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**Datasheet for the decision
of 11 January 2023**

Case Number: T 2771/18 - 3.5.01

Application Number: 10802517.2

Publication Number: 2457199

IPC: G06Q10/08, G06Q50/28

Language of the proceedings: EN

Title of invention:

METHOD AND DEVICE FOR CONTENT TRACKING

Applicant:

Tetra Laval Holdings & Finance S.A.

Headword:

Content tracking/TETRA LAVAL

Relevant legal provisions:

EPC Art. 56, 111(1)

RPBA 2020 Art. 11

Keyword:

Inventive step - labelling a package with cross-referenced
information from a database (no - obvious)

Remittal to the department of first instance - (no)

Decisions cited:

T 0641/00, T 0172/03, G 0010/93



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Case Number: T 2771/18 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 11 January 2023

Appellant: Tetra Laval Holdings & Finance S.A.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 4 July 2018
refusing European patent application No.
10802517.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: I. Kürten
C. Schmidt

Summary of Facts and Submissions

- I. This appeal is against the examining division's decision to refuse the European patent application No. 10802517.2 for lack of inventive step (Article 56 EPC).
- II. The examining division held that the claimed invention was straightforward automation of an administrative scheme for tracking packaged content on a general-purpose networked data processing system. Such a system was also known from both D1 (US 2005/086132 A1) and D2 (US 2004/098158 A1).
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision to refuse the application be set aside and a patent be granted on the basis of the refused main or auxiliary request. The appellant argued that D2 was a better starting point for assessing inventive step and that the distinguishing features of claim 1 were technical and non-obvious.

The appellant also requested remittal of the case to the first instance "in case the Board finds any request to contain further technical features not assessed by the examining division ... to allow full inventive step assessment".

Oral proceedings were requested if the Board was minded not to allow the main request.

- IV. The Board arranged for oral proceedings. In the communication accompanying the summons, the Board set out its preliminary opinion that claim 1 of both

requests did not involve an inventive step over *inter alia* D2.

V. In a reply, the appellant's representative announced that he would not attend the oral proceedings and requested a decision according to the state of the file. The Board thus cancelled the oral proceedings.

VI. Claim 1 of the main request reads as follows:

"A method for content tracking of a packaged content in a package comprising the steps of

*obtaining information of the raw material;
obtaining transport information;
obtaining process information;
obtaining packaging information;*

storing said information of raw material, transport information, process information and packaging information in an electronic database;

wherein each piece of information of said information is stored together with a time stamp stating when respective piece of information is generated;

cross referring, by a computer, said stored information based on said time stamp for each of said information pieces and that said pieces of information are generated in a pre-determined sequence;

generating, by a computer, an output comprising said cross referenced information; and

labelling the package with said output;

such that said content can be tracked along a timeline and accurately generating an output comprising said cross referenced information for each package

retrieving the stored information based on the labelling information from the package, and

perform a surgical recall of the packages based on the retrieved stored information."

VII. Claim 1 of the auxiliary request appends the following feature to claim 1 of the main request:

"wherein the method further comprises the steps of obtaining secondary packaging information storing said secondary packaging information in an electronic database; cross referring said stored information; generating, by a computer, a second output comprising said cross referenced information; and labelling the secondary package with said second output."

Reasons for the Decision

1. The invention

1.1 The invention concerns the tracking of packaged products, such as milk (published application, first paragraph).

1.2 The claimed method comprises steps of obtaining various pieces of information about a product, such as information about the raw material and the packaging, storing this information in an electronic database together with corresponding time stamps, "cross referring" the information, and labelling a packaged product with the cross-referenced information. Finally, based on the labelling information, stored information about the product is retrieved and used to recall the packaged product (page 5, line 3 to page 6, line 34).

This information about the origin and processing of a product enables, for example, packages containing milk from a contaminated farm to be identified and discarded (e.g. page 9, lines 3 to 10).

2. Main request - inventive step

2.1 The examining division considered that claim 1 defined an obvious implementation of a business/administrative scheme on a general-purpose networked processing system. Such a system was also known from both D1 and D2.

2.2 The appellant argued that the examining division did not correctly apply the COMVIK approach (T 641/00). This approach required identifying the closest prior art and the distinguishing features over this prior art before assessing the technical and inventive step contribution of these features. In contrast, the examining division indicated which features of claim 1 were non-technical before identifying the closest prior art. In the appellant's opinion, the approach taken by the examining division was similar to the abandoned

"contribution approach" (e.g. the Case Law Book, 10th edition, I.D.9.2.1).

- 2.3 The Board cannot see how the examining division failed to follow the COMVIK approach. At point 3.1 of the decision, the division identified a computer and an electronic database as the only technical features of claim 1. The rest of the claim was said to define a business/administrative method. This led the examining division to choose a general-purpose networked data processing system as the closest prior art (point 3.2). The Board considers that it is legitimate to select the closest prior art based on the technical features of the claim (e.g. T 0172/03 - *Order management/RICOH*, points 11 to 18). This approach is also outlined in the Guidelines for Examination, section G-VII, 5.4.

After choosing the closest prior art, the examining division identified the distinguishing features as the steps of the business scheme listed previously under point 3.1 (see point 3.3). The division then formulated the objective technical problem as how to implement this business scheme in the known computer system (point 3.4). Finally, the division argued that the solution in claim 1 was obvious and concluded that the claim lacked an inventive step (point 3.5).

- 2.4 Hence, the examining division followed a generally established approach for assessing the inventive step of inventions comprising mixtures of technical and non-technical features. The division acknowledged that claim 1 comprised technical means and, therefore, had technical character as a whole. The division, however, concluded that the claim lacked an inventive step since the distinguishing features did not contribute to this technical character. This is different from the

"contribution approach" mentioned by the appellant, where the lack of technical contribution over the prior art leads to the conclusion that the entirety of the claimed subject-matter is excluded from patentability under Article 52(3) EPC.

2.5 The appellant considered D2 to be a better starting point for assessing inventive step and argued that the following distinguishing features contributed to the technical character of the invention:

- (a) the computer-based cross-referring of time-stamped information related to various operations in a predetermined sequence;
- (b) the physical labelling of the package with cross-referenced information;
- (c) the computer-based retrieval of the information related to various operations based on the labelling information.

2.6 Although the Board agrees with the examining division that a general-purpose networked data processing system can be taken as a starting point for assessing inventive step, the Board adopts, for the sake of argument, the appellant's choice of D2.

2.7 D2, like the claimed invention, concerns the tracking of products, such as milk, during their processing and transport. D2 stores information about events (e.g. transport), units (e.g. tanks), and material quantities (e.g. volumes of milk) in different tables of a database, [0021], [0022], [0027], [0045]. The events are time-stamped and stored in the order of their occurrence, e.g. Figures 1 and 2. All events, units,

and material quantities have identifiers, [0019] to [0021]. Each event record stores the identifier of the processed material quantity (WorkID) and the identifiers of the source and destination units, [0021]. This implies, and it is even stated, that the various pieces of information are cross-referenced (see [0045]).

The identifier of a material quantity (WorkID) can be used to retrieve information about events or units which involved that material, [0053] to [0056].

- 2.8 Hence, D2 stores and retrieves information in the same way as the claimed invention (feature (a) and part of feature (c) above). D2, however, does not disclose labelling a package with cross-referenced information and using this information for the retrieval (feature (b) and part of feature (c)).
- 2.9 The Board agrees with the appellant that labelling a package is technical, as it relates to a physical activity. A label comprising cross-referenced information enables retrieving information about the packaged content. Hence, the problem solved can be formulated as how to obtain information about packaged content from the database of D2.
- 2.10 It is standard practice to label a package with information about its content (see e.g. D1, [0008]). In view of this, and when faced with the problem above, the skilled person would have chosen to label the package with a piece of information that can be used to retrieve further information about the packaged content. As the content's identifier of D2 (i.e. the WorkID, [0044]) fulfils this requirement ([0053] to [0056]), it would have been an obvious choice. Since

the further information (e.g. information about processing and transport events) is cross-referenced to the WorkID, the skilled person would have arrived at the subject-matter of claim 1 in an obvious way.

2.11 The appellant identified a number of effects achieved by features (a) to (c):

2.12 According to the appellant, the cross-referencing ensured that "the entire process meets the necessary standards with respect to the sequence of the process and is performed within the required time period". The process thus ensured that a package "meets the requirements of safety prior to labelling".

Apart from the fact that the Board doubts that this effect is technical, this argument seems to concern distinguishing feature a), which the Board considers to be known from D2, and thus for which any effect is irrelevant.

The Board also notes that this feature is quite vague and even the description does not define how cross referencing is based on the time stamp, let alone how this relates to standards or safety requirements. The appellant interpreted it as "*cross-referring ... to determine that said information are generated in a pre-determined sequence*" (grounds of appeal, page 7, fourth paragraph). Yet, the Board cannot derive this interpretation from the application. It appears rather that the invention is merely cross referencing various information about the product, each piece of information having a time stamp. The information would obviously have a pre-determined sequence, i.e. the sequence in which the steps occurred and the time stamp would, by definition, reflect this.

- 2.13 The appellant also argued that the invention helped avoid counterfeit products since a fake label could be easily identified when querying the database with the information on the label.

Claim 1, however, is limited to labelling packages with cross-referenced information from the database and retrieving information using such labels. The claim does not specify what happens if the label on a package cannot be found in the database. Such considerations extend beyond the scope of the claim and indeed the application as a whole. Hence, avoiding counterfeit products is not an effect achieved by the claimed method.

- 2.14 Finally, the appellant argued that the method allowed for retrospective and accurate recall of contaminated packages.

The Board agrees with the examining division that the recall of packages is a non-technical activity required by legislative regulations. Therefore, it does not enter the examination of inventive step.

- 2.15 Accordingly, claim 1 of the main request does not involve an inventive step (Article 56 EPC).

3. Auxiliary request - inventive step

- 3.1 Claim 1 adds further steps of obtaining, storing, and cross-referencing "secondary packaging information" followed by labelling a "secondary package" with this cross-referenced information.

3.2 The appellant argued that the additional features defined a tracking method that "allows for recall of precisely those packages whose content formed part of a batch processed in a certain operation, including when the package contains different batches of products in sub-packages" (grounds of appeal, page 12, first paragraph).

3.3 The Board does not find this argument persuasive because claim 1 only refers to "secondary packaging information" and a "secondary package". This broad wording does not imply any batch processing or sub-packages. Furthermore, the Board agrees with the examining division that the storage and processing of this secondary packaging information, even if it pertained to batch processing, only relates to non-technical activities with a straightforward computer implementation. Labelling a package with cross-referenced information is obvious for the same reasons as given above for the main request.

3.4 Accordingly, the Board judges that claim 1 of the auxiliary request does not involve an inventive step (Article 56 EPC).

4. Request for remittal

4.1 The appellant requested remittal if the Board found any request to contain technical features not assessed by the examining division.

4.2 In deciding on the appeal, the Board may either exercise any power within the competence of the examining division or remit the case to the division for further prosecution (Article 111(1) EPC). Article 11 RPBA 2020 - which according to Article 25(1) RPBA

2020 applies to the current case - stipulates that the Board shall not remit a case, unless special reasons related to the proceedings before the department whose decision was appealed present themselves for doing so.

- 4.3 Such special reasons cannot be identified. Although the examining division did not acknowledge the labelling of a package to be technical, the Board considers that this feature does not merit a remittal as the Board can assess its inventive step contribution without any difficulty.
- 4.4 The Board further notes that under the EPC a party has no absolute right to have every aspect of its case examined by two instances. The Board may rule on issues not dealt with by the first instance (see G 10/93, points 3 and 4 and the decisions cited in: Case Law Book, 10th edition, V.A.9.2.1).
5. As none of the appellant's requests is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated