

## Patentability of computer programs - recent High Court judgment

A judgment in the case of *Symbian's Patent Application* has been issued today by the High Court overturning an earlier decision of the UK Intellectual Property Office (UK-IPO) to refuse the application because it relates to nothing more than a computer program.

Symbian's patent application describes how in a computer a library of functions (DLL), which can be called on by multiple application programs running on the computer, is accessed. In particular, it provides a way of indexing these library functions to ensure the computer will continue to operate reliably after changes are made to the library.

In his judgment Mr Justice Patten observes that the UK-IPO's decision in this case illustrates the divide which exists between the UK-IPO and the European Patent Office (EPO) about how the patentability of inventions involving computer programs is assessed. This is because although the UK-IPO refused Symbian's patent application, the EPO has granted Symbian a patent for its invention.

The UK-IPO believes that when deciding whether this computer implemented invention is patentable, Mr Justice Patten did not apply the so-called "*Aerotel/Macrossan* test", which was established by the Court of Appeal in an earlier case, in the way intended by the Court of Appeal. This in UK-IPO's view has created uncertainty about how the *Aerotel/Macrossan* test should be applied for inventions of this type.

The UK-IPO will therefore appeal this judgment with a view to seeking clarification from the Court of Appeal. Pending a decision by the Court of Appeal, the UK-IPO will be continuing to follow the practice, set out in its Practice Notices issued in November 2006 and February 2008, which are founded on the established *Aerotel /Macrossan* test. When applying this test, the UK-IPO will take account of the *Symbian* judgment in appropriate cases.

### Editor's Notes

- What is patentable in the UK is determined by the Patents Act 1977 which is aligned with the European Patent Convention (EPC). Among other things, this states that patents are not available for computer programs as such. Thus, whilst it is possible to get patents in the UK for some inventions involving computer programs, it is not possible to get patents for innovations which are solely computer programs, such as an improved word processing program.
- The way that the UK-IPO decides if an invention is patentable is different from that used by the EPO. The two approaches should generally give the same answer.

- As with all High Court decisions the *Symbian* judgment is binding on the UK-IPO until such time as it is overtaken by the judgment of the Court of Appeal.
- For enquiries about the UK Intellectual Property Office press or media activities please contact Louise Hill on 01633 814840 or Bridget Whatmough on 01633 813825.