

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [X] To Chairmen
- (D) [-] No distribution

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

Case Number: T 1480/12 - 3.4.03

Application Number: 09012503.0

Publication Number: 2161693

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 Art. 84, 83

EPC R. 50(1), 137(3)

Keyword:

Clarity (no)

Sufficiency of disclosure (no)

Decisions cited:

Catchword:

Claim according to auxiliary request only recited in statement setting out the grounds of appeal. In order to be considered, new requests should be provided with amended application documents in accordance with Rule 50 EPC (cf Reasons, point 5).



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1480/12 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 10 December 2014

Appellant: TouchTunes Music Corporation
(Applicant) 850 Third Avenue, Suite 15C
New York, NY 10022 (US)

Representative: Debay, Yves
Cabinet Debay
126 Elysée 2
78170 La Celle Saint Cloud (FR)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 14 March 2012
refusing European patent application No.
09012503.0 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. 09 012 503, a divisional application of application No. 05 292 362, for lack of an inventive step, Article 56 EPC, (main request, first and second auxiliary requests) over documents

D1: DE 199 04 007 A

D2: "http://www.computing.net/answers/hardware/2-sound-cards-at-once/6293.html", dated 20.12.2002

D3: "http://www.computing.net/answers/hardware/2-sound-cards-in-1-machine/28190.html", dated 17.8.2004

D4: US 2004/0205171 A

D5: EP 1 408 427 A.

A third auxiliary request of the appellant for the grant of a patent on the basis of a new claim 1 consisting of a merge of claims 1 and 19 according to the second auxiliary request was not admitted into the procedure under Rule 137(3) EPC, as such a claim was not considered to overcome the Article 56 EPC objection. The examining division held that the request, though not presented in writing, was sufficiently clear for the division to decide on admissibility.

II. With the statement setting out the grounds of appeal of 19 June 2012, 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 19 according to the appellant's main request titled "*Requête principale*" filed with letter dated 18 November 2011, or

First auxiliary request:

Claims 1 to 19 according to the appellant's first auxiliary request titled "*Première requête subsidiaire*" filed with letter dated 18 November 2011, or

Second auxiliary request:

Claims 1 to 19 according to the appellant's second auxiliary request titled "*Deuxième requête subsidiaire*" filed with letter dated 18 November 2011, or

Third auxiliary request:

Claim 1 recited in the statement setting out the grounds of appeal dated 19 June 2012 on pages 27 and 28.

- 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.

Regarding the appellant's requests in the statement setting out the grounds of appeal, the appellant was informed that, in order to be considered, new requests should be provided with amended application documents

in accordance with Rule 50 EPC. No such amended application documents were filed in respect of the third auxiliary request.

Furthermore, the appellant was informed that it appeared that claim 1 according to the appellant's main request, as well as the first and second auxiliary requests lacked clarity, contrary to Article 84 EPC, and doubts existed as to whether the requirements of Article 83 EPC were met.

Moreover, the appellant was informed that it appeared that the subject-matter of claim 1 of all requests lacked an inventive step in the sense of Article 56 EPC over document D1. In particular, claim 1 was considered to contain both technical features and non-technical features pertaining to the fields of schemes for doing business and administrative schemes, the features making no contribution to the technical character of the invention not supporting the presence of an inventive step.

- IV. With a letter dated 1 December 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 10 December 2014 in the absence of the duly summoned appellant.

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

"A jukebox comprising:

*instances of media available for output;
a plurality of output channels,
a collection mechanism, wherein a fixed amount of money
is collected for playing preselected instances of media
and
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
wherein the user interface allows to identify the user
and allows the user to search for media using a
personal music assistant, comprising:
a data entry mechanism, to identify the user and to
collect profiling information about the user and;
a comparator, to compare the entered profiling
information to selections made by other users with
similar profiles and to recommend a list of media to
the user;
a display, to output the list of recommended media; and
a selector, for specifying which instance of media
should be played."*

Claim 6 is directed to a corresponding method of
outputting a user selectable instance of media in one
or more user selectable areas 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 fifth feature reading as follows:

*"wherein the user interface allows to identify the user
if the user is not already identified and allows the
user to search for media using a personal music
assistant, comprising:"*

Claim 6 is directed to a corresponding method of outputting a user selectable instance of media in one or more user selectable areas 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,
a collection mechanism, wherein a fixed amount of money is collected for playing preselected instances of media and
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 wherein the user interface allows to identify the user if the user is not already identified and allows the user to search for media using a personal music assistant, comprising:
a data entry mechanism, to identify the user and a data entry mechanism used to collect information to generate a profile of the user and;
a process for maintaining a list of selections made by the user;
a comparator, to compare the entered profiling information to selections made by other users with similar profiles and a process to recommend a list of media to the user;
a display, to output the list of recommended media; and
a selector, for specifying which instance of media should be played."*

Claim 6 is directed to a corresponding method of outputting a user selectable 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:

The subject-matter of claim 1 according to the main request was both new and inventive over documents D2 and D3.

In particular, documents D2 and D3 concerned a computer and had nothing to do with a jukebox. Moreover, documents D2 and D3 did not explicitly teach either a data entry mechanism, or a display, or a selector. Furthermore, documents D2 and D3 did not teach any comparator.

Moreover, the examining division incorrectly identified features that did not solve any technical problem but an administrative problem.

The subject-matter of claim 1 according to the main request was also both new and inventive over document D1, even when combined with any one of documents D2, D3 or D5.

In particular, document D1 did not teach explicitly or suggest *"a user interface, wherein the user interface allows a user to select one or more of the plurality of output channels"*. Moreover, document D1 did not teach any comparator.

Claim 1 according to the first and second auxiliary further contained clearly technical and non-obvious features and, thus, also involved an inventive step.

Moreover, the examining division should have accepted the third auxiliary request for the reasons already stated for the other requests.

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 *Clarity, sufficiency of disclosure*

Claim 1 of the main request defines "a comparator, to compare the entered profiling information to selections made by other users with similar profiles".

It is, however, unclear how profiling information (such as age etc. (cf description, page 19, lines 11 to 13)) should be compared to selections (eg songs) made by other users with similar profiles.

Accordingly, claim 1 lacks clarity, contrary to Article 84 EPC.

Moreover, as the above does not become clear from the description and drawings either, the application as a whole does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, contrary to the requirement of Article 83 EPC.

The above was noted in the 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 main request is not allowable.

4. *First and second auxiliary requests*

The above also applies with respect to claim 1 and the remaining application documents according to the appellant's first and second auxiliary requests.

Accordingly, the appellant's first and second auxiliary requests are not allowable either.

5. *Third auxiliary request*

As a third auxiliary request, the appellant requested the grant of a patent on the basis of a claim 1, consisting of a merge of claims 1 and 19 according to

the second auxiliary request, recited in the statement setting out the grounds of appeal on pages 27 to 28.

In the communication annexed to the summons to oral proceedings before the board, the appellant was informed that, in order to be considered, new requests should be provided with amended application documents in accordance with Rule 50 EPC.

No such amended application documents were filed in respect of the third auxiliary request, neither before the examining division, nor with the statement setting out the grounds of appeal, nor in response to the communication of the board annexed to the summons to oral proceedings.

Rule 50(1) EPC, in particular in conjunction with Rule 49 EPC, requires amended application documents, such as amended claims, to be presented on separate sheets and meeting certain form requirements. This is essential for further processing of the application, and, not least, avoids any doubts about what exactly is requested to be granted. As such, the board views critically the procedure followed by the examining division, deciding on the third auxiliary request based merely on an indication of the applicant of a merging of claims without any concrete claim being actually filed. In particular, in view of the fact that no amended application documents were filed at all in respect of the third auxiliary request in the first-instance proceedings, the board deemed it necessary in the present case to insist on the filing of proper amended application documents before proceeding to consider any such request. As noted above, no amended application documents were filed in respect of the third auxiliary request in response to the

communication of the board annexed to the summons to oral proceedings.

Moreover, it is noted that since claim 1 as recited in the statement setting out the grounds of appeal contains the same unclear feature as claim 1 of the main request, it does not overcome the above objections under Articles 84 and 83 EPC.

For the above reasons, no consent is given to the amendment according to the appellant's third auxiliary request, in accordance with Rule 137(3) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated