



## Press Summary

11 February 2026

### **Emotional Perception AI Limited (Appellant) v Comptroller General of Patents, Designs and Trade Marks (Respondent)**

**[2026] UKSC 3**

*On appeal from [2024] EWCA Civ 825*

**Justices:** Lord Briggs, Lord Hamblen, Lord Leggatt, Lord Stephens and Lord Kitchin

#### **Background to the Appeal**

This appeal raises the question of whether it is possible to obtain a UK patent for a system which uses an artificial neural network (“ANN”). An ANN is a model inspired by the human brain that can engage in machine learning. It can be trained to perform a task, and to improve the quality of its performance by an iterative process of adjustment, which involves comparing outputs generated by the ANN with target outputs that have been independently identified.

The appellant, Emotional Perception AI Ltd (“the applicant”), has applied for a patent for a system or method that uses an ANN to provide file recommendations. The commercial purpose of the claimed invention is to enable a person who is interested in a particular media file (e.g. a music track, a video, or text) to obtain the recommendation of a file creating a similar emotional response. The applicant contends that its invention enables that service to be provided more quickly and accurately, and to make better recommendations than anything else currently available.

The case concerns Article 52(2)(c) and (3) of the European Patent Convention (“EPC”), and equivalent provisions in section 1(2)(c) of the Patents Act 1977, which exclude from patentability “programs for computers … as such”. Initially, the Hearing Officer in the UK Intellectual Property Office (the “UKIPO”) rejected the application for a patent on the basis that the claimed invention fell foul of this exclusion. The High Court allowed an appeal by the applicant. On a further appeal by the Comptroller General of Patents, the Court of Appeal reinstated the Hearing Officer’s decision. These differing conclusions were all reached by applying guidance on the interpretation and application of Article 52 of the EPC given by the Court of Appeal in *Aerotol Ltd v Telco Holdings Ltd* [2006] EWCA Civ 1371; [2007] RPC 7 (“*Aerotol*”) (decided in October 2006). This guidance has been followed in England and Wales for the past 20 years.

The applicant's appeal to the Supreme Court raises three issues. Should the *Aerotel* guidance no longer be followed? ("Issue 1"). Is an ANN (or does it contain) a "program for a computer"? ("Issue 2"). Is the entire subject matter of the claims excluded? ("Issue 3").

## Judgment

The Supreme Court unanimously allows the appeal. Lord Briggs and Lord Leggatt give the judgment, with which Lord Hamblen, Lord Stephens and Lord Kitchin agree.

## Reasons for the Judgment

### Issue 1: Should the *Aerotel* guidance no longer be followed?

In *Aerotel*, the Court of Appeal set out a four-step structured approach to be followed in applying Article 52(2)(c). On this approach, the central question was whether the invention as defined in the claim for a patent makes a novel technical contribution to the known art, with the rider that subject matter which falls within an exclusion does not count for this purpose.

However, in *Duns Licensing Associates (Decision T 154/04) [2004] EPOR 10* ("**Duns**") (decided in November 2006), the Board of Appeal of the European Patent Office ("EPO") rejected the approach in *Aerotel* as inconsistent with the EPC. The Board endorsed what has been called the "any hardware" approach, according to which the subject matter of the claim will not be excluded from patentability under Article 52(2)(c) if it embodies or involves the use of a piece of physical hardware, however mundane [34]-[36].

In *G1/19 [2021] EPOR 30* ("**G1/19**"), an Enlarged Board of the EPO firmly endorsed the "any hardware approach" [38], and also impliedly endorsed the criticisms of *Aerotel* made in *Duns* [40], [56]. While UK courts are not strictly bound by decisions of even the Enlarged Boards of Appeal of the EPO, they should respect and follow such decisions unless convinced they are wrong or beyond the ambit of reasonable difference of opinion [44]. Accordingly, the approach adopted in *Aerotel* should no longer be followed. This is so even if the change might be disruptive [48], [50]-[52]. In any case Article 52(2), on a plain reading, solely concerns the question of whether the subject matter of the claim for a patent is an "invention". The EPO Board rightly criticised the *Aerotel* approach as misinterpreting "invention" as having to be novel or involving an inventive step, which are separate and independent requirements of patentability within the scheme of the EPC. In contrast, the *G1/19* approach, consistent with the plain reading of Article 52(2), squarely addresses the question of whether the claim amounts to an "invention" first, ahead of and separately from the other three conditions of novelty, inventive step and industrial application [59]-[64]. To qualify as an "invention", all that is required is that the subject matter should have technical character.

A concern raised by the Comptroller was that replacing the *Aerotel* approach with the approach endorsed in *G1/19* will overturn the settled approach in the UK to the assessment of inventive step, as laid down in *Pozzoli v BDMO SA [2007] EWCA Civ 588* and approved in *Actavis Group PTC EHF v ICOS Corporation [2019] UKSC 15* ("**Actavis**"). The EPO's approach to this issue, as set out in *Comvik GSM AB (Decision T 641/00) [2004] EPOR 10* ("**Comvik**"), is known as the "problem and solution method". This involves identifying, by reference to the closest prior art in the technical field of the invention, a technical problem which the invention claims to solve, and then assessing whether the technical feature(s) which form the claimed solution could be derived by the skilled person in that field in an obvious manner from the state of the art [32]-[33]. The Court disagrees with this concern. Neither *Comvik*, *Duns* or *G1/19* suggest that the "problem and solution" approach of the EPO is the only way of assessing

inventive step, or the only way of factoring the exclusions in Article 52(2) into the overall appraisal of patentability [53]-[54].

Issue 2: Is an ANN (or does it contain) a “program for a computer”?

To confine the term “computer” in Article 52(2)(c) of the EPC to conventional digital computers, as the applicant argued, would tie the operation of the EPC to a particular technology which happens to be prevalent, and would exclude devices such as old-fashioned analogue computers and quantum computers which are now being developed and which use the principles of quantum physics to process information in a fundamentally different way from conventional computers [76]-[77]. The term “program” should be interpreted correspondingly to mean a set of instructions capable of being followed by a computer of any kind, to produce desired manipulations of data [78]-[79].

The Court endorses the Hearing Officer’s characterisation of an ANN as “an abstract model which takes a numerical input, applies a series of mathematical operations (applying weights, biases and an activation function) and outputs a numerical result at successive layers” [81]. An ANN can be implemented in a variety of different types of hardware, and this fact demonstrates that an ANN is not itself a type of hardware. Whatever the specific form of the physical machine on which an ANN is implemented, the ANN is a set of instructions to manipulate data in a particular way to produce a desired result [80]-[82], [84]-[87]. It is therefore a “program for a computer” within the meaning of Article 52(2)(c) of the EPC [96].

Issue 3: Is the entire subject matter of the claims excluded?

The conclusion on issue 2 makes it necessary to consider whether the entire subject matter of the patent application falls within the scope of the exclusion of “programs for computers... as such” or whether it includes technical features and so qualifies as an “invention” within the meaning of Article 52(1). Applying the “any hardware” approach, the claims are to an “invention” and not excluded by Article 52(2)(c). Although the claimed method involves an ANN which is a program for a computer, it also involves technical means because the ANN can only be implemented on some form of computer hardware. That is sufficient to show that the subject matter of the claims has technical character and is not a computer program “as such”. The UKIPO was therefore wrong to refuse the application for a patent for the reason it did [97]-[98].

Once the first, very low hurdle of satisfying the “invention” test through the use of “any hardware” is cleared [99], the next stage is to undertake what the Enlarged Board in *G1/19* called the “intermediate step”. The intermediate step lies between step (1), which is to decide whether the subject matter of the claim qualifies as an invention by applying Article 52 EPC, and step (2), which is to decide whether the invention qualifies as novel under Article 54 EPC and as an inventive step under Article 56 EPC [100]. The object of the intermediate step is to filter out features (which may be technical or non-technical) of the invention which do not contribute to, or interact with, the technical character of the invention viewed as a whole, so as to exclude those features from consideration at step (2) [101]-[102], [107].

The discussion of the intermediate step in *G1/19* is couched in terms of the technical solution of a technical problem, which reflects the EPO’s approach to inventive step as a matter of practice. It is, however, open to the UKIPO and to the UK courts to adopt any appropriate method of identifying the technical character of the invention, viewed as a whole, as the necessary first part of carrying out the intermediate step [106].

*Application to this case*

Since the case has been argued until now below solely on the basis of the *Aerotel* approach, the Court has not received detailed argument or the views of the UKIPO and specialist judges in the lower courts on the application of the intermediate step, which has never been applied before in the UK. It is therefore not appropriate for the Supreme Court on this appeal: (i) further to define the intermediate step in cases involving programs for computers or (ii) to carry it out in relation to the application in issue. The Court confines its ruling to the issues mentioned above and refers the case back to the Hearing Officer to apply the intermediate step and the remaining requirements for patentability to the claimed invention [112]-[118].

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**