BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

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

Datasheet for the decision of 27 March 2007

Case Number: T 0849/06 - 3.5.03

Application Number: 96921533.4

Publication Number: 0843946

IPC: H04Q 9/02

Language of the proceedings: EN

Title of invention:
Computer use meter and analyser

Applicant:
NetRatings, Inc.

Opponent:
-

Headword:
Computer use meter / NETRATINGS

Relevant legal provisions:
EPC Art. 52, 56

Keyword:
"Inventive step - no"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0849/06 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 27 March 2007

Appellant: NetRatings, Inc.
890 Hillview Court
Milpitas, CA 95035 (US)

Representative: Klunker . Schmitt-Nilson . Hirsch
Winzererstrasse 106
D-80797 München (DE)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 23 December 2005 refusing European application No. 96921533.4 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: A. S. Clelland
Members: D. H. Rees
R. Moufang

Summary of Facts and Submissions

I. This is an appeal against the decision of the examining division to refuse the European patent application number 96 921 533.4 originally filed as International application number PCT/US96/10091, with publication numbers 0 843 946 and WO 96/41495 respectively. The decision was announced in oral proceedings held on 21 September 2005 and written reasons were dispatched on 23 December 2005. The reason for refusing the application was that the subject-matter of claim 1 of both a main and an auxiliary request lacked an inventive step with respect to the disclosure of document

D2: US 5 349 662 A

II. Notice of appeal was filed and the appropriate fee paid on 23 February 2006. A statement setting out the grounds of appeal and including independent claims of new main and three auxiliary requests was submitted on 24 April 2006.

III. In a communication accompanying a summons to oral proceedings to be held on 27 March 2007 the board gave its preliminary opinion that the claimed subject-matter lacked an inventive step in the light of the skilled person's general knowledge alone, as reflected in the various documents on file, or based on various combinations of those documents. In addition to D2 the following documents were mentioned *inter alia*:

D1: US 5 361 359 A
D4: US 5 032 979 A

D11: L.D. Catledge et al., "Characterising browsing strategies in the World-Wide Web," Computer Networks and ISDN Systems, volume 27 number 6, 1 April 1995, pages 1065 to 1073, Elsevier Science, GA, US.

The board also noted a minor clarity objection to the apparatus claims of the main and first auxiliary request.

IV. At the oral proceedings the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the new main (and sole) request consisting of claims 1 to 23, filed at the oral proceedings.

V. The independent claims read as follows:

"1. A monitor system, comprising
- a plurality of user computer machines being connected to the Internet World Wide Web, each storing a log of associated predetermined events;
- a plurality of local computer use meters installed in said user computer machines, each use meter configured to generate the log of associated predetermined events by intercepting operating system messages of the associated user computer machine and filtering and capturing messages, which comprise URL character strings reflecting on-line activity of the computer machine within an on-line content area of a commercial on-line service,
- a central processing station linked to said plurality of computer use meters and configured to receive and

store said logs of predetermined events from said plurality of computer use meters, and
- a database management system configured to access, process and generate reports on web traffic based on the predetermined events stored on the central processing station."

"12. A monitoring method, comprising the steps of:
- logging predetermined events by a plurality of local computer use meters installed in user computer machines being connected to the Internet World Wide Web, wherein each use meter generates the log of predetermined events by intercepting operating system messages of the associated user computer machine and filtering and capturing messages, which comprise URL character strings reflecting on-line activity of the user computer machine within an on-line content area of a commercial on-line service,
- storing said log of predetermined events by each use meter in the associated user computer machine,
- receiving and storing said logs of predetermined events by a central processing station from said plurality of computer use meters, said processing station being linked to said plurality of computer use meters, and
- accessing, processing and generating reports on web traffic based on the stored predetermined events stored on the central processing machine by a database management system."

VI. At the end of the oral proceedings the chairman announced the board's decision.

Reasons for the Decision

1. The claims of the new main request have been amended to overcome the clarity objection raised by the board in its communication and to specify that the messages captured comprise URL character strings. The latter feature is clearly disclosed at page 3, lines 28 to 33 of the published application. The board therefore decided to admit the new request.

2. *Interpretation of the claimed subject-matter*

2.1 The board understands the "computer use meter" to be, at least in one embodiment, one or more computer software modules. This interpretation is supported by the description relating to Figure 2 at page 10, line 17 to page 11, line 17.

2.2 In D11 a mechanism for logging events occurring in a web browser is described. The board considers that the necessary software additions and amendments to the browser also constitute a "use meter", although it should be called rather a "browser use meter".

2.3 The acronym "URL" stands for "Uniform Resource Locator", a string indicating an Internet address, which fact would be known by the person skilled in the art (see description page 3, lines 28 to 32).

3. *Inventive step*

3.1 Claims 1 and 12 specify corresponding features of a system and method. Their subject-matter will be treated together.

3.2 Document D11 discloses a monitor system comprising a plurality of user computer machines (D11, page 1066, column 2, lines 36 to 39) being connected to the Internet World Wide Web, a plurality of local browser use meters installed in said user computer machines, each use meter intercepting internal browser messages of the associated browser and capturing messages relating to associated predetermined events (page 1066, column 2, lines 31 to 36) which comprise among others URL character strings reflecting on-line activity of the computer machine within an on-line content area (page 1067, Table 1, "Open URL", and page 1069, Section 4.3, "Popularity of sites"). The mechanism described in D11 would equally capture URLs of commercial and non-commercial sites. There is a central processing station linked to said plurality of browser use meters and configured to receive and store the processed captured messages of predetermined events from said plurality of browser use meters (page 1066, column 2, lines 41 to 43). These stored messages are accessed, processed and from them reports of web traffic based on the predetermined events stored on the central processing station are generated (pages 1068 to 1070, Section 4, "Analysis and results").

3.3 Document D11 does not disclose the following features of the claimed invention:

3.3.1 The provision of message filtering by the use meter;

3.3.2 The generation by each use meter of a log which is transferred to the central processing station;

3.3.3 A "database management system" for the manipulation of the collected data;

3.3.4 The interception of operating system messages rather than internal browser messages.

3.4 The board considers the first three of these features to be mere implementation details and to have no inventive significance.

3.4.1 It understands the filtering feature to mean that some of the intercepted messages are discarded as being irrelevant to the information desired. Neither D11 nor the application specify exactly what mechanism is used to intercept messages but it is obvious that if the method adopted in fact also returns messages relating to events which are not of interest then they will preferably be discarded without further processing.

3.4.2 D11 states that "all captured events [are] forwarded to a secure disk," (page 1066, column 2, lines 41 and 42) without specifying whether they are first accumulated in a log on the local machine. The board considers that the skilled person would simply weigh up the added complexity of creating a temporary store of the messages on the local machine against the communication efficiency of sending the data in larger batches and choose whichever was appropriate.

3.4.3 D11 does not specify what tools were used to handle the data collected. However it does mention sorting and reorganising the data - see page 1068, column 1, line 27 to column 2, line 16. It is a commonplace that

a database management system may be appropriate for manipulating large datasets in this way.

3.5 The fourth of these features (point 3.3.4) overcomes a problem which arises in the disclosure of D11, namely that a user may access websites using a different browser or other applications and that such accesses will not be recorded. This problem is recognised in D11 - see page 1068, column 1, lines 15 to 19.

3.6 The application does not give details of the implementation of the computer use meter. However the appellant asserts, and the board accepts, that the skilled person was capable at the appropriate date of implementing a system intercepting operating system messages containing URLs, such as for example interprocess messages from a user browser instance to a modem driver. Thus the skilled person could have arrived at the claimed invention without the exercise of inventive skill and the outstanding question is whether he or she would have been motivated to do so.

3.7 Document D2 is concerned with the general problem of monitoring the activity of a user. It gives as examples monitoring whether somebody is working on an email item which has been sent to them, or if they have looked at a distribution, which may for example be a particular image. It may be desired to monitor which application programs, or portions of application programs, are being used. A manager may want to know what activities are being performed by individuals, how much time is required for such activities, and the distribution of such activities (column 2, line 62 to column 3, line 24). As the solution D2 proposes monitoring a

user's activities by intercepting and interpreting operating system messages (D2 column 3, line 67 to column 4, line 20), in other words by implementing a "computer use meter" in the sense of the present application.

3.8 The appellant argues that the meter system as laid out in detail in D2 does not allow strings contained in operating system messages to be reported to the monitor. The board does not agree; while it is not explicitly stated in D2 that this is done, the requirement to handle and report such strings is implicit in the results promised, such as reporting whether a specific image has been looked at (column 2, lines 64 to 66), i.e. a specific file has been opened by a specific application. Moreover D2 points to a mechanism for treating strings when it refers to the events which are intercepted having parameters which may include "interprocess communication content" (column 4, lines 4 to 7).

3.9 Even if for the sake of argument the board were to accept that D2 does not provide a mechanism for treating strings, the board concludes that D2 would still provide the skilled person starting from D11 with the motivation to change the "browser use meter" which reports URLs into a "computer use meter" reporting URLs, given that as noted at point 3.6 above the skilled person knows how to do so as a matter of common general knowledge.

3.10 Thus the board concludes that the skilled person starting with D11 not only could but would arrive at the claimed invention, motivated by D2. The subject-

matter of each of claims 1 and 12 therefore lacks an inventive step. The board remarks that in its view the necessary motivation could also have been provided by at least two other documents on file, namely D1 and D4.

3.11 In its counter-arguments the appellant referred to the fact that it had ascertained, in the course of legal proceedings elsewhere, that the authors of document D11 had not in fact implemented a computer use meter. The problem with the browser use meter had been recognised by the authors, so the fact that they had not implemented the solution presently claimed cast doubt on its obviousness. The board is not convinced by this argument. There could be many reasons unconnected with the obviousness of the technical solution why this route was not taken. For example, the source code of the operating system might not have been available to the authors of D11, they might not have received permission from the institution to install modified operating systems, or it might have been clear that it would require considerably longer to implement the necessary software of a computer use meter compared to the time required to produce the corresponding browser use meter.

3.12 Another point mentioned by the appellant was that the focus of D11 was not on producing statistics of web traffic but rather on capturing and analysing search strategies employed by web users. The board considers that this has no practical significance. D11 does disclose the production of web traffic reports, as required by the claims, and the system which the skilled person would develop motivated by D2 would also be used to produce such reports. It is also noted that

while it may not have been the prime focus of the research reported in D11, the relative popularity of web sites is actually given a quite prominent position in the document.

3.13 Another point argued by the appellant was that there were in fact several alternative solutions to the general problem of producing web traffic reports, mentioning, apart from intercepting operating system messages, "auditing" (i.e. analysing the state of the system at regular short intervals), modifying the browser as in D11, and using cookies. The board also mentioned "packet sniffing", i.e. simply intercepting modem traffic. The board considers this argument to be irrelevant to the case. The fact that there may be other solutions does not affect the obviousness of the particular claimed subject-matter.

4. Thus the appellant's sole request is not allowable and the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano A. S. Clelland