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**Datasheet for the decision
of 10 February 2014**

Case Number: T 0638/09 - 3.5.01

Application Number: 99921812.6

Publication Number: 1076870

IPC: G06F17/60

Language of the proceedings: EN

Title of invention:

PERFORMANCE EVALUATION TOOL AND METHOD

Applicant:

ETALK Corporation

Headword:

Evaluation tool/ETALK

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0638/09 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 10 February 2014

Appellant: ETALK Corporation
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 13 November 2008 refusing European patent application No. 99921812.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: S. Wibergh
Members: R. R. K. Zimmermann
D. Prietzel-Funk

Summary of Facts and Submissions

- I. European patent application no. 99921812.6 concerns a system and method for providing access privileges for a user in a performance evaluation system.
- II. The examining division refused the application for lack of inventive step. According to the reasons given in the decision dated 13 November 2008, the claimed subject matter defined nothing more than the straightforward implementation of an administrative scheme for providing access privileges to a performance evaluation system, using a common general-purpose computer and database system in a routine manner.
- III. The examining division considered a main and two auxiliary sets of claims, claim 1 of the main request reading as follows (numbered brackets <¹> , <²...> etc. are added for facilitating reference to the respective amendments):
- "A method for providing access privileges for a user in a performance evaluation system, comprising:
- storing an organizational structure for an enterprise, the organizational structure including a plurality of levels and a plurality of members assigned to the levels <¹>;
- storing view information for <²the user>, the view information specifying the levels and the members of the organizational structure to which the user is allowed access;
- storing a class of services of the performance evaluation system for <³the user>, the class of services specifying services that the user is allowed to perform; and

providing <⁴the user> with access privileges to perform services within the class of services <⁵for> levels and members associated with the view information <⁶>."

According to the first auxiliary request, the feature "wherein one or more of the users are also members" was inserted at position <¹> and the words "for that user" at position <⁶> of claim 1 above. The text in brackets 2, 3, and 4 was replaced by the expression "each user".

According to the second auxiliary request, the feature "and productivity data associated with the members of the performance evaluation system, wherein one or more users are also members " was inserted at position <¹> and the words "for that user" at position <⁶> of claim 1 of the main request. The text in brackets 2, 3, and 4 was replaced by the expression "each user".

IV. The appellant lodged an appeal against this decision on 23 January 2009 and filed a statement setting out the grounds of appeal together with a new third auxiliary set of claims on 13 March 2009. Claim 1 of this third auxiliary request differed from claim 1 of the main request only in the feature "and the storing of the view information is such that access privileges can be updated and maintained for the user in response to changes in allowed services or organizational structure" inserted at position <⁶> (see above).

V. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the claims of the main request or of one of the auxiliary requests 1 or 2 underlying the impugned decision, or on the basis of the claims according to the third auxiliary request submitted with the letter

setting out the grounds of appeal received on 13 March 2009.

VI. According to the appellant's submissions, the examining division was not right to choose a general computer system as closest prior art. The invention was an improvement of a performance information system, like Windows NT, which required a complex arrangement of various folders and files for granting, updating and changing access privileges of users in an enterprise. The invention eliminated or reduced such complexity by generating, storing and using specific information for granting and updating access privileges, namely an "organisational structure" of levels and members for the enterprise, information about the level and the members to which the user had access ("view information"), and a specification of the services that the user was allowed to perform ("class of services"). This use of such data, clearly defined in the present claims, was not anticipated by any piece of prior art cited by the examining division. No evidence had been provided by the examining division that the skilled person would store data like that specified in present claim 1. The claimed use of such data was relevant to inventive step since it provided a technical effect; the resulting system was technically easier and faster to operate than the prior art systems. It was wrong to qualify such type of features as non-technical. The amendments of claim 1 according to the third auxiliary request served to better emphasise the technical advantage resulting from the subject matter of the claims.

VII. The Board summoned the appellant to oral proceedings to be held on 14 March 2014; in a communication pursuant

to Article 15 (1) RPBA the Board made the following observations (point 3 f. of the communication):

"3. After scrutiny of the decision under appeal in the light of the appellant's arguments, the Board arrived at the provisional conclusion that the examining division was essentially right ...

... In the Board's view a general computer plus database system is a quite appropriate starting point in the prior art since the quintessence of the claimed invention lies in a (non-technical) management concept of organising access privileges in an information system.

Access privileges in an information system are essentially business (administrative) rules. The definition of such rules and the allocation of functions and privileges to members within a social entity are normal management tasks, which are not eligible for patent protection. Computerising does not turn any such activities into patentable inventions. Patentable matter may be found only in inventive features of the computer implementation itself. However, the implementation in the present case, as far as claimed (and disclosed), seems not to reach beyond the normal methods of building computerised information systems. ...

4. ... The main issue to be discussed should be the identification of the technical content of the claimed invention, i.e. the identification of those features of the invention which directly and causally produce a physical effect that can be

said to contribute to the technical solution of a technical problem."

VIII. In a letter dated and received by the Board on 29 January 2014, the appellant informed the Board that the appellant would not attend the oral proceedings. No observations were made on the merits of the appeal.

IX. The Board cancelled the oral proceedings and continued the proceedings in writing.

Reasons for the Decision

The appeal, although admissible, is not allowable since the decision under appeal stands up to closer scrutiny for the reasons already communicated to the appellant (see point VII. above). Considering that these reasons have not been challenged by the appellant, the Board confirms its conclusion that the claimed subject matter as defined in the present requests does not meet the requirements of inventive step (Articles 52(1) and 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

S. Wibergh

Decision electronically authenticated