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Datasheet for the decision of 21 January 2009

Case Number: T 0204/06 - 3.5.01

Application Number: 02801449.6

Publication Number: 1440405

IPC: G06F 17/60

Language of the proceedings: EN

Title of invention:
System and method for reinsurance placement

Applicant:
Swiss Reinsurance Company

Opponent:
-

Headword:
Reinsurance placement/SWISS RE

Relevant legal provisions:
-

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Inventive step (no)"

Decisions cited:
T 0002/83

Catchword:
See points 2.6 to 2.8 of the reasons.

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0204/06 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 21 January 2009

Appellant: Swiss Reinsurance Company
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Representative: Vogel, Dany
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 25 October 2005 refusing European application No. 02801449.6 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: S. Steinbrener
Members: S. Wibergh
P. Schmitz

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division to refuse European patent application No. 02801449.6.

II. According to the decision appealed, the invention did not involve an inventive step over the common general knowledge of a person skilled in the art of distributed network communications. The technical problem was seen as the mere implementation of the business-related aspects and features of a reinsurance placement method on a well-known kind of computer system.

III. Together with the statement setting out the grounds of appeal, dated 26 January 2006, the appellant requested grant of a patent based on the claims on file. Four additional sets of claims were filed by letter dated 4 May 2006 as auxiliary requests 1-4.

IV. The Board issued a communication annexed to a summons to oral proceedings, to which the appellant replied by letter dated 23 October 2008.

V. Oral proceedings were held on 21 January 2009, at which the appellant filed a further set of claims. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the main request (claims underlying the appealed decision), or on the first auxiliary request filed during the oral proceedings before the Board, or on auxiliary requests 2-5, filed as auxiliary requests 1-4 with the letter of 4 May 2006.

VI. Claim 1 of the main request reads:

"A system for facilitating negotiation of placement of reinsurance business between a cedent and a reinsurer comprising:

a host server (201) adapted to

communicate through a computer network (204) with a plurality of cedent computers (206),

receive a plurality of reinsurance programs from the cedent computers (206),

receive designations from the cedent computers (206) of selected programs to include in a reinsurance package,

automatically compile the selected programs into the reinsurance package,

receive an indication from the cedent computers (206) of selected reinsurers to receive the reinsurance package,

dispatch the reinsurance package to a file transfer server (202) in communication with the host server (201), and

forward to the selected reinsurers an electronic communication (252)containing a link to the reinsurance package through which to access the reinsurance package; and

the file transfer server (202), wherein the file transfer server (202) is adapted to

communicate with a reinsurer computer (208) through a computer network (205),

receive and store the reinsurance package from the host server (201), and

transmit to the reinsurer computer (208) the reinsurance package (253) accessed by the reinsurer computer (208) through the link".

VII. Claim 1 according to the first auxiliary request reads (additions in italics):

"A *data transmission* system for facilitating negotiation of placement of reinsurance business between a cedent and a reinsurer comprising:
a host server (201) adapted to
communicate through a computer network (204) with a plurality of cedent computers (206),
receive *and store* a plurality of reinsurance programs from the cedent computers (206),
receive designations from the cedent computers (206) of selected *reinsurance* programs, *from among the plurality of reinsurance programs,* to include in a reinsurance package,
automatically compile the selected *reinsurance* programs into the reinsurance package,
[the rest of claim 1 as the main request]".

VIII. Claim 1 according to the second auxiliary request, also directed to a *data transmission* system, contains in addition to claim 1 of the main request the features that a reinsurance program includes *structured data, adhering to a specific format, and unstructured data, being in no specific format* and that the reinsurance package is "*implemented as a data file*".

IX. Claim 1 according to the third auxiliary request, also directed to a *data transmission system*, contains in addition to claim 1 of the main request the feature "*the file transfer server (202) creating separate directories on the file transfer server (202) for each of the selected reinsurers and storing the reinsurance*

package for each of the selected reinsurers in the respective directory".

X. Claim 1 according to the fourth auxiliary request specifies in addition to claim 1 of the third auxiliary request that the link to the reinsurance package serves to "*locate and* access the reinsurance package *on the file transfer server (202)*".

XI. Auxiliary request 5 is a combination of auxiliary requests 2 to 4.

XII. At the end of the oral proceedings the Board announced its decision.

Reasons for the Decision

The main request

1. The invention

The invention is a system "for facilitating negotiation of placement of reinsurance business between a cedent and a reinsurer". It comprises a host server and a file transfer server which are adapted to communicate with further devices through a computer network. According to the description (in particular paragraphs [0003] to [0032]), the invention is intended to provide reinsurance creation and placement tools for direct insurers (cedents). Cedents purchase insurance from reinsurance companies to transfer some of their risk. The conventional process for managing the creation and placement of reinsurance requires exchanges of

information and data. The data includes reinsurance programs containing the information necessary to define the risks to be placed, assembled into reinsurance packages. These exchanges take place via visits, telephone, fax, mail or e-mail. It is however desirable to streamline the business process and collaboration, and there is a need for systematic storage of each step in the placement process for subsequent historical review. The invention solves these problems and also provides full control and security of the cedent's data exchanged with the reinsurer.

2. *Inventive step*

2.1 In the decision under appeal, the closest prior art is taken to be an undocumented but notorious, general client-server computer network. The Board will follow this approach. With respect to such elementary prior art the invention is clearly new (Article 54(1) EPC 1973) already because it contains two servers. The Board will therefore proceed directly to the issue of inventive step.

2.2 The appellant sees the technical problem as proposing a system for the transmission of data packages from a plurality of distributed first computers to selected second computers, wherein the data components from one of the first computers to be included in a data package depends on the addressee (grounds of appeal, p.3).

Here, the "first" and "second" computers correspond to the cedent and reinsurer computers in claim 1, respectively, and the "data components" are the reinsurance programs.

2.3 The appellant's solution to this problem (as set out in the grounds of appeal, p. 3 and 4) is a system comprising a host server and a file transfer server, the host server being adapted to receive from the cedent computers through a computer network the following data (using the language of the claim):
- the reinsurance programs,
- designations of selected reinsurance programs, and
- an indication of selected reinsurers to receive the reinsurance package;
the host server being adapted to
- compile the selected programs automatically into a reinsurance package,
- dispatch the reinsurance package to the file transfer server, and
- forward to the selected reinsurers an electronic communication containing a link to the reinsurance package through which to access the reinsurance package.

2.4 This solution is said to have essentially the following advantages and technical effects (grounds of appeal, p. 4):

A first aspect is that the host server, rather than the cedent computers, compiles the reinsurance programs into packages. The programs thus only have to be transmitted once over the network, offloading the cedent computers. Furthermore, they are present in only one copy (namely on the host server), ensuring data consistency.

A second aspect is that the file transfer server stores the reinsurance packages until they are accessed by the

reinsurer. This implies a decreased load on the cedent computers and the network since only useful data transmissions take place, and improved security due to the applications operating on the host computer being better protected (cf paragraph [126] of the description). The Board notes that the security aspect is not explicit in the appellant's formulation of the problem (point 2.2 above). It can however be regarded as an implicit requirement since the business context requires that cedent data be properly protected.

2.5 The question is whether the technically skilled person, faced with the problem as formulated above and judging that a client-server computer system would be a suitable starting point, would have arrived at the solution according to claim 1 without exercising inventive skill.

2.6 As to the first aspect of the solution (cf point 2.4 above), it is noted that the advantages indicated by the appellant are not expressly mentioned in the patent application. What is pointed out there, however, is that the invention is "particularly useful" if it can be "hosted cost-efficiently" (paragraph [27]), and in connection with the "exemplary system" shown in fig. 2A it is stated that the cedent computer "does not require special software, other than a browser" (paragraph [111]). The Board observes that any client-server system exploits the fact that data and programs stored on the server can be accessed by all clients. For cost reasons it may be desirable that the cedent computers contain as little software as possible. If so, the host server simply must provide most of the software and perform most of the data processing. It was therefore

an obvious choice to store the selected reinsurance programs in the server. The automatic compilation of the programs into packages is a mere automation of the manual work of assembling the programs to be sent to the different reinsurers.

2.7 The appellant has counter-argued that, although the cedent computers *might* contain only a browser, they *need* not. The Board was not correct in generalizing the particular embodiment described in the application. The possibility of using cedent computers containing only a browser was not a condition for the invention but an advantage stemming from it.

2.8 This argument fails to convince. Claim 1 is directed to a system adapted to communicate with, but not comprising, the cedent computers. It is not limited to any particular kind of cedent computer. The appellant acknowledges that it was well known that the clients in a client-server system may contain more or less software. In order to be patentable, an invention must involve an inventive step over the full ambit of the claim. This implies in the present case that the claimed system must involve an inventive step also if the cedent computers are assumed to contain only a browser. This is all the more so since no other configuration is mentioned in the description.

In the Board's view, the appellant's argumentation would only have a chance of succeeding if none of the cedent computers was restricted to a browser, since the claim would then at least not cover an embodiment in which the host server inevitably stores and compiles the reinsurance programs. However, claim 1 is not

limited to such a configuration, nor could it be, for lack of original support.

Nor can the Board see that it would be an ex-post-facto analysis, as the appellant has argued, to assume that the skilled person would consider clients equipped with a minimum of software. A designer of distributed systems cannot avoid considering which tasks should under the given circumstances be performed by the server and which by the clients. A common case is that (at least some) clients are used more or less as terminals ("thin clients"). It would be unrealistic to assume that this option would not have occurred to a person skilled in the art.

2.9 The appellant has furthermore pointed at certain advantages associated with the first aspect of the solution (see point 2.4 above). These advantages, which are not mentioned in the application, are however inherent to any client-server system.

2.10 As to the second aspect of the appellant's formulation of the solution (see point 2.4 above), the Board notes that if it is desired to protect certain data in the host server, it is only a matter of common sense not to store on it other data to which third parties have access. Hence the need for an additional server (the file transfer server) for storing the reinsurance packages accessible to the reinsurers. Furthermore, the appellant has acknowledged that the technique of forwarding a communication containing a link through which data stored on a server can be accessed was well known (decision under appeal, p.5). To provide such links would have been an obvious design choice.

2.11 Finally, the appellant has argued that it was not possible to arrive at a system having all the features of claim 1 from very general, undocumented prior art relating to broad concepts like thin client computing, file servers and push/pull technology. Although the individual claim features may have been known as such, the skilled person *would* not have arrived at the particular combination claimed.

The Board recalls that the "could-would approach" involves asking whether the skilled person *would* have - as opposed to *could* have - taken a certain step towards the invention in expectation of some improvement or advantage (cf T 2/83 "Simethicone Tablet/RIDER", OJ EPO 1984, 265, quoted in the Guidelines, C-IV, 11.7.3). This approach should not be taken to mean that inventions involving known design choices are non-obvious if only the number of choices is sufficiently great. It does imply, however, that if the skilled person expects some advantage of each feature in a claim and obtains no more than this advantage, then the claimed feature combination is obvious. It follows that any combination of features having known advantages (and disadvantages) is obvious unless it provides an unexpected effect.

In the present case the individual features represent design choices from general concepts whose respective advantages were known. The skilled person would have picked them because of these advantages considered useful under the prevailing circumstances. An unexpected effect going beyond the individual expected effects is not apparent.

It may be added that the examining division took the same view on this issue, correctly recognizing that hypothetical alternatives to a claimed invention might be obvious without implying that the invention is non-obvious (see p.6 of the decision under appeal).

2.12 Thus, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC 1973).

Auxiliary request 1

3. Claim 1 specifies that the system is a *data transmission* system, that the host server receives *and stores* a plurality of reinsurance programs, that it receives designations of selected *reinsurance* programs, *from among the plurality of reinsurance programs* and that it compiles the selected *reinsurance* programs into the reinsurance package. The Board regards all these features as implicit in the main request, ie as mere clarifications that play no role for the assessment of inventive step. Thus this request is also refused (Article 56 EPC 1973).

Auxiliary request 2

4. Claim 1 according to the second auxiliary request contains the additional features that a reinsurance program includes *structured data, adhering to a specific format, and unstructured data, being in no specific format,* and that the reinsurance package is *implemented as a data file*. These features, all known as such, were obvious choices for the data in question. Thus this request is also refused (Article 56 EPC 1973).

Auxiliary request 3

5. Claim 1 according to the third auxiliary request contains the additional feature *the file transfer server creating separate directories on the file transfer server for each of the selected reinsurers and storing the reinsurance package for each of the selected reinsurers in the respective directory*. Storing related data in a directory is a well-known technique of database structuring having no surprising effects in the present context. Thus this request is also refused (Article 56 EPC 1973).

Auxiliary request 4

6. Claim 1 according to the fourth auxiliary request specifies that the link to the reinsurance package serves to *locate* the reinsurance package on the file transfer server. It being self-evident that a package must be located before it can be accessed, this feature is implicit in the previous requests. Thus this request is also refused (Article 56 EPC 1973).

Auxiliary request 5

7. Auxiliary request 5 is a combination of auxiliary requests 2 to 4. The appellant has not argued that the additional features in requests 2 to 4 cooperate synergistically, nor does the Board see that they do. Thus the fifth and last auxiliary request must also be refused (Article 56 EPC 1973).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek S. Steinbrener