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**Datasheet for the decision
of 9 December 2014**

Case Number: T 1036/10 - 3.4.03

Application Number: 05292362.0

Publication Number: 1746548

IPC: G07F17/30, G06F17/30

Language of the proceedings: EN

Title of invention:

Jukebox system with central and local music servers

Applicant:

TouchTunes Music Corporation

Headword:

Relevant legal provisions:

EPC 1973 Art. 56, 84

EPC Art. 52, 123(2)

Keyword:

Inventive step (no)

Clarity (no) - first and second auxiliary request

Decisions cited:

T 0258/03, T 0641/00

Catchword:



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Case Number: T 1036/10 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 9 December 2014

Appellant: TouchTunes Music Corporation
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 8 January 2010 refusing European patent application No. 05292362.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: R. Bekkering
T. Karamanli

Summary of Facts and Submissions

I. The appeal is against the refusal of application No. 05 292 362 for lack of an inventive step, Article 56 EPC, over documents

D1: DE 199 04 007 A

D2: US 2004/0205171 A

D3: EP 1 408 427 A.

II. With the statement setting out the grounds of appeal of 21 April 2010, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the following:

Main request:

Claims 1 to 41 according to the appellant's "Main request" filed with letter dated 3 September 2009, or

First auxiliary request:

Claims 1 to 43 according to the appellant's first auxiliary request titled "Subsidiary request 1" filed with letter dated 3 September 2009, or

Second auxiliary request:

Claims 1 to 15 and 17 to 27 according to the appellant's third auxiliary request titled "...subsid3..." filed at the oral proceedings before the examining division on 7 October 2009.

III. A summons to oral proceedings was issued by the board, provided with an annexed communication in which a provisional opinion of the board on the matter was given.

In particular, the appellant was informed that it appeared that the subject-matter of claim 1 according to the appellant's main request lacked an inventive step in the sense of Article 56 EPC 1973 over document D1.

Claim 1 according to the first auxiliary request was considered to lack clarity, Article 84 EPC 1973. Moreover, it was considered to contain subject-matter extending beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC and to lack an inventive step.

Claim 1 according to the second auxiliary request was also considered to lack clarity, Article 84 EPC 1973, and to lack an inventive step.

IV. With a letter dated 28 November 2014, the board was informed that the appellant would not be attending the oral proceedings.

No arguments were provided by the appellant in response to the board's observations.

V. Oral proceedings were held on 9 December 2014 in the absence of the duly summoned appellant.

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

"A multi-zone jukebox comprising at least a microprocessor, a memory for storing instances of media available for output, a display of displaying visual items, a [sic] operating software for controlling the operation of the multi-zone jukebox and a set of output device [sic] for each zone of an establishment in which the multi-zone jukebox is disposed characterized in that the multi-zone jukebox comprises:

- a plurality of output channels, wherein each output channel is operably connected to a [sic] output device of a zone, allowing to simultaneously output different instances of media in each zone;
- a user interface, wherein the user interface allows a user to select one or more of the plurality of output channels for output of a specific instance of media; and
- a collection mechanism, wherein a determined amount of money is collected according [sic] the price determined by the jukebox, based on the number of zones selected for playing certain preselected instances of media."

Claim 27 is directed to a corresponding method of outputting a user selectable instance of media in one or more user selectable zones of an establishment.

VII. Claim 1 of the appellant's first auxiliary request corresponds to claim 1 of the appellant's main request, however with the first feature of the characterising portion reading as follows:

"a plurality of output channels, wherein each output channel is operably connected to a [sic] output device of a zone, allowing to simultaneously output different instances of media in each zone, providing each zone at

least with a queue provided with an identifier of the song and/or the position of the song in the queue and/or any suitable factors".

Claim 27 is directed to a corresponding method of outputting a user selectable instance of media in one or more user selectable zones of an establishment.

VIII. Claim 1 of the appellant's second auxiliary request reads as follows:

*"A jukebox comprising:
instances of media available for output;
a plurality of output channels, wherein a first output channel and at least a second output channel different from the first output channel are capable of simultaneously outputting different instances of media;
a user interface, wherein the user interface allows a user to select one or more of the plurality of output channels for output of a specific instance of media ;
a collection mechanism, wherein a fixed amount of money is collected for playing certain preselected instances of media ;
a plurality of output devices operably connected to the plurality of output channels ;and assigning one or more queues with priority or non priority to the one or more selected area of the establishment;
wherein the collection mechanism further collects some additional amount of money greater than the fixed amount of money, said additional amount being determined for the selected instance of media and the selected areas of the establishment if a user selects more than one of the output channels for output of an instance of media or select a priority queue for one of the output channel [sic]."*

Claim 17 is directed to a corresponding method of output of a user selected instance of media in one or more user selectable areas of an establishment.

IX. The appellant submitted with the statement setting out the grounds of appeal in substance the following arguments:

Document D1 did not disclose the following three features of claim 1:

- a set of output devices for each zone of an establishment, and a plurality of output channels, wherein each output channel is operably connected to an output device of a zone,
- the user interface allows a user to select one or more of the plurality of output channels, and
- a collection mechanism, wherein a determined amount of money is collected according [to] the price determined by the jukebox, based on the number of zones selected for playing certain preselected instances of media.

Only the latter two features were acknowledged in the decision under appeal to be differences over D1.

Regarding the first distinguishing feature, document D1 simply disclosed a loudspeaker and an amplifier and had the possibility to play titles on two various outputs. Moreover, D1 did not suggest "*a user interface, wherein the user interface allows a user to select one or more of the plurality of output channels*".

Furthermore, the Division considered that the determination of an amount of money collected according to the price, based on the number of zones selected was an administrative (business) problem and consequently

not a technical problem. This was in contradiction with the rules for determination of technical characteristic of the invention. The presence of technical characteristic could be conferred to a non-technical activity by the use of technical means. The determination of the amount of fees was a non-technical activity, but to realize this non-technical activity the collection mechanism used technical means such as the number of zones selected for playing instances of media, this number of zones selected being stored in queues as described by the invention. The technical problem was *"how to improve a juke box proposing the possibility of diffusion in several zones to allow more flexibility and comply automatically with the copyrights rules?"*.

The claimed solution was not suggested in D1 or D2.

Consequently, claim 1 of the main request protected a new and non-obvious jukebox, which comprised technical elements permitting to solve a technical problem.

Claim 1 according to the first and second auxiliary request contained additional features, providing further distinctions over the prior art.

Accordingly, also claim 1 of these requests protected a new and non-obvious jukebox, which comprised technical elements permitting to solve a technical problem.

Reasons for the Decision

1. The appeal is admissible.
2. *Absence of the duly summoned appellant*

The duly summoned appellant did not attend the oral proceedings, as announced. The proceedings were continued without him, as provided for in Rule 71(2) EPC 1973.

In accordance with Article 15(3) RPBA, the appellant was treated as relying only on its written case.

The board was in a position to decide at the conclusion of the oral proceedings, since the case was ready for decision (Article 15(5) and (6) RPBA) and the voluntary absence of the appellant was not a reason for delaying the decision (Article 15(3) RPBA).

3. *Main request*

- 3.1 *Novelty*

- 3.1.1 Document D1 discloses a music jukebox based on a PC. In particular, due to the possibility to play multiple tracks at the same time, output them on two different outputs and then mix them at will using a mixer, the jukebox is also suitable for use in discotheques. The jukebox offers a wide range of applications, eg in music stores for listening to songs (column 2, lines 18 to 24; see also claim 4 and column 1, lines 24 to 30).

In particular, document D1 discloses, using the terminology of claim 1, a jukebox comprising:
at least a microprocessor (part of PC),

a memory for storing instances of media available for output (part of PC),
a display of displaying visual items (touchscreen),
an operating software for controlling the operation of the jukebox (cf figure 2 and corresponding description),
an output device, and
a plurality of output channels, allowing to simultaneously output different instances of media (column 2, lines 18 to 24).

Moreover, as the jukebox of D1 allows the output of different songs on different outputs, it is implicit that it is equipped with a user interface, which allows a user to select one or more of the plurality of output channels for output of a specific instance of media.

The examining division appears to have taken the stance that the use of the jukebox in a music store implies multiple listeners at different locations in the store, simultaneously listening to different songs.

In the board's view, however, although multiple listeners at different locations in the store, simultaneously listening to different songs on trial, would correspond to the usual set-up in a music store, and such a set-up would thus readily occur to a skilled reader of D1, such a set-up is not necessarily provided in D1, and thus implicit, as a set-up with only one listener at one location would also be conceivable in D1.

Accordingly, the following features of claim 1 are not anticipated by document D1:

(a) the jukebox is a multi-zone jukebox comprising a set of output devices for each zone of an establishment, wherein each output channel is operably connected to an output device of a zone, and

(b) a collection mechanism, wherein a determined amount of money is collected according the price determined by the jukebox, based on the number of zones selected for playing certain preselected instances of media.

Accordingly, the subject-matter of claim 1 is new over document D1 (Article 54(1) EPC 1973).

3.1.2 The subject-matter of claim 1 is also new over the remaining available, more remote prior art.

3.2 *Inventive step*

Regarding the above distinguishing feature (a), the objective problem to be solved may be formulated as to provide a suitable set-up for a music store. As noted above, since a music store typically allows multiple listeners at different locations in the store to simultaneously listen to different songs on trial, and since the jukebox in D1 is stated to have the ability to simultaneously play multiple tracks via different outputs, it is considered to be obvious to a person skilled in the art to provide a set of output devices for each zone of the establishment, each output channel being operably connected to an output device of a zone.

Regarding the above distinguishing feature (b), it is noted that the consideration to collect money for playing media and to apply certain criteria (charge based on number of zones) for doing so, lies in the field of schemes for doing business.

Schemes for doing business shall not be regarded as inventions within the meaning of Article 52(1) EPC, in accordance with Article 52(2) EPC, and are therefore deemed to be non-technical.

The claimed invention concerns the technical implementation of a scheme for doing business.

According to established jurisprudence, an invention consisting of a mixture of technical and non-technical features and having technical character as a whole is to be assessed with respect to the requirement of inventive step by taking account of all those features which contribute to said technical character whereas features making no such contribution cannot support the presence of inventive step. Where the claim refers to an aim to be achieved in a non-technical field, eg in the field of business schemes like in the present case, this aim may legitimately appear in the formulation of the problem as part of the framework of the technical problem that is to be solved, in particular as a constraint that has to be met (cf "*Case Law of the Boards of Appeal of the EPO*", 7th Edition 2013, I.D. 9.1; T 641/00, OJ EPO 2003, 352, Reasons, points 3 to 7).

Accordingly, concerning feature (b) above the technical problem to be solved may be formulated as to technically implement, using technical means, the business scheme of collecting money based on the number of zones selected for playing certain preselected instances of media.

All steps of the underlying business scheme are, thus, part of the information provided to the technician in

charge of the technical implementation and do as such not contribute to inventive step.

The technical implementation as claimed in feature (b) above consists in providing a corresponding collection mechanism. This is considered to be obvious for a skilled person.

The above was noted in substance in the board's communication annexed to the summons to oral proceedings. The appellant did not submit any arguments in response.

- 3.2.1 In the statement setting out the grounds of appeal the appellant argued in substance that T 258/03 (OJ EPO 2004, 575) stated with regard to the concept of "*invention*" within the meaning of Article 52(1) EPC that what mattered was the presence of technical character which could be implied by the physical features of an entity or the nature of an activity, or could be conferred to a non-technical activity by the use of technical means. This case was exactly the same as the present invention in which a collection mechanism had to be able to determine the amount of fees to be collected in consequence of the number of potential listeners of the song. The presence of "*technical characteristic*" could be conferred to a non-technical activity by the use of technical means. The determination of the amount of fees was a non-technical activity, but to realize this non-technical activity the collection mechanism used technical means such as the number of zones selected for playing instances of media, this number of zones selected being stored in queues as described by the invention. Other suitable factors could be for instance the time at which a song was played in a different zone.

This technical problem was solved by a determination *"based on the number of zones selected for playing instances of media"*.

Further this technical problem of determining the amount of fees was linked to the number of zones selected and consequently to the capacity of the device to enable a user to select several zones through *"a user interface, wherein the user interface allowed a user to select one or more of the plurality of output channels"* wherein each output channel *"is operably connected to an output device of a zone"*.

However, this feature implied at least selection means like the claimed user interface to select some of the plurality of output channels corresponding to specific areas. Consequently, this feature referred to technical elements like selection means for determination of specific areas corresponding to output channels. Thus, the technical problem that could be determined from this feature was *"how to improve a juke box proposing the possibility of diffusion in several zones to allow more flexibility and comply automatically with the copyrights rules?"*. Contrary to what was asserted by the examining division, the distinguishing features solved a technical problem and brought a technical contribution which enabled a juke box to determine automatically the information needed by the collection mechanism once the user had made its selections.

The claimed solution was not suggested in D1 or D2.

Accordingly, the subject-matter of claim 1 was both new and non-obvious.

3.2.2 These arguments are, however, not found convincing.

A discussed above, the board agrees that the provision of a set of output devices for each zone of an establishment, wherein each output channel is operably connected to an output device of a zone, is not disclosed in D1. Moreover, the underlying problem to be solved concerning this distinguishing feature starting from D1 is a technical one, namely to provide a suitable set-up for a music store. The claimed solution hereto is, however considered to be obvious as discussed above.

Collecting money based on the number of zones selected for playing certain preselected instances of media, on the other hand, or complying with copyrights as the appellant puts it in his definition of the objective problem, is a scheme for doing business and thus non-technical. The underlying technical problem is only how to implement this scheme. The solution defined in claim 1 is merely the provision of a collection mechanism to this end. This is considered to be obvious as discussed above.

Decision T 258/03 referred to by the appellant indeed holds that what matters having regard to the concept of "*invention*" within the meaning of Article 52(1) EPC is the presence of technical character which may be implied by the physical features of an entity or the nature of an activity, or may be conferred to a non-technical activity by the use of technical means (cf Reasons, point 4.5). This however concerns the question whether the claimed subject-matter is excluded from patentability under Article 52(2) and (3) EPC. The claimed subject-matter in the present case concerns a jukebox, ie a technical apparatus, which undoubtedly is

not excluded from patentability under Article 52(2) and (3) EPC.

Another question, however, is whether the subject-matter of claim 1, which contains both technical and non-technical features, involves an inventive step. Here the above decision refers to the principles set out in decision T 641/00 (OJ EPO 2003, 352, cf Headnote I). In accordance with these principles, the invention is assessed with respect to the requirement of inventive step by taking account of only those features which contribute to a technical character (cf Reasons, point 5.3).

This means that, as held in the above decision and discussed above, where the claim refers to an aim to be achieved in a non-technical field, eg in the field of business schemes like in the present case, this aim may legitimately appear in the formulation of the problem as part of the framework of the technical problem that is to be solved, in particular as a constraint that has to be met (cf T 641/00, Reasons, points 3 to 7).

On application of these principles, concerning feature (b) above the technical problem to be solved is to technically implement, using technical means, the business scheme of collecting money based on the number of zones selected for playing certain preselected instances of media. The technical implementation as claimed in feature (b) above consists in providing a corresponding collection mechanism, which is considered to be obvious for a skilled person, as discussed above.

3.2.3 Accordingly, the subject-matter of claim 1 of the main request is obvious to a person skilled in the art and,

therefore, lacks an inventive step in the sense of Article 56 EPC 1973.

The appellant's main request is, thus, not allowable.

3. *First auxiliary request*

Claim 1 according to the first auxiliary request contains the further feature "*providing each zone at least with a queue provided with an identifier of the song and/or the position of the song in the queue, and/or any other suitable factors*".

It is, however, unclear what is meant by providing each zone with a queue, Article 84 EPC 1973.

There is also no basis in the application as filed for this feature, Article 123(2) EPC.

Moreover, the above feature is generally unclear as it also includes "*any other suitable factors*", it being unclear what is covered hereby, Article 84 EPC.

Furthermore, for the sake of completeness, it is noted that document D1 discloses the use of playlists. It would be obvious for a person skilled in the art, where different users/locations are provided with different music, to use respective playlists for each user/location.

The above was noted in substance in the board's communication annexed to the summons to oral proceedings. The appellant did not submit any arguments in response.

In view of the above, the appellant's first auxiliary request is not allowable either.

4. *Second auxiliary request*

Claim 1 of the second auxiliary request essentially differs from the main request in that it adds "*assigning one or more queues with priority or non priority to the one or more selected area of the establishment*" and defines collecting an additional amount of money depending on certain conditions being met.

Regarding the first added feature above it remains unclear what is assigning the queues. Moreover, it is not clear from the claim what queues with priority or non priority are. Thus, the requirements of Article 84 EPC 1973 are not fulfilled.

Moreover, for the sake of completeness, it is noted that setting priorities (and charging extra) for playing certain songs is generally known, see eg document D3 (cf paragraph [0064]).

Accordingly, it would be obvious to a person skilled in the art to include the option of setting priorities for one or more songs, or indeed a playlist, in the jukebox of D1.

As regards the second added feature referred to above, it is noted that, as for the main request, this feature relates to considerations in the field of schemes for doing business and, thus, is not taken into consideration for inventive step.

The above was also noted in the board's communication annexed to the summons to oral proceedings. The appellant did not submit any arguments in response hereto either.

In view of the above, also the appellant's second auxiliary request is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated