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**Datasheet for the decision
of 30 October 2014**

Case Number: T 0889/10 - 3.5.05

Application Number: 01306037.1

Publication Number: 1172753

IPC: G06F19/00

Language of the proceedings: EN

Title of invention:

Method for optimising pharmaceutical prescribing

Applicant:

Scriptswitch Limited

Headword:

Optimising pharmaceutical prescribing/SCRIPTSWITCH LIMITED

Relevant legal provisions:

EPC Art. 56, 113(1)
EPC R. 115(2)
RPBA Art. 15(3), 15(6)

Keyword:

"Basis of decisions - right to be heard"
"No comments on the preliminary opinion against the allowability of the appellant's requests expressed in the board's communication under Article 11(2) RPBA"
"Dismissal of the appeal on the basis of the reasons in the board's communication"

Decisions cited:

Catchword:



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Case Number: T 0889/10 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 30 October 2014

Appellant: Scriptswitch Limited
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West Midlands CV3 4FJ (GB)

Representative: Forsythe, Dominic
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 4 December 2009 refusing European patent application No. 01306037.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: P. Corcoran
D. Prietzel-Funk

Summary of Facts and Submissions

- I. The decision under appeal is the written decision of the examining division dated 4 December 2009 refusing the European patent application 01306037.1. Said decision was issued in response to a request for a decision according to the state of the file submitted with letter of 23 November 2009 by the then applicant and present appellant.

- II. Said decision refers to the official communications dated 24 July 2009 and 3 November 2009 in which the applicant was informed that the application did not meet the requirements of the EPC.

- III. The official communication dated 24 July 2009 is an annex to a summons to oral proceedings before the examining division in which the examining division expressed the opinion that claim 1 of the main request filed with letter of 6 November 2006 did not involve an inventive step in the light of the following document:
D1: US 5 833 599.
Substantially the same opinion was expressed in respect of the further independent claims of the request, *viz.* claims 8 (method) and 12 (computer program).

- IV. The official communication dated 3 November 2009 contains the written record of a consultation by telephone which took place on 29 October 2009 between the applicant's representative and a member of the examining division. According to the record of the consultation, the applicant was informed that the main request was not allowable for the reasons presented in the annex to the summons to oral proceedings. The applicant was also informed to the effect that the three auxiliary requests filed with the letter of 22

- October 2009 were not considered to be allowable. The first and third auxiliary requests were not considered to be allowable under Article 123(2) EPC. The second auxiliary request was not considered to be allowable due to a lack of inventive step.
- V. The appellant (applicant) filed a notice of appeal which was received at the EPO on 22 January 2010. The appeal fee was paid on the same date. A written statement setting out the grounds of appeal was received at the EPO on 14 April 2010.
- VI. In the written statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1-12 as filed with the letter of 6 November 2006. The appellant also filed four auxiliary requests with said written statement. A precautionary request for oral proceedings was made.
- VII. In a communication pursuant to Article 11(2) RPBA, annexed to the summons for oral proceedings to be held on 30 October 2014, the board noted that it had not been convinced by the appellant's submissions concerning D1 and that, for the reasons given in the communication, it was of the preliminary opinion that said submissions were not sufficient to establish that claim 1 of the main request involved an inventive step over the disclosure of said document. It was also noted that the board's reservations in this regard applied to the further independent claims of the main request.
- VIII. The board also expressed the preliminary opinion that, for the reasons given in the communication, the amendments to claim 1 of the fourth auxiliary request failed to establish an inventive contribution over the

prior art. In view of the fact that the corresponding claims of the preceding auxiliary requests were broader than claim 1 of the fourth auxiliary request, the board was also of the opinion that none of said preceding auxiliary requests were allowable for substantially the same reasons as given in respect of the main request and the fourth auxiliary request.

- IX. With the letter dated 15 October 2014, the appellant's representative informed the board that the appellant had decided not to attend the oral proceedings. The representative further submitted a request that a decision be taken "on the basis of the papers as currently on file". No substantive response was submitted to the objections raised in the board's communication.

Reasons for the Decision

1. The appeal is admissible.
2. *Non-attendance at oral proceedings*
 - 2.1 In the present case, the board decided that it was appropriate to proceed by holding the oral proceedings as scheduled in the absence of the appellant (cf. Rule 115(2) EPC).
 - 2.2 The appellant could reasonably have expected that during the oral proceedings the board would consider the objections and issues raised in the communication annexed to the summons to oral proceedings (cf. point VII. and VIII. above) which form the basis for the

present decision. In deciding not to attend the proceedings, the appellant effectively chose not to avail of the opportunity to present its observations and counter-arguments orally but instead to rely on its written case (cf. Article 15(3) RPBA) which corresponds to that contained in the written statement setting out the grounds of appeal.

- 2.3 The board was in a position to announce a decision at the conclusion of the oral proceedings as foreseen by Article 15(6) RPBA. The reasons on which this decision was based do not constitute a departure from grounds or evidence previously put forward which would require that the appellant be given a further opportunity to comment (cf. Article 113(1) EPC).
3. In its communication the board informed the appellant in detail of the reasons for its preliminary opinion that none of the requests on file complied with the inventive step requirement of the EPC.
4. The appellant's letter of 15 October 2014 did not make any substantive response to the objections noted by the board but merely stated that the appellant had decided not to attend the oral proceedings and further requested that a decision be taken "on the basis of the papers as currently on file".
5. Having reconsidered the objections raised in its communication the board sees no reason to depart from them. Consequently, the request of the appellant to set aside the decision of the examining division is not allowable for the reasons given in the aforementioned communication.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated