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**D E C I S I O N**  
**of 17 March 2005**

**Case Number:** T 0531/03 - 3.4.3

**Application Number:** 92102006.1

**Publication Number:** 0511463

**IPC:** G07G 5/00

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for generating cumulative discount certificates

**Patentee:**

Catalina Marketing International, Inc.

**Opponent:**

INFOMIL  
TESCO STORES LIMITED

**Headword:**

Discount certificates/CATALINA

**Relevant legal provisions:**

EPC Art. 52(1), 52(2)(c), 56

**Keyword:**

"Inventive step (no): Treatment of non-technical aspects in the assessment of inventive step (confirming T 0641/00)"

**Decisions cited:**

G 0002/02, T 0026/86, T 0796/92, T 0931/95, T 0641/00,  
T 0258/03

**Catchword:**

1. In the assessment of inventive step, features relating to a non-invention within the meaning of Article 52(2) EPC (so-called "non-technical features") cannot support the presence of inventive step (reasons, 2.5 and 2.6).
2. An attempt to take into account the contribution of non-technical and technical aspects on an equal footing in the assessment of inventive step would not be in conformity with the EPC, since the presence of inventive step would in such an approach be attributed to features which are defined in the EPC as not being an invention (reasons, 2.6).



Case Number: T 0531/03 - 3.4.3

**D E C I S I O N**  
**of the Technical Board of Appeal 3.4.3**  
**of 17 March 2005**

**Appellant:** Catalina Marketing International, Inc.  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 7 March 2003  
revoking European patent No. 0511463 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** R. K. Shukla  
**Members:** G. L. Eliasson  
P. Mühlens

## Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division dated 7 March 2003 revoking European patent No. 0 511 463. The ground for revoking the patent in suit was that the subject matter of claim 1 according to a main request and an auxiliary request did not involve an inventive step (Article 100(a) EPC) having regard to the prior art document

A1: US-A-4 910 972.

The other grounds of oppositions under Article 100(b) and (c) EPC raised by the opponent were rejected by the opposition division.

II. The appellant (patent proprietor) lodged an appeal on 28 April 2003, paying the appeal fee the same day. A statement of the grounds of appeal was filed on 7 July 2003.

The opponent (respondent), Infomil, filed observations with the letter dated 14 November 2003.

III. The parties made the following requests:

The appellant (patent proprietor) requests that the decision under appeal be set aside and that the patent be maintained according to one of the following requests:

**Main Request:**

Patent as granted;

**First Auxiliary Request:**

Claims 1 to 10 according to the first auxiliary request filed with the statement of grounds  
Description Columns 1 and 2 filed with the statement of grounds  
Rest of the description and drawings as granted

**Second Auxiliary Request:**

Claims 1 to 11 according to the second auxiliary request filed with the statement of grounds  
Description Columns 1 and 2 filed with the statement of grounds  
Rest of the description and drawings as granted

**Third Auxiliary Request:**

Claims 1 to 11 according to the first auxiliary request filed with the statement of grounds  
Description Columns 1 and 2 filed with the statement of grounds  
Rest of the description and drawings as granted

The respondent (opponent) requests that the appeal be dismissed. Furthermore, as an auxiliary request, the respondent requests oral proceedings.

IV. The independent claims 1 and 7 according to the main request read as follows:

"1. A system for generating a printable cumulative discount certificate in a retail store, solely in

response to a customer's decision to purchase one or more preselected items, the system including:

a plurality of terminals (12) at customer check-out locations, each having means (13) for reading product codes on purchased items in a customer order;

a store controller (10) with which the terminals can communicate, the store controller having access to an item record file (14) containing price and other information for each product item;

means (20) for identifying triggering products in the customer order;

means (20) for retrieving from a storage means (24) the terms of discounts relating to multiple separate products that are triggering products;

means (20) for automatically generating a printable cumulative discount certificate, which is redeemable as a cash discount in a subsequent transaction;

the system being characterized by the means for generating including means for creating a discount certificate list in which each entry corresponds to a different triggering product identified in the customer order, and means responsive to detection of the end of the customer transaction, for determining whether any items on the list should be excluded to leave only qualifying items on the printable cumulative discount certificate."

"7. A method for machine generating a printable cumulative discount certificate for use in a retail store point-of-sale system having a plurality of terminals at customer check-out locations, each with means for reading product codes on purchased items in a customer order; the method comprising the steps of:

applying a triggering flag to records in an item record file (14) corresponding to multiple separate products for which a cumulative discount certificate may be printed and holding in store means (24) the terms associated with said discountable products in store means;

determining discountable products in a customer order using the triggering flag;

retrieving the terms of the discountable product from said store means;

machine generating a printable cumulative discount certificate that is based on accumulated discounts of all of the discountable products identified in the determining step, the printable discount certificate being redeemable as a cash discount in a subsequent purchase transaction;

the generating step including creating a discount certificate list in which each entry corresponds to a different discountable product identified in the customer order;

detecting the end of the customer transaction; and  
  
determining whether any items on the list should  
be excluded from the printable cumulative discount  
certificate."

V. Independent claims 1 and 6 according to the first  
auxiliary request read as follows (emphasis added by  
the Board indicating amendments with respect to the  
main request):

"1. A system for generating a printed discount  
certificate in a retail store, solely in response  
to a customer's decision to purchase one or more  
preselected items, the system including:

a plurality of terminals (12) at customer check-  
out locations, each having means (13) for reading  
product codes on purchased items in a customer  
order;

a store controller (10) with which the terminals  
can communicate, the store controller having  
access to an item record file (14) containing  
price and other information for each product item;

means (20) for identifying triggering products in  
the customer order;

means (20) for retrieving from a storage means  
(24) the terms of discounts relating to multiple  
separate products that are triggering products;



**characterised by** means for creating a discount certificate list in which each entry corresponds to a different triggering product identified in the customer order;

means responsive to detection of the end of the customer transaction, for determining whether any items on the list should be excluded to leave only qualifying items;

means (20) for automatically generating a printable cumulative discount certificate, which is redeemable as a cash discount in a subsequent transaction; and

**means for placing the cumulative discount certificate in a print queue and printing in response to detection of the end of the customer transaction."**

- "6. A method for machine generating a printable cumulative discount certificate for use in a retail store point-of-sale system having a plurality of terminals at customer check-out locations, each having means for reading product codes on purchased items in a customer order, the method comprising the steps of:

applying a triggering flag to records in an item record file (14) corresponding to multiple separate products for which a cumulative discount certificate may be printed and holding in store means (24) the terms associated with said discountable products in store means;

determining discountable products in a customer order using the triggering flag;

retrieving the terms of the discountable product from said store means;

machine generating a printable cumulative discount certificate that is based on accumulated discounts of all of the discountable products identified in the determining step, the printable discount certificate being redeemable as a cash discount in a subsequent purchase transaction;

the generating step including creating a discount certificate list in which each entry corresponds to a different discountable product identified in the customer order;

detecting the end of the customer transaction **and placing the cumulative discount certificate in a print queue;**

determining whether any items in the list should be excluded from the printed cumulative discount certificate; **and**

**printing the queued cumulative discount certificate."**

VI. Claim 1 according to the second auxiliary request reads as follows (emphasis added by the Board indicating amendments with respect to the main request):

"1. A system for generating a printable cumulative discount certificate in a retail store, solely in response to a customer's decision to purchase one or more preselected items, the system including:

a plurality of terminals (12) at customer check-out locations, each having means (13) for reading product codes on purchased items in a customer order;

a store controller (10) with which the terminals can communicate, the store controller having access to an item record file (14) containing price and other information for each product item;

means (20) for identifying triggering products in the customer order;

means (20) for retrieving from a storage means (24) the terms of discounts relating to multiple separate products that are triggering products;

**the system being characterised by**

means (20) for automatically generating a printable cumulative discount certificate, which is redeemable as a cash discount in a subsequent transaction;

said means for automatically generating including means for creating a discount certificate list in which each entry corresponds to a different triggering product identified in the customer order; and

means responsive to detection of the end of the customer transaction **for placing the cumulative discount certificate in a print queue and** for determining whether any items on the list should be excluded to leave only qualifying items on the printable cumulative discount certificate."

Independent claim 7 according to the second auxiliary request has the same wording as claim 6 according to the first auxiliary request.

VII. Independent claims 1 and 7 according to the third auxiliary request reads as follows (emphasis added by the Board indicating amendments with respect to the main request):

"1. A system for generating a printable cumulative discount certificate in a retail store, solely in response to a customer's decision to purchase one or more preselected items, the system including:

a plurality of terminals (12) at customer check-out locations, each having means (13) for reading product codes on purchased items in a customer order;

a store controller (10) with which the terminals can communicate, the store controller having access to an item record file (14) containing price and other information for each product item;

means (20) for identifying triggering products in the customer order;

means (20) for retrieving from a storage means (24) the terms of discounts relating to multiple separate products that are triggering products;

**the system being characterised by**

**means for detecting a tender state of a tender key of a keyboard at said checkout;**

means (20) for automatically generating a printable cumulative discount certificate, which is redeemable as a cash discount in a subsequent transaction **upon detecting said tender state;**

said means for automatically generating including means for creating a discount certificate list in which each entry corresponds to a different triggering product identified in the customer order; and

means responsive to detection of the end of the customer transaction **for placing the cumulative discount certificate in a print queue and for determining whether any items on the list should be excluded to leave only qualifying items on the printable cumulative discount certificate."**

- "7. A method for machine generating a printable cumulative discount certificate for use in a retail store point-of-sale system having a plurality of terminals at customer checkout locations, each with means for reading product

codes on purchased items in a customer order, the method comprising the steps of:

applying a triggering flag to records in an item record file (14) corresponding to multiple separate products for which a cumulative discount certificate may be printed and holding in store means (24) the terms associated with said discountable products in store means;

determining discountable products in a customer order using the triggering flag;

retrieving the terms of the discountable product from said store means;

creating a discount certificate list in which each entry corresponds to a different discountable product identified in the customer order;

detecting the end of the customer transaction **by detecting a tender state of a keyboard at said checkout and placing the cumulative discount certificate in a print queue;**

determining whether any item in the list should be excluded from the printable cumulative discount certificate; **and**

**printing the queued** cumulative discount certificate that is based on accumulated discounts of all of the discountable products identified in the determining step, the printable discount

certificate being redeemable as a cash discount in a subsequent purchase transaction."

VIII. The reasons given in the decision under appeal for revoking the patent in suit can be summarized as follows:

- (a) The claimed system only differs from that of document A1 in that at the end of a transaction, a cumulative discount certificate is printed in which each entry corresponds to a different triggering product identified in the customer order, whereas in document A1, a separate discount coupon is printed for each "coupon deal" which may be one triggering product or a predefined group of triggering product identified in the customer order.
- (b) The problem addressed by the patent in suit relates to encouraging consumers to revisit the same store, which is a matter of marketing strategy motivated by non-technical, business-related considerations. Technical considerations could only be considered to arise in respect of how to provide a technical implementation of the underlying marketing strategy.
- (c) The objective technical problem may therefore be formulated as how to adapt an electronic coupon generation system, such as that known from document A1, so that it generates a single cumulative discount certificate for each transaction.

The solution of the above problem does not involve any non-obvious technical considerations or non-obvious technical effects, and therefore, the claimed subject matter does not involve an inventive step.

- (d) A formulation as suggested by the appellant of the technical problem in terms of improving efficiency and the reducing paper used for printing was rejected, since the proposed redefinition of the technical problem could not be derived from the application as filed, as it was not an inevitable result of issuing cumulative discount certificates that less paper would be consumed.

IX. The appellant (patent proprietor) presented essentially the following arguments in support of his requests:

- (e) The decision under appeal essentially follows the rationale of T931/95 and T641/00 where only the technical aspects of the invention were taken into account in assessing inventive step, i.e. the contribution of the non-technical person is ignored. It is submitted that this approach is incorrect, since the intention of the EPC (notwithstanding that of TRIPS) is that inventions which are made by non-technical person, but which inventions have industrial applicability, to be patentable, since the EPC Articles are silent on technical features. Only the Rules introduce the requirement of technicality but even then not in respect of inventive step.



(f) Furthermore, it is also a well-established principle in the case law that inventive step is to be based upon a claim as a whole. Therefore, the approach made in the above-mentioned decisions is incorrect, since the contribution of the non-technical features is ignored.

(g) The present invention requires a combination of a technical and a non-technical inventive step, and the skilled persons consist of a team of a "non-technical person" plus a technical person.

X. The respondent (opponent) presented essentially the following arguments:

(a) Contrary to the finding of the opposition division, the respondent maintains that the grounds of opposition raised under Article 100(b) and (c) EPC prejudice the maintenance of the patent in suit.

(b) As admitted by the appellant, the problem addressed by the patent in suit is commercial in nature, and therefore, the appellant seeks to reverse established jurisprudence of the boards of appeal.

### **Reasons for the Decision**

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.

2. *Inventive Step - Treatment of Non-technical Features*

2.1 In the present appeal, the appellant acknowledged that the opposition division followed the principles as set out in the decisions T 931/95 (OJ EPO 2001, 441) and T 641/00 (OJ EPO 2003, 352). Rather than directly criticizing the reasoning given in the decision under appeal, the appellant argued that the approach developed in the above board of appeal decisions for treating non-technical features when assessing inventive step was incorrect, since there was no justification in the EPC or TRIPS for ignoring the contribution of non-technical features in the assessment of inventive step (cf. item IX(e) above).

2.2 The issue raised by the appellant is thus how "non-technical" features in a claim are to be treated when the requirement of inventive step is assessed. In this connection, the term "non-technical" feature is to be understood as a feature relating to a non-invention within the meaning of Article 52(2) EPC (cf. T 641/00, reasons item 4 where the same definition of "non-technical feature" is employed). In particular, Article 52(2)(c) EPC states that schemes, rules and methods for performing mental acts, playing games or doing business are not to be regarded as inventions.

2.3 A further term used in this connection is the "technical character" of an invention. This term is not mentioned in the EPC but is derived from the term "invention" used in Article 52(1) EPC in conjunction with the exclusion under Article 52(2) and (3) EPC to be understood as implying a "requirement of technical character" (cf. T 931/95, reasons item 2). In case the

exclusion under Article 52(3) EPC applies, technical character of the invention is said to be lacking. It follows from the above that the term "non-technical feature" relates to features in a claim, which on their own would not contribute to the technical character of the invention. An invention may however contain a mixture of technical and non-technical features and still be considered to have a "technical character" (cf. e.g. T 26/86, OJ EPO 1988, 19, headnote 1; T 769/92, OJ EPO 1995, 525, headnote). Therefore, the contribution of a non-technical feature to the technical character of the invention of the claimed subject matter can only arise from its implementation in a technical system.

- 2.4 In earlier decisions of the boards of appeal, a certain "technical contribution" to the art in a field not excluded from patentability under Article 52(2) EPC was required for an invention to have the required technical character (cf. "Case Law of the Boards of Appeal of the European Patent Office", 4<sup>th</sup> Edition, Chapter I.A.1, as well as T 769/92 cited by the appellant). Such an assessment of the "technical contribution" implied an evaluation in the light of the available prior art or common general knowledge (cf. for example T 769/92, reasons item 3.8).

Such an assessment of the prior art prior to a consideration of novelty and inventive step is considered in later decisions of the boards of appeal to be inappropriate. It was therefore held in T 931/95 and T 258/03 (OJ EPO 2004, 575) that a device or method involving any technical means should be considered an invention within the meaning of Article 52(1) EPC, and

should therefore be considered as having technical character. It was acknowledged in T 258/03 that such a liberal assessment of the presence of technical character has as a consequence that the question of technical character is answered in affirmative even when the technical means involved are trivial, such as the act of writing using pen and paper (cf. reasons items 3.5 to 3.8 and 4.5 to 4.7).

2.5 The above decisions T 931/95 and T 258/03 also address the question as to how non-technical features are to be treated in the assessment of inventive step. Only those features which contribute to the technical character of the invention can contribute to inventive step (cf. T 931/95, reasons item 8; T 258/03, reasons items 5.3 and 5.7). In the decision T 641/00, it was held that when an invention consists of a mixture of technical and non-technical features and has technical character as a whole, the assessment of the requirement of inventive step should take into account all the features which contribute to the technical character whereas features making no such contribution cannot support the presence of inventive step (cf. headnote 1; reasons item 6). When assessing inventive step using the problem-and-solution approach and the claim to be assessed refers to an aim to be achieved in a non-technical field, it was held that this aim may legitimately appear in the formulation of the problem as part of the technical problem that is to be solved, in particular as a constraint that has to be met (cf. headnote 2; reasons item 7).

2.6 The approach suggested by the appellant taking into account the contribution of non-technical and technical

aspects, such as the contributions of a technical and a non-technical skilled person, on an equal footing when assessing inventive step would not, on the other hand, distinguish between technical and non-technical features, whereby in the assessment of inventive step only the contribution made by the non-technical features may be taken into consideration. The Board considers that this approach is not in conformity with the EPC, since as mentioned above, the non-technical features are defined as belonging to subject matter which according to Article 52(2) EPC is not to be considered an invention, and therefore, the presence of an inventive step following the approach suggested by the appellant would be attributed to features which are defined in the EPC as not being an invention.

2.7 The argument that the TRIPS agreement would allow patents for methods of conducting business is not relevant, since as held in G 2/02 (to be published in the OJ EPO), the European Patent Organization is not a party of TRIPS and is therefore not bound by TRIPS (cf. G 2/02, reasons items 5.1 to 5.6). Neither does the argument regarding the practice of the patent offices in Japan and the United States of America to grant patents for business methods apply, since the laws of these countries do not have a corresponding exclusion from patentability for business methods to the provision in Article 52(2)(c) EPC.

2.8 It follows from the above that the Board agrees with the approach as set out in T 641/00 regarding the treatment of non-technical features when assessing inventive step.

3. *Inventive Step - Main Request*

3.1 The patent in suit relates to a method and an apparatus for automatically generating discount certificates (discount coupons). The claimed method/apparatus comprises a modified point-of-sales computer system having a plurality of check-out terminals 12, each with an associated optical scanner 13 for reading bar-codes, and connected together with a store controller 10 having an item record file 14 containing the standard price of each sales item (cf. Figure 1). In addition to the conventional component of the computer system, a discount data base 24 is kept for the sales items which currently are discounted recording the discounted price and conditions for the discount. A discounted item is identified by a set trigger flag in its respective record in the item record file 14. When a discounted item is scanned at the check-out terminal, the store controller 10 retrieves the discounted price from the discount data base and records it in a cumulative discount list (cf. Figure 3). At the end of the customer order, the cumulative discount list is examined to determine to see whether the conditions for the discount of each item are met and a printable cumulative discount certificate is generated listing all the items which qualify for discount. The discount certificate is redeemable as a cash discount in a subsequent transaction.

3.2 Document A1 was considered the closest prior art in the decision under appeal and relates to a system for automatically printing discount coupons using a point-of-sales computer system (cf. abstract; Figure 1). In addition to the conventional components (checkout

terminal 12, scanner 13, item record file 14) of a point-of sales system, a coupon look-up file 32 is provided which contains coupon index records 40 and coupon deal records 42. Sales items which are part of a discount deal are identified by a trigger flag in the corresponding records in the item record file 14. When such a triggering item is scanned, a corresponding coupon deal record is retrieved through the coupon index records 40 and coupon deal records 42, and a request for printing the corresponding discount coupon is sent out in a printing queue (cf. column 4, line 60 to column 5, line 16; column 13, lines 5 to 7). Alternatively, it is also possible to allow "multiple-trigger" coupons, i.e. coupons which require the purchase of more than one triggering item in a single transaction (cf. column 2, lines 14 to 32; column 11, lines 32 to 47). In this case, a coupon is only printed after that the system has verified that the terms of the multiple-trigger coupon deal as stored in the coupon deal record are satisfied. It is also possible to print coupons for trigger items which the customer has failed to purchase, so-called "negative" coupon deals (cf. column 2, lines 7 to 13), which requires the detection of the end of the customer transaction (cf. column 10, lines 60 to 68).

- 3.3 It is not disputed that the system of claim 1 according to the main request only differs from that of document A1 in that a cumulative discount certificate is printed at the end of the transaction in which each entry corresponds to a different triggering product identified in the customer order (cf. item VIII(a) above). In the system according to document A1, on the other hand, a separate discount coupon is printed for

each "coupon deal" which may be one triggering product or a predefined group of triggering product identified in the customer order.

3.4 The patent in suit addresses the problem of encouraging consumers to revisit the same store (cf. patent in suit, column 2, lines 22 to 31), or as stated by the appellant, how to provide a consumer incentive to return to the store without having to manage the printing of a multitude of coupons.

3.5 As held in the decision under appeal, the problem stated above is a matter of marketing strategy which does not in itself involve any technical considerations upon which an inventive step could be based (cf. item VIII(b) above). Therefore, following the considerations made under item 2 above, an objective technical problem should be reformulated in terms of providing a technical implementation of the underlying marketing strategy. In the present case this means that the technical professional who is given the task of modifying the known electronic coupon generation system so that it operates according to a desired market strategy must, in order to carry out this task, also receive knowledge of this market strategy (cf. also T 641/00, reasons, item 14). In the present case, this means the replacement of discount coupons with a single discount certificate.

3.6 The objective technical problem thus relates to adapting an electronic coupon generation system, such as that known from document A1, so that it generates a single cumulative discount certificate for each transaction (cf. item VIII(c) above).



3.7 The Board furthermore finds that the opposition division correctly rejected the suggestion of the appellant that a technical problem may be formulated in terms of improving the efficiency and reducing the amount of paper used in printing the coupons or certificates, since this problem is not clearly and unambiguously derivable from the application as filed. In particular, is not an inevitable result from printing a single cumulative discount certificate using the system according to claim 1 that less paper will indeed be consumed (cf. item VIII(d) above). The appellant has also not provided any evidence that this would be the case.

3.8 The Board finally agrees with the opposition division's assessment that the skilled person faced with the above technical problem would not require any inventive skills to solve it (cf. item VIII(c) above). The appellant has also not contended that the solution of the above problem would involve any non-obvious technical considerations or provide any non-obvious technical effect.

Therefore, in the Board's judgement, the subject matter of claim 1 according to the main request does not involve an inventive step within the meaning of Article 56 EPC.

#### 4. *Inventive step - First and Second Auxiliary Requests*

With respect to the main request, claim 1 according to the first auxiliary request further specifies "means for placing the cumulative discount certificate in a

print queue and printing in response to detection of the end of the customer transaction". Claim 1 according to the second auxiliary request contains a corresponding feature. Since a print queue is disclosed in the system of document A1 (cf. item 3.2 above), the subject matter of claim 1 according to the first auxiliary request does not involve an inventive step for the same reasons as for the main request.

5. *Inventive step - Third Auxiliary Request*

With respect to the main request, claim 1 according to the third auxiliary request further specifies that the step of detecting the end of the customer transaction is by detecting tender state of a keyboard at the checkout and placing the cumulative discount certificate in a print queue. Since the system of document A1 comprises a means of detecting the balance-due point, i.e. the point when all items have been processed, and means for detecting whether payment has been received and the transaction has been closed (cf. column 12, lines 20 to 25), the system of document A1 discloses the additional features of claim 1 according to the third auxiliary request. Therefore, the subject matter of claim 1 according to the third auxiliary request does not involve an inventive step for the same reasons as for the main request.

6. Since none of the appellant's requests meet the requirement of inventive step, there is not need to investigate whether any of the other grounds of opposition raised by the respondent would prejudice the maintenance of the patent in suit.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

M. Patin

R. K. Shukla