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**Datasheet for the decision
of 22 April 2015**

Case Number: T 1528/12 - 3.5.05

Application Number: 09012155.9

Publication Number: 2169577

IPC: G06F19/00

Language of the proceedings: EN

Title of invention:

Method and system for medical imaging reporting

Applicant:

Algotec Systems Ltd.

Headword:

Medical report templates/ALGOTEC

Relevant legal provisions:

EPC Art. 56

Keyword:

Admission of written summary filed at oral proceedings - (yes)
Inventive step - (no): obvious user preferences

Decisions cited:

T 1122/01, T 0478/06

Catchword:



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Chambres de recours**

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Case Number: T 1528/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 22 April 2015

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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 6 February 2012
refusing European patent application
No. 09012155.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: K. Bengi-Akyuerek
F. Blumer

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, posted on 6 February 2012, to refuse European patent application No. 09012155.9 on the grounds of added subject-matter (Article 123(2) EPC) and lack of clarity (Article 84 EPC) in respect of the claims of a main request, lack of clarity with respect to a first auxiliary request and lack of inventive step (Article 56 EPC) in respect of a second auxiliary request, having regard to the disclosure of

D5: US-A-2007/0237377.

II. Notice of appeal was received on 3 April 2012. The appeal fee was paid on the same day. With the statement setting out the grounds of appeal, received on 5 June 2012, the appellant filed an amended set of claims as its main and sole request, which was based on the former second auxiliary request underlying the appealed decision. It requested that the decision of the examining division be set aside and that a patent be granted on the basis of the main request. In addition, it contended that the examining division committed two substantial procedural violations in the first-instance proceedings, but did not request reimbursement of the appeal fee.

III. A summons to oral proceedings scheduled for 22 April 2015 was issued on 19 January 2015. In an annex to this summons, the board expressed its preliminary opinion on the appeal pursuant to Article 15(1) RPBA. In particular, it raised objections under Article 56 EPC in view of D5. In addition, the appellant was also informed that the board could not recognise that any substantial procedural violation might have occurred in

the first-instance proceedings.

- IV. By letter of reply dated 23 March 2015, the appellant filed amended claims according to a new main request and two auxiliary requests, replacing the former main request on file, along with counter-arguments on the objections raised in the board's communication under Article 15(1) RPBA.
- V. Oral proceedings were held as scheduled on 22 April 2015, during which the appellant submitted a written summary of comments on D5. All the pending claim requests and the written summary were admitted into the proceedings and were discussed. Concerning the main request, the appellant did not provide any further comments as to its substance at the oral proceedings, but only referred to the respective written submissions.

The appellant's final request was that the decision under appeal be set aside and that a patent be granted on the basis of the main request or either of the auxiliary requests.

At the end of the oral proceedings, the decision of the board was announced.

- VI. Claim 1 of the **main request** reads as follows:

"A method for supporting a preparation of a medical report for a patient, comprising:

acquiring (102, 103) a medical imaging study and a medical record related to the patient;

automatically matching (104) a report template from a plurality of report templates to said medical imaging study and said medical record according to one

characteristic thereof, said templates being tagged with a set of more than one template rule, said more than one template rule each defining said studies for which said respective template is suitable, wherein for each template the set of rules is accessed and the respective data from said at least one of a medical imaging study and a medical record is extracted, the matching being carried out between the extracted data and the set of rules;

presenting said matched report template to allow a user to provide a diagnosis of said medical imaging study and said medical record; and

embedding (105) said diagnosis in said matched report template."

Claim 1 of the **first auxiliary request** adds to the features of claim 1 of the main request the following additional phrase:

"said defining comprising a modality, anatomic site, patient type, or pathology for which the template is suitable".

Claim 1 of the **second auxiliary request** reads as follows (amendments made to the main request underlined by the board):

"A method for supporting a preparation of a medical report for a patient, comprising:

acquiring (102, 103) a medical imaging study and a medical record related to the patient;

automatically matching (104) a report template from a plurality of report templates to said medical imaging study and said medical record according to one characteristic thereof, said templates being tagged with respective sets of more than one template rule,

said more than one template rule each defining said studies for which said respective template is suitable, said defining comprising a modality, anatomic site, patient type, or pathology for which the respective template is suitable, wherein for each template the set of rules is accessed and the respective data from said at least one of a medical imaging study and a medical record is extracted, the matching being carried out between the extracted data and the set of rules;

presenting said matched report template to allow a user to provide a diagnosis of said medical imaging study and said medical record; and embedding (105) said diagnosis in said matched report template."

Reasons for the Decision

1. The appeal is admissible.
2. Since the present second auxiliary request is more limited in scope than the main request and the first auxiliary request, the board commences with the reasoning for the second auxiliary request.
3. SECOND AUXILIARY REQUEST

Claim 1 of this request differs from claim 1 of the second auxiliary request underlying the appealed decision basically in that it further specifies that (emphasis added by the board)

- A) the medical report templates are tagged with respective sets of more than one template rule;

B) each template rule defines a modality, anatomic site, patient type, or pathology for which the template is suitable.

The board accepts that the above amendments are supported by the application as filed (see page 15, lines 22-25) and thus comply with Article 123(2) EPC.

3.1 *Admission of written summary into appeal proceedings*

The written summary of comments on D5 was submitted during the oral proceedings before the board (see point V above). In this context, the board is aware of decision T 1122/01 (see point 2), which refused computer-generated presentations at oral proceedings as written presentation of information. However, the board considers that, in the present *ex parte* case, the written summary of comments on D5 comprises comments and arguments which had already been presented in writing and were presented orally at the oral proceedings by the representative, *inter alia* by reading out the document, and that the summary was not very extended (i.e. about one page long). Therefore, the board exercised its discretionary power and admitted said written summary into the appeal proceedings.

3.2 Article 52(1) EPC: Novelty and inventive step

In the board's judgment, claim 1 of the second auxiliary request does not meet the requirements of Article 52(1) EPC in conjunction with Article 56 EPC, for the following reasons:

3.2.1 The board first notes, for the sake of completeness, that it is satisfied that the subject-matter of claim 1

possesses technical character and is thus considered an "invention" within the meaning of Article 52(1) EPC, since the method step of *automatically* matching a report template according to claim 1 implies the use of technical means such as a general-purpose computer.

3.2.2 The board concurs with the examining division (cf. appealed decision, section 17.2) that D5 discloses the following features of claim 1:

A method for supporting a preparation of a medical report ("radiological image reading report"; see Fig. 6) for a patient, comprising:

- a) acquiring a medical imaging study ("diagnosis target image 150") and a medical record ("radiological report 120") related to the patient (see e.g. paragraph [0069] in conjunction with Fig. 2);
- b) automatically matching a report template ("case report creation template 140") from a plurality of report templates to said medical imaging study and medical record according to one characteristic ("similarity level" between diagnosis target image 150 and case image 110) thereof (see e.g. paragraphs [0074] and [0075]);
- c) wherein each template is accessed and the respective data from the medical imaging study and the medical record is extracted, the matching being carried out between the extracted data and the templates (see paragraph [0076] in conjunction with Fig. 6, steps S105 to S107);
- d) presenting said matched report template to allow a user to provide a diagnosis of said medical imaging study and said medical record and embedding said diagnosis in said matched report

template (see e.g. Fig. 6, steps S108 to S110).

3.2.3 As regards feature b), the appellant argued that D5 taught that the case images 110 were considered and selected as being the closest to the diagnosis target image 150 *by the doctor* to provide a suitable text passage rather than a template to form the corresponding medical report (cf. written summary of comments on D5, third paragraph). In fact, though the *most* similar case image is indeed supposed to be selected by the doctor rather than by an automated system according to paragraph [0083] of D5, it is apparent to the board that similar case images are automatically retrieved and matched to the multitudes of pre-stored templates in the system of D5 (see e.g. paragraphs [0074] and [0075]: "The case report storage unit ... includes multitudes of case report creation templates 140, each constituted by a case image 110 and a report text model 130 of the case image 110 ... The report creation support apparatus 40 includes: a similar case image retrieval means 41 for retrieving the case image 110 of a case report creation template 140, which is similar to a diagnosis target image 150 ..." in conjunction with Fig. 6, steps S105 and S106). Therefore and since the extent of the matching step is not further defined in feature b) of claim 1, the above embodiment of D5 perfectly falls within its terms.

3.2.4 In conclusion, even though the phrase "tagged with" may, in the absence of a more detailed definition in the present application as to how tagging is actually performed, be broadly interpreted and D5 inherently foresees that different templates are pre-selected according to different matching criteria (i.e. rules) for determining the "similarity level" between the

acquired diagnosis target image and the case image of a certain template (see e.g. D5, paragraph [0076], options (a) to (d); Fig. 6, step S106), the board eventually agrees with the appellant that D5 fails to disclose directly and unambiguously that

- i) the templates are tagged with respective sets of template rules, each defining a modality, anatomic site, patient type, or pathology for which the template is suitable.

Hence, the subject-matter of claim 1 of the second auxiliary request is considered to be novel over D5 (Article 54 EPC).

3.2.5 As regards distinguishing feature i), the appellant appears to argue that it had the effect of producing a medical report that showed the same medical problem from the point of view of different modalities (cf. written summary of comments on D5, item 2). However, the board rather considers that the distinguishing feature does not yield a technical effect other than matching an electronic form (i.e. "medical report template") to pre-acquired data (i.e. "medical imaging study"; "medical record") based on pre-defined medical rules (i.e. "template rules" based on "modality, anatomic site, patient type, or pathology") by an automated computer system, as also utilised in D5 (see e.g. Fig. 2). Achieving such an effect, in the board's view, does not necessitate any inventive skills.

Moreover, the board finds that the definition and use of patient-related rules (such as modality, patient type, anatomic site or pathology) for selecting medical templates are merely governed by diagnostic considerations on the part of a doctor as a user of the

computer system in question and are conditional exclusively on his subjective preferences. Thus, the type of template rules to be used can likewise not contribute to an inventive step (see e.g. T 478/06, point 6). It is also worth noting that the present application does not provide sufficient information on how the matching is actually technically implemented, so that the board must assume that those rules are defined and implemented in a straightforward way. This was not contested by the appellant at the oral proceedings before the board.

3.2.6 For the above reasons, the subject-matter of claim 1 of this auxiliary request does not involve an inventive step.

3.3 In conclusion, the second auxiliary request is not allowable under Article 56 EPC.

4. MAIN REQUEST and FIRST AUXILIARY REQUEST

As these requests are broader in scope than the second auxiliary request (cf. point VI above), the board holds that the subject-matter of claim 1 of those requests a *fortiori* lacks an inventive step (Article 56 EPC) based on the reasoning as regards the second auxiliary request set out in point 3.2 above.

The board notes with regard to the main request that claim 1 does not specify that the template rule is defined on the basis of any modality, anatomic site, patient type, or pathology. Thus, the appellant's argument that the generated report takes into consideration different modalities or patient types (see written summary of comments on D5, items 1 and 2) must fail as the underlying difference is not reflected

in that claim. Accordingly, the main and first auxiliary requests are likewise not allowable under Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated