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**Datasheet for the decision
of 19 April 2023**

Case Number: T 1167/19 - 3.4.03

Application Number: 07008330.8

Publication Number: 1850280

IPC: G06Q10/00

Language of the proceedings: EN

Title of invention:

System for providing information to a user

Applicant:

Bissantz, Nicolas, Dr.rer.Pol.

Headword:

Relevant legal provisions:

EPC Art. 52(1)

EPC 1973 Art. 56

RPBA Art. 12(2), 12(4)

RPBA 2020 Art. 12(3), 13(2)

Keyword:

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

Late-filed request - submitted with the statement of grounds of appeal - admitted (no) - request could have been filed in first instance proceedings (yes)

Statement of grounds of appeal - party's complete case - mere reference to first instance proceedings

Amendment after summons - cogent reasons (no) - exceptional circumstances (no)

Decisions cited:

T 0641/00

Catchword:



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Case Number: T 1167/19 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 19 April 2023

Appellant: Bissantz, Nicolas, Dr.rer.Pol.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 November
2018 refusing European patent application No.
07008330.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman T. Häusser
Members: M. Stenger
T. Bokor

Summary of Facts and Submissions

- I. The appeal concerns the decision of the Examining Division to refuse European patent application no. 07 008 330. In the contested decision, the Examining Division set out that the subject-matter of the claims of the main request and of five auxiliary requests then on file did not involve an inventive step within the meaning of Article 56 EPC starting from a notorious data processing system.

- II. In the statement of grounds of appeal, the appellant requested that the contested decision be set aside and that a European patent be granted, as a main request based on the claim wording as originally filed, according to a new auxiliary request 1 introduced with the statement of grounds of appeal, or based on any of the auxiliary requests 1 to 5 filed during the examination proceedings (i.e. auxiliary requests 1 to 5 referred to in the contested decision, labelled Auxiliary Request I, Ia, II, IIa and III, respectively). The appellant further requested, should the Board of Appeal deem further substantive examination necessary, that the case be remanded back to the Examining Division. In addition, the appellant had requested in the notice of appeal that the appeal fee be refunded to the applicant.

- III. In a communication under Article 15(1) RPBA preparing the oral proceedings before the Board, the Board set out its preliminary opinion that the subject-matter of claim 1 of the main request lacked an inventive step, that admission of the new auxiliary request 1 would have to be discussed during oral proceedings (pointing out that it did not perceive how the amendment of claim

1 corresponded to new detailed comments and objections debated in the course of the first instance oral proceedings) and that it was minded not to admit auxiliary requests 1 to 5 filed during the examination proceedings for lack of proper substantiation. In that communication, the Board further provided some brief comments concerning lack of inventive step of the independent claims of all auxiliary requests.

- IV. With letter dated 14 November 2022, the appellant submitted arguments why the new auxiliary request 1 was a reaction the first instance oral proceedings and therefor should be admitted. With the same letter, the appellant filed arguments why the subject-matter of respective claim 1 of all auxiliary requests was inventive. It further submitted that auxiliary requests 1 to 5 should be admitted.
- V. With a communication dated 20 January 2023, the Board indicated that the admission of the new auxiliary request 1 filed with the statement of grounds of appeal and auxiliary requests 1 to 5 filed during the examination procedure would be discussed during the oral proceedings scheduled for 14 February 2023 as set out in the Board's communication under Article 15(1) RPBA. The Board further indicated that it was preliminarily minded not to admit the submissions of the appellant filed with date of 14 November 2022, which were apparently made to remedy the lacking substantiation of the auxiliary requests 1 to 5 filed during examination proceedings and pursued in the appeal. The same applied to the corresponding requests.
- VI. With letter dated 31 January 2023, the appellant indicated that it would not be present at the oral

proceedings and requested a decision on the state of the file.

VII. Claim 1 of the main request has the following wording:

*System for providing information to a user, said system comprising
a screen for showing the information to the user,
information generating means for generating at least one graphical and/or textual information,
first selecting means for enabling the user to select at least one of said graphical and/or textual information,
first generating means for generating first data which are related to said selected information,
wherein said first data are grouped according to a criterion,
changing means for changing said criterion to at least one further criterion,
and triggering means which are adapted to trigger said changing means upon activation by the user of the system.*

VIII. Claim 1 of new auxiliary request 1 differs from claim 1 of the main request in that the last feature ("*and triggering means ...*") is replaced by the following feature:

and a mouse wheel adapted to trigger said changing means upon activation by the user of the system.

IX. Claim 1 of auxiliary request 1 (labelled "Auxiliary Request I") filed during the examination proceedings differs from claim 1 of the main request in that it comprises, at its end, the following additional features:

*characterised in that
the criterion according to which the first data are
grouped is determined according to the spread of the
data for different criteria,
wherein the criterion having the highest spread of data
is initially selected.*

- X. Claim 1 of auxiliary request 2 (labelled "Auxiliary Request Ia") filed during the examination proceedings differs from claim 1 of auxiliary request 1 filed during the examination proceedings in that it comprises, at its end, the following additional feature:

*and the changing means is adapted to change the
criteria so that a criterion having a higher spread of
data is selected prior to a criterion having a lower
spread of data.*

- XI. Claim 1 of auxiliary request 3 (labelled "Auxiliary Request II") filed during the examination proceedings differs from claim 1 of the main request in that it comprises, at its end, the following additional feature:

*characterised in that
said first generating means is adapted to only display
those data contributing to the sum of data to a
predetermined minimum extent.*

- XII. Claim 1 of auxiliary request 4 (labelled "Auxiliary Request IIa") filed during the examination proceedings differs from claim 1 of the main request in that it comprises, at its end, the following additional features:

*characterised in that
the data comprise at least one sparkline, and
said first generating means is adapted to only display
those data contributing to the sum of data to a
predetermined minimum extent.*

- XIII. Claim 1 of auxiliary request 5 (labelled "Auxiliary Request III") filed during the examination proceedings differs from claim 1 of the main request in that it comprises, at its end, the following additional features:

*characterised in that
the graphical and/or textual information and/or the
data comprise at least one sparkline,
the system comprises means for zooming the sparkline,
and the means for zooming the sparkline is adapted to
create a space on one or both sides of a bar of the
sparkline and to provide one or more values explaining
the absolute or relative values or changes of a
selected bar of the sparkline into said space(s).*

- XIV. The appellant argued essentially as follows:

- (a) Main request

The claimed subject-matter involved an inventive step over a notorious data processing system.

- (b) New auxiliary request 1 filed with the grounds of appeal

The new auxiliary request 1 should be admitted into the proceedings as it was an attempt to overcome all objections without giving rise to new ones.

(c) Auxiliary requests 1 to 5 filed during the first instance proceedings

The subject-matter of auxiliary requests 1 to 5 involved an inventive step and should be taken into account during the appeal proceedings.

Reasons for the Decision

1. The appeal is admissible.

2. The invention

The invention relates to the display of a large amount of data using "sparklines". Sparklines are word-sized, minimized graphical diagrams, e.g. column or bar diagrams. The displayed data is grouped initially according to a particular criterion. This criterion can be changed by changing means triggered by triggering means upon activation by the user.

3. Main request, claim 1

3.1 The Examining Division identified the following technical features in this claim:

A system comprising a screen, information generating means, first selecting means, first generating means, changing means and triggering means.

It further held that these technical features corresponded to a system with a screen, input means (selection means) and abstract processing means (generation, changing and triggering means). It considered the closest prior art to be a notorious data

processing system (points 1.3 to 1.4 of the contested decision).

The Examining Division then found that the differences between the subject-matter of claim 1 and such a system related to the particular set of processing steps which the system was programmed to carry out, namely a set of abstract business rules to be programmed in a straightforward, obvious manner by the skilled person.

- 3.2 The appellant did not contest the existence of such notorious data processing systems nor the selection of such a system as the closest prior art (page 3, third paragraph of the grounds of appeal). However, it submitted that the specific processing steps served to achieve the technical effect of saving power/reducing the energy consumption of the system and allocating display space with maximum efficiency. They thereby contributed to solving a technical problem. Therefore, all features recited in the claim had to be taken into account when assessing inventive step (page 3, last paragraph to page 5, third paragraph of the statement of grounds of appeal). The reasoning in the decision represented an *ex post facto* view (page 6, second and third paragraphs of the statement of grounds of appeal).

- 3.3 The Board accepts the view of the Examining Division and the appellant that a notorious data processing system may be seen as representing the closest prior art. Moreover, the Board notes that it was also notorious knowledge at the effective date of the application that such systems, for instance general purpose standard personal computers, generated information to be shown to the user and that at least a part of the shown information could be selected by the user, resulting in

related data to be displayed. Examples are, for instance, simple drop-down menus, adventure games or, more in a business context as the application, various programs available in the 1990s for tracking the stock market, e.g. the Comdirect online brokering system or, even closer to the application, the program "Quotetracker", which was the first implementation of the "sparklines", invented by Edward Tufte and referred to in the application, as early as 1998.

Using the wording of the claim, it was thus also notorious to provide, in a data processing system in the form of a general purpose standard personal computer as set out above, the functions of and means for "showing the information to a user", "generating at least one graphical and/or textual information", "enabling the user to select at least one of said graphical and/or textual information" and "generating first data which are related to said selected information" in combination. In addition, it is inevitable that any (first) data, when displayed, is grouped according to a (first) criterion since a decision must be taken and implemented where and how to arrange the data.

- 3.4 It follows therefrom that the subject-matter of claim 1 of the main request differs from a notorious general purpose standard computer as described above only by
- changing means adapted for changing said criterion to at least one further criterion, and
 - triggering means which are adapted to trigger said changing means upon activation by the user of the system.
- 3.5 The Board does not see how these distinguishing features (or more generally, the "specific processing

steps" referred to by the appellant) would achieve the technical effect of saving power/reducing the energy consumption of the system and allocating display space with maximum efficiency referred to by the appellant (e.g. grounds of appeal, page 4, first to fifth paragraphs). The submission of the appellant that only the most relevant items of information are displayed and that the same amount of information can be displayed on only one screen where previously two screens would have been necessary (grounds of appeal, page 6, last paragraph to page 7, first paragraph) actually even supports that view of the Board since it makes clear that a cognitive decision is taken which information is relevant and therefore to be displayed, while less relevant information is simply not displayed.

Thus, the distinguishing features/the "specific processing steps" merely allow that a cognitive decision is implemented which information is to be displayed in which manner. They do therefore not contribute to the solution of a technical problem, contrary to the submissions of the appellant.

- 3.6 The Board notes that the claim, including all processing steps, is formulated in a very broad and abstract manner. Thus, irrespective of whether the processing steps are considered to be technical or not, most of them have been part of the notorious knowledge at the priority date of the application, contrary to the submission of the appellant (grounds of appeal, page 6, fourth paragraph).

Furthermore, the distinguishing features defined above are also formulated in a very broad and abstract manner. For instance, they do not define that the criterion can be changed to the further criterion while

the first data is displayed, or if that is the case, that display is changed immediately upon a change of the criterion. Nor is there any indication in the claim about what the criterion might be.

Irrespective thereof, the manner in which data to be displayed is grouped will normally be done depending on the content of the data, i.e. the information to be displayed. In the present case, the information to be displayed is purely business related (for instance, revenues, see page 3, last paragraph of the original application).

That is, neither the content of the data displayed nor the manner in which the displayed data is grouped contributes to the solution of a technical problem.

Hence, the criteria according to which the (non-technical) first data is to be grouped as well as the number of these criteria or the wish to change between different criteria also do not contribute to the solution of a technical problem and will thus normally be given to the technically skilled person as part of the requirement specification.

Consequently, the objective technical problem may be formulated in the present case as how to implement the changing and triggering functions defined in the distinguishing features.

The Board notes that formulating the objective technical problem as being the implementation of a non-technical requirement specification corresponds to the well-known "COMVIK-approach" and the appellant's submission relating to an *ex post facto* view does not apply (see point 7. of the "COMVIK"-decision T641/00).

The implementation of the changing and triggering functions, at least at the abstract level claimed of providing corresponding "means for" performing them, would have been a straightforward task for the skilled person.

Therefore, the subject-matter of claim 1 of the main request is not inventive (Article 52(1) EPC) under Article 56 EPC 1973 in view of a notorious general purpose standard personal computer as set out above combined with common general knowledge.

4. New auxiliary request 1 filed with the grounds of appeal

Claim 1 of the new auxiliary request differs from claim 1 of the main request in that the triggering means are defined to be a mouse wheel.

This request was not discussed during the examining proceedings. Pursuant to Article 12(4) RPBA 2007, the Board thus has the discretion not to admit it if it comes to the conclusion that it could have been presented in the first instance proceedings.

The appellant submitted that it had transpired from the oral proceedings that the Examining Division considered that the software means recited in the claim wording were defined in insufficient technical detail to support an inventive step. Therefore, in the new auxiliary request 1, at least one abstract software means (the triggering means) had been substituted with a specific hardware component (the mouse wheel), providing more technical detail and focusing the proceedings on an embodiment that appeared to be of commercial interest (see letter dated 14 November 2022, page 2, first and second paragraphs).

The Board notes that even the European search opinion already set out that the technical features claimed were considered to be well-known in the art of data processing and merely served their well-known functions (point 2.3 of the European search opinion). In a communication dated 4 April 2018 accompanying the summons to oral proceedings, the Examining Division further set out in detail that the triggering means were considered to be technical but notoriously known (point 3.3 of that communication), i.e. that the triggering means could not support an inventive step. Thus, contrary to the appellant's submission, substituting the triggering means by a mouse wheel cannot be considered as responding to any new comments and objections debated in the course of the oral proceedings (see also the statement of grounds of appeal, page 8, antepenultimate and penultimate paragraph).

Instead, the Board comes to the conclusion that the new auxiliary request 1 not only could but should have been presented in the examination proceedings, in reaction to the communication dated 4 April 2018 or at the latest during the oral proceedings before the Examining Division.

The Board therefore decides not to admit the new auxiliary request 1 into the proceedings under Article 12(4) RPBA 2007.

5. Auxiliary requests 1 to 5 filed during the examination proceedings and also underlying the contested decision
- 5.1 With respect to the independent claims of auxiliary requests 1 to 5 filed during the examination

proceedings, the Examining Division essentially set out that the description was silent with respect to any technical considerations concerning the adaptation of a notorious data processing system to carry out the additional process steps defined in the claims of these requests. It further stated that it had been unable to identify any further or surprising technical effect resulting from this adaptation.

Therefore, the Examining Division came to the conclusion that the subject-matter of the independent claims of each these requests lacked an inventive step within the meaning of Article 56 EPC.

5.2 The appellant, when discussing auxiliary requests 1 to 5 filed during examination proceedings in its statement setting out the grounds of appeal, merely referred to its reasons outlined with regards to the main request and to the written submissions made during the examination proceedings (grounds of appeal, page 10, fourth paragraph). Only in its letter dated 14 November 2022 the appellant submitted arguments relating to the Article 56 EPC objections set out by the Examining Division in the contested decision for each of these requests.

5.3 The mere reference to the reasons of the main request and to the submissions made during the examination proceedings in the statement setting out the grounds of appeal does not relate to the objections set out by the Examining Division in the contested decision (i.e., at the end of the first instance proceedings) for auxiliary requests 1 to 5. Therefore, it does not amount to a proper substantiation of the appeal with respect to these requests as required by Articles 12(2) and (4) RPBA 2007 in combination with Article 25(2) RPBA 2020 (it is noted that Article 12(3) RPBA 2020

essentially stipulates the same requirements as Article 12(2) RPBA 2007 and formally also applies to appeals filed before the entering into force of the RPBA 2020).

- 5.4 The additional arguments with respect to these requests submitted by the appellant with letter dated 14 November 2022, even if relating to requests which were filed earlier, were not part of the notice of appeal or the statement setting out the grounds of appeal and therefore do not fall under what should be taken into account by the Board under Article 12(4) RPBA 2007. Instead, they are to be considered as amendments falling under the provisions of Article 13(2) RPBA, with the consequence that these submissions shall, in principle, not be taken into account, unless there are exceptional circumstances, which have been justified with cogent reasons by the appellant. This was already set out in the Board's communication pursuant to Article 15(1) RPBA 2020 (see point 8. of that communication).

An explanation of such exceptional circumstances is not apparent from any of the submissions of the appellant. Hence, these submissions and consequently the affected auxiliary requests 1-5 filed during the proceedings before the Examining Division are not taken into account under Article 13(2) RPBA and Article 12(4) RPBA 2007, respectively.

6. Request to remand the application back to the Examining Division

In view of the foregoing, the Board comes to the conclusion that it can take a final decision and that therefore no further examination of the Examining Division is necessary. A remittal of the application to

the Examining Division is not necessary in the case at hand.

7. Refund of the appeal fee

The request for refund of the appeal fee made in the notice of appeal was not mentioned in the statement setting out the grounds of appeal. The request is therefore not substantiated. In any case, the Board is unaware of any circumstances in the current case that would justify such a refund, as already indicated in the preliminary opinion of the Board.

8. Summary

The subject-matter of claim 1 of the main request is not inventive under Article 56 EPC.

New auxiliary request 1 and auxiliary requests 1 to 5 as filed during the first-instance proceedings are not admitted. The requests for a remittal of the application to the Examining Division and for the refund of the appeal fee are refused.

In the absence of any allowable request in the proceedings, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated