

**Internal distribution code:**

- (A) [ ] Publication in OJ  
(B) [ ] To Chairmen and Members  
(C) [X] To Chairmen  
(D) [ ] No distribution

**Datasheet for the decision  
of 30 July 2009**

**Case Number:** T 1382/04 - 3.5.01

**Application Number:** 00985545.3

**Publication Number:** 1244976

**IPC:** G06F 17/00

**Language of the proceedings:** EN

**Title of invention:**

Intelligent transaction monitor system and method

**Applicant:**

Fortent Limited

**Opponent:**

-

**Headword:**

Transaction monitor/FORTENT

**Relevant legal provisions:**

EPC Art. 123(2)  
EPC R. 100(2)(3)  
RPBA Art. 5(3)

**Keyword:**

"Request for oral proceedings constitutes a reply to a  
communication (yes)"  
"Admissibility of amendment (no)"

**Decisions cited:**

T 0861/03

**Catchword:**

See point 1 of the reasons.



Case Number: T 1382/04 - 3.5.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.01  
of 30 July 2009

**Appellant:** Fortent Limited  
Prospect House  
80-110 New Oxford Street  
London W1P 1HB (GB)

**Representative:** Jackson, Richard Eric  
Carpmaels & Ransford  
43 Bloomsbury Square  
London WC1A 2RA (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 7 June 2004  
refusing European patent application  
No. 00985545.3 pursuant to Article 97(1) EPC  
1973.

**Composition of the Board:**

**Chairman:** S. Steinbrener  
**Members:** K. Bumès  
A. Pignatelli

## Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 00985545.3, published as
- A2: WO-A2-01/48626,
- primarily for lack of novelty over
- D1: US-A-5 920 848.
- "Further observations" have been made in section III of the decision under appeal, raising objections under Articles 123(2), 84, 56, and 52(2)(3) EPC 1973.
- II. The appellant requests that the decision under appeal be cancelled and that the application be allowed to proceed to grant on the basis of an amended set of claims filed with the statement setting out the grounds of appeal.
- (a) Claim 1 reads:
- "1. An automated system for business transaction data monitoring and analysis in a multi-user environment, comprising:
- a data monitor for receiving and processing business transaction data arising from a plurality of sources; and
- a data store for storing the processed data;
- wherein the data monitor (i) includes means for constructing historical profiles based on aggregate statistics of the received transaction data across different time periods for a plurality of individual business entities and business entity groupings, (ii) uses the historical profiles for targeted investigative analysis using individual entity based and business entity grouping comparison on the basis of patterns of

usual and unusual behaviour to generate automatically alert signals in response to particular outcomes of the investigative analysis, the sensitivity of the alert signals being dynamically and automatically adjusted based on user response."

- (b) According to the appellant,
- there are "sufficient novel and inventive technical features recited in the independent claims" (statement of grounds, page 5, last paragraph);
  - "the examiner is over-reading the description of D1 with knowledge of our invention" (statement of grounds, page 1, paragraph 2);
  - "D1 does not describe a multi-user system where there would be an expectation of a central store of information shared by many users, or a multi-user system where the decision making is made across multiple facets of that centralised data, or where alerts may be sent and routed to multiple different users within an organisation" (statement of grounds, page 1, paragraph 2).

III. On 18 December 2008, the Board issued a communication pursuant to Rule 5(3) RPBA expressing doubts *inter alia* about the original basis of amended claim 1. Construing claim 1 broadly, the Board also came to a negative preliminary conclusion regarding the novelty of the claimed system with respect to D1. According to Rule 100(2) EPC, the Board invited the appellant to file observations within a period of four months (expiring on 28 April 2009).

IV. By a facsimile letter of 22 April 2009, the appellant requested an extension of time for filing the

appellant's comments on the Board's communication. At the same time, the appellant requested oral proceedings in the event that the prosecution of the application could not be resolved satisfactorily in writing.

V. The Board did not consider the appellant's reason to be sufficient to justify an extension of the time limit and therefore refused the requested extension. However, in view of the appellant's auxiliary request for oral proceedings, the Board summoned the appellant to attend oral proceedings scheduled for 31 July 2009.

VI. By a facsimile letter of 10 June 2009, the appellant's representative informed the Board that he could not attend oral proceedings on 31 July 2009 due to a pre-arranged vacation starting on that day.

VII. In a communication dated 16 June 2009, the Board considered that the request for providing an alternative date for the oral proceedings had not been filed "as soon as possible", contrary to point 2 of the "Notice of the Vice-President of Directorate-General 3 of the European Patent Office dated 16 July 2007 concerning oral proceedings before the boards of appeal of the EPO", published in the OJ EPO 2007, Special edition No. 3, section H.1 (pages 115/116).

Therefore, the Board in principle maintained the original date to keep its scheduling efficient but offered to advance the oral proceedings by one day in order to accommodate the representative's vacation plan.

- VIII. By a facsimile letter of 18 June 2009, the appellant agreed to the alternative date for oral proceedings, i.e. 30 July 2009.
- IX. In a subsequent facsimile letter of 23 July 2009, the appellant informed the Board that he would not be represented at the oral proceedings, and requested a decision by the Board based on the written submissions on file.

### **Reasons for the decision**

1. *Rule 100(2)(3) EPC - Pendency of the application*

According to Rule 100(2) EPC, the appellant has been invited to file observations on the Board's communication dated 18 December 2008. Failure to reply to such an invitation in due time would result in the application being deemed withdrawn (Rule 100(3) EPC). Hence, before deciding on the present case, the Board has to ascertain that a reply meeting the requirements of Rule 100(2) EPC has been received in due time. If no response qualifying as a reply has been received, the case is not pending any more. The question arises because the appellant has not made any substantive observation on the Board's communication.

- 1.1 Historically, the legal instrument of a deemed withdrawal was introduced for administrative reasons as a means to save resources of patent offices and courts in cases where the applicant or appellant has clearly lost its interest in prosecuting an application (see G. Gall, "Die europäische Patentanmeldung und der PCT

in Frage und Antwort", 6th edition, Carl Heymanns Verlag, Köln 2002; page 135, answer to question 24).

1.2 In the present case, the Board considers the request for oral proceedings which was received within the time limit for filing observations as a reply avoiding a deemed withdrawal under Rule 100(3) EPC since it cannot be assumed that the appellant has lost his interest in the application while requesting oral proceedings at the same time, apparently with a view to present his comments on the Board's arguments orally. Thus, the Board concurs with a corresponding finding in decision T 861/03 (point 6.2 of the reasons).

1.3 Hence, the present case is pending and, consequently, the Board has the power and obligation to issue a decision on the appeal.

2. *Article 123(2) EPC - Admissibility of amended claim 1*

The Board judges that the following features in amended claim 1 extend beyond the content of the application as filed, and claim 1 is not allowable for this reason alone.

2.1 Historical profiles for "business entity groupings":

The application as filed states the opposite: the system provides "separate output profiles relating to the individual business entities" (A2, original claim 11).

A2 mentions "aggregates across complete business entities" (page 9, lines 26 to 29). However, this is not a clear and unambiguous disclosure of "historical profiles for business entity groupings".

A2 terms "groupings of individuals" at page 2 (lines 17 to 20), but this statement relates to prior art.

2.2 Targeted investigative analysis using "individual entity based and business entity grouping comparison":

The pertinent comparison mentioned in A2 is made between historical transaction profiles and business events in order to detect unusual patterns of behaviour and alert system operators to them (page 4, lines 3 to 7; page 12, paragraph 2).

2.3 Targeted investigative analysis using "comparison on the basis of patterns of [...] unusual behaviour":

This formulation inverts the original teaching. The comparison mentioned on page 4 of A2 is not based on patterns of unusual behaviour but patterns of unusual behaviour are detected on the basis of the comparison.

## **Order**

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

The appeal is dismissed.

The registrar:

The chairman:

T. Buschek

S. Steinbrener