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**Datasheet for the decision
of 2 June 2020**

Case Number:	T 2012/17 - 3.5.07
Application Number:	11849211.5
Publication Number:	2652635
IPC:	G06F17/30, G06F21/00, H04L29/08, G06Q30/02, G07F7/10
Language of the proceedings:	EN

Title of invention:
Providing a customized application to a user terminal

Applicant:
Intellipocket OY

Headword:
Customised application/INTELLIPOCKET

Relevant legal provisions:
EPC Art. 113(1)
EPC R. 103(1)(a)

Keyword:
Substantial procedural violation - violation of the right to
be heard (yes)
Remittal to the department of first instance - fundamental
deficiency in first instance proceedings (yes)

Decisions cited:
T 0763/04, T 1557/07

Case Number: **T 2012/17 - 3.5.07**

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 2 June 2020

Appellant:	Intellipocket OY
(Applicant)	Hiilikatu 3
	00180 Helsinki (FI)
Representative:	Papula Oy
	P.O. Box 981
	00101 Helsinki (FI)
Decision under appeal:	Decision of the Examining Division of the European Patent Office posted on 25 April 2017 refusing European patent application No. 11849211.5 pursuant to Article 97(2) EPC

Composition of the Board:

Chairman	R. Moufang
Members:	R. de Man
	M. Jaedicke

Summary of Facts and Submissions

I.   The applicant (appellant) appealed against the decision
         of the Examining Division refusing European patent
         application No. 11849211.5, published as international
         application WO 2012/080578 and claiming a priority date
         of 17 December 2010.

II.   The contested decision mentioned the following
         documents:

         D1: WO 2005/026981 A1, published on 24 March 2005;

         D2: EP 1 182 589 A2, published on 27 February 2002;

         D3: WO 2010/004549 A2, published on 14 January 2010;

         D4: US 2010/0211638 A1, published on 19 August 2010;

         D5: WO 2010/146241 A1, published on 23 December 2010.

         The Examining Division decided that the subject-matter
         of claim 1 of the main request and the first to fifth
         auxiliary requests lacked inventive step over
         document D1.

III.   In a letter dated 1 April 2016, filed in response to a
         communication of the Examining Division, the appellant
         had referred, *inter alia*, to the following document:

         D6: "Mobile Web Application Best Practices", W3C
             Recommendation, 14 December 2010, retrieved from:
             http://www.w3.org/TR/mwabp/.

IV.   In its statement of grounds of appeal, the appellant
         maintained the requests considered in the decision
         under appeal. It requested that the decision under
         appeal be set aside and that a patent be granted on the

basis of the claims of the main request or, in the
alternative, one of the first to fifth auxiliary
requests.

V.   In a communication issued under Rule 100(2) EPC, the
        Board informed the appellant of its intention to set
        aside the decision under appeal, to remit the case to
        the Examining Division for further prosecution and to
        order reimbursement of the appeal fee under Rule 103(1)
        (a) EPC. In response, the appellant agreed to remittal
        without oral proceedings before the Board being held
        first.

VI.   Independent claim 1 of the main request reads as
        follows:

        "A method for providing a user terminal (1-80; 6-80;
        $7\text{-}80_1$ ... $7\text{-}80_n$) with a customized web application,
        wherein execution of the web application requires a
        respective copy of the web application at the user
        terminal and an application server (1-20), and wherein
        the web application is customized in respect of user-
        specific parameters and terminal-specific properties,
        the method comprising the following acts performed by
        an application server (1-20), the application server
        comprising an equipment database (1-24) for storing
        terminal-specific properties in respect of a plurality
        of different user terminals:
        -    storing a template for the customized web
             application and a feature set for each of several
             terminal types;
        -    receiving a set of requests (2-2, 2-14; 6-81) for
             creation of the customized web application;
        -    determining the user-specific parameters and a type
             of the user terminal based on the set of requests

(2-2, 2-14; 6-81) for the customized web
application;
- determining the terminal-specific properties based
  on the determined type of the user terminal;
- creating the customized web application based on
  the template, the user-specific parameters and the
  terminal-specific properties;
- inserting the customized web application into a set
  of delivery files for a data communication system
  (1-50) and transmitting (2-26) the set of delivery
  files to the user terminal; and
- caching the customized web application and/or
  parameters for re-creating the customized web
  application at least for a specified validity
  period of the customized web application."

VII.   The text of claims 2 to 14 of the main request, and
         that of the claims of the auxiliary requests, is not
         relevant to this decision.

Reasons for the Decision

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

2.   *The invention*

2.1   The application relates to "web applications" which are
         to be downloaded to user terminals such as mobile
         phones. According to paragraph [0018] of the published
         application, the term web application refers to "a set
         of information material from which web pages may be
         constructed". Examples of such information are "images,
         text, code segments in markup languages such as HTML
         and XHTML, stylesheets such as CSS, script languages

such as JavaScript, video and audio, as well as various
browser plug-in content such as Flash, Silverlight and
Java Applet content".

2.2   The invention seeks to provide web applications
        customised to user-specific parameters and terminal-
        specific properties (paragraph [0006]). Essentially,
        this is achieved by providing, at an application
        server, a customisable web application template and, in
        response to requests specifying user-specific
        parameters and a user-terminal type, creating the
        customised web application on the basis of the
        template, the user-specific parameters and terminal-
        specific properties corresponding to the user-terminal
        type.

3.   *Right to be heard – Article 113(1) EPC*

3.1   The right to be heard under Article 113(1) EPC
        encompasses the right of a party to have its comments
        considered in the written decision (see decision
        T 763/04 of 22 June 2007, reasons 4.3 and 4.4).
        Although a decision does not have to address each and
        every argument of a party in detail, it must comment on
        the crucial points of dispute to give the losing party
        a fair idea of why its arguments were not considered
        convincing (see decision T 1557/07 of 9 July 2008,
        reasons 2.6).

3.2   In this case, a crucial point of dispute was whether
        document D1 disclosed "web applications".

3.2.1   According to the European search opinion, document D1
        disclosed a web application in the form of "application
        122 to communicate with a web service" on page 5,
        lines 16 and 17. In its communication dated 1 July 2016

and its decision, the Examining Division additionally referred to page 18, lines 10 to 13.

3.2.2   Throughout the first-instance proceedings, the appellant repeatedly contested that document D1 disclosed web applications.

In its letter of 1 April 2016, it argued that, as evidenced by document D6, at the priority date of the application, the term "web application" had a definition established by the W3C standardisation body. The Board notes that, according to document D6, the term refers to a web page or collection of web pages delivered over HTTP which uses server-side or client-side processing to provide an "application-like" experience within a web browser.

In its next letter dated 16 January 2017, submitted in response to the summons to oral proceedings before the Examining Division, the appellant reiterated this argument by referring to its previous response.

During the oral proceedings before the Examining Division, the appellant argued that a web application was run within a web browser, was not a stand-alone application and could not be equated to the application 122 in document D1 (see points 8, 9 and 20 of the minutes).

3.2.3   In the contested decision, the Examining Division did not mention the appellant's arguments with respect to the term "web application" but merely referred to the passages on page 5, lines 16 and 17, and page 18, lines 10 to 13, of document D1. The first passage states that "[t]he terminal 100 uses the applications 122 to access or otherwise communicate with a web

service 110, or other schema-defined services such as but not limited to SQL databases". The second passage explains that "application generation and customization can be initiated by the user of the terminal 100 discovering the web service 110 using such as but not limited to: a device browser; an email attachment; or a dedicated web service discovery application". From neither passage is it evident whether the Examining Division considered that the applications 122 satisfied the definition of a "web service" as put forward by the appellant or whether (and why) it took the view that the definition proposed by the appellant, for which document D6 was cited as evidence, was considered too narrow.

3.3   A further crucial point of dispute was whether document D1 disclosed the claimed step of the application server creating the customised web application ("the following acts performed by an application server ... creating the customized web application based on the template ...").

3.3.1   In its letter dated 16 January 2017, the appellant pointed out that, in document D1, the customisation of the application templates was carried out by the developer/user and not "solely and completely by the application server" as required by claim 1. During the oral proceedings before the Examining Division, the appellant again stressed that, in document D1, customisation was performed by the user (see point 10 and also point 13 of the minutes of the oral proceedings before the Examining Division).

3.3.2   In its decision, however, the Examining Division did not acknowledge the step of the application server creating the customised web application as one of the

differences. Nor did it explain why it disagreed with the appellant on this point.

3.4   Hence, the contested decision neither explicitly nor implicitly addresses the appellant's arguments with respect to at least two crucial points of dispute. It follows that the Examining Division infringed the appellant's right to be heard and thus committed a substantial procedural violation.

3.5   The inventive-step objection being the only ground for the refusal, this procedural violation was causal for the appeal. Reimbursement of the appeal fee under Rule 103(1)(a) EPC is therefore equitable.

4.   *Remittal*

4.1   Given that in document D1 an "application template" is customised by a developer/user (or "an independent customization provider 120") who may essentially freely rewrite the template with the help of a development environment (see page 5, lines 11 to 15; page 16, line 18, to page 18, line 8; Figure 6), the templates of document D1 appear to be unsuitable for automated customisation. It is therefore questionable whether document D1 is a suitable starting point for assessing inventive step of the subject-matter of claim 1 of the main request.

4.2   However, inventive step still has to be assessed with respect to documents D2 to D5.

       Moreover, the precise technical meaning of, *inter alia*, the term "web application" and the feature "wherein execution of the web application requires a respective copy of the web application at the user terminal and an

application server" may need further investigation in
light of the technical explanations and examples given
in the application and the common general knowledge of
the skilled person.

4.3   Hence, it is appropriate to remit the case to the
        Examining Division for further prosecution on the basis
        of the main request. In addition, the appeal fee is to
        be reimbursed.

Order

For these reasons it is decided that:

1.   The decision under appeal is set aside.

2.   The case is remitted to the department of first
        instance for further prosecution.

3.   The appeal fee is to be reimbursed.

The Registrar: The Chairman:

S. Lichtenvort   R. Moufang

Decision electronically authenticated