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**Datasheet for the decision
of 13 December 2022**

Case Number: T 0563/19 - 3.4.03

Application Number: 12881587.5

Publication Number: 2877978

IPC: G06Q50/18

Language of the proceedings: EN

Title of invention:

SYSTEMS AND METHODS FOR NETWORK-BASED ISSUE RESOLUTION

Applicant:

Ask America, Inc.

Headword:

Relevant legal provisions:

EPC Art. 56

RPBA Art. 12(4)

RPBA 2020 Art. 12(2)

Keyword:

Inventive step - (no) - mixture of technical and non-technical features

Late-filed request - request could have been filed in first instance proceedings (yes)

Decisions cited:

T 0641/00, T 0384/07

Catchword:



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Case Number: T 0563/19 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 13 December 2022

Appellant: Ask America, Inc.
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Representative: Barker Brettell LLP
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 26 September
2018 refusing European patent application No.
12881587.5 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman M. Stenger
Members: J. Thomas
E. Mille

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision refusing European patent application No. 12 881 587.
- II. The refusal was based on the grounds that the then main request and the then first and second auxiliary requests did not involve an inventive step (Articles 52(1) and 56 EPC), further the then second auxiliary request extended the subject-matter beyond the content of the application as filed (Article 123(2) EPC) and the then third and fourth auxiliary requests were not admitted into the proceedings under Rules 116(2) and 137(3) EPC.
- III. In a communication under Article 15(1) RPBA 2020 the Board informed the appellant about its preliminary opinion. Oral proceedings were held before the Board at which neither the appellant nor its representative attended.
- IV. At the oral proceedings, the chairman summarised the appellant's submissions, as they appear from the file, as follows:

The decision under appeal is to be set aside and a patent is to be granted on the basis of the set of claims of a main request or alternatively of any of a first and a second auxiliary request, the main request and the first auxiliary request being those on which the impugned decision was based, and the second auxiliary request having been filed with the statement setting out the grounds of appeal.

V. The Board decided the case at the end of the oral proceedings.

VI. The following documents were already cited by the examining division and are also referred to below:

D1: US 2002/0035480 A1

D9: US 6 766 307 B1

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

"A method for network-based issue resolution, the method comprising, by at least one hardware processor:

*receiving from a user a selection of a type of audience from a plurality of types of audiences;
receiving a definition of an issue;
identifying one or more audience members appropriate to vote on the issue and corresponding to the selected type of audience;
wherein the step of identifying an audience member comprises the steps of:*

*generating a personality profile for each of a plurality of members,
wherein the personality profile comprises one or more personality characteristics associated with the member, said step comprising:*

analyzing data collected from the member's participation in and responses to issues and/or survey questions using at least one algorithm to determine the language used by the member;

comparing the language and responses used to the language and responses used by other members with known personality characteristics;

associating the audience member with one or more known personality characteristics; and generating a personality profile comprising the associated known personality characteristics; and selecting one or more audience members to vote on the issue from their personality profile; providing the definition of the issue to the one or more audience members; receiving one or more responses from the one or more audience members; and determining a resolution for the issue based on the one or more responses."

VIII. Claim 1 of the first auxiliary request is based on claim 1 of the main request with the following underlined features added (underlining by the Board), reciting claim 1 from the "providing" step on:

"... providing the definition of the issue to the one or more audience members; receiving one or more responses from the one or more audience members; updating the personality profile for each of the one or more audience members based on the received one or more responses from the one or more audience members, one or more issues received from the respective audience member, or one or more resolutions of the one or more issues received from the respective audience member; receiving a plurality of comments from the one or more audience members; ranks the plurality of comments based on one or more personality profiles for the one or more audience members; and determining a resolution for the issue based on the one or more responses."

IX. Claim 1 of the second auxiliary request is based on claim 1 of the main request with the following underlined features added and strike-through features deleted (emphasis by the Board), reciting claim 1 from the "providing" step on:

*"... providing the definition of the issue to the one or more audience members;
receiving one or more responses from the one or more audience members;
and
determining a resolution for the issue based on the one or more responses;
and
tracking each audience member's participation in issues".*

X. The examining division's arguments relevant for the present decision may be summarised as follows:

The subject-matter defined in claim 1 consisted of technical and non-technical features. The few technical features defined in claim 1 did not go beyond a notoriously known general-purpose networked computer system in which the non-technical features concerning an online mediation method were implemented. The implementation was considered to be a straightforward solution for the skilled person. This applied in the same manner for claim 1 of the main request and claim 1 of the first auxiliary request.

XI. The appellant's arguments relevant for the present decision may be summarised as follows:

The subject-matter defined in claim 1 of the main request concerned a technical solution to a technical problem, since it related to a method for network-based issue resolution. This required the automated selection of the desired audience, the generation of personality profiles in order to select suitable audience members and the determination of a solution for the issue at hand. These steps required technical comparisons using a hardware processor. At least the detection and comparison of the languages of the different participants needed in its implementation an algorithm as defined in claim 1 which should be considered technical. The appellant referred to the "Comvik" approach and T 348/07 (which apparently should read T 384/07 as referred to in the impugned decision). According to these decisions, all steps of the claimed method contributed to the technical solution including the technical implementation of the non-technical mediation method. Based on these considerations, the subject-matter defined in claim 1 should be considered to involve an inventive step since it went beyond a notoriously known networked computer system.

The same arguments applied for claim 1 of the first auxiliary request wherein additional technical features were defined. Updating the personality profiles and ranking the comments based on these personality profiles solved the technical problem of how to identify the most relevant response to an issue. Therefore also the subject-matter defined in claim 1 of the first auxiliary request should be considered technical and inventive.

In the second auxiliary request submitted for the first time with the statement setting out the grounds of appeal, the newly added / amended features provided, as

compared to the cited prior art, the technical difference of tracking the audience members. Tracking allowed the implementation of the previously defined technical steps with more accuracy. Therefore, an inventive contribution should be acknowledged.

Reasons for the Decision

1. Procedural matters

Following the summons to oral proceedings under Rule 115(1) EPC dated 2 March 2022, a communication under Article 15(1) RPBA 2020 was sent to the appellant indicating the Board's preliminary negative opinion with respect to the main request and the first and second auxiliary requests.

Although the appellant was duly summoned, it neither responded to the summons nor appeared at the oral proceedings.

During the oral proceedings, the Board noted that no new facts, arguments or evidence appeared from the file in response to its preliminary opinion, which would change its opinion on the case. Consequently, in accordance with Article 15(3) RPBA 2020, the Board relied for its decision on the appellant's written submissions in the notice of appeal and the statement setting out the grounds of appeal. Hence, the Board was in a position to decide at the conclusion of the oral proceedings, since the case was ready for decision (Article 15(5) and (6) RPBA 2020), and the voluntary absence of the appellant was not a reason for delaying the decision (Article 15(3) RPBA 2020).

2. Main request - inventive step

2.1 The invention

The claimed invention concerns a mediation scheme or method which is automated by implementation on a networked computer system.

The mediation scheme comprises the following method steps:

- selection of a type of audience from a plurality of types of audiences;
- definition of an issue;
- identification of one or more audience members appropriate to vote on the issue and corresponding to the selected type of audience.

Therein, the identification of an audience member comprises the steps of:

- generating a personality profile for each of a plurality of members, wherein the personality profile comprises one or more personality characteristics associated with the member,
- analyzing data collected from the member's participation in and responses to issues and / or survey questions and determining the language used by the member;
- comparing the language and responses used to the language and responses used by other members with known personality characteristics;
- associating the audience member with one or more known personality characteristics; and
- generating a personality profile comprising the associated known personality characteristics; and
- selecting one or more audience members to vote on the issue from their personality profile.

The method further comprises the steps of

- providing the definition of the issue to the one or more audience members;
- receiving one or more responses from the one or more audience members; and
- determining a resolution for the issue based on the one or more responses.

Certain of these steps, in particular the ones relating to the personality of the members, may involve psychological considerations. However, none of these steps requires the presence of any particular technical solution or implementation. Hence, none of them contributes to the solution of a technical problem. Thus, the (psychological) mediation scheme defined above is a purely non-technical method that can be carried out through mental actions using non-technical information.

The only aspects besides the above mentioned purely non-technical method steps in the wording of claim 1 relate to the method being "*network-based*", the steps being performed "*by at least one hardware processor*" and determining something "*using at least one algorithm*" (in the sense that the algorithm is performed by the hardware processor). These aspects might be considered to be of technical nature.

Hence, claim 1 of the main request consists of a mixture of non-technical and technical features.

2.2 The "Comvik" approach

As discussed in the previous section, claim 1 comprises both technical and non-technical features, and therefore the Board applies the well-established "Comvik" approach to assess inventive step as set out

in T 641/00 (see *Case Law of the Boards of Appeal of the European Patent Office*, 10th edition 2022, I.D.9.2.1 and Official Journal EPO, 7/2003, pages 352 to 364).

The Board notes that the appellant also referred to the "Comvik" approach as being the correct approach for assessing inventive step in the present case (statement setting out the grounds of appeal, page 3, last but two and penultimate paragraphs).

2.2.1 Closest prior art

At the relevant filing date, networked computer systems were part of the common general knowledge, as exemplified in documents D1 (Figure 1) or D9 (column 2, line 42 to column 3, line 10). In agreement with the examining division (Reasons for the Refusal, point 1.1, page 5, "*Closest prior art*"), the Board considers that such a notoriously known networked computer system is a suitable starting point for assessing inventive step.

2.2.2 Differentiating features

Any networked computer system at the relevant filing date comprised a hardware processor and inevitably used algorithms when running a program or implementing a method. Thus, all features that might be considered to be technical have generally been part of any networked computer system at the relevant filing date. When starting from such a notoriously known networked computer system, the differentiating features are therefore restricted to the above cited non-technical mediation method (which is implemented on such a generally known networked computer system).

2.2.3 Objective technical problem - technical effect

According to the "Comvik" approach, the non-technical features of a claim may be incorporated as a requirement specification in the formulation of the problem to be solved. Following that approach, the problem to be solved may be formulated in the present case as the automation of the above mentioned non-technical mediation method using a networked computer system.

2.3 Obviousness

Neither the idea of automating the method nor its specific implementation is inventive, as will be explained in the following.

The automation of mediation methods was generally known at the relevant filing date. Examples can be found in documents D1 and / or D9 (see title and abstracts of both documents). Hence, no inventive step can be acknowledged based on the idea to automate a mediation method.

Furthermore, the application does not mention any possible difficulties the skilled person, namely a person skilled in computer technology, would encounter when implementing the non-technical mediation method defined above in a networked computer system. The application is also silent concerning any particular technical implementation which would provide a technical advantage or a further technical effect. Instead, the automation as defined in claim 1 has to be considered as not going beyond an obvious, straightforward implementation of the non-technical mediation scheme defined above by which the skilled

person would directly arrive at the subject-matter of present claim 1 (see *Case Law of the Boards of Appeal of the European Patent Office*, 10th edition 2022, I.D.9.2.3). Thus, no inventive step can be acknowledged on the specific implementation of the mediation method, either.

According to the wording of claim 1, the algorithm is (performed) by the hardware processor. Hence, the Board accepts the argument of the appellant that in the present case, the use of an algorithm requires a computer or server (statement setting out the grounds for appeal, page 5, second paragraph). In that sense, the use of an algorithm can be seen as being a technical feature and has been considered as such above (see point 2.2.2).

However, as also noted above, whenever a method is implemented on a computer (or according to present claim 1, on a hardware processor), an algorithm of some kind has inevitably to be used. That is, spelling out explicitly that an "*algorithm*" is used for implementing a method step on a computer does effectively not go beyond merely implementing that method step on the computer.

In other words, the skilled person, when being faced with the task of determining the language used by the audience members by means of a networked computer system, will inevitably have to use an algorithm in order to do so. Hence, the use of an algorithm as defined by the claim wording "*using at least one algorithm to determine the language used by the member*" relates to the obvious straightforward implementation on the networked computer system of the non-technical constraint that the language of each different audience member is to be detected. The implementation of an algorithm can therefore, in the present case, not

contribute to inventive step, contrary to the submission of the appellant.

The Board furthermore notes that the reasoning along the lines of the "Comvik" approach (T 641/00) set out above is also in line with decision T 384/07 referred to by the appellant. In that decision, inventive step was "*assessed on the technical implementation of the [non-technical] business scheme, where the business scheme appears as an input requirement to the skilled person entrusted with the technical implementation, irrespective of whether the business scheme as such is innovative*" (T 384/07; Reasons for the Decision, point 4.7). In the present case, the (psychological) mediation scheme appears, in a similar manner, as an input requirement to the skilled person entrusted with the technical implementation.

The Board therefore concludes that the subject-matter defined in claim 1 of the main request does not involve an inventive step under Article 56 EPC.

3. First auxiliary request

"*Updating*" the personality profile and "*ranking*" the comments according to the amended features of claim 1 of the first auxiliary request, at least in the broad and technically unspecified manner in which they are claimed, do not provide a specific technical contribution or a further technical effect on which an inventive step could be based. Instead, the amended features of claim 1 of the first auxiliary request merely concern the general concept of the non-technical mediation method and represent only further constraints of that method. The skilled person, when being presented with these additional constraints, would have

implemented them in the networked computer system in the same straightforward manner as discussed above for the non-technical mediation method steps of the main request.

As a side remark, the Board notes that a plurality of comments always has some order or ranking.

The subject-matter defined in claim 1 of the first auxiliary request therefore lacks an inventive step under Article 56 EPC as well.

4. Second auxiliary request - admission

4.1 The second auxiliary request was submitted for the first time with the statement setting out the grounds of appeal. The Board therefore has the discretion not to admit it into the proceedings under Article 12(4) RPBA 2007 (which here applies according to Article 25(2) RPBA 2020), if it considers that it could and should have been filed during the first instance proceedings.

The only basis in the original application for the additional feature of claim 1 of the second auxiliary request that each audience members participation in issues is tracked can be found in paragraph [90] of the original description. That is, there is no basis in the claim set as originally filed for that feature.

Moreover, this feature is not present in the claim sets of the two higher ranking requests and was not present in any of the claim sets submitted during the first instance proceedings.

That is, the additional feature of claim 1 of the second auxiliary request relates to aspects that were never discussed during the first instance proceedings

and was introduced for the first time in the appeal proceedings.

It is not the purpose of the appeal proceedings to discuss completely new aspects for the first time. Instead, the purpose of the appeal proceedings is to review the decision of the first instance (Article 12(2) RPBA 2020). Hence, the second auxiliary request with claims including the additional feature of claim 1 not only could, but should have been submitted during the first instance proceedings, at the latest during the oral proceedings before the Examining Division. Instead of seizing this opportunity, the appellant chose not to attend the first instance oral proceedings, thereby preventing the examining division from taking a decision on the matter. Hence, the examining division's opinion on this subject-matter is unknown and a review of this subject-matter according to Article 12(2) RPBA 2020 is not possible.

Taking all these considerations into account, the Board decides not to admit the second auxiliary request under Article 12(4) RPBA 2007.

5. Conclusion

The subject-matter defined in claim 1 of the main request and in claim 1 of the first auxiliary request does not involve an inventive step (Article 52(1) and 56 EPC). The second auxiliary request is not admitted into the proceedings (Article 12(4) RPBA 2007). Consequently, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

M. Stenger

Decision electronically authenticated