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Datasheet for the decision of 21 March 2014

Case Number: T 0646/09 - 3.5.01

Application Number: 02725467.1

Publication Number: 1446734

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:
METHOD, SYSTEM, AND SOFTWARE FOR TRANSMISSION OF INFORMATION

Applicants:
Prodigy Communications Limited Partnership
Tiemann, Duane E.
Hall, Susan A.

Headword:
Web page transmission/PRODIGY

Relevant legal provisions:
EPC 1973 Art. 56

Keyword:
Inventive step - order of transmitting web page portions (no Inventive step - routine impelementation)
Inventive step - storing web page portions in script array (no Inventive step - routine implementation)
Inventive step - choice of web page portion to define page structure (no Inventive step - routine programming)

Decisions cited:
T 0003/90, T 0382/96, T 0446/00, T 0910/02, T 0663/10

Catchword:

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Case Number: T 0646/09 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 21 March 2014

Appellant: (Applicant 1)	Prodigy Communications Limited Partnership 6500 River Place Boulevard, Building 3 Austin, TX 78730 (US)
Appellant: (Applicant 2)	Tiemann, Duane E. 50 Orchard Drive Ossining, NY 10562 (US)
Appellant: (Applicant 3)	Hall, Susan A. 246 Old Church Road Putnam Valley, NY 10579 (US)
Representative:	Hackney, Nigel John Mewburn Ellis LLP 33 Gutter Lane London EC2V 8AS (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 13 November 2008 refusing European patent application No. 02725467.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman S. Wibergh
Members: W. Chandler
S. Fernández de Córdoba

Summary of Facts and Submissions

I. This appeal is against the decision of the Examining Division refusing the application No. 02725467.1 (published as WO-A-02/082210). The application concerns reducing the transmission time of web pages.

II. The Examining Division refused the main to sixth auxiliary requests *inter alia* on the ground of lack of inventive step (Article 56 EPC). The Examining Division referred to the prior art document EP-A-0 898 235 (D1), and found that the invention differed from this document in that A) the static portions were sent before the dynamic portion and that B) the static portions were formatted as array elements of a script array and referenced by function calls in the dynamic portions. The Examining Division considered the two sets of features separately and concluded that they did not provide an inventive step. Furthermore, the Examining Division did not consider the sixth auxiliary request to be a valid request.

III. The appellants requested that the decision under appeal be set aside and that a patent be granted on the basis of one of the main to sixth auxiliary requests filed with the statement setting out the grounds of appeal and corresponding to the refused requests. The appellants also had an auxiliary request for oral proceedings.

IV. The Board summoned the appellants to oral proceedings. In a communication accompanying the summons, the Board set out its preliminary opinion essentially agreeing with the conclusion of the Examining Division that the invention did not involve an inventive step over D1.

V. In reply, the appellants informed the Board that they would neither attend, nor be represented at the oral proceedings, and requested that the Board convene for oral proceedings in the appellants' absence to consider the arguments and requests on file.

VI. On 21 March 2014 oral proceedings were held in the appellants' absence.

VII. Claim 1 according to the main request reads as follows:

A method comprising:

separating a template that includes identifier information into a plurality of static portions (311, 313) and at least one dynamic portion (312, 314) at a content server (120), the plurality of static portions formatted as a plurality of array elements of a script array, each array element of the plurality of array elements of the script array defining a script associated with a static portion of the plurality of static portions (311, 313);

transmitting the plurality of static portions (311, 313) in response to a first client request of a remote client (130), the plurality of static portions (311, 313) cached by the remote client (130); and

transmitting the at least one dynamic portion (312, 314) to the remote client (130) in response to a subsequent client request of the remote client (130), the at least one dynamic portion (312, 314) including a plurality of function calls each of which references an array element of the script array cached by the remote client (130) to display the plurality of static

portions and the at least one dynamic portion (312, 314) in accordance with the template at the remote client (130).

VIII. Claim 1 according to the first auxiliary request differs from claim 1 of the main request in that *"a plurality of static portions"* is replaced by *"one or more static portions"* and in that *"at least one dynamic portion"* is replaced by *"one or more dynamic portions"*.

IX. Claim 1 of the second auxiliary request differs from claim 1 of the main request in that it further defines the *"script array"* as a *"java script array"*.

X. Claim 1 of the third auxiliary request adds to claim 1 of the main request, after the first feature, the step of *"writing the script array to a script file"*.

XI. Claim 1 of the fourth auxiliary request adds to claim 1 of the third auxiliary request, after the second feature, the step of *"writing the at least one dynamic portion (312, 314) and identification of the script file to a hypertext markup language (HTML) file;"* and, in the last feature, that transmitting the at least one dynamic portion includes *"delivering the HTML file to the remote client (130)"*.

XII. Claim 1 of the fifth auxiliary request is identical to claim 1 of the main request.

XIII. The sixth auxiliary request is a request that, in the event that one of the independent claims of the previous requests is found to be allowable, whereas the other of the independent claims is not, then, the patent be allowed on the basis of whichever independent claim is allowable.

XIV. The appellants' arguments can be summarised as follows:

The appellants argued the same differences as in the decision under appeal but considered that the Examining Division had incorrectly treated distinguishing features separately from each other. In the appellants' view, the particular arrangement of the static portions and dynamic portions and also the specified transmission order went together to produce an arrangement which could handle data more efficiently.

The appellants furthermore argued that JavaScript was "not so widely known" at the priority date in April 2001, and so, the choice of using this technique would not have been obvious at that time.

Additionally, the appellants argued that the Examining Division's refusal to consider the sixth auxiliary request was unjustified. The appellants submitted that, although the request covered a number of possibilities, it could not be said to be "not clear". In the appellants' view, it was, instead, a straightforward and sensible request to be able to proceed with an independent claim from any of the previous requests should such a claim be seen to be allowable in the consideration of the previous requests.

Reasons for the Decision

1. *The invention*

The invention is based on the recognition that web pages often contain static portions and dynamic portions, where the dynamic portions change more

frequently than the static portions (cf. the published patent application page 1, lines 13-15). For example, an HTML page ("template") could have portions representing tickers or links that change relatively frequently (page 1, lines 15-19). Rather than transmitting the whole page each time it is requested, only the dynamic portions, including references to the static portions, are sent to the user. This generally leads to a reduction in transmission time (page 3, lines 16-18). If the user is not able to access the static portions locally, the user requests them from the server (page 3, lines 13-14).

2. *Main request – inventive step (Articles 52(1) and 56 EPC)*

2.1 It is common ground that D1 represents the closest prior art. Apart from having the same objective of reducing the transmission time of web pages as the invention, the method in D1 also functions essentially in the same manner. An HTML page (in D1 referred to as a "resource") is separated into at least a static portion and a dynamic portion (D1, paragraph [9]). Since the static portion can be cached by the client, the content server need only send the dynamic portion, including a reference to the static counterpart ([15], [25]). If the static portion is not in the cache, the client requests it from the server. The static and dynamic portions are, then, combined at the client ([28]).

2.2 Although claim 1 refers to "a plurality of static portions", the Board does not see that this differs from the "static portion" in D1. In the invention, the static portions (311, 313) are treated as one file (170) for storage and transmission (page 9, lines

26-29). This corresponds to the static portion ("template") in D1, which, in itself, includes a plurality of portions (e.g. the tags).

2.3 Claim 1 is also similar to D1 in terms of the relative arrangement of the static portion and the dynamic portion. In both, the dynamic portion references the static portion. In the invention, the tag "<script scr=home0918062221.js>" (page 14, line 12) identifies the source of the static portion, similar to the <TEMPLATE> tag in D1, Table 1. Then, the dynamic portion uses a function call ("document.write()") to reference the script in the static portion. This corresponds to the <VAR> tags in D1's static portion which call the <DYNAMICS> part in the dynamic portion. However, according to the invention the function calls are from the dynamic portion to the static portions, whereas in D1 it is the other way around. In the Board's view, this difference derives from the way the page structure is defined. In the invention, the page structure is defined in the dynamic portion (page 14, lines 3-19) whereas in D1 it is in the static portion, which must then reference the dynamic portion again.

2.4 Thus the invention in claim 1 differs from D1 in that:

A) the static portion is sent before the dynamic portion,

B1) the static portion is formatted as a plurality of elements of a script array, and

B2) the page structure is defined in the dynamic portion rather than in the static portion.

2.5 The Board considers that, although it might be said that the distinguishing features of the claim all contribute to the overall effect of handling data effectively, they nevertheless do so individually and without any synergy, as argued by the Examining Division. Therefore, the differences must be assessed independently of each other for inventive step.

2.6 The Board does not see any inventive advantage in transmitting the static portion before the dynamic portion (difference A). Indeed, the description of the present application states, at page 6, line 26, that the static portion may be transmitted either before or after the dynamic portion, as appropriate. This is a matter of routine implementation for the person skilled in the art. Therefore, the Board considers that the relative transmission order of the static and dynamic portions does not establish an inventive step over D1.

2.7 Furthermore, as far as the Board is aware, JavaScript was a well-known web programming language at the priority date of 2001, being named as such by Netscape and Sun in 1995 and adopted by Microsoft in 1996. Thus, since the language was known, it would have been obvious to use its array feature for storing data (difference B1).

2.8 Whether to define the page structure in the dynamic portion or in the static portion (difference B2) is, in the Board's view, a matter of routine web programming. The Board, furthermore, agrees with the Examining Division that the particular arrangement of the static and dynamic data depends on the content that the data represents. According to an example in the present application, the static data is a script function that checks whether a string is blank or not (page 8, lines

22-39). In D1, the page structure and the text "[t]he time is" and "[t]his page has been accessed [...] times" are defined as static (see Table 1), but the skilled person would evidently consider including them in the dynamic portion if they change relatively frequently. The way the dynamic portion references the static portion, and vice versa, depends on the type of data and the chosen arrangement. This is, in the Board's view, a matter of routine programming in this field.

2.9 For these reasons, the Board agrees with the conclusion in the decision under appeal that claim 1 of the main request does not involve an inventive step. The main request is, therefore, not allowable.

3. *Auxiliary request 1 – inventive step (Articles 52(1) and 56 EPC)*

3.1 Claim 1 of the first auxiliary request differs from claim 1 of the main request essentially in the formulation "one or more static portions" rather than "a plurality of static portions". Its scope therefore encompasses that of the main request, and its subject-matter is obvious for the reasons already given.

4. *Auxiliary request 2 – inventive step (Articles 52(1) and 56 EPC)*

The reasons with respect to claim 1 of the main request already take into account that the script array is a JavaScript array, and are, therefore, equally applicable to claim 1 of the second auxiliary request. Consequently, the second auxiliary request is not allowable for lack of inventive step.

5. *Auxiliary request 3 – inventive step (Articles 52(1) and 56 EPC)*

Claim 1 according to the third auxiliary request adds the feature that the script array is written to a script file. In D1 the static portion is also stored, and transmitted, separately from the dynamic portion, in the script file "query.hpp" (Table 1 on page 4). In any case, the Board considers that the script array has to be stored in an appropriate form and that a "script file" would have been an obvious choice. The third auxiliary request is, consequently, not allowable.

6. *Auxiliary request 4 – inventive step (Articles 52(1) and 56 EPC)*

6.1 Claim 1 of the forth auxiliary request adds to claim 1 of the main request the feature that the dynamic portion and "identification of the script file" are written to a HTML file, which is delivered to the client. This is disclosed in D1, where the dynamic portion in Table 1 is an HTML file (cf. the <HTML> tag) that includes a link to the script file containing the static portion (<TEMPLATE HREF="query.hpp">).

6.2 Since the additional feature of the fourth auxiliary request is disclosed in D1, it cannot contribute to an inventive step. The fourth auxiliary request is, therefore, not allowable.

7. *Auxiliary request 5 – inventive step (Articles 52(1) and 56 EPC)*

Claim 1 as defined in the fifth auxiliary request is identical to claim 1 of the main request. Therefore, the same reasons apply to both requests. The fifth

auxiliary request is, thus, not allowable for lack of inventive step.

8. *Admissibility of auxiliary request 6*

It is a fundamental principle of European patent law that the applicant is responsible for defining the subject-matter for which protection is sought by formulating appropriate requests (T 382/96, point 5.2; and T 446/00). This principle is enshrined in Article 113(2) EPC, which provides that the European Patent Office shall only consider and decide upon a European patent application in the text submitted to it, or agreed, by the applicant. The applicant cannot shift the responsibility to formulate requests to the EPO, in this case a board of appeal. Thus, the Board considers that the definition of a request in terms of what might be allowable is inadmissible.

9. *Request that the Board convene for oral proceedings*

9.1 The appellants announced their intention not to attend, or be represented, at the oral proceedings before the Board, but nevertheless requested that the Board convene for oral proceedings in the appellants' absence to consider the arguments and requests on file.

9.2 Although this request is moot in the sense that oral proceedings were indeed held, the Board would like to point out that a statement of an intention not to attend oral proceedings is treated as a withdrawal of the request for oral proceedings (see decision T 3/90, OJ EPO 1992, 737). Under these circumstances, the Board may still convene for oral proceedings if - like in the present case - it deems this to be expedient, but is not obliged to do so (see T 663/10, point 1.3 of the

reasons; T 910/02, point 6 of the reasons). In either event, the Board considers the appellant's arguments and requests, in accordance with Article 113(1) and (2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek S. Wibergh

Decision electronically authenticated