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**Datasheet for the decision
of 5 October 2012**

Case Number: T 0062/08 - 3.5.01
Application Number: 04751558.0
Publication Number: 01620830
IPC: G06Q 10/00
Language of the proceedings: EN

Title of invention:

An end user oriented workflow approach including structured processing of ad hoc workflows with a collaborative process engine

Applicant:

SAP AG

Headword:

Workflow system/SAP

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Inventive step - no"

Decisions cited:

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Catchword:

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Case Number: T 0062/08 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 5 October 2012

Appellant:
(Applicant)

SAP AG
Dietmar-Hopp-Allee 16
69190 Walldorf (DE)

Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 20 August 2007
refusing European patent application
No. 04751558.0 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: S. Wibergh
Members: R. R. K. Zimmermann
G. Weiss

Summary of Facts and Submissions

- I. Euro-PCT application 04751558.0 published as WO 2004/102454 claims a priority from an earlier application filed in 2003 for an invention related to a structured workflow system.
- II. In the European phase, the examining division raised several objections, among others lack of inventive step. In oral proceedings held before the examining division on 17 July 2007, the applicant pursued its application on the basis of a main request and three auxiliary requests, claim 1 of the main request and the first auxiliary request, respectively, reading as follows:

Main request

"1. A structured workflow system (100), comprising:
a first data storage (106) for structured work items, wherein each work item is a data object representing a task to be performed by an actor, wherein an actor is one or more of a person, a group of persons and a machine, the structured work items being defined for a business process by a business process generator <>¹, wherein the business process generator (103) is an automated computer process;
a second data storage (120) <>² for local work items, wherein a local work item is a data object input in response to the operation of the business process and a variance from the business process defined by the business process generator and wherein the local work items comprise one or more of a deviation from the business process, a local

rule for handling work items, a local process, and an additional routing of an object; a configurable workflow engine (102) <>³ that processes work items and local work items, including processing links between at least one work item and one local work item such that constraints on the business process (108) set by the business process generator are followed in processing local work items (120)<>⁴."

Numbered angle brackets <>¹ etc are added for convenience of reference to amended text passages.

First auxiliary request

In the first auxiliary request, text has been added at positions <>² and <>⁴, these passages in claim 1 reading now as follows:

<>²: "of a database"

<>⁴: ", wherein a user interface is provided to input knowledge management (KM) tasks which upon processing create local work items, and wherein the KM tasks are stored in a KM repository framework, the local work items are directly stored in the database, and consistency between the KM tasks and the local work items is kept by mutually registered callbacks".

III. The examining division refused the application. According to the decision posted in writing on 20 August 2007, the workflow system of claim 1 in all requests merely defined an obvious implementation of an administrative and business-related process on a common

distributed computer system using standard data processing techniques.

IV. The appellant (applicant) lodged an appeal against the refusal decision of the examining division on 19 October 2007 and filed a statement setting out the grounds of appeal by letter dated and received by the EPO on 14 December 2007. With the grounds of appeal two sets of claims were filed as main and auxiliary requests, respectively, the claims being identical to those filed as main and first auxiliary requests (see above) and refused by the examining division. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the "new claims". Oral proceedings have been requested for the case that the Board did consider the main request not to be allowable.

V. In a provisional opinion issued pursuant to Rule 100(2) EPC on 18 November 2011, the Board made the following statement on the patentability of the invention:

"4. First, the examining division seems to be correct in treating workflow systems as a non-patentable business method.

4.1 The appellant citing C.A. Ellis (chapter "Workflow technology" in Computer Supported Cooperative Work, edited by M. Beauouin-Lafon, John Wiley and Sons, of 1999) has argued that computer-based Operation research and collaboration technologies and in particular automated workflow management systems belonged to

a field of technology and had technical character per se.

4.2 The technical character of a computer-implemented workflow system is not in dispute, however. The decisive point is rather which features and aspects of such a workflow system do and which do not contribute to the technical character of the system, and thus to the patentability of the claimed invention (cf eg T 154/04 - Duns Licensing, OJ EPO 2008, 46, Reasons No. 16).

4.3 In view of the Board, the non-technical part of a computer-implemented workflow system encompasses any concept and model of the workflow process itself as well as any concept or meta-model of organising and distributing tasks, responsibilities etc to users or participants of the workflow system. The circumstance that a concept or workflow model is particularly suitable to be implemented and executed on a computer system does not convey a technical character to the concept or model itself, except if a direct causal link to a technical effect and to the technical solution of a technical problem can be established over the whole scope of the claimed invention.

The examining division was apparently right to consider the computer implementation as the only relevant technical aspect of the invention. The Board presently also agrees that this implementation is obvious. Possibly novel and

creative aspects in the concept and model of the workflow are not relevant to inventive step.

The use of technical terms like workflow engine, process generator or database does not lead to a different assessment of the technical contribution. The term workflow engine, for example, has the connotation as an abstract object of the workflow model and may, at the same time, designate a technical component of the computer system implementing the workflow model. An improvement of the workflow engine may result from changing the workflow model (non-technical innovation) or from improving the technical implementation (possibly patentable invention). Improving the workflow engine, or the workflow system in general, is not per se the solution of a technical problem. Only at the level of the technical implementation a technical and possibly inventive contribution to the prior art can be acknowledged.

4.4 In the present case a possibly novel but not patentable workflow model seems to be alone accountable for any improvements cited by the appellant. The present workflow system implements the concept of allowing dynamic changes to and local deviations from the predefined business process represented through the workflow model by introducing into the model appropriate local processes and objects which represent changes to the business process and by setting up rules and constraints to be met by such changes.

Such a dynamic workflow model is of the category of abstract non-technical items excluded from patentability under Article 52(2)c) EPC. What remains in the present claims is the straightforward computer implementation of an improved workflow model, characterized by allocating common computer components to the abstract processes and objects of the model. Such an implementation does not require, on the technical side, any inventive considerations.

5. Furthermore, the examining division raised the objection of lack of clarity with regard to the definition "knowledge management repository framework" (KM RF) used in the then first auxiliary request (now auxiliary request).

5.1 In the grounds of appeal, the appellant argued that the skilled person would understand the term repository framework and cited, in support of this argument, the SAP-document Repository Framework -- Concepts Knowledge Management and Collaboration, publication date 2003.

5.2 This document, however, addresses only a limited circle of users, namely those who work with the SAP Enterprise Portal 6.0 (see page 7, ch. 1.3 of the document), and is, moreover, published in August 2003, ie after the priority date of the present application. The document is thus not suitable to prove what has been common technical knowledge at the relevant time.

Without any evidence the Board has no good reason to challenge the examining division's knowledge and the assessment of the term in question. The objection, therefore, is still valid, now with respect to the auxiliary request.

6. It should further be noted that the present application seems not disclose in a clear and complete manner how to implement a KM repository framework. Any embodiment based on such a component must thus be judged as insufficiently disclosed within the meaning of Article 83 EPC 1973. Similar objections may be raised against any SAP-specific terminology used in the application, the technical content of which has not been disclosed before the priority date of the application."

VI. In a reply letter dated 20 March 2012, the appellant filed a new set of claims 1 to 11 and submitted the following request:

"Provided that a new request is admitted into the procedure, the currently valid requests are replaced by the new request for the issuance of a communication under Rule 71(3) EPC on the basis of the following documents:

- new claims 1 to 11, as enclosed as an unmarked version;
- new description page 6, as filed with letter of December 14, 2007;
- description pages 1 to 5 and 13, as published;

- figures 1 to 8B (sheets 1/8 to 8/8), as
filed with letter of November 11, 2005.
Auxiliary, oral proceedings according to
Article 116(1) EPC are hereby requested."

New claim 1 differs from claim 1 of the (old) main
request at text positions <>¹, <>³ and <>⁴ (see above),
reading as follows:

<>¹: "(103) for generating the business process
predefining work items into a plurality of phases"

<>³: "that is implemented as a state engine and"

<>⁴: ", wherein the workflow engine (102) manipulates
the work items as part of executing a workflow of
the business process, comprising:
memory for storing a current phase identifier;
an input for receiving a request to change the
current phase identifier from a current phase to a
next phase;
scanning logic for determining, upon a request to
change the current phase identifier, if work items
remain in the business process as incomplete work
items in the current phase;
logic to request input from the business process
generator (103) if the scanning logic determines
that at least one work item of the current phase
remains incomplete, to determine further handling
of the incomplete work items in the current phase,
further handling including one or more of labeling
an incomplete work item in the current phase as
being obsolete, labeling an incomplete work item
in the current phase as being completed, and

modifying an incomplete work item in the current phase such that it becomes a work item in the next phase or a subsequent phase beyond the next phase; and logic to handle incomplete work items automatically without end user input."

VII. The appellant was summoned to oral proceedings for the 5 October 2012. In a communication pursuant to Article 15(1) RPBA annexed to the summons, the Board made the following statement:

"Having taken into account the submissions of the appellant filed in writing the Board considers it expedient to hear the appellant in oral proceedings as requested in letter dated 20 March 2012. The matter to be discussed will include the admission of the new request (cf Article 12(4) and 13 RPBA), admissibility of the amendments under Article 123(2) EPC, and the objection of lack of inventive step (see also the communication of the Board dated 18 November 2011)."

VIII. In a letter dated and received by the Board on 2 October 2012 the appellant stated that neither the representative nor any member of the appellant would attend the scheduled oral proceedings and requested the Board to issue a decision on the state of the file.

IX. The oral proceedings before the Board took place as scheduled on 5 October 2012 without the attendance of the appellant. After deliberation on the basis of the appellant's request submitted in writing in its letter

dated 20 March 2012 the Board announced its decision on the appeal.

Reasons for the Decision

1. The appeal, although admissible, is not allowable since the requests before the Board are either inadmissible or cannot be allowed on their merits.

2. Regarding the amended claims according to the "new request" of 20 March 2012 (see point VI. above), the Board has decided not to admit them to the proceedings.
 - 2.1 Pursuant to Article 12 (4) RPBA, the Board may decide at its discretion to hold inadmissible requests which could have been presented in the first instance proceedings even though the request has been filed with the notice or the grounds of appeal or pursuant to directions of the Board in reply to a communication of the Board. Moreover, pursuant to Article 13 (1) RPBA, any amendment of a party's case after it has filed its grounds of appeal may be admitted at the Board's discretion having regard to, inter alia, the complexity of the new subject matter, the current state of the proceedings and the need for procedural economy.

 - 2.2 The decision not to admit the new request should not come as a surprise to the appellant since the annex to the summons already indicated that the admission of the new request had to be discussed (see point VII. above).

 - 2.3 In fact, new claim 1 according to this request has been heavily amended, in particular by introducing the

feature that the workflow engine is "implemented as a state engine" (see the amendment at passage <>³ above).

This feature has been given particular emphasis as an important technical contribution over the prior art by the appellant in its letter of March 2012. However, the feature has not been in any of the claims on which the examining division decided to refuse the application, nor was it brought otherwise before the examining division in the first instance proceedings; at least the file documents don't show any argument about any such type of feature.

- 2.4 This state-engine feature raises several concerns: first, the only support in the application is a single sentence at page 13 of the WO-publication at line 1 reading "The core of a workflow engine can be implemented as a state engine." Since the implementation of the workflow engine and of a core of the workflow engine is apparently not the same thing, it is doubtful if the amendment complies with the requirements of Article 123 (2) EPC. Even if the feature is construed to mean that a core of the workflow engine is implemented as a state engine it is still not clear which part of the workflow engine and how this part is to be implemented to function as a state engine and which technical problem is solved by implementing a state engine. Moreover, such an implementation may not be sufficiently clearly and completely disclosed to meet the requirements of Article 83 EPC 1973. Finally, since the feature has not been considered in the first instance proceedings, the Board has doubts whether the invention to which the new request relates has been searched.

2.5 In summary, the state engine feature results in a fresh case which cannot be decided on its merits in the oral proceedings before the Board. Considering the late state of proceedings and the need for procedural economy, the Board therefore decides not to admit the amended claims of 20 March 2012 in the proceedings.

3. Since the new set of claims is not admitted the appellant's request as stated in its letter of 20 March 2012 implies that the two sets of claims filed with the statement setting out the grounds of appeal (see point IV. above) are further pursued by the appellant and hence still in the proceedings.

3.1 With regard to these requests the Board has given a negative opinion in its communication of 18 November 2011, referring to lack of clarity, lack of inventive step, and insufficient disclosure of the invention (see above). In its reply letter, the appellant did not give any arguments supporting clarity and sufficiency of disclosure and based its arguments concerning inventive step essentially on the inadmissible feature of the state engine implementation of the workflow engine (see above).

3.2 Hence, the Board has not been given any argument and does not see any good reason to change its negative opinion as expressed in its communication of 18 November 2011. Thus, the requests filed with the statement setting out the grounds of appeal are not allowed.

4. In the absence of any allowable request the appeal can only be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

T. Buschek

S. Wibergh