

**Internal distribution code:**

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

**Datasheet for the decision  
of 13 April 2021**

**Case Number:** T 2251/13 - 3.5.01

**Application Number:** 07848533.1

**Publication Number:** 2102801

**IPC:** G06Q30/00

**Language of the proceedings:** EN

**Title of invention:**

INTERACTIVE FOOD AND DRINK ORDERING SYSTEM

**Applicant:**

Ordamo Limited

**Headword:**

Projection surface with built-in track pad/ORDAMO

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - building track pad into projection surface  
(yes - non-obvious alternative)

**Decisions cited:**

T 0641/00, T 0190/03



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 2251/13 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 13 April 2021**

**Appellant:** Ordamo Limited  
(Applicant) 87 Arlington Road  
London NW1 7ES (GB)

**Representative:** Langley, Peter James  
Origin Limited  
Twisden Works  
Twisden Road  
London NW5 1DN (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 17 June 2013  
refusing European patent application No.  
07848533.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** W. Chandler  
**Members:** A. Wahrenberg  
Y. Podbielski

## **Summary of Facts and Submissions**

- I. This case concerns the applicant's appeal against the decision of the examining division to refuse the European patent application No. 07848533.1, published as WO 2008/071979 A1.
- II. The grounds for the decision were lack of inventive step (Article 56 EPC) of the subject-matter of claim 1 in view of D1 (US 2005/273345) in combination with D3 (Ammer A: "Projector-Camera System for Flexible Interactive Projections", 2005, Stockholm University, Stockholm, Sweden, XP002470986), and lack of clarity (Article 84 EPC) of the subject-matter of claims 4 and 5.
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision to refuse the application be set aside and that a patent be granted on the basis of the main or first auxiliary request filed therewith. The appellant furthermore requested that the appeal fee be reimbursed under Rule 103(1)(a) EPC.
- IV. In the communication accompanying the summons to oral proceedings, the Board tended to share the examining division's view that the subject-matter of claim 1 lacked an inventive step over D1. The Board also raised an objection of lack of inventive step starting from D3, which was considered to be closer to the invention than D1. Concerning the request for the reimbursement of the appeal fee, the Board expressed some sympathy for the appellant's arguments, but did not regard a

reimbursement of the appeal fee to be equitable.

- V. In a reply to the Board's communication, the appellant withdrew the request for reimbursement of the appeal fee, and filed a second auxiliary request and additional arguments and evidence in favour of inventive step.
- VI. During the oral proceedings, which were held by videoconference due to the coronavirus pandemic, the appellant filed a new main request replacing all the requests on file. The appellant's final request was, thus, that the decision under appeal be set aside and that a patent be granted on the basis of the new main request.
- VII. Claim 1 of the main request reads:

An interactive food and/or drink ordering system, the system comprising a computer, a projector controlled by the computer, a surface and an interface device built into the surface and connected to the computer, in which the computer controlled projector is mounted above the surface such that a menu of food and/or drink selection options is projected onto some or all of the surface, the selection options being selectable by a user operating the interface device which is built into the surface, in which the interface device is a track pad interface, and in which the track pad interface communicates with the computer over a short range wireless network.

## Reasons for the Decision

### 1. *The invention*

- 1.1 The invention concerns an interactive food and/or drink ordering system in a restaurant. The main idea is to project a menu onto the restaurant table (Figure 1). The table has a built-in track pad allowing the guest to select and order food and/or drinks from the menu.

The system comprises a projector that is mounted above the table and connected to a computer (Figure 15). Also the track pad is connected to the computer via a short range wireless network such as Bluetooth.

### 2. *Clarity (Article 84 EPC)*

- 2.1 The objection under Article 84 EPC in the decision under appeal concerned unclear claim dependencies. The problem has been removed.

### 3. *Inventive step (Article 56 EPC)*

- 3.1 The examining division assessed inventive step starting from D1 which relates to a food and drink ordering system comprising a computer terminal.

In the Board's view, however, D3 is a better starting point because it is related to a projector-camera system for interactive projections, which is *technically* closer to the claimed invention. In other words, D3 requires fewer *technical* modifications to arrive at the subject-matter of the claims.

D3 explicitly mentions in paragraph 1.1 on page 2 that

the projector-camera system may be used on a restaurant table to show the menu. However, even without this, D3 would be a good starting point, because the use of the projector-camera system in a restaurant to show the menu is a non-technical aim which does not contribute to inventive step under the "Comvik approach" (see T 641/00 - *Two identities/COMVIK*). Therefore, it is irrelevant whether or not this is disclosed in the prior art. What counts is the technical disclosure.

- 3.2 It is common ground that the invention in claim 1 differs from D3 by (i) the ordering of food and/or drinks from the menu, and (ii) a track pad that is "built into the [projection] surface".

In D3, the user interacts with the system by using his fingers (paragraph 3.1 on page 8). The system makes use of a fingertip finding algorithm (paragraph 4.1) to identify the user's interaction.

- 3.3 In its preliminary opinion, the Board considered that the ordering of food and drinks (i) constituted an obvious implementation of a non-technical requirement. The appellant did not contest this. Instead, the feature that was given patentable weight was the second one (ii), namely the built-in track pad.

- 3.4 The appellant argued that the built-in track pad provided a clearer projection surface, because the projected image was not obstructed by the user's hand as in D3 (see Figure 7).

The Board is not convinced that the invention has this effect, because claim 1 does not exclude that the track pad covers parts of the projection area. Furthermore, a fingertip interface could be designed such that the

user points at projected buttons or the like which do not contain any information. Therefore, the Board does not see that the built-in track pad has any technical effect beyond providing an alternative to the fingertip interface in D3.

3.5 The question that remains to be answered is whether this would have been an obvious alternative. The fact that the problem is formulated as "how to provide an alternative" does not automatically mean that the solution is obvious. Also the fact that the alternative, here a track pad, was well known *per se* is not enough. There has to be some hint or incentive, in the prior art, or in the skilled person's common general knowledge, to provide the alternative.

3.6 In fact, the invention is not merely the use of a track pad as an input device. It involves building the track pad into a table top or a similar surface that is used as a projection surface. Although, as the examining division pointed out, there is no detailed implementation of this feature, the Board judges that "built into" implies at least that the device forms an integral part of the table top structure.

The examining division considered that this was a "straightforward constructional detail". However, they did not refer to any prior art that disclosed such a built-in interface. Nor can this be said to be common knowledge.

3.7 At the oral proceedings it was discussed whether the idea of building something into a surface, e.g. to make it more permanent or less obtrusive, could be a routine design skill and part of the skilled person's "mental furniture", discussed for example in decision T 190/03

- *Multiple subtitles/EDICO* at point 16.

Although this seems plausible, in the end the Board judges that on balance this is not the case. The required amendment and design skill is in the field of mechanics. However, the skilled person in this case is a specialist in computer systems who would not necessarily have these routine design skills and would not have considered modifying a table top structure in order to provide an alternative input interface without a further hint.

3.8 For these reasons, the Board judges that the invention defined in claim 1 involves an inventive step (Article 56 EPC).

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent in the following version:

Claims 1-13 of the main request filed during the oral proceedings before the Board

#### Description:

- pages 1, 1A, 2, 2A and 3 filed during the oral proceedings before the Board
- pages 4-57 as originally filed

Drawings: sheets 1/8 to 8/8 as originally filed.



The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated