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**Datasheet for the decision  
of 26 January 2023**

**Case Number:** T 2852/19 - 3.4.03

**Application Number:** 14868146.3

**Publication Number:** 3077976

**IPC:** G06Q10/02, G06Q30/00

**Language of the proceedings:** EN

**Title of invention:**

SYSTEMS AND METHODS FOR DYNAMIC EVENT ATTENDANCE MANAGEMENT

**Applicant:**

Stubhub Inc.

**Headword:**

**Relevant legal provisions:**

EPC Art. 52(2)(c), 56

RPBA 2020 Art. 15(3)

**Keyword:**

Patentable invention - technical and non-technical features -  
method for doing business

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

Oral proceedings cancelled after withdrawal of request for oral  
proceedings, decision according to the state of the file

**Decisions cited:**

T 0641/00, G 0001/19, T 0279/05, T 0775/90, T 1175/02,  
T 0438/06, G 0003/08

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 2852/19 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 26 January 2023**

**Appellant:** Stubhub Inc.  
(Applicant) 199 Fremont Street  
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San Francisco, California 94105 (US)

**Representative:** Müller-Boré & Partner  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 22 May 2019  
refusing European patent application No.  
14868146.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. Papastefanou  
**Members:** A. Böhm-Pélissier  
D. Prietzel-Funk

## Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division to refuse patent application No. 14 868 146. The refusal was based on the ground of lack of inventive step (Article 56 EPC).
- II. The Appellant (Applicant) **requested** that the decision under appeal be set aside and that a patent be granted based on the Main Request as first submitted on 8 March 2019.
- III. The Board summoned on 30 September 2022 for oral proceedings to be held on 12 September 2023. Before a communication under Article 15(1) RPBA 2020 was issued by the Board, the Appellant, by letter dated 7 November 2022 withdrew the auxiliary request for oral proceedings. Consequently, the Board cancelled the oral proceedings.
- IV. Reference is made to the following **document**:
- D1 = US 2010/015993 A1
- V. **Claim 1** of the Main Request:
- (The labelling (A), (B), ... was introduced by the Board)
- (A) *A system (100) for redistribution of tickets for an event at a venue (400), comprising:*
- (B) *a memory (332) configured to store event information associated with the event; and*
- (C) *a processor (331) coupled to the memory, wherein the processor is configured to:*

- (D) *determine a location of a user that has a ticket for a seat at the event based on location data from a Global Positioning System, GPS, component (323) from a user device (320) of the user;*
- (F) *determine an area (404) around the venue for the event, wherein a size of the area is reduced as an event start time approaches;*
- (G) *determine whether the location of the user is within the area around the venue for the event;*
- (H) *obtain calendar information, purchase history information, and/or location history information for the user;*
- (I) *determine that the seat will be unused for all or a portion of the event based on determining that the location of the user is outside of the area around the venue and based on at least one of: the calendar information, the purchase history information, and/or the location history information;*
- (J) *sending an alert to the user prompting the user to indicate whether they plan to attend the event;*
- (K) *offer the seat for sale to another user based on the user indicating that they will not attend the event.*

VI. The Appellant's **arguments** can be summarised as follows:

- (a) The efficient filling of the seats of a venue was a technical task, as a given venue with limited space was filled with items in the best possible way; the mere fact that the seats were filled with people and not, for example, a surface with concrete, could not be decisive for the assessment of the inventive step.
- (b) T 775/90, T 1175/02 and T 438/06 held that the automation of a human process by a computer was not inventive; the system of claim 1 however was not a

simple automation of a manually performed process of calling or writing to each visitor individually, since such a complex and time consuming process to find out whether the visitors intended to attend the event - shortly prior to an event - was simply not possible by a manual process.

- (c) In addition, collection of all necessary data, i.e. whether visitors were inside or outside a defined area, could not be done by a human in a timely and efficient manner.
- (d) The system of D1 was much more effective with respect to a manually performed process and thus reduced network traffic, number of databases queries and processing power considerably, because no individual phone calls or emails were necessary.
- (e) By defining an area around the venue and automatically detecting whether visitors were inside or outside this area, the number of ticket holders potentially arriving late to the event was captured in real time and thus dynamically reduced, which had the technical effect of allowing the system to effectively identify potential ticket holders whose tickets could be resold.
- (f) In case T 279/05, a technical effect was attributed to a seat reservation system.
- (g) D1 did not disclose or teach Features (F), (G), (I) and (J); consequently, the subject-matter of claim 1 was inventive.

### **Reasons for the Decision**

1. The appeal is admissible.

2. **Procedural issues**

Since no oral proceedings took place, the Board took its decision on the basis of the state of the file, i.e. based on the arguments submitted in the statement setting out the grounds of appeal.

3. **The invention as described in the application**

3.1 The invention relates to optimised occupancy of an event. The aim is to avoid seats remaining empty if visitors cannot reach the event location in time (see introduction of the description).

3.2 The invention proposes to automatically determine whether visitors to an event are in a defined area at a certain distance from the venue. GPS data from visitors' cell phones is used for this purpose. If ticket buyers are not in said area shortly before the start of the event, an alert is sent to them and their ticket is resold in case of cancellation.

4. **Main Request - Inventive step (Article 56 EPC)**

4.1 **Closest prior art**

D1 is the only document discussed in the impugned decision. D1 discloses GPS tracking of event visitors within a specific radius, but D1 does not mention reselling a ticket. D1 is considered closest prior art.

4.2 **Disclosure of D1**

4.2.1 The system of D1 continuously monitors the location of a visitor on its way to an event (dinner in a restaurant) via GPS and calculates the route and

estimated arrival time of the visitor at the event location (claim 1). In particular a restaurant may rearrange its seating schedule according to the venue of the visitors to "maximize capacity and hence revenue" ([0023]).

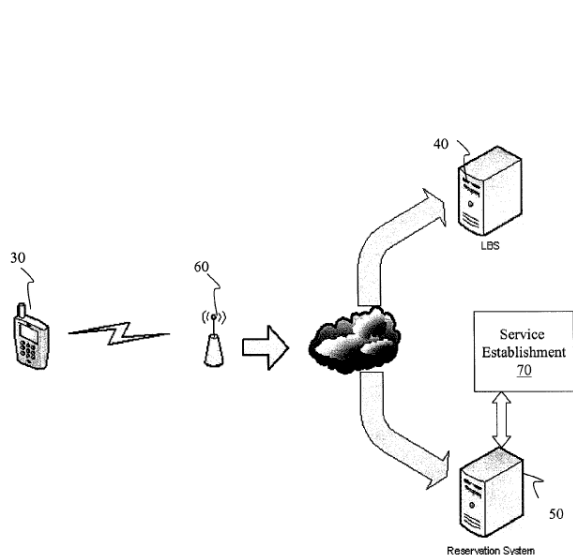


FIG. 1

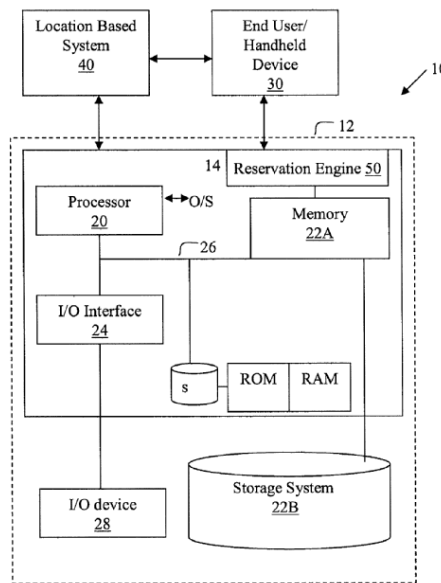


FIG. 2

D1

**4.2.2** The system detects "the proximity of the customer to the restaurant and the estimated time of arrival" ([0075]). Traffic, road conditions, speed, travel history etc. are taken into account ([0074]-[0077]). D1 discloses in [0066] monitoring a specific area and that "at each predetermined threshold, e.g., at a 5 mile radius, 2 mile radius, etc. the reservation system can alert the service establishment via a page, sms, email or display that a reservation has arrived or a mobile device is within the range of the threshold".

**4.2.3** Customers can opt out of the service ([0077]) and/or cancel the restaurant reservation ([0023]). D1 further discloses "adjust the seating time of the reservation or the seating priority based on the user's location, remind a user of a reservation; cancel a reservation if the user cannot meet the appointment time" ([0081],



[0082]). In addition, D1 discloses to "broadcast reservation availability to other interested parties via mobile devices such as cellular telephones in the event users are late or are "no-shows" for a reservation" ([0093]), i.e. to offer available seats in case of cancellation.

#### **4.3 Assessment of the disclosure of D1 with respect to claim 1**

4.3.1 Consequently, D1 discloses (references with respect to D1):

- (A) A system (10) for redistribution of tickets (seat reservations) for an event (dining) at a venue (restaurant), comprising:
- (B) a memory (22A, 22B) configured to store event information associated with the event; and
- (C) a processor (20) coupled to the memory, wherein the processor is configured to
- (D) determine a location of a user that has a ticket for a seat at the event (seat reservation at a dining table) based on location data from a Global Positioning System, GPS, component (30, 40) from a user device (30) of the user
- (F) determine an area around the venue for the event ("radius", [0066]); ~~wherein a size of the area is reduced as an event start time approaches;~~
- (G) determine whether the location of the user is within the area around the venue for the event;
- (H) ~~obtain calendar information, purchase history information, and/or location history information for the user (tracking the route traveled, estimation of arrival time);~~
- (I) determine that the seat will be unused for all or a portion of the event based on determining that the

*location of the user is outside of the area around the venue ([0082], [0066]) and based on at least one of: ~~the calendar information, the purchase history information, and/or the location history information~~ (route tracking history);*

*(J) sending an alert (reminder, [0081]) to the user ~~prompting the user to indicate whether they plan to attend the event;~~*

*(K) offer the seat ~~for sale~~ to another user based on the user indicating that they will not attend the event (rearrangement of the seating after cancellation, [0081], [0082], [0093]).*

- 4.3.2 D1 therefore does not disclose features (F) [part], (I) [part], (J) [part] and (K) [part].

#### **4.4 Difference**

D1 therefore does not explicitly disclose:

- (a) dynamically adapting the distance/area with time;
- (b) requesting a visitor to cancel a seat reservation;
- (c) offer the seat for resale.

#### **4.5 Effect**

4.5.1 The effect

- (i) of features (a) and (b) is optimising the seat occupancy;
- (ii) of features (b) and (c) is to increase the profit by reselling seats shortly prior to the event in case a visitor has cancelled its venue.

4.5.2 The effect (i) is technical. The effect (ii) is non-technical. According to the "COMVIK approach" (see T 641/00), non-technical features within the meaning of

Article 52(2)(c) EPC, i.e. features relating to administrative or commercial procedures not having a technical effect, cannot contribute to the inventive step. These features may therefore be included in the problem definition (see, inter alia, G 1/19 [reasons pt. 31], T 641/00, G 3/08, "Case Law of the Boards of Appeal of the European Patent Office", 10<sup>th</sup> edition, 2022, Sections I.D.9.2.1 to I.D. 9.2.6). According to T 641/00, the objective to be achieved in a non-technical field may appear legitimate in the formulation of the problem as part of the framework of the technical problem, i.e. the objective technical problem amounts to a statement of requirements that any implementation must meet.

4.5.3 Furthermore, according to the COMVIK approach, it is not decisive whether a system or process is technical or not. Rather, it is relevant whether the system or process contributes to the solution of a technical problem. The purpose of the system disclosed in D1 is the same as in the present invention, i.e. to achieve effects (i) and (ii) ([0023]). D1's system as well as the present invention have - with respect to a manual system (cf. section VI(b) ff, above) - the technical effect of

- 1.) reducing network traffic since visitors do not have to be called/emailed individually;
- 2.) optimising the seat occupancy.

4.5.4 This is achieved in both systems through GPS tracking and arrival time estimation, as well as the possibility to cancel seats via mobile device after a reminder sent to the visitor. Consequently, the implementation of the distinguishing features (a) to (c) into D1's system

would not have any additional technical effect and would not solve a technical problem.

4.5.5 The system according to the invention has only the difference that the radius of the area is dynamically adjusted. However, this corresponds to the disclosure of D1, i.e. the continuous monitoring of the position and the continuous calculation of the time of arrival. Therefore, the arguments under a) to e) of the appellant do not apply, since the technical effects discussed there are already achieved in the system of D1. Consequently, decision T 0279/05 is not applicable to the present case.

#### **4.6 Problem**

Therefore, the problem may be formulated as "optimising the seat occupancy and implementing features (J) and (K), i. e. prompting the user to indicate whether they plan to attend the event and offer the seat for sale".

#### **4.7 Obviousness**

##### **ad (a)**

4.7.1 D1 calculates for a visitor continuously, i.e. at each point of the approach route, the remaining distance and route as well as the remaining time until reaching the venue. In addition, D1 specifies at least two different area thresholds (5-mile radius, 2-mile radius). It is obvious that these thresholds correspond to the time intervals when a visitor will be able to make his reservation in time at two different time thresholds, e.g., at 7:30 PM and 7:45 PM if the reservation is made for 8:00 PM. Therefore, it is obvious in view of the disclosure of D1 that the size of the area is reduced

(e.g. from a 5-mile radius at 7:30 PM to a 2-mile radius at 7:45 PM) as an event start time approaches.

**ad (b)**

4.7.2 Feature (b) relates to an economical model, i.e. reselling a ticket by encouraging a visitor to cancel its reservation if it cannot meet the appointment time. The system of D1 reveals that a visitor is reminded of its reservation ("*remind a user of a reservation*"). D1 further discloses the option to "*cancel a reservation if the user cannot meet the appointment time*" by mobile phone. It would be obvious that the reminder contains a link or a request to cancel the reservation if the appointment time cannot be met.

**ad (c)**

4.7.3 Feature (c) is per se obvious, because it relates to a business method, i.e. reselling a ticket (reservation) in the case a visitor cannot arrive in time. In addition, D1 teaches "*maximizing capacity and hence revenue*". D1 further teaches to rearrange a seating schedule and to offer the seat to other users ([0093]). If the restaurant charges a reservation fee for the deck, then this rearrangement corresponds to a resale of the seat reservation (if the system in D1 is not applied to a restaurant reservation but to a theater or concert reservation, the rearrangement would also correspond to a resale of the reservation ticket). It is therefore obvious to resell a reservation (event ticket) when the system in D1 detects that a reservation cannot be taken.

4.8 Features (F), (I), (J) and (K) are therefore obvious in view of the disclosure and teachings of D1.

## 5. Summary

The subject-matter of claim 1 does not involve an inventive step over document D1 in combination with the common general knowledge of the skilled person and is therefore not inventive within the meaning of Article 56 EPC. Consequently, the appeal against the impugned decision refusing the application is unfounded and has to be dismissed.

## Order

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



S. Sánchez Chiquero

M. Papastefanou

Decision electronically authenticated