

Internal distribution code:

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

**Datasheet for the decision
of 28 June 2011**

Case Number: T 1470/06 - 3.5.02

Application Number: 02700170.0

Publication Number: 1329012

IPC: H02J 3/14

Language of the proceedings: EN

Title of invention:

Method and system of coordination of consumption and/or
production in distribution systems

Applicant:

Planenergi

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 56

Relevant legal provisions (EPC 1973):

-

Keyword:

"Inventive step - no (all requests)"

Decisions cited:

-

Catchword:

-



Case Number: T 1470/06 - 3.5.02

D E C I S I O N
of the Technical Board of Appeal 3.5.02
of 28 June 2011

Appellant: Planenergi
Jyllandsgade 1
DK-9520 Skoerping (DK)

Representative: Olesen, Kaj
Patentgruppen A/S
Arosgaarden
Aaboulevarde 31
DK-8000 Aarhus C (DK)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 13 April 2006
refusing European application No. 02700170.0
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: M. Ruggiu
Members: R. Lord
P. Mühlens

Summary of Facts and Submissions

I. This is an appeal of the applicant against the decision of the examining division to refuse European patent application No. 02 700 170.0. The reason given for the refusal was that the subject-matter of the independent claims then on file was excluded from patentability under Article 52(2) EPC. In a section headed "*Obiter Dictum*" the examining division also indicated that even if the claimed subject-matter were to be recognised as having technical character, it would not involve an inventive step according to Article 56 EPC.

II. The following document of the state of the art cited during the procedure before the first instance is relevant for this decision:

D2: GB 2 309 567 A.

III. The appellant requested in writing (in effect) that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 12 according to the main request filed with his letter dated 8 February 2011, or if that was not possible, that a patent be granted on the basis of claims 1 to 6 according to the first, second or third auxiliary request filed with the same letter.

In a communication accompanying a summons to oral proceedings dated 8 March 2011 the board indicated its preliminary opinion that *inter alia* the subject-matter of the independent claims according to each of the requests filed with the appellant's letter of 8 February 2011 did not involve an inventive step

according to Article 56 EPC in the light of the teaching of D2. This communication made reference to an earlier communication from the board dated 28 September 2010.

Oral proceedings before the board took place on 28 June 2011 at which, as he had previously informed the board, the appellant was not represented.

IV. Claim 1 according to the appellant's main request reads as follows:

"Method for controlling production or consumption in a distribution system (1) for heat, electricity, gas or water comprising a central unit for distribution (4) and one or more consumers (2) or producers (3), characterized by information of importance to the consumption and/or production being provided to one or more of said consumers (2) or producers (3), said information of importance to the consumption and/or production comprising purchase or sales prices or prognoses thereof and by said information of importance to the consumption and/or production being used for planning future production and/or consumption, which planning can be more or less automated, and by said information of importance to the consumption and/or production comprising:

- determined data concerning a first period of time, and
- estimated data concerning a second period of time, said first period of time being identified as the period of time following immediately after the operating minute, i.e. the time of consumption or production, and said second period of time extending beyond said first period of time, wherein said

information of importance to the consumption and/or production comprises time-sequential information (6, 7) which relates to

- the determined purchase or sales prices for said first period of time and
- the estimated purchase or sales prices for said second period of time, and wherein further information is being provided by one or more of said consumers (2) or producers (3), which further information comprises
 - time-sequential information (8) relating to determined or expected plans for future consumption, said plans being produced in an automated manner and transmitted from one or more consumers (2) to said central unit for distribution (4) and/or
 - time-sequential information (9) relating to determined or expected plans for future production being transmitted from one or more producers (3) to said central unit for distribution (4)."

Claim 7 according to the appellant's main request differs from claim 1 only in that the opening word "Method" is replaced by the word "System", in that the comma before "characterized by" is deleted, in that in the following phrase the expression "by the system" is inserted after the word "provided", in that in the definition of the first period of time the word "minute" is replaced by "time", in that at the end of the same paragraph the word "and" is inserted before "wherein", in that at the end of the first bullet point after the next paragraph a comma is inserted before "and", in that the phrase "further information is being provided" is replaced by the phrase "said system comprises means for transmitting further information

being provided", and in that in the final paragraph the expression ", which is" is inserted after "production".

Claim 1 according to the appellant's first auxiliary request differs from claim 7 of the main request only in that in the first paragraph the expression "for planning future" is replaced by "to control" and the phrase "which planning can be more or less automated," is deleted, and in that the last three paragraphs are shortened to read:

"said system comprises means for

- transmitting time-sequential information (8) relating to determined or expected plans for future consumption from one or more consumers (2) to said central unit for distribution (4) and/or for
- transmitting time-sequential information (9) relating to determined or expected plans for future production, from one or more producers (3) to said central unit for distribution (4)."

Claim 1 according to the appellant's second auxiliary request differs from claim 7 of the main request only in that the phrase ", said central unit for distribution (4) comprising computer processing means," is inserted at the end of the penultimate paragraph (before "and/or").

Claim 1 according to the appellant's third auxiliary request differs from claim 7 of the main request in that towards the end of the first paragraph the following text is inserted after "more or less automated," :

"said system comprising

- computer processing means at said central unit for distribution (4),
- communication means (5, 31a-31n),
- transmission means (35),"

in that in the third from last paragraph the phrase "via said communication means (5, 31a-31n)" is inserted after "or producers (3)", and in that in the penultimate paragraph the phrase "comprising computer processing means," is inserted after "for distribution (4)".

- V. The appellant addressed the issue of inventive step only briefly in his statement of grounds of appeal, arguing that none of the prior art cited in the decision under appeal related to a method or a system making use of data relating to two different periods of time for the distribution control.

Reasons for the Decision

1. The appeal is admissible.
2. *Inventive step*
 - 2.1 The document D2 discloses a system for controlling production and/or consumption in a distribution system, in particular a distribution system for gas or electricity (see in particular figure 8; page 2, lines 1 to 32; page 3, lines 17 to 35; page 5, lines 1 to 32; page 16, lines 1 to 26; claims 1, 6, 7, 16, 17, 24, 28 to 31, 33 and 43). As described there, the

system comprises a central unit for distribution, one or more consumers and/or producers, and means for transmitting time-sequential information from the one or more consumers to the central unit and/or from the one or more producers to the central unit.

2.2 The system defined in claim 7 of the appellant's main request is thus distinguished from that of D2 by the content of the information transmitted from the consumers and/or producers to the central unit and by the use to which that information is put. The content of that transmitted information is defined in the claim as consisting of purchase and sales prices for different time periods and plans for future consumption by the consumers and/or production by the producers, and the claim further defines that this information is used for planning future production and/or consumption. These are clearly features relating to methods of doing business, and are therefore of a non-technical nature, whereas those features of the claim which are known from D2, as indicated in the previous paragraph, are clearly of a technical nature.

2.3 In accordance with the established case law of the boards of appeal, as described for instance in T 641/00 (OJ EPO 2003, 352), if a claim consists of a mixture of technical and non-technical features, the requirement of inventive step is to be assessed taking into account only those features which contribute to the technical character, whereas those features which do not contribute to the technical character cannot support the presence of an inventive step. Moreover, non-technical features in such a claim can be taken into account in the formulation of the technical problem.

2.4 In the case of claim 7 of the appellant's main request, of the features distinguishing the claimed system from that of D2, the only one which might be considered to contribute to the technical character is the definition that the "*planning can be more or less automated*". If it is assumed that this implies at least some degree of automation, then since automation as such is a standard development in many technical fields, this feature represents merely the routine application of known technical means (i.e. those described in paragraph 2.1 above) for purposes which are non-technical (i.e. to implement the features relating to methods of doing business described in paragraph 2.2 above), which development would thus not involve an inventive step according to Article 56 EPC.

2.5 Of course, if it were concluded that the definition cited above does not clearly specify that some degree of automation of the planning is involved, then the system of claim 7 would not contain any technical features beyond those known from D2, so that the claimed subject-matter could not involve an inventive step according to Article 56 EPC. In this context, the board notes that the penultimate paragraph of the claim does define the production of plans in an automated manner, but that this feature is optional since the features of the final two paragraphs are defined such that they can be alternatives. Even if it were defined in a manner such that it was not optional, it would not result in the presence of an inventive step, because it would be obvious for the same reason as discussed in paragraph 2.4 above.

- 2.6 The appellant's argument that the cited prior art does not disclose that the information on prices relates to two different time periods is of no relevance to the above argumentation, since this concerns the non-technical features which, following the case law cited in paragraph 2.3 above, are not to be taken into account for the assessment of inventive step
- 2.7 Since independent claim 1 according to the appellant's main request merely defines the method carried out by the system of claim 7 of that request, and since claim 1 according to the appellant's first auxiliary request differs from claim 7 of the main request only in matters of wording, not of substance, the conclusions of paragraphs 2.4 and 2.5 apply correspondingly to both of these claims. Moreover, since the independent claims 1 of the appellant's second and third auxiliary requests differ in substance from claim 7 of the main request only in that they specify the elements known from the prior art more explicitly, these conclusion apply also to those claims.
3. Hence the board concludes that none of the independent claims of the appellant's current requests define subject-matter involving an inventive step according to Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

C. Moser

M. Ruggiu