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Datasheet for the decision
of 31 January 2018

Case Number: T 1957/13 - 3.5.05

Application Number: 07101398.1

Publication Number: 1953659

IPC: G06F19/00

Language of the proceedings: EN

Title of invention:
A method for effecting computer implemented decision-support in prescribing a drug therapy

Applicant:
Daintel ApS

Headword:
Drug prescribing database/DAINTEL

Relevant legal provisions:
EPC Art. 56
RPBA Art. 12(4)

Keyword:
Inventive step - (no)
Late-filed request - admitted (no)

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Decisions cited:

Catchword:

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: **T 1957/13 - 3.5.05**

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 31 January 2018

Appellant: (Applicant)	Daintel ApS Islands Brygge 39 2300 Copenhagen S (DK)
Representative:	Høiberg P/S Adelgade 12 1304 Copenhagen K (DK)
Decision under appeal:	Decision of the Examining Division of the European Patent Office posted on 25 March 2013 refusing European patent application No. 07101398.1 pursuant to Article 97(2) EPC

Composition of the Board:

Chair	A. Ritzka
Members:	P. Cretaine
	F. Blumer

Summary of Facts and Submissions

I.   This appeal is against the decision of the examining
        division, posted on 25 March 2013, refusing European
        patent application No. 07101398.1 on the grounds of
        added subject-matter (Article 123(2) EPC), lack of
        clarity (Article 84 EPC) and lack of novelty (Article
        54 EPC) in respect of the disclosure of

        D1: US 2002/091546.

II.   Notice of appeal was received on 4 June 2013, and the
        appeal fee was paid on the same day. The statement
        setting out the grounds of appeal was received on
        2 August 2013. The appellant requested that the
        decision be set aside and that a patent be granted on
        the basis of the claims of a main request or first to
        eleventh auxiliary requests, all requests filed with
        the statement setting out the grounds of appeal. The
        claims of the eighth auxiliary request were identical
        to the claims on which the decision was based. In
        addition, oral proceedings were requested in case the
        board did not allow the main request.

III.   A summons to oral proceedings was issued on 17 November
        2017. In a communication dated 4 December 2017, the
        board gave its preliminary opinion on the file pursuant
        to Article 15(1) RPBA. In particular, it questioned the
        admissibility of the main request under Article 12(4)
        RPBA and also indicated that this request did not
        appear to meet the requirements of Articles 84 and 56
        EPC. It further expressed the opinion that the first to
        eleventh auxiliary requests did not meet the
        requirements of Article 56 EPC. In that respect it
        relied on the common general knowledge of the skilled
        person, in particular as exemplified in

D3: US 2005/0192961.

IV.   By letter of 23 January 2018 the appellant informed the
        board that it would not attend the oral proceedings.

V.   Oral proceedings were held on 31 January 2018 in the
        absence of the appellant. The appellant requested in
        writing that the decision under appeal be set aside and
        that a patent be granted on the basis of the main
        request or, subsidiarily, on the basis of any of the
        first to eleventh auxiliary requests, all requests as
        filed with the statement setting out the grounds of
        appeal dated 2 August 2013. After due deliberation on
        the basis of the written submissions, the board's
        decision was announced at the end of the oral
        proceedings.

VI.   Independent claim 1 according to the <u>main request</u> and
        the <u>first auxiliary request</u> reads as follows:

        "A computer-implemented method for reducing the size of
        a rules database for decision-support in prescribing a
        drug therapy of a patient having a disease or a
        discomfort, the rules database comprising a table
        having rows and columns with one or more columns of
        decision parameters (DP) representing patient data, and
        one or more columns of prescription information (PI)
        representing elements of the prescription, where each
        row contains a set of decision parameters (DP) and a
        set of prescription information (PI) corresponding to
        the set of decision parameters (DP) in the same row,
        the method comprising
        - finding a prescription information (PI) value that
        corresponds to a specific set of decision parameter
        (DP) values having cell content in common, which they

do not have in common with other sets of decision
parameter (DP) values,
- adding a row to the table, where the common decision
parameter (DP) values are present and leaving the
remaining decision parameter (DP) values empty,
- copying the common prescription information (PI)
value to the added row,
- removing the prescription information (PI) value from
the rows that have these sets of DP values, and
- removing rows that have no prescription information
(PI) values."

Claim 1 according to the second auxiliary request is
amended with respect to claim 1 of the main request by:
- replacing the feature "finding a prescription
information (PI) value" with the feature "finding a set
of one or more prescription information (PI) values"
and
- replacing the feature "removing the prescription
information (PI) value" with the feature "removing said
prescription information (PI) value".

Claim 1 of the third auxiliary request is amended with
respect to claim 1 of the main request by replacing the
wording "A computer-implemented method for reducing the
size of a rules database" with the wording "A computer-
implemented method for improving readability and
reducing the size of a rules database"

Claim 1 of the fourth and fifth auxiliary requests is
amended with respect to claim 1 of the main request by
replacing the wording "a table having rows and columns"
with the wording "a table having rows and columns
forming cells".

Claim 1 of the sixth auxiliary request is amended with
respect to claim 1 of the main request by:
- replacing the wording "a table having rows and
columns" with the wording "a table having rows and
columns forming cells",
- replacing the feature "finding a prescription
information (PI) value" with the feature "finding a set
of one or more prescription information (PI) values"
and
- replacing the feature "removing the prescription
information (PI) value" with the feature "removing said
prescription information (PI) values".

Claim 1 of the seventh auxiliary request is amended
with respect to claim 1 of the main request by:
- replacing the wording "A computer-implemented method
for reducing the size of a rules database" with the
wording "A computer-implemented method for improving
readability and reducing the size of a rules database",
and
- replacing the wording "a table having rows and
columns" with the wording "a table having rows and
columns forming cells".

Claim 1 of the eighth and ninth auxiliary requests
reads as follows:
"A method for reducing the size of a rules database for
decision-support in prescribing a drug therapy of a
patient having a disease or a discomfort, the rules
database comprising a first table having rows and
columns with one or more columns of decision parameters
(DP) representing patient data, and one or more columns
of prescription information (PI) representing elements
of the prescription, where each row contains a set of
decision parameters (DP) and a set of prescription

information (PI) corresponding to the set of decision
parameters (DP) in the same row, the method comprising
a. finding, in the first table, one or more
prescription information (PI) columns and one or more
decision parameter (DP) columns and a prescription
information (PI) value for each prescription
information (PI) column and a decision parameter (DP)
value for each decision parameter (DP) column, so 15
[sic!] that all rows in the first table that have all
these decision parameter (DP) values in the
corresponding columns, the found prescription
information (PI) columns will have the found
prescription information (PI) values,
b. adding a row to the first table, where the found
decision parameter (DP) values are inserted into the
corresponding decision parameter (DP) columns and
leaving remaining decision parameter (DP) values empty,
c. copying the found prescription information (PI)
values to the added row into the corresponding columns,
d. removing the prescription information (PI) values
from the corresponding columns in all other rows that
have this set of decision parameter (DP) values in the
corresponding DP columns
e. removing rows that have no prescription information
(PI) values, whereby a second table different from the
first table is obtained, and repeating steps a) to e)
at least once."

Claim 1 of the <u>tenth and eleventh auxiliary requests</u>
comprises all the features of claim 1 according to the
eighth auxiliary request with the exception of the
wording "whereby a second table different from the
first table is obtained, and repeating steps a) to e)
at least once", which has been deleted in step e.

All the requests comprise further independent claims
directed to a rules database obtained by the method of
claim 1, a computer programmed to carry out the method
of claim 1 and a computer program for carrying out the
method of claim 1.
The eighth and tenth auxiliary requests comprise a
further independent claim directed to a method for
effecting a drug prescription decision using the
obtained rules database.

Reasons for the Decision

1.   Admissibility of the appeal

        The appeal complies with Articles 106 to 108 EPC (cf.
        point II above) and is therefore admissible.

2.   Non-attendance at oral proceedings

        The appellant decided not to attend the scheduled oral
        proceedings. Pursuant to Article 15(3) RPBA, the board
        is not obliged to delay any step in the appeal
        proceedings, including its decision, by reason only of
        the absence at the oral proceedings of any party duly
        summoned who may then be treated as relying only on its
        written case.

        Hence, the board was in a position to announce a
        decision at the end of the oral proceedings.

3.   Main request - admissibility

        The claims of the main request are identical to the
        claims of the request filed on 15 October 2008 after
        receipt of the European search opinion. By letter of

26 January 2010 the appellant submitted an amended set of claims without mentioning that the previous set of claims filed on 15 October 2008 was maintained. In the annex accompanying the summons to oral proceedings dated 16 February 2012, the examining division stated that the examination had been carried out only on the set of claims submitted with the letter dated 26 January 2010. This implicit finding of the examining division that the set of claims submitted with the letter dated 15 October 2008 had been withdrawn was not challenged by the applicant in its letter of response dated 6 February 2013. As a consequence the set of claims filed on 15 October 2008, i.e. the claims of the present main request, was not decided upon by the examining division.

In the statement setting out the grounds of appeal, the appellant did not give any reason why it again submitted a request which had been withdrawn and thus not decided upon in the first-instance proceedings. In particular, it did not address the clarity objection (Article 84 EPC), raised by the examining division in respect of the claims submitted on 15 October 2008, that the iterative character of the method taught by the whole description was not defined in the claims. Further, although the appellant was forewarned by the board in the annex accompanying the summons to oral proceedings that the admissibility of the main request was an issue to be discussed (see point 4.1), it did not submit any argument in response and decided not to attend the oral proceedings.

For these reasons the board, exercising its discretionary power under Article 12(4) RPBA, decides not to admit the main request into the appeal proceedings.

4.   First auxiliary request

This request differs from the main request in the
addition of a dependent claim 2 defining the step of
repeating the steps of claim 1, meaning that the set of
claims according to the first auxiliary request defines
an iteration process.

The application relates in substance to a
reorganisation process for medical data presented in a
table for further lookups which could be performed
either by a computer (see page 10 of the description,
lines 11 to 17) or by a doctor (see page 3, lines 14 to
25). Since the whole information content of the data
present in the initial table is not changed by the
reorganisation process, the result achieved is merely a
different presentation of the information. This
reorganisation is described in detail with reference to
tables 3 to 7 in the description and has been even more
thoroughly described by the appellant in the Appendix
provided with the statement of grounds of appeal. The
process is iterative (see page 5, line 14: "Repeat the
following process" and the two examples described in
relation to tables 1 and 2 and tables 3 to 7,
respectively). Further, in the only two examples given
in the description with respect to tables 1 and 2 and 3
to 7, and further explained in detail in the Appendix
provided by the appellant, a removal of rows occurs
after the last iteration. From the description it is
also clear that the reorganisation process can equally
be performed by a human being only, without the help of
a computer.

Claim 1 defines only the very first step in the
reorganisation process described in the application,
without specifying any iteration step. The
rearrangement of information present in the initial
table, defined by the steps of claim 1, is a process
which can be performed manually by a person, as also
exemplified by the Appendix provided by the appellant.
In the board's judgement it involves only a basic
understanding of the table's organisation in rows,
columns and cells and the routine identification of
rows presenting common cells for the purpose of
suppressing redundant cells in the table, which is a
common objective in the field of data storage (see for
instance D3, abstract and paragraphs [0002] and
[0003]). Furthermore, the technical advantage of the
resulting table may well be an expected and thus
unsurprising reduction in the number of cells. However,
the readability of the whole table is not definitely
improved, contrary to what is argued by the appellant,
since the number of operations needed to read the
prescription values for a defined set of decision
parameters remains substantially the same. The board
therefore judges that the process steps defined by
claim 1 lie within the general design competence of the
skilled person and do not require inventive skills.
Moreover, executing the process steps on a general-
purpose computer, as implied by the wording "computer-
implemented method" in claim 1, merely amounts to the
automation of the mental process performed by the
person reorganising the table and is not considered to
involve an inventive step, in accordance with the case
law of the boards of appeal.

For these reasons, the board judges that the subject-
matter of claim 1 does not involve an inventive step
(Article 56 EPC).

5.   Second auxiliary request

Claim 1 differs from claim 1 according to the <u>first
auxiliary request</u> only in that it defines finding more
than one PI value in an iteration round, instead of
identifying the PI values one by one at each finding
step. In the board's judgement, this additional feature
is straightforward for the skilled person when it comes
to identifying a set of decision parameters having cell
content in common. Therefore, claim 1 does not involve
an inventive step (Article 56 EPC).

6.   Third auxiliary request

Claim 1 differs from claim 1 according to the <u>first
auxiliary request</u> only in that it specifies that the
method is "for improving readability".

This additional feature, however, defines only an aim
to be achieved. Moreover, the board is not convinced
that the rearrangement of the initial table through the
claimed process does improve readability (see point 4
above). Therefore, the board judges that claim 1 does
not involve an inventive step (Article 56 EPC).

7.   Fourth auxiliary request

Claim 1 differs from claim 1 according to the <u>first
auxiliary request</u> only in that it specifies that the
rows and columns of the table are "forming cells". This
feature is, as already acknowledged by the appellant
(see the statement setting out the grounds of appeal,
7.1), common knowledge. Therefore, the board judges
that claim 1 does not involve an inventive step
(Article 56 EPC).

8.   Fifth auxiliary request

Claim 1 is identical to claim 1 according to the <u>fourth</u>
<u>auxiliary request</u>. Therefore it does not involve an
inventive step (Article 56 EPC).

9.   Sixth auxiliary request

Claim 1 differs from claim 1 according to the <u>first</u>
<u>auxiliary request</u> only by the features already
introduced by the <u>second and fourth auxiliary requests</u>.
Since these features are obvious for the skilled person
(see points 5 and 7 above) and are juxtaposed in the
claim, the board judges that claim 1 does not involve
an inventive step (Article 56 EPC).

10.   Seventh auxiliary request

Claim 1 differs from claim 1 according to the <u>first</u>
<u>auxiliary request</u> only by the features already
introduced by the <u>third and fourth auxiliary requests</u>.
Since these features are obvious for the skilled person
(see points 6 and 7 above) and are juxtaposed in the
claim, the board judges that claim 1 does not involve
an inventive step (Article 56 EPC).

11.   Eighth auxiliary request

Claim 1 is identical to claim 1 according to <u>the</u>
<u>request on which the decision was based</u>.

In the board's judgement, the Article 56 EPC objection
raised in point 4 above with respect to the <u>first</u>
<u>auxiliary request</u> is valid for claim 1, since this
claim defines substantially the same subject-matter,

using a slightly different wording and further defining
the iteration, and is based on the same just two
examples presented in the description and detailed in
the Appendix provided by the appellant with the
statement setting out the grounds of appeal.

Therefore the board judges that claim 1 does not
involve an inventive step (Article 56 EPC).

12.   Ninth auxiliary request

Claim 1 is identical to claim 1 according to the eighth
auxiliary request. Therefore it does not involve an
inventive step (Article 56 EPC).

13.   Tenth auxiliary request

Claim 1 differs from claim 1 according to the eighth
auxiliary request only by deletion of the feature
"whereby a second table different from the first table
is obtained, and repeating steps a) to e) at least
once" in step e. Therefore it does not involve an
inventive step (Article 56 EPC).

14.   Eleventh auxiliary request

Claim 1 is identical to claim 1 according to the tenth
auxiliary request. Therefore it does not involve an
inventive step (Article 56 EPC).

15.   Conclusion

The main request is not admitted into the proceedings,
and the first to eleventh auxiliary requests are not
allowable under Article 56 EPC for lack of inventive
step of their respective claim 1.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz-Wein   A. Ritzka

Decision electronically authenticated