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Datasheet for the decision of 1 February 2012

Case Number: T 0711/08 - 3.5.01

Application Number: 02257302.6

Publication Number: 1304642

IPC: G06F 17/60

Language of the proceedings: EN

Title of invention:
A procurement system which automatically calls for bids on predetermined subjects

Applicant:
Kabushiki Kaisha Toshiba

Headword:
Procurement system/TOSHIBA

Relevant legal provisions:
EPC Art. 52(1)

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Inventive step (no): main and auxiliary requests"
"Additional search (no)"

Decisions cited:
T 1351/04, T 0279/05, T 1242/04, T 0690/06

Catchword:
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Case Number: T 0711/08 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 1 February 2012

Appellant: (Applicant)
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Decision under appeal:
Decision of the Examining Division of the European Patent Office posted 28 November 2007 refusing European patent application No. 02257302.6 pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: S. Wibergh
Members: P. Scriven
G. Weiss

Summary of Facts and Submissions

I. The Examining Division decided to refuse European patent application 02257302.6 due to a lack of inventive step. They considered the invention to be a straightforward implementation of a method of doing business, the implementation involving only notorious technical features. No search into the state of the art had been carried out.

II. The applicant appealed that decision, and requested that it be set aside and that a patent be granted on the basis of main or auxiliary requests which were substantively identical to those the Examining Division had found to be unallowable. It also requested oral proceedings *in lieu of any adverse decision*, and that a search be performed.

III. The Board sent a communication under Rule 100(2) EPC, in which it presented its preliminary view of the case.

IV. With the letter dated 7 June 2011, the appellant responded by filing amendments to the main request, and presenting further arguments, in particular on the basis of T 1351/04 "File search method/FUJITSU", and T 279/05 "Predicting availability/ITA", neither published in the OJ EPO.

V. Oral proceedings took place as scheduled on 1 February 2012. The appellant stated the final form of its requests as that the decision under appeal be set aside, and a patent granted on the basis of one of the sets of claims filed with letter dated 7 June 2011 as main and auxiliary requests. In the auxiliary request, claim 1

was corrected so that "… by subtracting the rated values of the desired component…" reads "… by subtracting the prices of the desired component…".

VI. Claim 1 according to the main and auxiliary requests read as follows.

Main request

A bidding and purchasing system for bidding and purchasing components by analysing information on the subject component, the system comprising:

a storage (1) configured to store information on a price, a function, and a quantity of each of the components, said storage (1) comprising a parts information unit (l-A) configured to store and manages parts information and a purchase information unit (1-B) which stores and manages purchase information;

an input unit (4) configured to input a reference for the desired component;

a bid/purchase determination information unit (2-A) configured to store said reference value;

a relation processor (2-1) configured to calculate a correlation between prices of the components from the purchase information unit (1-B) and the functions of the components from the parts information unit (I-A);

a determining processor (2-2) configured to determine the necessity of bidding for purchasing the desired component by subtracting the reference from the correlation to obtain a corrected correlation and comparing the prices of the components with the corrected correlation; and

a bid/order processor (3-1) configured to request further bids or purchase the desired component based on

the necessity of bidding determined by the determining processor (2-2).

Auxiliary request

An evaluating system for bidding and purchasing a desired component, the system comprising:

a storage (1) configured to store information on each of prices and quantities (1-B), and rated values of a plurality of subject components;

a input unit (4) configured to input a rated value of the desired component;

a correlation calculation unit (2-1) configured to calculate a correlation between each of the prices and the rated values on the plura1ity of subject components based on the stored information in the storage (1);

a judging base setting unit (2-2) configured to set a judging base for bidding or purchasing the desired component by subtracting the prices of the desired component inputted through the input unit (4) from the correlation calculated by the correlation calculation unit (2-1);

a determining unit (2-2) for determining a necessity of bidding for purchasing the desired component; and

a deciding unit (3-1) configured to decide a bidding or a purchasing order of the desired component based on the necessity of bidding for purchasing the desired component by the determining unit (2-2).

VII. During the written and oral proceedings before the Board, the appellant argued as follows.

The invention addressed the problem of comparing products with different technical specifications, and

efficiently identifying those for which suppliers should be requested to provide bids. That problem was a technical one.

In T 1351/04, the provision of management data to aid in a computer search was seen as technical. The present invention was analogous, with the correlation value playing the role of the management information. The calculation of the correlation value was, therefore, a technical step.

In T 279/05, a prediction step, in addition to being a business activity, was also found to involve technical considerations. The present invention was analogous: by comparing prices with the correlation, it was possible to identify those components for which bids should be requested, so that, overall, there was a reduction in requests and of the data processing involved. The reduction in data processing was a technical effect, to which the calculation of and comparison with the correlation value contributed.

Since the calculation of and comparison with a correlation contributed to a technical effect, a search should be carried out. A search was always necessary, as long as there was any doubt about a claim feature being non-technical.

Reasons for the Decision

1. Background

1.1 The invention concerns the sorting of components into those which can immediately be ordered from a supplier, and those for which suppliers should be asked to prepare bids. The basic idea is that those which are relatively cheap should simply be ordered when they are required, but those which are relatively expensive should be open to bidding, in the hope that the price can be reduced.

1.2 What the invention provides is a technical tool for doing that. As part of its operation, it calculates a correlation between prices and rated values of components. It is on the basis of that, that components are sorted into the relatively cheap and the relatively expensive.

2. Main request, claim 1, Article 56 EPC 1973

2.1 The appellant accepts that the method underlying the system of claim 1 is a method of doing business. It also accepts that the *storage*, the *input unit*, the *relation processor*, the *determining processor*, and the *bid/order processor* would be realised by standard, general-purpose computer components, which are notorious in the sense of T 1242/04 "Provision of product-specific data/MAN", OJ EPO 2007, 421.

2.2 However, while the appellant accepts that the *relation processor* would be implemented by a notorious general-purpose computer, it does not accept that it would have

been obvious for the skilled person to program it so that it provided the function defined in claim 1. Rather, the appellant sees the calculation of a correlation and the consequent division of components into two classes, only one of which will be subject to a bidding process, as contributing to the solution of a technical problem. As in T 279/05, that can not be considered notorious, and a search is needed, before a decision on inventive step can be taken.

2.3 The technical problem, as explained by the appellant during oral proceedings before the Board, is one of reducing the amount of data processing a computer needs to perform. A computer scientist is charged with the production of an ordering system, but realises that would take a lot of processing power. She consults with the business person, and tries to find ways of reducing the processing needed. In the present case, the solution comes from the business person, but, in the appellant's view, that does not mean there is no technical effect, because it is provided at the instigation of the technically skilled person, who is trying to solve a technical problem.

2.4 The Board cannot accept this argument.

2.5 Firstly, the Board sees no evidence that the alleged effect is actually obtained. If there is a reduction in processing due to requesting fewer bids, there is also an increase due to the calculation of correlation and the sorting into two sets, which, on the appellant's account is new. Whether there is an overall decrease or an overall increase is not something the application discusses.

2.6 Secondly, whether or not there is an overall reduction in processing, the Board does not see the effect as technical. If there is a reduction, it is because there are fewer bids to request and process. There would be the same reduction in processing if the bids were requested by telephone, by email, or in face to face conversation. There are simply fewer requests and responses to process. It is, then, an effect which is not tied to technical implementations of the method, but which applies to any implementation, whether technical or not.

2.7 The appellant's further argument by analogy with T 1351/04, that the efficiency of a computer search is a technical issue is not one the Board sees as relevant to the present case. In T 1351/04, the search was to locate data in a data structure, and the invention provided management data in a specific form, which was to make the search more efficient. In the present case, finding the data is not an issue. It is simply presumed to be there. Rather, the aim is to pick out certain items of data for business reasons, and the Board can see no features that make it particularly easy for a computer to do that.

2.8 The Board, therefore, rejects the appellant's argument regarding technical contribution, and sees the technical features of the claim as those set out above, at 2.1.

2.9 As a consequence, the question of inventive step amounts to this: would it have been obvious to the skilled person, charged with building an automatic

ordering system to implement the business method, to provide this particular combination of technical features? The Board judges that it would, for the simple reason that each of the *storage*, the *input unit*, the *relation processor*, the *determining processor*, and the *bid/order processor* is defined solely by its ability to perform its respective step of the method. The skilled person, therefore, could not have done otherwise than provide them.

2.10 The Board concludes that the main request is not allowable, due to a lack of inventive step (Article 56 EPC 1973).

3. Auxiliary request, claim 1, Article 56 EPC 1973

3.1 In comparison with claim 1 according to the main request, claim 1 according to the auxiliary request omits the steps of inputting, storing and subtracting a reference value, but adds the steps of inputting a rated value, and of subtracting prices.

3.2 As explained by the appellant, the issue of inventive step is the same as for claim 1 according to the main request. The Board understands that to mean that the differences relate to differences in the underlying business method, and that the claim stands or falls with the question of whether there is or is not a contribution to the solution of a technical problem.

3.3 The appellant has not advanced any different arguments on that point, regarding the auxiliary request; nor can the Board see that the situation is different.

3.4 The Board concludes that the auxiliary request cannot be allowed, due to a lack of inventive step (Article 56 EPC 1973).

4. The need for an additional search

4.1 The appellant has argued that, as long as it is not established that a feature makes no technical contribution, a search should be made. The Board understands that in relation to a decision on inventive step.

4.2 As set out in T 1242/04 (supra, see point 9.2), and in T 690/06 "Financial records/AUKOL", not published in the OJ EPO, at point 8, an application may be refused for lack of inventive step, without a search, when all the technical features in question are "notorious".

4.3 The Board agrees with the appellant to the extent that when there are features which possibly make a technical contribution, and which are not "notorious", a decision denying the presence of inventive step cannot be made without a search.

4.4 That is not the present situation, and so no additional search is needed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek S. Wibergh