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Datasheet for the decision
of 12 December 2019

Case Number:	T 0515/19 - 3.5.01
Application Number:	01965508.3
Publication Number:	1410281
IPC:	G06F17/60, H04L12/24, G06F11/34
Language of the proceedings:	EN

Title of invention:
SYSTEM AND METHOD OF ENTERPRISE SYSTEMS AND BUSINESS IMPACT
MANAGEMENT

Applicant:
BMC Software, Inc.

Headword:
Business impact management/BMC SOFTWARE

Relevant legal provisions:
EPC Art. 84

Keyword:
Clarity - both requests (no)

Decisions cited:
T 1129/97, T 0049/99

Case Number: **T 0515/19 - 3.5.01**

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 12 December 2019

Appellant: (Applicant)	BMC Software, Inc. 2101 City West Boulevard Houston, Texas 77042 (US)
Representative:	Dolleymores 9 Rickmansworth Road Watford, Hertfordshire WD18 0JU (GB)
Decision under appeal:	Decision of the Examining Division of the European Patent Office posted on 13 September 2018 refusing European patent application No. 01965508.3 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman	W. Chandler
Members:	W. Zubrzycki
	Y. Podbielski

Summary of Facts and Submissions

I. This is an appeal against the examining division's decision to refuse the European patent application No. 01965508.3 for lack of clarity (Article 84 EPC).

II. The appellant requested that the decision be set aside and the case be remitted to the examining division for further prosecution or "the Appeal Board set aside the decision and allow the application such that it can proceed to an Rule 71(3) procedure". The Board interprets the latter request as a request to grant a patent on the basis of the main or first auxiliary requests filed with the statement setting out the grounds of appeal, dated 11 January 2019. The appellant also requested oral proceedings in the event that the Board was minded not to overturn the decision.

III. In the communication accompanying the summons to oral proceedings, the Board expressed its preliminary opinion that claim 1 of both requests were not clear (Article 84 EPC) and contained added subject-matter (Article 123(2) EPC). The Board added that claim 1 of both requests did not appear to involve an inventive step (Article 56 EPC)

IV. In a letter dated 6 December 2019, the appellant informed the Board that nobody would attend the oral proceedings. Oral proceedings were held on 12 December 2019 in the appellant's absence (Rule 115(2) EPC and Article 15(3) RPBA).

V. Claim 1 of the main request reads:

A method for managing impact of events on business services in an Information Technology (IT)

Infrastructure comprising a plurality of paths (IT paths), each comprising IT elements, wherein internal end-users or external customers rely on business services to submit business transactions involving a sequence of application transactions along said plurality of Paths of the infrastructure to form Aggregates representing a snapshot of the IT elements for a path; the method comprising providing a knowledge base, and; comprising:

(a) configuring a backbone (85) comprising an abstraction layer (105), the method which further comprising configuring the abstraction layer by the steps of

(i) providing at least two peer-to-peer service processors (130, 130a, 130b, 130$_z$) in the IT Infrastructure where a large number of server processors have been installed;

(ii) least (sic) one of the service processors, referred to as a domain processor (120), being provided, from the knowledge base, with a pre-packaged set of event structures, data structures, and rules, such that the domain processor can deliver at least one abstraction service to abstract collected events;

(iii) at least one of the service processors (125), being configured as an ODS processor with a pre-packaged set of event structures, data structures, and rules, such that the ODS processor can deliver at least one object directory service;

wherein the backbone further a comprises a processing layer referred to as a business layer (100),

the method further comprising the step of configuring the business layer by

(i) providing at least one peer-to-peer service processor in the IT Infrastructure; and

(ii) providing the service processor, from the knowledge base, with a pre-packaged set of event

structures, data structures, and rules, such that the service processor can deliver business impact statements.

(b) defining a plurality of business objects (STB) related to business transactions in the infrastructure;

(c) defining a plurality of IT objects related to the IT Components in the infrastructure; characterised by

(d) remotely submitting sample application transactions at selected source locations in the IT infrastructure while requesting the backbone to capture execution information along the Paths for each of the application transactions;

wherein remotely submitting sample application transactions comprises the steps of:

(i) decomposing at least one business service into one or more of the business transactions, wherein each business transaction branches to one or more site-specific business transactions (SBT);

(ii) further decomposing each site-specific business transaction (SBT) into one or more site application transactions (SAT);

(iii) organizing each site application transaction (SAT) into an orderly sequence;

(iv) associating to each site application transaction (SAT) at least one parameter to remotely submit a sample site application transaction at an associated source location;

(v) associating to each site application transaction (SAT) at least one parameter to request the backbone to capture related execution information for each sample site application transaction; and

(vi) defining at least one business user group as a resource dependent on at least one of the site business transactions for at least one of the business services.

(e) sending monitoring requests along Paths to monitor the Paths used by the application transactions to form

monitoring information;
(f) abstracting the monitoring information into
business impact information using abstraction rules, an
abstraction rule being triggered by the arrival of
information to generate an event, abstraction forming
business impact information.

Claim 1 of the auxiliary request differs from claim 1
of the main request by:

- the addition of the wording "*defining one of the IT*
Paths for each site application transaction (SAT)" as
step (iv) and renaming steps (iv), (v) and (vi) of the
main request to steps (v), (vi) and (vii) respectively

- Replacing step (f) by the wording "(*f) propagating*
the monitoring information to said at least one domain
processor (120) which uses the knowledge base to
abstract the monitoring performance into business
impact information related to business services and
business user groups, the abstraction being done by
using abstraction rules triggered by the propagated
information."

Reasons for the Decision

1.   Main Request - Article 84 (EPC)

The Board considers that claim 1 does not comply with
the requirements of Article 84 EPC for the reasons set
out below.

1.1   The expression "*The (IT) Infrastructure comprising a*
plurality of paths (IT paths), each comprising IT
elements" is unclear. Firstly, it is not clear what
criteria is used for assigning IT elements to IT paths.

Secondly, it is generally not clear whether assigning
IT elements to IT paths alters the structure of the
distributed IT infrastructure or merely constitutes a
mental act.

The appellant referred in the statement of grounds to
page 6 of the original application and argued that the
IT paths were clearly defined throughout the
description as paths taken by the transactions.
However, the argument that the unclear claim term can
be understood by reference to the description does not
overcome the clarity objection, as Article 84 EPC
requires that the claims be clear in themselves (see
decision T 49/99, point 12 of the reasons and decision
T 1129/97, point 2.1.2 of the reasons).

1.2   The expression "*submit business transactions ... to
        form Aggregates representing a snapshot of the IT
        elements for a path*" is unclear. Firstly, even if
        snapshots are interpreted as subsets of IT elements, it
        is not clear what criteria are used for assigning IT
        elements to snapshots. Secondly, it is not clear how
        submitting transactions in some IT infrastructure can
        allow the snapshots to be formed.

        The appellant argued in the statement of grounds that
        the aggregates were well known and used for storing
        compact summary data relating to a person, business or
        transaction history. The appellant referred to a
        Wikipedia entry concerning aggregate operations in SQL
        databases and to description pages 7 and 38 in
        combination with Figure 20.

        The Board does not deny that the term aggregate has a
        recognizable meaning in the field of relational
        databases. Since, however, the claim relates to a
        different technical context, this argument does not
        overcome the above clarity objection. A reference to

the description does not overcome this objection either
(see the preceding point).

1.3   It is not clear, even taking the description into
        account, to which functionality step (f) relates. In
        particular, since it is not clear to which kind of
        processing "abstracting the monitoring information"
        relates, it is not clear which information is output by
        the abstraction rules and which role the rules fulfill.
        The appellant argued in the statement of grounds that
        the skilled reader was clearly taught that a number of
        abstraction rules were provided and that the rule
        determined how an abstraction was to be done according
        to the particular event which triggered a certain rule.
        However, this argument does not really explain what
        "abstracting" actually involves in the context of claim
        1 and does not overcome the clarity objection.

1.4   It is not clear what functionality the service
        processors and server processors provide (step (a)(i))
        and it is not clear how a service processor,
        interpreted as a piece of executable code, can be
        provided from a knowledge base which does not contain a
        programming code (step (a)(ii)).

2.   Auxiliary Request

        The objections under Article 84 EPC raised for the main
        request also apply to the auxiliary request.

3.   As none of the 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