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**Datasheet for the decision
of 18 May 2011**

Case Number: T 0469/08 - 3.5.01

Application Number: 03715284.0

Publication Number: 1485845

IPC: G06F17/60

Language of the proceedings: EN

Title of invention:
A TAX REFUND SYSTEM

Applicant:
European Tax Free Shopping Limited

Headword:
VAT REFUND/European Tax Free Shopping

Relevant legal provisions:
EPC 1973 Art. 56

Keyword:
"Inventive step (no) "



Case Number: T0469/08 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 18 May 2011

Appellant: European Tax Free Shopping Limited
(Applicant) Tully Business Park
Ballinahown,
Galway (IE)

Representative: Gates, Marie Christina Esther
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Dublin 6 (IE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 19 October 2007
refusing European patent application No.
03715284.0 pursuant to Article 97(1) EPC 1973**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal is against the Examining Division's decision to refuse European patent application 03715284.0, on the grounds of lack of inventive step. The Examining Division stated, at point 3), that the *sole technical problem derivable from the wording of claim 1 was the implementation of non-technical constraints ... in a known computer system.*
- II. In the statement setting out the grounds of appeal, the appellant argued that the invention was not aimed at automating a method of doing business, but at improving on the efforts at automation which had already been made. The improvements were technical improvements to earlier technical implementations (statement of grounds, page 2, paragraphs 2 - 6). The Examining Division had erred in its assessment of which features were technical and which not, and, in particular in ascribing knowledge to the business person which properly belonged to the technically skilled person (statement of grounds, page 5, paragraph 2).
- III. The Board appointed oral proceedings for 18 May 2011. Together with the summons, the Board sent its preliminary analysis of the case. According to that analysis, the subject matter of claim 1 would have been obvious to the skilled person, starting from
- D1: US-A-6 003 016
- IV. With the letter dated 20 April 2011, the appellant clarified its requests and filed a main request and auxiliary requests 1 to 3. It argued that D1 did not disclose the use of an issuer code, which was part of the data on a payment card, for the detection of

eligibility for a refund. That was a technical feature, which contributed to the inventive step for each request, and which was not obvious to the skilled person, taking either D1 or D2 (US-A-4 890 228) as starting point.

- V. Oral proceedings were held as scheduled. During the oral proceedings, the appellant withdrew the main and first auxiliary requests. It requested that the decision under appeal be set aside and a patent granted on the basis of the former auxiliary requests 2 or 3 filed with letter dated 20 April 2011, which were maintained as main request and auxiliary request 1.
- VI. Claim 1 according to the main request reads as follows.

A payment card system suitable for processing payment card transactions at point of sale, comprising:
a display configured for displaying information to a payment card system user,
at least one data capture device configured for receiving card data from a cardholder,
a memory storing a table and a processor,
a value added tax recognition module configured for identifying an issuer code from the card number provided in the received card data, comparing the issuer code with selections in the table, automatically determining from the identified issuer code whether a value added tax refund record may be generated for a transaction, and for outputting a system notification to said payment card system user in response to a positive determination,
an indication receiving element configured for receiving an indication that a value added tax refund record is required in response to the system notification, and

a record generation module configured for generating the value added tax refund record in response to a received indication that a value added tax refund record is required for the transaction and for communicating this generated value added tax refund record to at least one associated record output device.

VII. Claim 1 according to the auxiliary request is identical, except that the definition of the record generation module reads

a record generation module configured for generating the value added tax refund record in response to a received indication that a value added tax refund record is required for the transaction, for associating the value added tax refund record with a unique identifier and for communicating this generated value added tax refund record to the retrieval system, the retrieval system having means for storing or maintaining a value added tax refund record database, means for storing the received value added tax refund records associated with respective unique identifiers in the database, and means for retrieving and aggregating the value added tax refund records associated with each unique identifier.

VIII. During oral proceedings, the appellant argued as follows.

- a) In its preliminary analysis, the Board had failed to acknowledge that D1 did not disclose the use of the issuer code on a payment card as an indication that the holder might be eligible for a VAT refund.

- b) The issuer code was part of the card number. It indicated the bank which had issued the card, and generally also the country in which it had been issued. That code was to be regarded as technical, because its use necessitated changes in the point-of-sales terminal which read and processed the card data. That remained true, even if there were business considerations behind the invention.

- c) It was not relevant that the invention failed to provide complete proof of eligibility. That was a matter for the tax authorities. The invention, rather, provided a prima facie reason for the cardholder to request a refund, which would subsequently be subject to normal scrutiny by the tax authorities. Indeed, the tax authorities in several countries had adopted the invention.

- d) The invention made use of a normal payment card, albeit with a modified point-of-sales terminal. According to D1, either a separate card was used to indicate eligibility, or else a card which combined the functions of a payment card and an eligibility card. In the case of the combined card, it was different from a normal payment card. Therefore, the skilled person, starting from D1, would not have considered the use of data on the credit card because D1 taught that such data was insufficient.

IX. At the end of the oral proceedings, the chairman announced the Board's decision.

Reasons for the Decision

1. Background
 - 1.1 The invention is concerned with value added tax (VAT) refunds. VAT normally has to be paid at the time a purchase is made. However, some people, for various reasons, do not have to pay VAT and can request a refund. Eligibility for a refund is a matter of local legislation.
 - 1.2 As an aid to customers, shops may provide forms for claiming VAT refunds. These forms are submitted to the relevant tax authorities, who will decide whether or not there is to be a refund in each particular case.
 - 1.3 The salesperson will provide the claim form if the customer asks for one, and may offer a form if there is some reason to think the customer might be eligible. It is not important that the shop only provide forms to people who really are eligible. Eligibility is something on which the tax authority must decide. The decision at this stage is simply whether it is worthwhile providing a form or whether it is worthwhile the customer making a claim.
 - 1.4 The invention helps with that decision. As set out in claim 1 according to the main request, if it appears, from data captured from the customer's payment card, that a refund might be possible, then the customer can be offered a "refund record".
 - 1.5 According to claim 1 of the auxiliary request, the "refund record" is sent to a retrieval system, and stored in a database from which aggregated results can be extracted. That is, the auxiliary request provides

additional help in the subsequent processing of the refund claim.

2. The teaching of D1

2.1 D1 discloses a method of refunding VAT. Customers carry either a VAT card and a separate credit card, or else a combined card (D1, column 2, lines 37 - 39; column 3, lines 21 - 24; column 4, lines 11 - 15).

2.2 In the case of a combined card, all the data normally carried on the credit card, and all the data carried on the VAT card, are carried on one card (D1, column 3, lines 21 - 27). The data carried by the VAT card, and therefore also by the combined card, includes country of residence and passport information (D1, column 3, lines 17 - 19). That seems to be the data on the basis of which eligibility for a refund is judged.

2.3 During a purchase using the combined card, it is presented to the salesperson. The cost is debited from, and the VAT refund credited to, the credit card account (D1, column 4, lines 5 - 15). That is done by a computer which administers the account (D1, column 2, lines 62 - 66; column 3, lines 40 - 43; column 4, lines 21 - 34).

2.4 D1 does not disclose how the card data are captured and sent to the computer which administers the account. It is clear that must happen, but it is left to the skilled person.

3. The main request

3.1 It is common ground that the payment card system defined by claim 1 differs from the one disclosed in D1 by the following features.

- 1) D1 does not disclose the ability of outputting a system notification, or receiving a response to such a notification.
- 2) D1 does not disclose the identification of an *issuer code from the card number*, and, therefore, also not its comparison with *selections in a table* so as automatically to determine *whether a value added tax refund record may be generated*.

3.2 The appellant contended that the inventive step lay in the use of the issuer code as an indication of possible eligibility. In support of its case, the appellant referred to OJ EPO 2007, 594, which relates to the examination of computer-implemented inventions at the EPO, in particular when it is a business method which is implemented. In the paragraph bridging pages 597 and 598, to which the appellant pointed, the following is stated.

For example, it may be ascertained for a subject matter comprising information content (apparently non-technical aspect) and an apparatus (clearly technical aspect) that the information content is used during the operation of the apparatus in a manner that impacts or takes account of the technical function of the apparatus and thus contributes to technical character.

- 3.3 During oral proceedings before the Board, the appellant conceded that once the decision to use the issuer code on a credit card has been taken, the remaining features would follow in a straightforward manner. That is, they would not render the invention less obvious. That goes, in particular, for feature 1) set out under point 3.1.
- 3.4 It falls to the Board, therefore, to consider what impact the use of the issuer code has on inventive step.
- 3.5 The term "issuer code" is not quite standard terminology. During oral proceedings before the Board, the appellant explained that a part of a payment card number identifies the bank which issued the card, and generally also identifies the country in which it was issued. The use of the issuer code, then, presumes that the fact of holding of a payment card issued in a particular country by a particular bank is a good indication that a VAT refund may be possible. It does not matter that it is not a perfect indicator, as explained at point 1.3.
- 3.6 The use of the issuer code clearly has technical consequences. The code has to be extracted and compared with table entries. However, the decision to use the issuer code is not based on technical considerations. Rather, it is based on an assessment of what should be taken as an indication of eligibility. The first impetus to the invention lies in the decision to offer claim forms to customers who hold payment cards issued in particular places. That is a decision which in itself involves no technical considerations at all.
- 3.7 In the Board's view, it is only at this point that the technically skilled person enters the picture. He is

required to adapt the system of D1. The adaptation involves providing means for recognising whether the issuer code indicates eligibility; means for asking whether the customer actually wants a claim form and for receiving a response; and means for providing a claim form, if desired. That automation, as the appellant has conceded (see point 3.3), is technically straightforward. In particular, features 1) and 2), set out under point 3.1, are straightforward.

3.8 The appellant's argument that the system of D1 requires either a separate VAT card, or else modification of a standard payment card, whereas the claimed invention requires no separate card and no modification of the payment card, does not change the situation. Those are certainly advantages, but they follow directly from the decision to allow the issuer code on a standard credit card to indicate potential eligibility. As explained above, that is not a technical matter.

3.9 For those reasons, the subject matter of claim 1 would have been obvious to the skilled person. The Board concludes that the main request is not allowable because the subject matter of claim 1 does not involve an inventive step (Article 56 EPC 1973).

4. The auxiliary request

4.1 Claim 1 according to this request defines, rather than the output of a refund record to some generic output device (as in claim 1 according to the main request), the sending of it to a retrieval device which can store it in a database, and which can retrieve aggregated records. It also defines each refund record as being associated with a unique identifier, which is used for the aggregation. The claim does not specify what is

uniquely identified, but the Board understands it to be the customer, as explained in the description at page 32, lines 19 - 27. On that understanding, the aggregation collects refund records from a particular customer.

- 4.2 The Board does not consider that the combination of this additional feature with the use of the issuer code combine to produce any unexpected effect. The appellant has not argued that there is one. The two features are, therefore, assessed separately. The question of the issuer code has already been answered.
- 4.3 As set out in the description (page 33, lines 12 - 21), the aggregation may simply be the collection and printing of all the records for a particular customer.
- 4.4 That is something done for the convenience of the authorities who have to process refund claims. Technically, all that is involved is the provision of means to identify claims by a specific person, and to print them out. It is the automation of something the authorities would do, or would like to do for entirely non-technical reasons.
- 4.5 The skilled person, faced with the task of automating that could do nothing else than provide means for storing and aggregating records, because that is what he has been asked to do.
- 4.6 The technical means of achieving that, for example, a database system, were well known at the priority date.
- 4.7 The appellant argued that the additional feature addresses security concerns. According to this argument, it is not permitted simply to allow a server

to receive data from a point-of-sales terminal, because that would involve security risks. By defining the sending of records to the retrieval system, it is implicit, in claim 1, that the connection is allowed in this case, and that the security issues have been resolved.

4.8 The Board can see nothing in the wording of claim 1 which implies anything about security. In particular, the claim defines no technical features which deal with security. Rather, claim 1 defines simply that the connection exists, whether there are security concerns or not. For that reason, the Board is not convinced that the additional feature addresses the technical problem of providing security.

4.9 The Board, therefore, considers that the technical problem is the automation of collection and aggregation, which is not inventive, as set out above.

4.10 The Board, for those reasons, considers that the subject matter of claim 1 does not involve an inventive step (Article 56 EPC 1973).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

T. Buschek

S. Wibergh