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**Datasheet for the decision
of 18 March 2021**

Case Number: T 1790/17 - 3.5.01

Application Number: 14178116.1

Publication Number: 2843600

IPC: G06Q10/06

Language of the proceedings: EN

Title of invention:

Method for redesigning one or more product or process parameters of a manufactured article

Applicant:

The Procter & Gamble Company

Headword:

Redesigning product or process parameters/PROCTER & GAMBLE

Relevant legal provisions:

EPC Art. 52(2), 111(1)
RPBA 2020 Art. 11, 12(2), 13(2)

Keyword:

Patentable invention - redesigning a product based on user feedback (no - business method) - controlling manufacture of a product with improved process data (yes - technical)
Amendment after summons (yes - exceptional circumstances)
Remittal (yes - exceptional circumstances)

Decisions cited:

G 0001/19

Catchword:

The purpose of the oral proceedings for the appellant is to better explain his case and for the Board to understand and clarify points which, perhaps, up to that point were not sufficiently clear. This is particularly relevant in *ex parte* cases where besides the applicant/appellant no other party is involved. If amendments resulting from such discussions were not possible, oral proceedings would be pointless. The new [substantially amended] auxiliary request was filed as a direct reaction following the exchange of arguments in the oral proceedings and addressing the objections and concerns the Board had. Furthermore, this request overcame the grounds on which the appealed decision was based. The Board considers the filing of such a request is justified by exceptional circumstances and therefore admits it into the proceedings. (See point 7 of the reasons)



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Case Number: T 1790/17 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 18 March 2021

Appellant: The Procter & Gamble Company
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Cincinnati, OH 45202 (US)

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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 23 February
2017 refusing European patent application No.
14178116.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: R. Moser
P. Schmitz

Summary of Facts and Submissions

- I. This appeal is against the examining division's decision to refuse European patent application No. 14178116.1.
- II. The examining division found that claim 1 of the main and three auxiliary requests defined an administrative workflow without any technical means and, thus, this subject matter was excluded from patentability under Article 52(2) and (3) EPC.
- III. The appellant requested that the decision under appeal be set aside and that the case be remitted to the first instance for further prosecution on the basis of the main request (the claims as originally filed) or auxiliary requests 1 to 4, filed with the statement setting out the grounds of appeal. Alternatively, grant was requested on the basis of the same requests.
- IV. In the communication accompanying the summons to oral proceedings, the Board expressed doubts that claim 1 of the main request was clear and provisionally agreed with the examining division that the steps identified in claim 1 were not technical. In relation to the auxiliary requests the Board noted that, even if technicality was acknowledged, it appeared that the technical contribution was not sufficient to support an inventive step.
- V. In a reply, the appellant filed new auxiliary requests 1 and 2 and arguments in favour of technicality, clarity and inventive step. The former auxiliary requests were withdrawn.

VI. Oral proceedings took place on 18 March 2021 by videoconference. At the oral proceedings, the appellant filed a new auxiliary request and declared that this request (labelled "New First Auxiliary Request") replaced the pending first auxiliary request. Auxiliary request 2 was withdrawn. At the end of the oral proceedings the Chairman announced the Board's decision.

VII. The appellant's final requests were that the decision under appeal be set aside and that the case be remitted to the first instance for further prosecution on the basis of the main or first auxiliary request or, alternatively, that a patent be granted on the basis of either of these requests.

VIII. Claim 1 of the main request reads:

"A method for redesigning one or more product or process parameters of a first manufactured article, in order to provide different product or process parameters of a second, transformed, manufactured article, wherein the method comprises the steps of:

- i) associating a unique identifier with individual first manufactured articles, or with groups of first manufactured articles;
- ii) capturing and recording product data and/or process data relating to the first manufactured articles;
- iii) soliciting and recording consumer feedback relating to in use performance of the first manufactured articles;
- iv) correlating consumer feedback with product data and/or process data of a specific, individual, first manufactured article by means of the unique identifier;
- v) determining different product or process parameters for a second manufactured article; and

vi) applying one or more different product or process parameters to the first manufactured articles to transform them into second manufactured articles, the second manufactured articles being better adapted to meet consumer needs than the first manufactured article."

IX. Claim 1 of the first auxiliary request reads:

"A method for redesigning one or more process parameters of a first manufactured absorbent article, in order to provide different process parameters of a second manufactured absorbent article, and manufacturing the second manufactured absorbent article, wherein the method comprises the steps of:

- i) associating a unique identifier with individual first manufactured absorbent articles, or with groups of first manufactured absorbent articles;
- ii) capturing and recording process data relating to the first manufactured absorbent articles;
- iii) soliciting and recording consumer feedback relating to in use performance of the first manufactured absorbent articles;
- iv) correlating, by a controller, consumer feedback with process data of a specific, individual, first manufactured absorbent article by means of the unique identifier;
- v) determining different process parameters for a second manufactured absorbent article based on the correlated consumer feedback and process data for the first manufactured absorbent articles;
- vi) applying, by the controller, the one or more different process parameters to a converting apparatus configured to manufacture absorbent articles; and
- vii) manufacturing, by the converting apparatus, the second manufactured absorbent articles, the second

manufactured absorbent articles being better adapted to meet consumer needs than the first manufactured absorbent article."

- X. The appellant's arguments concerning the main request can be summarised as follows:

Steps i) to vi) in claim 1 have technical character:

A unique identifier serves the purpose of identifying individual articles during a manufacturing process and is used for quality control.

Product and process data is technical data collected from a manufacturing process.

In use performance data relates to product quality and performance and is to be interpreted as objective user measurements.

Determining different product and/or process parameters is technical because of the technical nature of the underlying manufacturing process and the fact that the data is used for this process.

The transforming of first articles into second articles in step vi), although not literally correct, has to be read in the given context and with a mind willing to understand. It can only be interpreted as applying the determined technical parameters to the manufacturing process to produce different articles.

The steps in claim 1 cause a technical effect which is to produce improved articles or provide an improved manufacturing process.

Reasons for the Decision

The invention

1. The invention relates to a method for redesigning product or process parameters of a manufactured article (e.g. diapers) based on consumer feedback relating to the article's performance in use (see paragraphs [0005] to [0007] of the published application).
2. Claim 1 of the auxiliary request further specifies that a controller determines the redesigned process parameters and, based thereon, adjusts manufacturing parameters of a converting apparatus (assembly line) in order to produce the second articles ([0015]).

Main request

3. The Board agrees with the examining division's conclusion that claim 1 is so abstract that it encompasses entirely non-technical subject-matter excluded under Article 52(2) and (3) EPC.
4. The claim essentially defines a method for collecting consumer feedback on the use of a product. This feedback is used to redesign the product such that it is better adapted to meet consumer needs.

For example, when buying shoes the consumer might report that they don't fit. This feedback could be related to data collected during manufacture of the shoes such as a label on the shoebox indicating their size. The manufacturer might then conclude that a wrong label has been attached to the shoebox and issue an instruction to change the manufacturing - in this case

the labelling - process accordingly.

5. The Board finds that none of steps i) to vi) relate to technical matter and do not necessarily involve technical data.
- 5.1 Firstly, a business person would have the idea of keeping track of products such that consumer feedback can be collected for a specific product. Keeping track of products requires some sort of identifier. The "unique identifier" in step i), which according to the description can for example be a serial number or a bar code, is a self-evident implementation of this requirement.
- 5.2 Secondly, the product and/or process data in step ii) does not exclude non-technical product data such as the above mentioned size label.

The appellant argued that the skilled person understood that this data was recorded and used in a manufacturing process and, thus, technical (see paragraphs [0008] and [0009]). The Board is not convinced as no examples of any such data are given. Product data collected during the manufacture of a product can be interpreted broadly and - as mentioned above - include non-technical data.

- 5.3 Similarly, the Board is not convinced that the consumer feedback relating to "in use performance" of a product in step iii) necessarily represents technical data.

The appellant argued that this data had to be understood as objective user measurements similar to measurements obtained from laboratory testing. Any subjective element possibly included in the consumer feedback was eliminated by performing the subsequent

statistical correlation analysis defined in step iv).

However, the Board does not consider that the term correlating has to be interpreted as statistical correlation of a number of users' feedback with various parameters. Paragraph [0012] of the description supports the colloquial use of the term which is that of a single connection between two things. In the case at hand consumer feedback of a specific article is connected with product and/or process data by means of the unique identifier.

The appellant's argument that the use of algorithms, spreadsheets or graphical interpretation as mentioned in paragraph [0013] would support the statistical interpretation of correlating is not persuasive. This paragraph relates to the evaluation of quality information generated from the correlation, not to the correlation analysis itself. At best it might support the appellant's view that step v) is based on step iv) - see next point.

- 5.4 The appellant argued that step v) in conjunction with step iv) further explained the technical purpose of the feedback information being that of identifying manufacturing parameters used for producing faulty products and changing them.

The Board notes that there is no link between step v) and iv). It is, thus, not possible to conclude that the correlated data is actually used for determining different manufacturing parameters. Even if it were, the Board remains of the view that a purely non-technical interpretation as outlined above, for example determining a different size label, still exists.

The determined different product and/or process data can, therefore, not be considered as data useful or used for controlling a technical device and, therefore, has no technical purpose or effect.

For that reason the Board does not agree with the appellant that step v) is technical. The determined parameters encompass non-technical data and, thus, cannot imply a technical effect in the sense of points 88 and 94 of G 1/19 as argued by the appellant.

- 5.5 The Board judges that step vi) is not clear enough to contribute to technical character either.

Applying the new parameters to the first manufactured articles to "transform" them into second articles does not seem to be possible. Most likely, what is meant is to apply these parameters to the manufacturing process. This, however, neither implies an actual manufacturing step nor involves any technical means. Also, as the parameters themselves might not be technical their application to the manufacturing process does not necessarily imply any technical effect either.

6. Accordingly, claim 1 is not an invention under Article 52(2) EPC.

First Auxiliary request

7. Auxiliary request 1 was filed during the oral proceedings after the main request and former auxiliary request 1 and 2 had been discussed. Since this set of claims differs substantially from the previous ones, the Board considers this as an amendment to the party's appeal case and its admittance is at the Board's discretion (Article 13 RPBA 2020).

Moreover this request was filed after notification of the summons to oral proceedings and thus Article 13(2) RPBA 2020 applies, which stipulates that such amendments shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified by cogent reasons. Although, this discretion is rather limited, the Board still has to consider and balance all relevant circumstances when using its discretion. These circumstances include the development of the case as well as the purpose of the oral proceedings.

The purpose of the oral proceedings for the appellant is to better explain his case and for the Board to understand and clarify points which, perhaps, up to that point were not sufficiently clear. This is particularly relevant in *ex parte* cases where besides the applicant/appellant no other party is involved. If amendments resulting from such discussions were not possible, oral proceedings would be pointless. The new auxiliary request was filed as a direct reaction following the exchange of arguments in the oral proceedings and addressing the objections and concerns the Board had. Furthermore, this request overcame the grounds on which the appealed decision was based. The Board considers the filing of such a request is justified by exceptional circumstances and therefore admits it into the proceedings.

8. Claim 1 of this request has been changed to a method for redesigning process parameters *and manufacturing articles* according to the redesigned process parameters. The articles are limited to *absorbent articles* and the manufacturing data to *process data*.

Furthermore, the claim specifies that a *controller* performs the correlation step and *applies different process parameters to a converting apparatus*, these parameters being determined based on the correlation step.

Finally, a new step *vii) of manufacturing, by the converting apparatus*, articles according to the determined different process parameters has been added.

9. The Board judges that the amendments are clear and derivable from paragraph [0015] of the description and do not add any new subject-matter.
10. The Board is satisfied that the subject matter of claim 1 is technical. It includes an explicit manufacturing step, technical means of a manufacturing process and is limited to process data which in the Board's view can only refer to technical data.

Remittal

11. In its decision the examining division only decided on technicality of the invention but not on the further patentability requirements. In particular, the new technical features could not have been analysed with respect to novelty and inventive step. Also, it is not possible for the Board to evaluate whether in view of the amendments a further search may be necessary. The European Search Report merely contained a so-called no-search declaration and the documents cited during the procedure might not cover the added technical features.
12. As recalled in Article 12(2) RPBA 2020, the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner. This object

would not be achieved if the Board were to conduct a complete examination of the application.

13. Given the special reasons mentioned above, the case is remitted to the examining division for further prosecution (Article 111(1) EPC and Article 11 RPBA 2020).

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 for further prosecution.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated