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**Datasheet for the decision
of 20 August 2019**

Case Number: T 0748/13 - 3.5.01

Application Number: 10158168.4

Publication Number: 2237203

IPC: G06Q10/00

Language of the proceedings: EN

Title of invention:

System and method for queue management

Applicant:

Q.nomy

Headword:

Queue image/Q.NOMY

Relevant legal provisions:

EPC Art. 116(1), 84, 123(2), 56

EPC R. 103(1)(a), 111

Keyword:

Oral proceedings - withdrawal of request for oral proceedings
Reimbursement of appeal fee - appealed decision reasoned (yes)
Claims - clarity (no)
Amendments - added subject-matter (yes)
Inventive step - allowing the user to select an image
representing him in a queue (no - not technical)

Decisions cited:

T 0003/90, T 0641/00



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Case Number: T 0748/13 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 20 August 2019

Appellant: Q.nomy
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 24 September
2012 refusing European patent application No.
10158168.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: A. Wahrenberg
C. Schmidt

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse the European patent application No. 10158168.4.
- II. In first instance proceedings, the appellant requested a "decision according to the state of the file". Following this request, the examining division issued its decision on EPO form 2061 which made reference to a communication dated 23 February 2012. That communication contained an objection of lack of inventive step of the claimed subject-matter in view of D1 (WO 2005/010636 A2).
- III. In the statement setting out the grounds of appeal dated 24 January 2013, the appellant requested that the decision to refuse the application be set aside and that a patent be granted on the basis of an amended set of claims. The appellant also requested the refund of the appeal fee according to Rule 103(1)(a) EPC, and oral proceedings in the event that the Board was minded to refuse the appellant's requests.
- IV. The Board summoned the appellant to oral proceedings. In a communication accompanying the summons, the Board set out its preliminary view that the request for the reimbursement of the appeal fee was unfounded and that the claimed subject-matter appeared to lack clarity (Article 84 EPC) and an inventive step over D1 (Article 56 EPC), as well as containing added matter (Article 123(2) EPC).

- V. The appellant replied by letter that neither the appellant, nor the appellant's representative would attend the oral proceedings.
- VI. The Board sent a communication informing the appellant that, in view of the appellant's letter, which amounted to a withdrawal of the request for oral proceedings, the oral proceedings were cancelled, and the Board would issue a decision on the case as it stood.

VII. Claim 1 reads:

A computer-implemented method for management of a queue comprising:

receiving at a user interface identification information identifying a user;
presenting a plurality of images on a display, none of the presented images being associated with any other user currently in the queue;
receiving input selecting one of the images;
associating the selected image with the user;
updating a list of available images in response to the selection of an image, whereby a different image is associated with each user;
displaying the user's queue status on a display (162) using the image; and
summoning the user when the user reaches the front of the queue by displaying the image associated with the user on a display.

VIII. The appellant's arguments in the statement of grounds of appeal can be summarised as follows:

The decision to refuse the application was not correctly reasoned and did not comply with Rule 112 [sic] EPC or the Guidelines for Examination C-V 15.2

because the grounds for refusal were not clearly identified.

The decision contained a brief statement according to which the application was being refused because the applicant requested a decision according to the state of the file. That in itself did not lead to the conclusion that the application did not meet the requirements of the EPC.

The feature of receiving input selecting one of the images "from a user" had been removed from claim 1 on appeal; this did not change the scope of the claim.

The added feature of updating a list of available images in response to the selection of an image was based on the disclosure in paragraphs [0040] and [0041] of the application as filed.

Article 52(1) (a) and (c) and Article 52(3) EPC did not specifically refer to administrative schemes and the reasoning in the examining division's communication did not identify which of these provisions was applicable and why.

The claimed invention differed from D1 in that:

- a) the image was selected by the user;
- b) the image was associated with the user;
- c) a plurality of images were presented on a display, none of which were associated with any other user currently in the queue;
- d) a list of available images was updated in response to the selection of an image, whereby a different image was associated with each user.

By enabling the user to select an image, the claimed invention helped to avoid the user forgetting his selected image, which could result in a failed summons. The avoidance of a failed summons was a technical effect. The technical problem solved was, thus, the identification of a ticket to the customer in such a way as to reduce the likelihood of a failed summons.

Reasons for the Decision

1. *Non attendance at oral proceedings*

The practice of the Boards of Appeal is to interpret a statement by a party that it will not attend or be represented at oral proceedings as a withdrawal of any previous request for oral proceedings pursuant to Article 116(1) EPC by that party (see decision T 3/90, OJ EPO 1992, 737). Indeed, the purpose of oral proceedings is to allow the parties to present their case orally. Thus, interpreting the statement as a request that the Board hold oral proceedings without the requesting party does not make any sense because such a request would serve no legitimate purpose.

2. *The invention*

2.1 The invention concerns a method for queue management.

2.2 In queuing systems before the invention, it was common that the customer received a ticket with a number representing the customer's place in the queue, and the customer was summoned by displaying or announcing the number. This sometimes resulted in a failed summons,

because the customer did not notice that his number was being displayed or announced.

2.3 The invention deals with this problem by allowing the customer to select an image, from a set of available images, to represent him in the queue. The customer is summoned by displaying the image. According to the application, the customer is more likely to notice an image that he himself has selected.

3. *Clarity and added matter*

3.1 In the Board's view, claim 1 lacks clarity (Article 84 EPC), and relates to subject-matter which extends beyond the application as filed (Article 123(2) EPC), for the following reasons.

3.2 The method of claim 1 comprises the step of "receiving at a user interface identification information identifying a user". However, this information is not used anywhere in the method leading to doubts about this feature. Furthermore, in the application as filed (see e.g. paragraph [0023]), the identification information is not used at all in connection with the selection of an image.

3.3 On appeal, claim 1 was amended to remove the step of receiving a selection from a user. Amended claim 1 includes "receiving input selection", which is not necessarily a user input. Thus, the whole point of allowing the user to select an image seems to have been removed from claim 1. This removal of a clearly essential feature infringes Article 123(2) EPC.

3.4 Amended claim 1 contains the step of updating a list of available images in response to the selection of an

image. However, in the application as filed the set of available images is not updated only when a user has selected an image; it is also updated when the user leaves the queue, for example. Therefore, the amendment appears to be an intermediate generalisation, i.e added matter (Article 123(2) EPC).

4. *Inventive step*

4.1 The examining division considered that the subject-matter of claim 1 lacked an inventive step over D1. The Board does not see any error in the approach taken by the examining division.

4.2 D1 discloses a queue management system (QMS), in which each customer gets a number representing the customer's place in a queue (Figure 5). The number is displayed on a display (Infopoint screen in Figure 5). The Board agrees with the examining division that the number may be seen as an "image" in the sense of claim 1.

4.3 In D1, it is clear that each number is associated with only one customer. Therefore, in assigning a number to a customer, the list of available numbers must be updated so as to remove numbers that are already in use. Therefore, D1 discloses "the additional limitations" c) and d) identified by the appellant in the statement of grounds of appeal.

4.4 In the Board's view, the subject-matter of claim 1, differs from D1 in that the image is selected by the customer (user) from a plurality of available images presented on a display. This is the same difference as identified by the examining division in the communication of 23 February 2012. Although present claim 1 does not say that the input is received from

the user (see point 4.3 above), the Board continues its analysis on that basis.

- 4.5 The examining division considered that the feature of allowing the user to select his queue image was administrative rather than technical. Although administrative methods are not explicitly mentioned in Article 52(2) EPC, the list of non-technical subject-matter is not exhaustive. It is established case law of the Boards of Appeal that only subject-matter which contributes to the technical character of the invention by providing a technical effect can contribute to inventive step (see T 641/00 - *Two identities/ COMVIK*).
- 4.6 The appellant argued that, if the user is able to choose an image, there is a greater likelihood of the image being remembered, firstly because the act of having selected the image will be in the mind of the user, and secondly, the user is able to choose the image that he or she is most likely to remember. Thus, in the appellant's view, the invention reduces the risk of a failed summons, which is a technical effect.
- 4.7 The Board is not persuaded. The effect mentioned by the appellant is psychological at best, and speculative at worst. It is entirely dependent on the user's state of mind. The Board does not see any technical effect provided by allowing the user to select an image.
- 4.8 The technical problem solved by the invention is the modification of the QMS system of D1 to implement the user selection. The Board agrees with the examining division that the implementation would have been straightforward and obvious to the skilled person.

4.9 For the reasons as set out above, the Board concludes that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

5. *The request for reimbursement of the appeal fee*

5.1 Pursuant to Rule 103(1)(a) EPC, the appeal fee shall be reimbursed if the Board deems the appeal to be allowable, and if such reimbursement is equitable by reason of a substantial procedural violation.

5.2 The appellant argued that the decision of the examining division was not properly reasoned, because the grounds for refusal were not clearly identified. A lack of sufficient reasoning in the appealed decision, in violation of Rule 111 EPC, is generally regraded as a substantial procedural violation within the meaning of Rule 103(1)(a) EPC.

5.3 The decision of the examining division was issued on EPO Form 2061 (often called a "decision according to the state of the file"), of which the section "Grounds for the decision" reads:

"In the communication(s) dated 23 February 2012 the applicant was informed that the application does not meet the requirements of the European Patent Convention. The applicant was also informed of the reasons therein.

The applicant filed no comments or amendments in reply to the latest communication but requested a decision according to the state of the file by a letter received in due time on 17 August 2012.

The application must therefore be refused."

5.4 The appellant seemed to argue that the EPO Form was itself ambiguous because the statement "*The application must therefore be refused*" could be read as referring to the applicant's request for a decision rather than the reasons set out in the communication of 23 February 2012.

5.5 The Board finds this argumentation to be unconvincing, to say the least. There is no reasonable reading of the decision under appeal that would cause doubts as to the reasons why the application was refused. Indeed, the alleged ambiguity of Form 2061 did not prevent the appellant from providing a reasoned statement against the examining division's objections. The decision of the examining division thus satisfies the requirements of Rule 111 EPC, and, consequently, there was no substantial procedural violation.

5.6 For this reason, the appellant's request for reimbursement of the appeal fee cannot be allowed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated