the sender selected message mode messaging system and the receiving device"* are grammatically slightly unclear and the specification of the patent does not provide further assistance. However I consider that the skilled person would regard these phrases as merely reinforcing the flexible nature of the claimed invention rather than specifying a technical feature of the invention.
22. Examples of content given on page 14 lines 2 to 4 include *"colour text, fonts, images, audio, video, mixed-media, coding, graphical phone numbers and url's"*. Examples of features given on page 14 lines 9 to 12 include *"blinking characters and images, decoding, media conversion, links, special effects, formatting, templates, highlighting, hyperlinks, secured access, headlines and signatures"*. The difference between *"content"* and *"features"* in the patent is not entirely clear. A font is an example of content whereas formatting is an example of a feature. However the skilled person, taking both together would understand that the sender selects content as conventionally understood, such as text, images and video, and selects how that content is to be presented on the receiver device in terms of such things as font and formatting style.
23. Examples of functions given on page 14 lines 17 to 22 include *"settings commands, flash delivery of all modes of messages, delivery frequency, straight to screen presentation, interface activation straight to audio output presentation, auto dialling or links, browser activation, delivery timing control, backlight control, colour pallet"*. The skilled person would understand that *"functions"* control how the message is handled and presented at the receiving device.
24. The skilled person would, given the example in figure 4 of the patent, construe *"cross-platform coding"* as the coding of non-standard content such as a company logo into a form which can be handled by the selected messaging mode. A compatible receiving device that can decode the coded content can display the image. Otherwise a standard text phrase may be used.

25. The requester has argued that claim 1 should be construed as encompassing any enabling device, any single mode, mixed mode or multi modes of messaging without limitation selected by the sender, (a) any message content, features and functions, (b) any message content, features and coding or (c) any content, features, functions and coding, without limitation selected by the sender, and generating, sending, receiving and presenting of any message containing content, features, functions and/or coding without limitation selected by the sender.
26. Based on the reasoning I have already outlined, I do not believe the skilled person would construe claim 1 so broadly. Neither the requester nor the observer has submitted arguments in relation to the specific terms I have construed.
27. Having construed claim 1, I will consider each step of the claim and determine, from the evidence, whether that step is present in the Snapchat (RTM) application.

Does Snapchat (RTM) infringe claim 1

28. The Snapchat (RTM) application provides text, picture and video messaging between a sender and receiver which is flexible in that pictures can be customised by the sender. Now taking each bullet point step of claim 1 in turn:
 - *Sender selects sending device;*
29. The user of Snapchat (RTM) must necessarily select a device.
 - *sender selects messaging mode;*
30. According to the evidence, the sender selects and starts the Snapchat (RTM) app on a smartphone by touching the screen icon. When the app is opened the user can touch various on-screen buttons or icons to compose a text message (including graphical icons), take a picture or video, draw or put text on the picture and send a message comprising the text, picture or video. Real-time video chat is also possible. The underlying “messaging mode” as I have construed it is not visible to the sender or selected by the user. This step is not present in the Snapchat (RTM) app.
31. The requester has stated that the sender selects a messaging mode by selecting photo messaging, video messaging, chat (text messaging) or video chat. The evidence does not show that a different messaging mode, as I have construed it, is selected. Rather, the sender is selecting different *content* which may or may not use the same messaging mode in each case. Video chat (real-time video calling) cannot, in my opinion, be considered messaging.
32. In the Observations in reply, the requester argues that a when a “Snap” is activated by a sender (a Snap being a picture or video message), the sender in reality (a) activates a Snap and (b) automatically selects a mode of messaging. Again, as I have construed it, this is not shown in the evidence.
 - *sender selects, without limitation which it is possible to incorporate, send and receive using the selected device:*

- *any standard or non standard content and features;*
 - *any standard or non standard functions and/or cross-platform coding;*
which define how the flexible message will be sent, received and presented on the, or each, receiving device;
33. In Snapchat (RTM) the sender selects content and features as I have construed them. The sender also selects a time limit for viewing a message which is a function as I have construed it. These selections define how the flexible message will be presented on a receiving device but not necessarily how the message will be sent and received. The evidence does not show that any selection of content, feature or function defines how the message will be sent or received.
- *generating flexible message incorporating the content and features and functions and/or cross-platform coding selected by the sender;*
34. The Snapchat (RTM) app generates a message in this way.
- *flexible message sent, received and presented on receiving device(s) as selected by sender without limitation which it is possible to send, receive and present using the sender selected message mode messaging system and the receiving device.*
35. The Snapchat (RTM) app sends, receives and presents a message in this way.

Conclusion

36. I conclude that, based on the evidence submitted, the method of providing messaging embodied in the Snapchat (RTM) application does not infringe claim 1 of the patent. It follows that dependent claims 2 to 11 are also not being infringed.

Application for review

37. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.

GARETH GRIFFITHS
Examiner

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.