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Datasheet for the decision
of 21 June 2018

Case Number: T 1655/13 - 3.5.07

Application Number: 02777607.9

Publication Number: 1586013

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:
Data management

Applicant:
Loureiro, Jorge Diniz Queiroga

Headword:
Data management/LOUREIRO

Relevant legal provisions:
EPC Art. 84, 123(2)

Keyword:
Claims - clarity (no) - support in the description (no)
Amendments - added subject-matter (yes)

Case Number: T 1655/13 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 21 June 2018

Appellant: Loureiro, Jorge Diniz Queiroga
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Decision under appeal: **Decision of the Examining Division of the**
                             European Patent Office posted on 8 January 2013
                             refusing European patent application
                             No. 02777607.9 pursuant to Article 97(2) EPC

Composition of the Board:

Chairman   R. Moufang
Members: P. San-Bento Furtado
                   M. Jaedicke

Summary of Facts and Submissions

I.   The appeal lies from the decision of the Examining
        Division to refuse European patent application
        No. 02777607.9. It was filed on 17 October 2002 as
        international application PCT/IB02/04273, which has the
        publication number WO 03/034173 A2. While the applicant
        had originally claimed the priority of the South
        African application ZA 2001/8533 of 17 October 2001, he
        withdrew the priority claim in the international phase
        (see the International Bureau's notification of
        withdrawal of 19 April 2004).

II.   The decision under appeal refused the application on
        the grounds of lack of novelty of the independent
        claims of the main request and lack of inventive step
        of the subject-matter of claim 1 of the first and
        second auxiliary requests – all three requests having
        been filed during the oral proceedings – over the
        following prior-art document:
        D1: WO 01/77883 A1, published on 18 October 2001.

        The Examining Division was further of the opinion that
        some features of the invention lacked technical
        character. The subject-matter of dependent claims 2, 7
        to 9 and 15 of the main request was not new, and that
        of the remaining claims 3 to 6 and 10 to 13 not
        inventive over document D1 alone or in combination with
        the following document:
        D3: US 2002/0091836 A1, published on 11 July 2002.

        As an additional comment, the Examining Division
        expressed the opinion that the claims were drafted in
        such vague and general terms that any web server which
        allowed users to create websites using website
        templates, the technical means of which were well

known, would disclose the main technical aspects of the
invention.

III.   In the statement of grounds of appeal, the appellant
        requested that the decision be set aside and that a
        patent be granted on the basis of the main request or
        of either the first or second auxiliary request, all
        three requests as considered in the appealed decision,
        or on the basis of one of the third to tenth auxiliary
        requests submitted with the grounds of appeal (the
        first to tenth auxiliary requests being hereinafter
        also referred to as auxiliary requests 1 to 10).

IV.   In a communication accompanying a summons to oral
        proceedings, the Board tended to agree with the
        Examining Division that the claims contained some non-
        technical features and defined the subject-matter in
        technically vague terms. It informed the appellant
        that, at the oral proceedings, it would have to be
        discussed how to interpret the claims and whether there
        was support for some of the claimed features in the
        description or in the application as originally filed.
        The discussion of those questions was especially
        relevant with regard to features on which the appellant
        had based its reasoning in favour of inventive step.
        The Board then discussed the interpretation of features
        of claim 1 of the main request, taking into account the
        submissions by the appellant. The Board expressed its
        preliminary opinion that claim 1 of the main request
        did not fulfil the requirements of Articles 84
        and 123(2) EPC.

        As regards novelty over document D1, the Board noted
        that, due to the withdrawal of the priority claim, D1
        seemed to constitute state of the art with regard to
        the European application. The Board could not identify

any technical difference between the feature alleged to
be distinguishing by the appellant and the creation of
a hyperlink as known from the prior art and from
document D1. The Board was not convinced that there was
a basis in the application for the appellant's
interpretation of this feature.

The Board was of the preliminary opinion that the
subject-matter of claim 1 was not inventive over the
Microsoft Internet Explorer (IE) suite of programs,
taking into account the features of that product which
were well known before the application under
consideration, and as was described in documents
introduced by the Board. The distinguishing features
seemed to merely reflect the organisation of the
database's informational content on the basis of non-
technical criteria and lacked inventive step.

At least some of the preliminary objections to claim 1
of the main request under Articles 84 and 123(2) EPC
applied to claim 1 of each of the auxiliary requests.
Some of the additional features in those claims were
unclear. The additional features of claim 1 of the
auxiliary requests lacked technical character, were
obvious and/or known from the prior art and did not
involve an inventive step.

V.   In a letter of reply the appellant informed the Board
that he would not attend the oral proceedings and would
not make any further submissions.

VI.   The oral proceedings were held on 21 June 2018 in the
absence of the appellant. At the end of them, the
chairman pronounced the Board's decision.

VII.   The appellant had requested in writing that the
        contested decision be set aside and that a patent be
        granted on the basis of the main request or of either
        the first or second auxiliary request, all three
        requests as considered in the appealed decision, or on
        the basis of one of the third to tenth auxiliary
        requests submitted with the grounds of appeal.

VIII.   Claim 1 of the main request reads as follows:
        "A computer program product for managing information
        relating to a particular topic, the computer program
        product including program instructions:

            for compiling a database in which the information is
        stored, the database including a first portion (10)
        subdivided into first sub-portions (12) and a second
        portion (10) subdivided into second sub-portions (12),
        wherein the information is stored in the first and
        second sub-portions,

            for linking the first sub-portions (12) of the first
        portion (10) of the database, to one another in a
        predetermined linear sequential arrangement such that
        navigation from a first sub-portion to another
        succeeding or preceding first sub-portion with the
        sequence is permitted and wherein each subsequent sub-
        portion (12) in the sequential arrangement contains
        increasing information on the topic,

            for linking the second sub-portions (12) of the
        second portion (10) of the database, to one another in
        a predetermined linear sequential arrangement such that
        navigation from a second sub-portion to another
        succeeding or preceding second sub-portion with the
        sequence is permitted and wherein each subsequent sub-
        portion (12) in the sequential arrangement contains
        increasing information on the topic,

            for defining primary key expressions by a compiler
        in the information contained in selected sub-portions

of at least one of the first sub-portions (12) and the
second sub-portions (12),

   for creating user-executable links between each
primary key expression and another sub-portion (12) of
the database thereby permitting a user to jump from the
primary key expression to said another sub-portion (12)
by clicking on the primary key expression, and

   for recording an address for said one sub-portion
(12) in the database from which a the [sic] user-
executable navigation link is made to said another sub-
portion (12), in order to allow a user to return to
said one sub-portion."

IX.   Claim 1 of the first auxiliary request differs from
        that of the main request in that, apart from the
        deletion of the last word of its penultimate paragraph
        ("and"), the following text has been added at the end
        of the claim:
           "the database includes explanatory notes and wherein
        selected sub-portions (12) include secondary key
        expressions which are embedded in the information
        contained in said selected sub-portions (12), and
           the computer program product including program
        instructions for linking each secondary key expression
        to a particular explanatory note."

X.   Claim 1 of the second auxiliary request differs from
        that of the main request in that, apart from the
        deletion of the last word of its penultimate paragraph
        ("and"), the following text has been added at the end
        of the claim:
           "for displaying on a display device, title
        information representing each sub-portion (12) from
        which a link is made via said primary key expressions,
        so as to provide a user with a record of a conversation

path formed by sub-portions (12) of the database which
are linked via said primary key expressions, and
    for recording and displaying said title information
in an order representing the sequence in which the sub-
portions (12) were accessed by a user."

XI.   Claim 1 of the third auxiliary request differs from
        that of the second auxiliary request in that the
        following text has been added at the end of the claim:
        "for compiling the databases such that the database
        includes explanatory notes and such that selected sub-
        portions (12) include secondary key expressions which
        are embedded in the information contained in said
        selected sub-portions (12), and
            for linking each secondary key expression to a
        particular explanatory note."

XII.   Claim 1 of the fourth auxiliary request differs from
        that of the third auxiliary request in that the
        following text has been inserted before "for compiling
        the databases":
        "for linking each primary key expression to another
        sub-portion (12) of the database which contains
        increasing information relating to the subject matter
        of the primary key expression,".

        Furthermore, the following text has been added at the
        end:
          "for compiling the databases such that the
        explanatory notes of the database have primary key
        expressions embedded therein, and
            for linking each primary key expression to a
        predetermined sub-portion (12) of the database."

XIII.   Claim 1 of the fifth auxiliary request differs from
        that of the fourth auxiliary request in that the
        following text has been added at the end of the claim:
           "for compiling the databases such that the
        explanatory notes of the database have secondary key
        expressions embedded therein, and
           for linking each secondary key expression to another
        explanatory note."

XIV.   Claim 1 of the sixth auxiliary request differs from
        that of the fifth auxiliary request in that the
        following text has been added at the end of the claim:
           "for compiling the databases such that the database
        includes default explanatory notes which each contain
        information in the form of an overview of the
        information contained in a particular sub-portion (12)
        of the database, and
           for displaying the default explanatory note
        simultaneously with the relevant sub-portion (12) on a
        display device."

XV.   Claim 1 of the seventh auxiliary request differs from
        that of the sixth auxiliary request in that the
        following text has been added at the end of the claim:
           "for compiling the databases such that portions (10)
        of the database are arranged in sets which are
        sequentially arranged, and
           for linking pre-selected sub-portions (12) of a
        particular portion of one set (14) to the first sub-
        portion (12) of at least one portion (10) of succeeding
        set."

XVI.   Claim 1 of the eighth auxiliary request differs from
        that of the seventh auxiliary request in that the
        following text has been added at the end of the claim:

"for linking the portions (10) and sub-portions (12)
of the database by means of hypertext links, and
for recording the address in the database of each
sub-portion (12) of the database from which a link
using a primary key expression is achieved."

XVII. Claim 1 of the ninth auxiliary request differs from
that of the second auxiliary request in that the
following text has been added at the end of the claim:
"including a feedback component including program
instructions permitting any part of the information
contained in a sub-portion (12) or explanatory note of
the database, to be selected by a user and for the
user's selection to be recorded."

XVIII. Claim 1 of the tenth auxiliary request differs from
that of the ninth auxiliary request in that the
following text has been added at the end of the claim:
"including a monitoring component which includes
program instructions for recording users' selections of
primary and secondary key expressions."

XIX.   In the grounds of appeal the appellant argued with
respect to the main request that document D1 did not
disclose the step in claim 1 of "defining primary key
expressions by a compiler in the information contained
in selected sub-portions of at least one of the first
sub-portions and the second sub-portions". Document D1
disclosed that the user created links; that a user was
able to "link", or "bookmark", a web page. By contrast,
the invention provided a completely different and
opposite teaching. The appellant argued that, according
to the aforementioned step, "not a user and instead a
compiler automatically creates the so called primary
key expressions" and the primary key expressions were
created in the information contained in selected sub-

portions only. Document D1 did not provide any hints or
suggestions to automatically create links for (only)
selected content of a web page to be embedded in the
web page. As this conclusion applied to the other prior
art as well, it had to be concluded that the claims of
the main request were not only new but also inventive
over the prior art.

Reasons for the Decision

1.   The appeal complies with the provisions referred to in
        Rule 101 EPC and is therefore admissible.

The invention

2.   The invention concerns a database, referred to in the
        application as the "forumBook", which contains
        information relating to a particular topic. The
        database includes portions which are each subdivided
        into a number of sub-portions, also referred to as
        "pages". The portions are further arranged into a
        number of sets, also called "levels" (see page 9,
        lines 8 to 12, of the international A2 publication).
        The portions and sub-portions may be linked, e.g. by
        means of hypertext links (page 9, lines 14 to 19; page
        5, first full paragraph).

2.1   A primary key expression is embedded in the information
        contained in a sub-portion and is linked to another
        sub-portion of the database which contains further
        information relating to the subject-matter of the
        primary key expression (page 10, lines 8 to 22). The
        database may also include explanatory notes linked by
        secondary key expressions (page 2, second and third
        paragraphs; page 11, lines 17 to 35; Figure 3C).
        Portions of the database are arranged in sets, which

are sequentially arranged. A tertiary key expression
links (by a "default link") a sub-portion in one set
and a sub-portion in the succeeding set (page 13, line
33, to page 14, line 17).

2.2   According to page 9, lines 23 to 26, the numbers of
         sets, portions and sub-portions forming the forumBook
         are "determined by the compiler of the database" and
         "depend on the nature, scope and amount of subject-
         matter to be covered in the database". The sub-portions
         of each portion are linked to one another in a
         sequential arrangement wherein each subsequent sub-
         portion in the sequential arrangement contains further
         information on the topic. The sequences of sub-portions
         are intended to "allow a linear and seamless
         progression of understanding of the topic similar to
         the progression when people have a conversation about
         the topic" (page 9, line 31, to page 10, line 2).

2.3   The claims as originally filed were directed to a
         database of information, to a computer program product
         for managing the content of a database, to an
         information management product and to a method of
         compiling a database.

Main request

3.   Claim 1 recites a computer program product for managing
         information relating to a particular topic, the
         computer program product including program instructions
         for performing the steps mentioned in the claim. The
         steps are essentially the following (step (b)
         corresponding to two equivalent steps in the claim):
         (a) compiling a database including first and second
             portions, each subdivided into sub-portions,

(a.1) the database and sub-portions storing
information,

(b) linking sub-portions of each of the first and
second portions in a predetermined linear
sequential arrangement

(b.1) such that navigation from a sub-portion to
another succeeding or preceding sub-portion
within the sequence is permitted and

(b.2) wherein each subsequent sub-portion in the
sequential arrangement contains more information
on the topic,

(c) defining primary key expressions by a compiler in
the information contained in selected sub-portions
of at least one of the first and second sub-
portions,

(d) creating user-executable links between each primary
key expression and another sub-portion,

(d.1) thereby permitting a user to jump from the
primary key expression to another sub-portion by
clicking on the primary key expression, and

(e) recording an address for said sub-portion in the
database from which the user-executable navigation
link is made to said another sub-portion,

(e.1) in order to allow a user to return to said
one sub-portion.

4.   *Clarity/support in the description (Article 84 EPC) and
added subject-matter (Article 123(2) EPC) - claim 1*

4.1   As the Board explained in its preliminary opinion,
steps (a) to (d) of claim 1 of the main request refer
to a phase in which the database is set up, while step
(e) is a step performed by the computer program in a
later phase as a reaction to a user following a link.

The specific wording "the computer program product
including program instructions for [performing each of
the steps (a) to (e)]" raises the question of whether
the claim should be understood as covering a computer
program product including program instructions for
performing all the steps automatically. This is of
particular importance for the steps of compiling a
database (= step (a)) and defining primary key
expressions by a compiler (= step (c)).

4.2   Indeed, one point of discussion in the proceedings,
        both before the department of first instance and on
        appeal, was whether the term "compiler" in step (c) had
        to be understood as a person or as computer-program
        means for automatically defining primary key
        expressions.

        The appellant's submissions on this point have not been
        very consistent. In the letter of 19 October 2012
        (page 5), he stated that the computer program included
        "program instructions to enable a compiler (author) to
        define primary key expressions in the information which
        is stored in selected sub-portions of the database". In
        a similar vein, he maintained at the oral proceedings
        before the department of first instance that the term
        "compiler" could refer to a human being (see minutes,
        page 1, point 3). That was also how the Examining
        Division interpreted the claim.

        However, in the grounds of appeal the appellant
        submitted that, according to feature (c) of claim 1,
        "not a user and instead a compiler automatically
        creates the so called primary key expressions". When
        arguing in favour of inventive step, he heavily relied
        on this interpretation for distinguishing the claimed
        invention from the teaching of document D1 (see

section XIX above). Since these submissions imply that the term "compiler" should be interpreted as specifying computer-program means, the appellant is contradicting his own previous statements, thereby causing serious concerns about the clarity of the feature.

4.3   The wording of claim 1, in particular the expression "program instructions for", suggests that the claimed steps are performed automatically by computer means. Furthermore, the term "compiler" is commonly used in computer science to designate a computer program to automatically process code. It would therefore be inappropriate to interpret the claim as implicitly ruling out the compilation of the database in step (a) and the definition of primary key expressions in step (c) being both performed automatically. While it could be argued that the claim language is broad enough to also encompass embodiments where some human activity is involved, it cannot be understood as being limited to such kinds of embodiment.

4.4   On the other hand, the description - as the following detailed analysis will show - discloses merely that steps (a) and (c) above are performed essentially by a person. It does not disclose that they can be performed automatically without the active participation of a human being.

4.4.1   Numerous passages in the description refer to a "compiler of the database", i.e. not to a compiler without any further qualification (see page 9, lines 23 to 24 and lines 31 to 32; page 11, lines 13 to 15; page 12, lines 24 to 29; page 13, lines 8 to 11; and page 15, lines 22 to 24). According to page 9, lines 31 to 32, "the sets, the portions and the sub-portions of the database are compiled by or in collaboration with

the compiler of the database". The passage on page 12, lines 24 to 29, describes that the primary key expressions are established by the compiler of the database. None of these passages describes a computer program for automatically compiling the database or a compiler of the database as part of a computer program for automatically compiling the database and defining primary key expressions.

4.4.2   Moreover, page 15, lines 22 to 24, reads as follows:
"The Applicant envisages that in a wide application, monitoring components may be operable to monitor the use of any part of the forumBook by any participant, i.e. by a user or a compiler of the database."
It is clear from this passage that a "participant" is not part of a computer program, but a person, and that the "compiler of the database" is a "participating person".

4.4.3   Page 13, lines 8 to 11, of the description reads as follows:
"The invention extends to a computer program product for managing the content of the forumBook, which includes program instructions for linking the sub-portions of each portion of the database to one another in a predetermined sequential arrangement as determined by the compiler of the database. The computer program product also includes program instructions for linking [...]".

In the Board's opinion, it is clear from this text in combination with the passages cited above that the automatic processing starts from a sequential arrangement predetermined by the compiler of the database, the compiler of the database being a person

who compiles the database. Similarly, the compiler of
the database who establishes primary key expressions
(page 12, lines 24 to 29) may only reasonably be
understood as being a person.

4.4.4   A step of "defining primary key expressions in the
information contained in selected sub-portions of the
database" is disclosed in the description in the
context of "a method of compiling a database of
information relating to a particular topic" (page 7,
penultimate paragraph, to page 8, second line).
However, that passage does not mention a compiler (as
computer means) or that such a compiler defines the
primary key expressions. It does not disclose at all
that either the step of compiling a database or the
step of defining primary key expressions may be
performed automatically by computer-program means.

5.   Nor do the originally filed claims contain any
disclosure which would support a different
understanding of the teaching of the invention.

5.1   A step of defining primary key expressions is defined
in original claim 24. However, that claim is directed
to a "method of compiling a database of information
relating to a particular topic" and does not mention a
compiler, program instructions or any computer program
including program instructions. In the Board's view,
the skilled reader would interpret that original claim,
especially in the light of the description, as defining
a method performed by a person compiling a database.
Thus, from original claim 24 it cannot be derived that,
according to the teaching of the invention, computer-
program means automatically compile the database or
define the primary key expressions.

5.2   Original claim 9, which is dependent upon original
        claim 8, defines a computer program product including
        "program instructions for linking each primary key
        expression to another sub-portion of the database".
        However, it does not recite a step of defining primary
        key expressions and does not refer to a compiler.
        Furthermore, original claims 8 and 9 essentially define
        a "computer program product for managing the content of
        a database of information" wherein the database
        includes portions, sub-portions and primary key
        expressions, "the computer program product including
        program instructions for linking [...]". According to
        these claims, the program instructions of the program
        product are thus not used for setting up the portions,
        sub-portions and primary key expressions of the
        database, but are used only in a second phase in a
        database with previously defined portions, sub-portions
        and primary key expressions.

6.   In the light of the above analysis, the Board comes to
        the following conclusions:

        -    Claim 1 is broader than justified by the
             description as there is no support in the
             description for a "compiler" as program means for
             automatically defining primary key expressions, or
             for "program instructions" for automatically
             performing steps (a) and (c). Hence, it does not
             comply with Article 84, second sentence, EPC
             because it lacks support.

        -    Furthermore, the lack of support in the description
             for a "compiler" (without the qualification "of a
             database") and the inconsistency between the
             "compiler" as specified in the claim and the
             "compiler of the database" defined as a person in

the description renders the claimed feature
"compiler" unclear. Consequently, claim 1 does not
comply with Article 84, second sentence, EPC
because it lacks clarity.

-       Features (a) and (c) of claim 1 cannot be directly
        and unambiguously derived from the application as
        originally filed. Thus, the claim infringes
        Article 123(2) EPC.

Auxiliary requests 1 to 10

7.   *Clarity and added subject-matter - claim 1*

7.1   Claim 1 of each of auxiliary requests 1 to 10 includes
        all the features of claim 1 of the main request,
        including steps (a) and (c) discussed above with regard
        to the main request.

        As a consequence, the reasoning given above for claim 1
        of the main request with respect to lack of clarity and
        of support and to added subject-matter also applies to
        claim 1 of each of auxiliary requests 1 to 10.

7.2   The Board therefore concludes that auxiliary requests 1
        to 10 do not fulfil the requirements of Articles 84
        and 123(2) EPC.

Final remarks

8.   In its communication under Article 15(1) RPBA, the
        Board stated that the compiler mentioned in step (c)
        and in the description had to be understood as a user
        (point 7.4 of the communication) and that there was no
        basis in the application for interpreting feature (c)
        as referring to fully automatic creation of primary key

expressions (point 8.2). Even though, at first sight, this could seem to differ from the Board's interpretation of the claim under point 4.3 above, it was clear from the communication that different claim interpretations were possible and could result from the deliberations at the oral proceedings. In particular, in the same communication, the Board announced that, at the oral proceedings, it might have to be discussed how steps (a) to (d) were to be interpreted (point 7.3) and whether the claims satisfied the requirements of clarity and support in the description and in the application as originally filed (points 7.3 to 7.5). In addition, the Board was of the opinion that the claim covered a computer program product including program instructions for performing steps (a) to (e) automatically, but that there was no basis in the application as originally filed for these automatic steps (points 7.4 and 8.2). The Board also raised preliminary objections under Articles 84 and 123(2) EPC.

The appellant therefore had to expect that claim interpretation and compliance with Articles 84 and 123(2) EPC would be discussed and decided upon at the oral proceedings. For that reason, the Board was, despite the absence of the duly summoned appellant, in a position to take a final decision on these points at the oral proceedings, without violating the appellant's right to be heard. The appellant had an opportunity, in accordance with Article 113(1) EPC, to comment on these issues in writing and during the oral proceedings, which it chose not to attend.

9.   Since none of the requests on file is allowable, the appeal is to be dismissed. Thus, there is no need to consider any of the further objections raised in the

contested decision or by the Board in its preliminary
opinion.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

I. Aperribay   R. Moufang

Decision electronically authenticated