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UK Supreme Court Sets New Standard for AI Patentability in *Emotional Perception* Decision

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The Supreme Court of the United Kingdom in *Emotional Perception AI Ltd v. Comptroller General of Patents, Designs and Trade Marks*[1] has set a new standard for patenting AI and computer-implemented inventions. The Court has adopted the "any hardware" test and requires a feature-by-feature analysis to determine patent eligibility, moving UK law closer to European practice. This lowers the threshold for exclusion from patentability and means that such applications are less likely to fall at the first hurdle.

BACKGROUND

The applicant, Emotional Perception AI Ltd, developed a system in which an artificial neural network (ANN) is trained to align measurable physical properties of media files (such as tempo, tone, or rhythm in music) with semantic, human-perceived emotional responses. The commercial aim is to enable recommendations that are "provided more quickly and simply and to make better recommendations than anything else currently available" for users of content platforms with AI-driven recommendation engines. The Court described the invention's value as enabling "the similarities and differences which a human being might subjectively perceive between different files of information" to be replicated "by reference entirely to objectively measurable physical properties of those files." The method employs machine learning, iteratively adjusting the ANN's parameters to minimise the difference between semantic and physical file similarities, and, once trained, provides recommendations based solely on physical properties. This approach is highly relevant for digital content providers seeking to optimise user engagement through automated, scalable technology.

HISTORY OF PROCEEDINGS

The application for a patent by Emotional Perception AI was first rejected by the UK Intellectual Property Office (UKIPO) in 2022. Under Articles 52(2)(c) and (3) of the European Patent Convention (EPC) and section 1(2)(c) of the Patents Act 1977, "schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers" are not regarded as patentable inventions. The hearing officer determined that the claimed invention was excluded from patentability as a "program for a computer . . . as such."

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Emotional Perception AI appealed to the England and Wales High Court of Justice, which allowed the appeal and held that an ANN is not a program for a computer and, in any event, that the subject matter was not excluded from patentability.[2] The Court of Appeal (England and Wales) in 2024 reinstated the UKIPO's original refusal.

The Supreme Court heard the appeal and handed down its judgment on 11 February 2026. Throughout all the previous stages, the *Aerotel* test had been applied to assess patent eligibility, reflecting two decades of UK practice. The test involved four steps, requiring a court to:

1. properly construe the claim;

2. identify the actual contribution (although at the application stage this might have to be the alleged contribution);

3. ask whether it falls solely within the excluded matter; and

4. if the third step has not covered it, check whether the actual or alleged contribution is actually technical

The Supreme Court was asked to reconsider the *Aerotel* approach in light of the European Patent Office's (EPO) Enlarged Board of Appeal decision in case no. *G1/19*,[3] which addressed the patentability of computer implemented simulations. The decision endorsed the "any hardware" approach and criticised *Aerotel* as incompatible with the EPC. The "any hardware" test is much more permissive at the initial stage of assessing exclusions from patentability: if a claim involves any technical means (such as a computer or server), it is not excluded from patentability "as such." The "technicality" of the invention is instead assessed later during the inventive step (obviousness) analysis.

Aerotel was originally adopted by the UK courts at a time when the approach to Article 52 EPC had not yet been settled at the level of the EPO Board of Appeal, with panels taking divergent and sometimes irreconcilable approaches. The Court of Appeal considered it legitimate for UK courts to develop their own methodology until the EPO's Enlarged Board provided clarification. Indeed, *Aerotel* expressly anticipated that if an Enlarged Board ruled on the question, the UK approach might have to be reconsidered, potentially by a leap-frog appeal to the Supreme Court.

The UK Supreme Court had to decide whether to retain *Aerotel* or align UK law with the clarified EPO approach, balancing the disruption of changing a settled UK practice against the policy imperative for uniform interpretation across EPC contracting states.

KEY FINDINGS

Rejection of the *Aerotel* Approach and Impact on UK Practice

The Supreme Court found "a compelling case, in the light of *G1/19*, for rejecting the *Aerotel* approach," which "at best jumbles up the test of an invention with the other requirements for patentability" and reverses the logical order prescribed by the EPC. The Court further noted that, although the change may not produce many different outcomes, there are strong reasons to bring UK law into conformity with EPO practice.

The "Any Hardware" Approach and Technical Character

Following its rejection of *Aerotel*, the Supreme Court adopted the EPO's "any hardware" approach, holding that if claims require any hardware element, they are not excluded at the first gate as computer programs "as such." The Court found that although the invention involved an ANN which is a program for a computer, it also involved technical means because the ANN could only be implemented on some form of computer hardware, and the claims referred to a database for storing data files, a communications network, and a user device — all of which required or constituted hardware. This was enough to confer technical character and qualify the subject matter as an "invention" under Article 52(1) EPC. The UKIPO was therefore wrong to refuse the application for a patent for the reason it did.

Exclusion for "Programs for computers . . . as such"

The Supreme Court confirmed that ANNs, regardless of whether implemented in software or hardware, are "programs for computers" within Article 52(2)(c) EPC. The Court stated: "Whatever the specific form of the machine on which an ANN

is implemented, the ANN constitutes, in essence, a set of instructions to manipulate data in a particular way so as to produce a desired result. In other words, an ANN is a program for a computer." The Court rejected the argument that hardware implementations fall outside this exclusion, noting that an ANN is not itself a type of hardware and should be interpreted as a set of instructions capable of being followed by a computer of any kind, to produce desired manipulations of data.

The "Intermediate Step" — Filtering Features for Inventive Step

The Court held that, after clearing the "invention" threshold (now a "very low hurdle" under the "any hardware" approach), the next stage is the "intermediate step" described in *G1/19*. The Court adopted the EPO's guidance: the object of the intermediate step is to filter out features (which may be technical or nontechnical) 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 of novelty and inventive step. Thus, only features that contribute to, or interact with, the technical character of the invention are considered for inventive step and novelty. Nontechnical features "as such" are disregarded. However, nontechnical features that do interact with technical subject matter may be included.

The Court emphasised that the function of the intermediate step is to exclude features of the invention from subsequent consideration rather than determine the patentability of the invention as a whole. The required analysis is feature-by-feature, focusing on whether each feature contributes to the technical character of the invention viewed as a whole.

Nature of the Claimed Invention and Next Steps

The claims cover both a system and a method for providing file recommendations using an ANN trained "to make the distances between the pairs of files in the property space align more closely with the distances between those pairs in the semantic space." After training, the ANN can recommend files solely by reference to the physical properties of the files, without semantic comparison, yet aligned with predicted human emotional responses.

The Supreme Court did not define the intermediate step, or apply it in detail to this case, due to the lack of argument and lower court guidance on the point. Instead, it set aside the decision of the hearing officer. The question of how the intermediate step applies to this invention, and whether the features of the invention which contribute to its technical character can be considered to involve an inventive step, are questions to be determined in subsequent proceedings before the UKIPO. The practice of the UKIPO is likely to shift rapidly to reflect this new framework, and future applications for computer-implemented and AI-related inventions should be drafted with careful attention to both technical character and the intermediate step. The Court observed that "further assistance is limited by the way in which the matter has reached this court" and that the UKIPO and courts will need to work through the implications in future cases.

This decision provides greater clarity and a potentially smoother route to patent protection for AI innovations in the UK. This contrasts markedly with ongoing uncertainty in respect of copyright protection for AI-generated outputs, as highlighted by the recent *Getty Images v. Stability AI* decision[4] and the ongoing UK government policy consultation on the introduction of a broad data-mining exception in respect of copyright works (with an opt-out right for copyright owners), which is due to conclude next month.

IN SUMMARY

- The applicant, Emotional Perception AI, developed a system in which an artificial neural network is trained to align measurable physical properties of media files (such as tempo, tone, or rhythm in music) with semantic, human-perceived emotional responses.

- On appeal, the UK Supreme Court adopted the European Patent Office's guidance: the object of the "intermediate step" is to filter out features 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 of novelty and inventive step.

- The practice of the UKIPO is likely to shift to reflect this new framework and the patentability of the artificial neural network in question will need to be considered in fresh proceedings before the UKIPO.

Notes

1. Emotional Perception AI Ltd v. Comptroller General of Patents, Designs and Trade Marks [2026] UKSC 3, available at https://supremecourt.uk/uploads/uksc_2024_0131_judgment_1da6c10a83.pdf.
2. [2023] EWHC 2948 (Ch).
3. No. G1/19 (2021) (Bentley Systems (UK) Ltd / Pedestrian Simulation), available at https://www.epo.org/boards-of-appeal/decisions/pdf/g190001ex1.pdf.
4. Getty Images v. Stability AI decision, available at https://www.judiciary.uk/wp-content/uploads/2025/11/Getty-Images-v-Stability-AI.pdf.