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**Datasheet for the decision
of 5 March 2014**

Case Number: T 0822/09 - 3.5.01
Application Number: 05252213.3
Publication Number: 1603067
IPC: G06F17/60
Language of the proceedings: EN

Title of invention:

Using software incorporated into a web page to collect page-specific user feedback concerning a document embedded in the web page

Applicant:

Opinionlab, Inc.

Headword:

Feedback measurement/OPINIONLAB

Relevant legal provisions:

EPC Art. 54(1), 54(2), 56

Keyword:

Novelty - (no) auxiliary request 3
Inventive step - (no) all other requests

Decisions cited:

T 0003/90

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0822/09 - 3.5.01

**D E C I S I O N
of Technical Board of Appeal 3.5.01
of 5 March 2014**

Appellant: Opinionlab, Inc.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 18 November
2008 refusing European patent application No.
05252213.3 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: S. Wibergh
Members: R. R. K. Zimmermann
P. Schmitz

Summary of Facts and Submissions

- I. European patent application no. 05252213.3 concerns a software tool for collecting page-specific user feedback concerning web pages of a website.
- II. The examining division refused the application *inter alia* for lack of inventive step of claim 1 of the main request and the first and second auxiliary requests, and for lack of novelty of claim 1 of the third auxiliary request.
- III. Claim 1 of the respective requests read as follows:

Main request:

"A system (10) for measuring subjective user reaction concerning a particular web page (28) comprising an embedded document (84), the system comprising:
a first icon (50) viewable on the particular web page (28) independent of input from a user (16) subsequent to the user accessing the particular web page (28), the particular web page comprising a document embedded in the particular web page, the first icon (50) soliciting a subjective user reaction to the document embedded in the particular web page (28) from the user (16) independent of input from the user subsequent to the user accessing the particular web page (28), the first icon operable to receive user input indicating a desire to provide a subjective user reaction to the document (84) embedded in the particular web page (28), the user input causing a second icon (70) to become viewable on the particular web page (28), the second icon providing the user an opportunity to provide a subjective user reaction to the document embedded in the particular web page (28); and

software associated with the second icon (28) and operable to receive the subjective user reaction to the document embedded in the particular web page for reporting to an owner (12) of the document embedded in the particular web page."

First auxiliary request:

"A system (10) arranged to measure data concerning a web page (28), the system comprising:
a first icon (50) viewable on the web page (28) independent of input from a user (16) and subsequent to the user accessing the web page (28), the web page comprising a document (84) embedded in the web page, the first icon (50) being arranged to solicit first data from a user (16) about the document (84) subsequent to the user accessing the web page (28), the first icon operable to receive the first data from the user concerning the web page, the first data from the user arranged to cause a second icon (70) to become viewable on the web page (28), the second icon being arranged to provide the user an opportunity to provide second data regarding the document embedded in the web page (28);
a collection module (42) associated with the second icon (70) which is operable to receive the first and second data regarding the document (84); and
a reporting module (46) arranged to report the first and second data to an owner (12) of the web site."

Second auxiliary request:

"A web page measurement tool arranged to measure data concerning a particular web page (28), the tool comprising:
a first icon (50) viewable on the web page (28), the web page comprising a document (84) embedded in the web page, the first icon (50) operable to solicit first

data from a user (16) about the document (84) subsequent to the user accessing the web page (28), the first icon further operable to receive the first data from the user concerning the web page, wherein the first data from the user is operable to cause a second icon (70) to become viewable on the web page (28), the second icon operable to provide the user with an opportunity to provide second data regarding the document embedded in the web page (28); a collection module (42) associated with the second icon (70) which is operable to receive the first and second data regarding the document (84); and a reporting module (46) arranged to report the first and second data to an owner (12) of the web site."

Third auxiliary request:

"A system (10) arranged to provide data concerning a particular web page (28), the system comprising: a collection module arranged to identify one or more pages of a web site incorporating a measurement tool (400) and operable to generate (404) and store (406) a map of the web site according to the topography of the web site, such that an owner of the web site is able to specify one or more criteria to generating data concerning the web site (410) and relating to the topology of the web site; and wherein the system is operable to provide the data to the owner (418)."

IV. The examining division cited the international publication WO 2004/012044 A2 (document D1) as closest prior art, finding that the only differences between claim 1 of the three highest-ranking requests and D1 were that the particular web page comprised an embedded document and that the user feedback was given with regard to this document. The display of embedded documents was considered to be a standard feature of

web applications supported by common browsers. The claimed use for providing user feedback was qualified as a non-technical intellectual activity which could not be taken into account in assessing inventive step. These requests did thus not comply with the requirement of inventive step. Claim 1 of the third auxiliary request did not meet the requirement of novelty since, if reading the undisclosed term "topology" as "topography", all claim features would be fully anticipated by document D1.

- V. The decision, dated 18 November 2008, was appealed by the appellant (applicant) "in its entirety" on 28 January 2009. The appeal fee was paid the same day. A statement setting out the grounds of appeal was filed on 27 March 2009, including the sets of claims already pursued before the examining division, except for the third auxiliary request that was amended by replacing the term "topology" in claim 1 by "topography" (see point III above).

The Board takes the appellant's request to be that a patent be granted on the basis of one of these sets of claims or that, as an auxiliary measure, oral proceedings before the Board be arranged.

- VI. The appellant argued that the claims submitted were admissible and allowable. Prior art document D1 did merely disclose a method and system for receiving a feedback concerning a web page.

It did not disclose, however, any reporting of feedback with regard to a document embedded in a web page as suggested by the invention. Collecting, aggregating and reporting the data about the feedback to the owner of the embedded document were technical measures and

should thus be taken into account in the assessment of inventive step.

The icons, for example, were part of an executable code/module, reducing the time required for giving feedback. As a further technical effect and technical advantage, the invention reduced the necessary download amount of extra code and thus the network load by embedding icons before downloading the web page and storing the feedback data in the icons before sending the data to the web site owner.

The auxiliary requests put further emphasis on the technical and inventive contribution provided by the invention by replacing the term "subjective user reaction" by "data" and further limiting the subject matter of the claims by defining a "collection module", a "reporting module" and a "web page measurement tool".

VII. The Board summoned the appellant to oral proceedings. In a communication pursuant to Article 15 (1) RPBA, the Board made the following observations on the merits of the case:

"4. Having examined the arguments on file, the Board arrived at the (provisional) conclusion that the reasons given in the decision under appeal are essentially correct. The appellant's arguments are not convincing: they ignore the non-technical character of the concept of collecting and reporting document-specific user feedback. They do also not take sufficient account of the full disclosure content of document D1 (regarding the novelty of the subject-matter of claim 1 of the third auxiliary request e.g., see the decision under appeal, point 5.5 referring to page 42 f. of D1).

5. In the present view of the Board, the only relevant difference of the invention (main and two first auxiliary requests) in respect of document D1 is the extension of the prior art feedback mechanism (see D1, e.g. figs. 2 and 3, first icons at 50 and second icons at 60) to embedded documents. Since the motivation of providing a document-specific user feedback has no technical connotation whatever, neither the idea of implementing such a feedback nor the straight technical implementation are able to provide a technical and non-obvious contribution, the necessary prerequisite for inventive step.

6. The technical details of the implementation as far as claimed and disclosed in the present application appear all to be obvious in the light of document D1. The alleged differences referred to by the appellant are either disclosed explicitly by document D1 or rendered obvious by the common general knowledge. This was already set out correctly in the decision under appeal. According to the present view of the Board, neither the claims nor the application as a whole specifically indicate any technical feature that is non-obvious and hence able to form a valid basis for an allowable claim."

VIII. In a letter of 30 January 2014, the appellant informed the Board that it would not attend the forthcoming oral proceedings. The hearing was then cancelled.

Reasons for the Decision

1. The appellant initially requested, as an auxiliary measure, oral proceedings before the Board. After a

hearing had been appointed, the appellant informed the Board that it would not attend. This statement is regarded as a withdrawal of the request for oral proceedings (T 3/90, OJ EPO 1992, 737).

2. The appeal, although admissible, is not allowable. The decision of the examining division has to be confirmed on the grounds of lack of inventive step (Article 52(1) EPC and Article 56 EPC 1973) in claim 1 of the main and first and second auxiliary requests and lack of novelty (Article 52(1) EPC and Article 54(1) and (2) EPC 1973) in claim 1 of the third auxiliary request. The reasons have been given in the Board's communication (see point VII above) with reference to the decision under appeal (see point IV above) and are summarized below.

- 2.1 The main request

The main difference between the system of claim 1 and D1 is that the web page comprises an embedded document and that the user feedback is given with regard to this document. The display of embedded documents is however a standard feature, and providing feedback with respect to such a document - rather than to the entire web page - is a non-technical choice that cannot contribute to an inventive step.

- 2.2 The first auxiliary request

Replacing "subjective user reaction" by "data" makes no difference since a user reaction can only be reported in the form of data. Referring the software as "modules" also makes no substantive difference.

- 2.3 The second auxiliary request

The invention is referred to as a "web page measurement tool" rather than a "system". The mere word "tool", however, does not imply any further technical features.

2.4 The third auxiliary request

The appellant has argued that D1 does not disclose identifying one or more pages of a web site, or a map of the web site. As pointed out by the examining division, however, these features are disclosed in D1 (p.42, 1.26 onwards).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

S. Wibergh

Decision electronically authenticated