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**Datasheet for the decision
of 27 August 2020**

Case Number: T 1353/15 - 3.4.03

Application Number: 01916492.0

Publication Number: 1634224

IPC: G06Q10/00

Language of the proceedings: EN

Title of invention:

METHODS AND APPARATUS FOR CUSTOMIZING PET FOOD

Applicant:

Société des Produits Nestlé S.A.

Headword:

Relevant legal provisions:

EPC 1973 Art. 56

Keyword:

Inventive step - all requests (no)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 1353/15 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 27 August 2020

Appellant: Société des Produits Nestlé S.A.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 February
2015 refusing European patent application No.
01916492.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: M. Papastefanou
G. Decker

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing the European patent application No. 01 916 492.0 (published as WO 01/69487 A1) on the grounds that neither the Main Request nor the Auxiliary Requests I to IX before it involved an inventive step within the meaning of Article 56 EPC 1973. In addition, Auxiliary Requests III and VIII did not meet the requirements of Article 123(2) EPC.
- II. The appellant (applicant) requested that the decision under appeal be set aside and that patent be granted on the basis of the Main Request or one of the Auxiliary Requests I to IX, all filed with the statement of the grounds of appeal. The Main Request and the Auxiliary Requests I to IX correspond to the respective requests underlying the decision under appeal.
- III. As a reaction to the board's preliminary opinion, which was annexed to the summons to oral proceedings, the appellant withdrew its request for oral proceedings, without providing any other reasoning.

The board then cancelled the oral proceedings and issues its decision in writing.

- IV. Reference is made in the following documents:

D1: US 5 930 768 A;

D2: Jan Goossenaerts et al.: *"Product Configuration in the Framework of the Virtual Enterprise"*, Life Cycle Approaches to Production Systems, ASI 97, pages 33-38.

V. Claim 1 of the Main Request is worded as follows:

*A method for administering a consumer direct pet care system for offering customized pet care products according to an individual preference of a customer, said method comprising the steps of:
gathering data characterising the pet from the customer, the data comprising age, size and breed of the pet, pet care information and pet health information,
compiling this data to generate an individual pet profile (80);
accepting a pet care product order from the potential customer based upon information in the individual pet profile (80); and
processing the pet care product order in accordance with the individual pet profile (80), which comprises the steps of manufacturing (94) and packaging (96) the order in accordance with data contained in the individual pet profile (80).*

VI. Claim 1 of **Auxiliary Request I** has the same wording as claim 1 of the Main Request with the addition of the following feature, after the step of compiling the data to generate an individual pet profile (80):

creating a customized pet care plan on the basis of the data including recommended customized pet care products.

VII. Claim 1 of **Auxiliary Request II** has the same wording as claim 1 of Auxiliary Request I with the addition of the following feature at the end of the claim:

wherein the step of manufacturing the order (94) comprises the step of communicating with processing

equipment in one or more centralized processing facilities to batch and mix a customized pet food for an individual customer.

- VIII. Claim 1 of **Auxiliary Request III** has the same wording as claim 1 of Auxiliary Request II with the addition of the following features at the end of the claim:

wherein the step of processing the pet care product order further comprises the step of calculating the supply of food to last a certain time period indicated by the customer and based on pet data provided in the individual pet profile (80), and wherein the step of packaging (96) comprises the step of controlling a customized packaging to match a requested packaging in the individual pet profile (80).

- IX. Claim 1 of **Auxiliary Request IV** has the following wording:

A method for administering a consumer direct pet care system for offering customized pet care products for multiple pets according to an individual preference of a customer, said method comprising the steps of: gathering data characterising multiple pets from the customer, the data comprising age, size and breed of the pet, pet care information and pet health information, compiling this data to generate an individual pet profile (80) for each of the multiple pets; determining a pet care product formulation of pet food suitable to meet nutritional needs of each of the multiple pets based on each of the individual pet profiles (80); accepting a pet care product order from the potential

customer based upon information in the individual pet profile (80); and processing the pet care product order in accordance with the determined formulation, which comprises the steps of manufacturing (94) and packaging (96) the order in accordance with data contained in the individual pet profile (80), wherein the step of manufacturing the order (94) comprises the step of communicating with processing equipment in one or more centralized processing facilities to batch and mix a customized pet food for an individual customer.

- X. Claim 1 of each of the **Auxiliary Requests V to IX** corresponds to claim 1 of each of the Main Request and Auxiliary Requests I to IV respectively, with the addition of the following feature, same in all requests, at the end of the claim:

wherein the method is carried out by using a server architecture comprising a web server (12), an application server (14), a database server (16), a directory server (18), a workflow server (20) and a mail server (22), which are coupled in a local area network (24); a plurality of workstations (26,28,30,32,34) coupled to the local area network (24); and computer of customers (36,37,38) coupled to web server (12) and mail server (22) via an ISP internet [sic] connection (40).

- XI. The appellant argued essentially that the features of the claim were technical and their combination involved an inventive step with respect to D1 and D2. The appellant's arguments are dealt with in more detail in the reasons for the decision.

Reasons for the Decision

1. The appeal is admissible.
2. The claimed invention relates to a method and an apparatus for ordering customized pet care products. Data characterising the pet are obtained from a customer/pet owner (e. g. age, size, breed of the pet, information relating to the health and care of the pet). A profile of the pet is generated based on the gathered data. Pet care products corresponding to the generated pet profile are proposed to the customer, who can order one or more of them. The order of the pet care product is then processed and the product is manufactured and packaged.

The aim of the invention is to provide pet care products, and especially pet food, which are better tailored to the specific pet. An embodiment of the invention relates to an implementation of the claimed method using an Internet-based computer network architecture allowing the customer/pet owner to order the pet products online (see page 1 line 1 to page 2, line 13 of the application as published).

3. Main Request
 - 3.1 In the board's view the method defined in claim 1 does not use any technical means besides the implied product manufacturing and packaging means.

The board shares the opinion of the examining division that the use of the word "system" in the definition of the claimed method ("*A method for administering a*

consumer direct pet care system for offering customized pet care products...") does not necessarily imply the use of any technical means. A system in this context can also be understood as a set of procedures (see point 2.2.7 of the reasons of the impugned decision).

- 3.2 In the board's opinion the claimed method can be implemented as follows:
A customer/pet owner enters a pet care shop. They discuss with an employee, who asks the customer a series of questions in order to get information about the customer's pet, such as breed, age, size, and information related to the health and care of the pet. The employee, based on the information provided by the customer generates a pet profile. Based on this pet profile, the employee proposes to the customer pet care products that would be suitable to the specific pet. The customer orders one (or more) of the proposed products. The employee goes to the back of the store, manufactures the ordered product (e. g. mixes a specific composition of pet food), packages it and gives it to the customer.
- 3.3 In the board's view, apart from the manufacturing and packaging, which involve handling of a physical product, the remaining steps of the method relate to purely administrative (business) steps of a commercial transaction. No technical means nor any technical considerations are involved and no technical problem is solved.
- 3.4 In the statement of the grounds of appeal, the appellant argued that the steps relating to the generation of the pet profile affected the manufacturing step, i. e. different pet profiles would result in different manufactured products. Since

manufacturing (and packaging) was a technical step, all the method steps had to be considered together, as technical features, since they provided a synergistic effect in that a specific product tailored to the individual needs of a pet was provided based on general information about the pet, i. e. without the requirement of the user to determine in detail all parameters such as particular nutritional parameters and batch size of the specific product to be manufactured and packaged for the individual pet.

Moreover, the data gathering itself included technical considerations needed to provide the food product, such as the need to comply with certain hygienic requirements and other related technical requirements.

The technical problem solved by the claimed method was thus to provide means for the production of a customized pet care product tailored to a specific pet while facilitating the ordering procedure (see page 7 of the statement of the grounds of appeal).

- 3.5 The board does not follow the appellant in this reasoning.
- 3.5.1 At first, the board notes that any technical or hygienic requirements relating to the manufacturing and the packaging of the product that might exist do not relate to the gathered information or the generated pet profile, since, according to claim 1, the gathered data characterise the individual pet and not any product that may be ordered, manufactured and packaged.
- 3.5.2 At second, even if facilitating the ordering procedure were to be regarded as a technical problem, the board is not convinced that the claimed method indeed

achieves any such facilitation. It might be true that the customer does not need to know many parameters of the desired product; however, according to the claimed method, the customer needs to provide a quantity of information relating to the pet (breed, size, age, pet health and pet care information). It is not evident that this involves less information than requesting a specific product with specific characteristics/parameters. In the board's view, the assertion that the claimed method facilitated the ordering procedure is not corroborated by the definition of the method.

3.5.3 In addition, the assertion that the method provides for a pet care product that is better tailored to the individual pet is equally not corroborated, according to the board's view. There is no information, neither in the claim nor in the application as a whole, on how the pet profile is used in order to select the pet care products to propose to the customer. The only indication provided in the application is that a pet care product is ordered based upon information in the individual pet profile. The board does not hold this sufficient to support the assertion that the ordered pet care product would be better tailored to the specific pet than it would have been had it been ordered based on other parameters.

3.5.4 Finally, in the board's opinion there is no direct connection between the features relating to the gathering of data and the generation of the pet profile and those relating to the manufacturing and packaging of the pet care product. As it is defined in the claim, the pet profile assists the customer to select and order the pet care product (*"accepting a pet care product order from the potential customer based upon information in the individual pet profile..."*).

Despite the statement in the claim that the method includes the step of *"processing the pet care product in accordance with the individual pet profile (80), which comprises the steps of manufacturing (94) and packaging (96) the order in accordance with data contained in the individual pet profile (80)"*, the board does not see any connection of the steps of manufacturing and packaging with the data included in the pet profile. As already mentioned before, according to the definition in the claim, the data in the pet profile are data characterising the individual pet and do not appear to relate to the manufacturing and packaging of the pet care product.

It is evident that when different products are ordered there would be different products that would have to be manufactured and packaged. In the board's view, however, which product is manufactured and packaged is determined by the order of the customer (who selects which product to order) and not directly from the generated pet profile.

3.5.5 The board's opinion is therefore that the features of the claimed method relating to the gathering of information from the customer and the generation of the pet profile based on this information neither contribute to solving any technical problem nor provide any technical effect. They are, hence, considered to be administrative, non-technical features.

3.6 Regarding the manufacturing and packaging, the board notes that these method steps merely imply the use of unspecified technical means and the handling of an unspecified pet care product. The application does not provide any information about how manufacturing and

packaging are (to be) carried out other than they are done according to *known methods and techniques* (see page 6, lines 25 to 30 of the published application). The board considers, thus, that these features of the claim belong to the state of the art and the common general knowledge of the skilled person.

3.7 Hence, starting from such commonly known manufacturing and packaging procedures, the only features distinguishing the claimed method from the state of the art are non-technical features. In the board's opinion, such features cannot provide a basis for an inventive step within the meaning of Article 56 EPC 1973.

3.8 The board notes that the appellant argued in favour of inventive step starting from documents D1 and D2 as closest prior art (see point "4. Inventive step" starting on page 6 of the statement of the grounds of appeal).

In the impugned decision the examining division merely cited D1 and D2 as examples of generally known techniques (see point 2.2.10 of the reasons) but did not make any further reference to them in its assessment of the inventive step of the claimed subject-matter.

The board agrees with this approach of the examining division and considers neither appropriate nor necessary to refer to any specific prior art document in view of the paucity of the technical features in the claimed subject-matter.

3.9 The board's conclusion is, therefore, that the subject-matter of claim 1 of the Main Request does not

involve an inventive step.

4. Auxiliary Requests I to IV

- 4.1 Compared to claim 1 of the Main Request, claim 1 of **Auxiliary Request I** additionally defines that on the basis of the data characterising the pet gathered from the customer, a customized pet care plan including recommended customized pet care products is created (see point VI above).

The board considers this feature to be an additional step of the administrative (business) method of gathering pet specific data and generating a pet profile without any technical effect. As a non-technical feature, it is not a suitable basis for an inventive step.

- 4.2 According to the additional feature of claim 1 of **Auxiliary Request II** (see point VII above), the pet care product is pet food and its manufacturing takes place in centralized facilities.

In the board's view, the location of the processing facilities where the product is manufactured does not play a role in the claimed method. Locating the manufacturing facilities at one location instead of another is a matter of specific needs and circumstances and a skilled person would make the appropriate choice without exercising any inventive skill. The fact that the ordered pet care product is pet food is considered to be an administrative choice regarding the type of pet care product.

In the board's view, therefore, these features do not support the presence of an inventive step so that the

subject-matter of claim 1 of Auxiliary Request II does not involve an inventive step, either.

- 4.3 The additional features in claim 1 of **Auxiliary Request III** (see point VIII above) define that a supply of food is calculated to last a certain period of time and that the manufactured product is packaged with customized packaging to match a corresponding packaging request by the customer.

As with the previous requests, the board holds that these features relate to administrative steps of the claimed method. Calculating a supply of food to last a certain time period requested by the customer is an administrative (business) step, which fulfils a certain customer request, addresses no technical problem and involves no technical considerations. The same applies to the customized packaging. Even if packaging the manufactured product were to be seen as a technical activity as such, providing customized packaging to match a customer's request is regarded a purely commercial step.

Hence, the subject-matter of claim 1 of Auxiliary Request III is not inventive, either.

- 4.4 Claim 1 of **Auxiliary Request IV** defines additionally that the method relates to multiple pets instead of one pet (see point IX above). In addition, the claim defines that the step of manufacturing the order comprises the step of communicating with the processing equipment in one or more centralized processing facilities to batch and mix a customized pet food for an individual customer.

- 4.4.1 Regarding the last feature, reference is made to point 4.2 above concerning Auxiliary Request II.
 - 4.4.2 As to the other added features, the board considers that they are part of the non-technical features of the claim. The facts that the claimed method relates to multiple pets and that the pet care product is pet food do not constitute technical features that solve any technical problem, provide any technical effect or involve any technical considerations. Like the rest of the features relating to the business method, they are not regarded as a suitable basis for an inventive step.
 - 4.4.3 The board's opinion is, thus, that the subject-matter of claim 1 of Auxiliary Request IV does not involve an inventive step, either.
5. Auxiliary Requests V to IX
- 5.1 The feature added to claim 1 of each of the **Auxiliary Requests V to IX** (see point X above) is a mere listing of various known types of servers the defined network architecture comprises. Apart from a general statement that the claimed method is carried out using the defined architecture, there is no further indication of how these servers implement the claimed method, i. e. which servers implement which steps of the method.
 - 5.2 In the board's view, the added feature merely implies that the claimed method is carried out using a computer network architecture consisting of known, generically defined, technical means (servers, network, connection, etc.). These technical means execute their standard, known functions and do not seem to provide any technical effect that would go beyond the known and expected advantages that result from automating a

business method using a computer system.

- 5.3 Following the established EPO case law and practice, the board considers that the non-technical business method features would be given to the skilled person (a computer network expert) for implementation, who would implement them using a commonly known and generically defined computer network without exercising any inventive skills.

The board concludes, therefore, that the subject-matter of claim 1 of Auxiliary Requests V to IX does not involve an inventive step.

6. Since none of the requests on file is allowable, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated