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**Datasheet for the decision
of 13 December 2013**

Case Number:	T 2243/08 - 3.5.01
Application Number:	02721030.1
Publication Number:	1386229
IPC:	G06F17/30
Language of the proceedings:	EN

Title of invention:
DISPLAY OF SOFTWARE NOTES ACCESSED BY CONTENT RECIPIENT FROM
CONTENT PROVIDER SITE

Applicant:
3M Innovative Properties Company

Headword:
Software notes/3M

Relevant legal provisions:
EPC 1973 Art. 56

Keyword:
Inventive step -
 displaying content behind an active session (no
Inventive step - presentation of information)
Inventive step -
 downloading content in advance of displaying (no
Inventive step - obvious possibility)

Decisions cited:

Catchword:

Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: **T 2243/08 - 3.5.01**

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 13 December 2013

Appellant: (Applicant)	3M Innovative Properties Company 3M Center P.O.Box 33427 St. Paul, MN 55133-3427 (US)
Representative:	Vossius & Partner Siebertstrasse 4 81675 München (DE)
Decision under appeal:	Decision of the Examining Division of the European Patent Office posted on 15 July 2008 refusing European patent application No. 02721030.1 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman   S. Wibergh
Members: W. Chandler
                P. Schmitz

Summary of Facts and Submissions

I.   This appeal is against the decision of the examining
        division to refuse the European patent application No.
        02721030.1. It concerns displaying information from
        content providers in the form of software notes on a
        user's computer.

II.   The examining division decided that claim 1 of the sole
        request, filed with letter dated 4 December 2003, was
        not novel over the event communication application
        called "Tickertape", disclosed in Parsowith S. et al.,
        "Tickertape: Notification and Communication in a Single
        Line", Proceedings 3rd Asia Pacific Computer and Human
        Interaction, Shonan Village Center, Japan, July 15 to
        17, 1998, pages 139 to 144 (D3).

III.   In the statement of grounds of appeal, the appellant
        re-filed the refused request and argued that claim 1
        was novel and inventive. The appellant also made an
        auxiliary request for oral proceedings.

IV.   In the communication accompanying the summons to oral
        proceedings, the Board agreed with the appellant that
        claim 1 was novel, but had doubts as to whether it was
        inventive. In a reply, the appellant provided further
        arguments and filed a slightly amended auxiliary
        request.

V.   At the oral proceedings, the appellant requested that
        the decision under appeal be set aside and that a
        patent be granted on the basis of the main request
        filed with letter dated 4 December 2003, or auxiliary
        request 1 filed with the reply dated 13 November 2013,
        or claim 1 of auxiliary request 2 filed during the oral
        proceedings before the board on 13 December 2013 and

dependent claims still to be adapted. At the end of the
oral proceedings, the Chairman announced the Board's
decision.

VI.   Claim 1 of the main request reads as follows:

"A method performed at a content recipient comprising:
    executing first program code at the content
recipient so as to receive content from a content
provider;
    executing second program code at the content
recipient so as to display the content behind a session
if the session is active; and,
    executing third program code so as to provide a
notification that the content is available for
display."

VII.   Claim 1 of the first auxiliary request adds the
following feature in italics into the second feature:

"executing second program code at the content
recipient so as to *store the content in temporary
memory in order to* display the content behind a session
if the session is active".

VIII. Claim 1 of the second auxiliary request further adds to
the end of the first feature "without identifying the
content recipient", deletes the end of the second
feature after the words added in the first auxiliary
request, changes the word "notification" into
"notifier" in the third feature and adds a fourth
feature reciting:

"upon activation of the notifier by the content
recipient, executing fourth program code to determine
whether there is an active session being performed by

the content recipient and, if there is an active
session displayed in an area to be occupied by the
content when the content is made to appear upon
activation of the notifier, burning the content through
the active session being displayed."

Reasons for the Decision

1.   The invention relates to accessing information
        (content) from a provider and displaying and notifying
        it at a recipient. Figure 4 of the application as
        published shows that the content recipient determines
        (62, 64), requests (72) and receives (74) information
        from the content provider. The recipient is notified
        (78) by a notifier that the content has been received.
        The recipient can respond to the notification (80) to
        display the content (98).

2.   The description gives various possibilities for
        notifying and displaying. The notifier may be the
        content itself in which case it is immediately
        displayed as the top active layer of the display and
        there is no need to respond to it (page 7, lines 11 to
        14). The notifier may alternatively be an icon (Figure
        6: top right and page 7, lines 14 to 17) which is
        activated to display the information (Figure 4: 80). In
        this case, if the user has an active session (e.g.
        writing a letter in window 92 in Figure 6), the content
        may be "burnt through" this window (Figure 6: 22,
        Figure 4: 90 and page 8, lines 7 to 11). The icon
        itself may contain some content, viz. the information
        that it refers to a note (Figure 5: 82a and page 7,
        line 28 to 29).

        The main request

3.   The first feature of claim 1 specifies receiving the
        content. The second, displaying it "behind" an active
        session and the third, notifying that it is available
        for display. However, the concept of displaying "behind
        a session" is not defined in the description. Moreover,
        the sequence of displaying "behind" and then notifying
        does not correspond to any of the embodiments (see
        above). In fact, at first sight, it does not appear to
        make sense to notify that the content is available for
        display if it is already being displayed. The appellant
        argued that the correct interpretation of the claim was
        that the content was always displayed upon receipt. If
        there was an active session, it would be displayed
        "behind" it. This was supported by original claim 1,
        which only contained the features of receiving and
        displaying behind. A notification that content was
        available for display, originally in dependent claim 3,
        nevertheless made sense because the content may have
        been displayed totally behind the active session and
        therefore not visible. Thus, "available for display" in
        the third feature meant available for display *on top*.

4.   In the Board's view, this raises the further questions
        of whether the invention only applies to the situation
        where the content is totally behind the active session
        and, if so, whether in this case the content can be
        considered to be "displayed" at all. However, the
        issues of patentability can be decided on the basis of
        the appellant's interpretation without answering these
        questions.

5.   The division refused the application for lack of
        novelty over D3. This document discloses an interface
        that receives and displays content by scrolling a
        message across a small window ("Tickertape interface" -

Figure 1 and paragraph 2.2). The division considered that the window anticipated displaying the content, and that the fading of the colour of the message with time constituted the notification that the content was available for display. They also considered that displaying "behind" an active session was anticipated by the statement that the window allowed "users to continue to work with Tickertape in the background". However, the Board agrees with the appellant that the word "background" as it is used in D3 does not mean that the interface is hidden behind the active window, but, on the contrary, that it is displayed all the time the user is working.

6.   The Board, however, instead chooses to pursue an alternative interpretation of D3 commented upon in the grounds of appeal (at point 3.1.3). D3 states at the end of section 2.2 that a blue button appears at the start of a message if the message includes an attachment. In the Board's view, this anticipates the notification that the content, i.e. the attachment, is available for display. Clicking on the blue button displays the attachment.

7.   However, as mentioned above, according to the appellant's interpretation of claim 1, display comes before notification. Thus, under this interpretation, claim 1 would differ from D3 by the feature of immediately displaying the content behind a session if the session is active as opposed to only after activation of the notifier (blue button in D3).

8.   The appellant furthermore argued that the first feature of claim 1, specifying "program code at the content recipient so as to receive content from a content provider" reflected one of the main aspects of the

invention, namely that it hid the content recipient's identity from the content provider, solving a problem of anonymity. However, in the Board's judgement this is so general as to be anticipated by the subscribing to a message group disclosed in D3 at the end of page 139, so that this is not a distinguishing feature. The Board notes that, although this aspect is not considered to be distinguishable over D3, it is actually mentioned in the opening part of the description, whereas the features subsequently relied on to support inventive step, discussed below, are not given any special significance, and in some cases, are not even mentioned, anywhere in the description.

9.   The appellant also argued that in the invention the notifier did not have any content unlike the interface in D3, which was aiming to display all the content, but only had one line available. Thus a further difference was that the notifier of the invention did not have any content. However, in the Board's view, the mere word "notifier" could refer to anything and is also not distinguished over D3. Moreover, as mentioned above, the present description even discloses an embodiment in which the notifier is the content itself and also an embodiment in which the notifier has some content.

10.   Thus the only distinguishing feature over D3 is the above-mentioned (point 7) immediate displaying of the content behind a session if the session is active. When examining inventive step, it is established jurisprudence of the boards of appeal that an allowable invention must be a technical solution to a technical problem. However, in the Board's view it is not possible to derive a technical problem from the feature of displaying the content "behind" a session. It is an aspect of presentation of information, namely when and

where the user wants to see the content. The user may want to see the content immediately or not be bothered by it. The user may want to see the message away from any other windows or save space on the screen and have it overlapping or underneath. Moreover, the description does not suggest any technical effect of this feature either because, as mentioned above, it does not actually disclose displaying the content "behind" and in this generality, but only after activating the notifier and even then only in combination with an overlapping window and "burn through". Also the description gives the example of displaying the content immediately on top as well, reinforcing the impression that all possibilities are matters of presentation according to the taste of the users.

11. The appellant argued that displaying the content upon receipt implied the technical effect of not requiring its downloading upon activation of the notifier. However, even if this can be acknowledged as an implicit effect, it does not in the Board's view result from the feature of displaying "behind", but simply from displaying it (automatically) upon receipt. Thus the feature of displaying "behind" still cannot contribute to a technical problem and the implicit effect can at most justify a technical problem along the lines of how to provide an alternative to downloading after activating the notifier. However, downloading before or after activating the notifier are both obvious possibilities and the skilled person would choose one depending on the circumstances, available memory/bandwidth, urgence of the data contents, etc.

12. Accordingly the Board judges that claim 1 of the main request does not involve an inventive step (Article 56 EPC 1973).

The first auxiliary request

13.   Claim 1 of the first auxiliary request adds that the
       content is stored in temporary memory before being
       displayed.

14.   The appellant considered that this reinforced the
       technical character of the feature of displaying the
       content behind the active session. It also explicitly
       defined that the content was available at the recipient
       before activation of the notifier, not afterwards as in
       D3. However, since in any practical system displayed
       content would have to be stored in a memory, this
       feature would be a self-evident requirement whenever it
       was decided to display the content (as a result of the
       non-technical considerations).

The second auxiliary request

15.   The amendments in claim 1 of the second auxiliary
       request relate to two different aspects of the
       invention.

16.   The first aims to clarify that the invention hides the
       recipient's identity from the provider. Thus, the
       receiving feature additionally specifies "without
       identifying the content recipient". The appellant had
       in mind things like not identifying the recipient by
       name or user ID. However, the term "without
       identifying" cannot be interpreted literally because at
       some level, the identity must be known - even if it is
       only the IP address of the recipient's computer, which
       is necessary to send the content to it. Thus, the term
       is essentially only a relative term that cannot

distinguish over a means capable of operating at the
same level, here the "subscribe function" in D3.

17.   The second amendment relates to the displaying aspect
        and boils down to making the content appear ("burn")
        through any active session when the notifier is
        activated. Even if this implies some new functionality
        over a standard windows situation where a window
        receiving the focus would become "active", it remains
        in the Board's judgement a matter of presentation of
        information. The effect is simply to show the content
        in a particular way. How this is achieved by any
        technical manipulation of the windows/sessions is not
        specified.

18.   Accordingly, claim 1 of all requests does not involve
        an inventive step (Article 56 EPC 1973), so that the
        appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek   S. Wibergh

Decision electronically authenticated