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**Datasheet for the decision
of 11 December 2009**

Case Number: T 0874/07 - 3.5.05

Application Number: 04709178.0

Publication Number: 1596753

IPC: A61C 13/00

Language of the proceedings: EN

Title of invention:

Dental image storage and retrieval apparatus

Applicant:

Henry Schein, Inc.

Opponent:

-

Headword:

Dental image storage and retrieval/ALBADENT

Relevant legal provisions:

-

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0874/07 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 11 December 2009

Appellant: Henry Schein, Inc.
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Representative: Körber, Martin Hans
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 18 December 2006
refusing European patent application
No. 04709178.0 pursuant to
Article 97(1) EPC 1973.

Composition of the Board:

Chairman: D. H. Rees
Members: P. Cretaine
P. Schmitz

Summary of Facts and Submissions

- I. The present appeal is against the decision of the examining division dispatched 18 December 2006, refusing European patent application No. 04709178.0. The decision is a decision according to the state of the file simply referring to the communications dated 24 August 2006 and 27 November 2006. From these communications it may be deduced that the decision was based on the grounds that claim 1 did not meet the requirements of Article 123(2) EPC and that the Examining Division was of the opinion that claim 1, even if it were amended to remove the added subject-matter, would not involve an inventive step, having regard to the common knowledge of a person skilled in the art of file systems and image retrieval.
- II. Notice of appeal was submitted on 19 February 2007 and the appeal fee was paid on the same day. With the statement setting out the grounds of appeal submitted on 27 April 2007, it was requested to set the decision to refuse aside and to grant a patent based on claims 1 to 11 filed with said statement. A precautionary request for oral proceedings was also made.
- III. In a communication accompanying a summons to oral proceedings to be held on 11 December 2009, the board gave a preliminary opinion that a feature of claim 1 might well be considered as relating to presentation of information and that, even if said feature were considered as a technical feature, the subject-matter of claim 1 would not involve an inventive step, having

regard to the disclosure of D2 in combination with the disclosure of D1:

D1: EP 0 838 767 A2

D2: US 2003/0033151 A1.

The board further gave its reasons for finding the appellant's arguments unconvincing.

IV. In a letter submitted by facsimile on 8 December 2009, the appellant announced that it would not attend the oral proceedings and requested the board to issue a decision. The letter contained neither arguments nor amendments to the requests.

V. Oral proceedings were held on 11 December 2009 in the absence of the appellant.

After deliberation on the basis of the submissions and requests as filed with the statement setting out the grounds of appeal, the board announced its decision.

VI. The appellant requests that the decision under appeal be set aside and that a patent be granted based on claims 1 to 11 as filed with the statement setting out the grounds of appeal.

VII. Claim 1 of the sole request reads as follows:

"A method of storing a dental image of a patient's dental region, comprising:
receiving a patient identity of the patient for whom the dental image is to be stored;

capturing the dental image;
generating a prompt for an image identifier that describes at least one characteristic of the dental image;
receiving the image identifier in response to the prompt;
generating a unique file name for the dental image, the unique file name having the patient identity and the image identifier as characters, the patient identity being separated from the image identifier by a reserved character; and
outputting the dental image for storage on a storage device in association with the unique file name."

Reasons for the Decision

1. Admissibility

The appeal complies with the provisions of Article 106 to 108 EPC 1973 (see Facts and Submissions, point II). Therefore it is admissible.

2. Non-attendance of oral proceedings

In its letter of 8 December 2009 the appellant announced that its representative would not participate in the oral proceedings. The board considered it to be expedient to maintain the set date for oral proceedings. Nobody attended the hearing on behalf of the appellant.

Article 15(3) RPBA stipulates that the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence

at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Thus, the board was in a position to take a decision at the end of the hearing.

3. *Inventive step.*

3.1 D2 represents the most relevant prior art since it relates to a dental images storing and retrieval system. The system described in D2 comprises a storage device which stores dental images for a selected dental patient (see paragraph 8): the dental patient being able to be selected for retrieving its records, it is implicit that the patient's dental images are stored in a database associated with information containing an identification value unique to the patient, i.e. with a kind of patient identity.

3.2 The method of claim 1 differs from the storing method disclosed in D2 only in that the file name attributed to each dental image is generated by:

a) prompting the user (e.g. the dentist) for an image identifier that describes at least one characteristic of the dental image, and

b) generating a filename having as characters the patient identity and the image identifier, separated by a reserved character (e.g. a string character "-") in the filename.

3.3 The board has doubts whether feature b) should be taken into account for the assessment of inventive step. This

feature apparently merely defines the information stored in the filename ("patient identity" and "image identifier") and the way in which this information is presented (concatenation of the two components). In that sense it could be considered to be a feature relating to unpatentable subject-matter as defined in Article 52(2)(d) EPC and, according to the case law of the boards of appeal, to be disregarded for the assessment of inventive step.

- 3.4 However, the board does not have to decide on this point; even if feature b) is considered to be a technical feature, the subject-matter of claim 1 does not involve an inventive step for the following reasons.

The contribution of the claimed features taken as a whole and compared with the closest prior art D2 is that the filename has a format which does not depend on the dental personnel and provides information about the file content for retrieval based on patient identity and/or image identifier.

The objective problem may thus be defined as how to ensure that the dental personnel adheres to a consistent naming scheme which provides information about the image.

When searching for a solution to this problem, the skilled person would not restrict him- or herself to the field of dental or medical image systems but would also consult prior art in the broader field of image storing and retrieval systems, since said problem to be solved is not related to the kind of information the images are representing.

The skilled person would consider the teaching of D1 which relates to a system for transferring pictures from a digital camera to a personal computer or a laboratory server; a unique filename is created for each picture, comprising a unique identifying number appended to a theme title, such as "athletic meeting", "flower", which describes a characteristic of the image and represents therefore an image identifier (see from column 2, line 33 to column 4, line 49). Moreover, the board considers that D1 implicitly discloses that the theme title is allocated to a picture by a user of the camera.

By applying the teaching of D1 in respect of the theme title to the method of D2, the skilled person would arrive at a file-naming scheme which appends to the patient's identity an image identifier describing one characteristic of the image; the feature of separating the patient's identity and the image identifier by a reserved character being a common measure, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC 1973).

- 3.5 The appellant argued that the identifying number disclosed in D1 does not relate to recording information, unlike the image identifier defined in claim 1: in the view of the board it is however the theme title of D1 which represents an image identifier ("flower", "athletic meeting").

The appellant further argued that there is no prompting in D1 for an image identifier; the board considers however it to be implicit that the theme title is input by the user of the digital camera since it is highly

improbable that any kind of automatic theme title generating system be provided in a common digital camera.

The appellant also argued that the skilled person would not consider combining D2 with D1 since D2 is not concerned with the filename generation. This argument is implicitly based on a choice of D1 as closest prior art. In the board's view it is however D2 which represents the closest prior art since it is directed, as the alleged invention, to a dental image storing system, whereas D1 relates to a non-medical imaging system. Faced with the problem of file naming, the skilled person is incited however to apply the teaching of D1, which deals with image file-naming, to closest prior art D2.

- 3.6 The subject-matter of claim 1 thus lacks an inventive step and a patent cannot be granted on the basis of claim 1 and dependent claims 2-11 put forward by the appellant (Article 56 EPC 1973).

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

K. Götz

D. H. Rees