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**Datasheet for the decision
of 21 March 2023**

Case Number: T 0926/20 - 3.5.01

Application Number: 15731333.9

Publication Number: 3161734

IPC: G06Q10/00, H04W4/00

Language of the proceedings: EN

Title of invention:

A METHOD FOR PROVIDING A MOBILE LOCATION BASED INFORMATION
SERVICE

Applicant:

AR Check GmbH & Co. KG

Headword:

Mobile location-based task assignment/AR CHECK

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - assigning tasks based on user location and
profiles (no - non-technical)

Decisions cited:

T 0641/00, T 1082/13



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Case Number: T 0926/20 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 21 March 2023

Appellant: AR Check GmbH & Co. KG
(Applicant) Elefantengasse 4
60311 Frankfurt (DE)

Representative: Dr. Langfinger & Partner
In der Halde 24
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 October 2019
refusing European patent application No.
15731333.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Höhn
Members: R. Moser
L. Basterreix

Summary of Facts and Submissions

- I. This case concerns an appeal against the examining division's decision to refuse European patent application No. 15731333.9 for lack of inventive step (Article 56 EPC).
- II. The decision referred to a notorious (mobile) communication network including a server and mobile devices with a location determination unit; documents D1 to D3 being cited as examples of such a network. The examining division argued that steps b) and d) to h) in claim 1 (see point VIII below) were non-technical and, therefore, could be included in the objective technical problem as a set of requirements to be implemented. The implementation of these requirements using the notorious mobile communication network was, in the division's view, obvious.
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision be set aside and a patent be granted on the basis of the refused set of claims which are the claims as published.
- IV. In a communication under Rule 100(2) EPC, the Board set out its preliminary view of the case. The Board tended to agree with the examining division that claim 1 did not involve an inventive step as the location-based task assignment scheme in claim 1 had no technical character.
- V. In a reply, the appellant provided no further arguments, but requested an oral hearing.

VI. The Board issued a summons to oral proceedings. In the communication accompanying the summons under Article 15(1) RPBA, the Board maintained the preliminary opinion as set out in its previous communication.

VII. Oral proceedings were held as a videoconference on 21 March 2023. The appellant confirmed its requests submitted in writing that the appealed decision be set aside and a patent be granted on the basis of the claims as published.

At the end of the oral proceedings the Chairman announced the Board's decision.

VIII. Claim 1 as published reads:

"A method, in particular a computer implemented method, for providing a mobile location based information service comprising the following steps, in particular in the following sequence:

a) providing at least one server operably connectable to at least one mobile device and at least one further device;

b) at the server, providing at least one user profile the user profile comprises at least a total amount of time of the a [sic] user available at a certain date and time and at least one location profile, the location profile containing information relating to at least one geographic location comprising tasks associated with a certain location and a point in time to carry out at least one of the tasks;

c) providing at least one mobile device comprising a location determining unit for determining a current

location of the mobile device;

d) at the least one mobile device, sending current location data and/or first identification data of the at least one mobile device to the server;

e) at the server, based on the location data and/or the first identification data and the date and time and a location profile associated with the location data and/or a location profile associated with a further location generating at least first instructing data, wherein the instructing data comprises at least one task, advise, instruction and/or information and preferably a due date and time, an expected time for completion and/or a start date and time;

f) at the server, sending first instructing data to the at least one mobile device and causing the at least one mobile device to display at least one representation, to provide an audio output and/or a haptic output related to said first instructing data;

g) at the at least one mobile device, detecting an input representative for an acceptance, in particular a partly acceptance, or a denial answer in response to the displayed representation, the provided audio output and/or the provided haptic output, of said first instructing data and sending the acceptance, in particular the partly acceptance, or the denial answer and the first identification data to the first server;

h) at the server, in response to the acceptance, in particular the partly acceptance or the denial answer updating the location profile, and preferably based on the location data, the first identification data, the date and time and the updated location profile

associate [sic] with the location data generating at least second instructing data and sending said at least second instructing data to the at least one mobile device."

- IX. The appellant's arguments are discussed in detail in the reasons for the decision.

Reasons for the Decision

Background

1. The invention concerns the use of location-based services for assigning tasks to users, such as cleaning workers.

Conventional location-based services do not provide a dynamic presentation of data based on a user's location, date/time and input - see third-to-last paragraph on page 1 of the published application.

2. According to the invention, when a user is present at a building or any other specific location, he receives cleaning tasks/instructions for that particular location ("location profile"), based on the current date, time, and his availability ("user profile"). In other words, the location-based service utilises both the user and location profile to determine which task should be assigned to the user.

The user can either accept or decline the assigned task, thereby updating the location profile, and allowing the remaining tasks to be assigned to other cleaning workers - see last three paragraphs on page 6 of the application.

Inventive step

3. It is common ground that the invention in claim 1 is a "mixed-type invention" comprising both technical and non-technical features.

The established approach for assessing such mixed-type inventions is the "Comvik approach" (see T 641/00 - Two identities/COMVIK, and Case Law of the Boards of Appeal, 10th edition, I.D.9.2.1). Under the Comvik approach, only the technical features which contribute to the solution of a technical problem by providing a technical effect are taken into account for the purpose of assessing inventive step under Article 56 EPC. The non-technical features which make no technical contribution may legitimately form part of the technical problem to be solved as a set of requirements to be met.

4. The Board essentially agrees with the examining division's partitioning of the claim into technical and non-technical features. In particular, the following features of claim 1 are technical:

- a "server operably connectable to at least one mobile device and at least one further device" (step a));

- a "mobile device comprising a location determining unit for determining a current location of the mobile device" (step c));

- the mobile device is able to communicate with the server and comprises input means (as in step g)) and output means, i.e. a display, audio and haptic output (as in step f)).

The Board has no doubts that these features were, at the priority date of the application in 2014, part of any conventional technical infrastructure for location-based services using mobile devices. An example of such an infrastructure can be found in document D3 (US 2011/0282972 A1), see Figures 3 and 6 and corresponding passages of the description (see in particular paragraphs [0027] and [0070]).

The Board, thus, concludes that a conventional system for location-based services, which comprises a server and mobile devices equipped with a location determination unit, is a suitable starting point for assessing inventive step.

5. In the Board's view the features distinguishing claim 1 from this closest prior art pertain to non-technical, administrative aspects of the location-based service, namely those relating to the assignment of tasks to users.

Such a service could, for example, be offered by a cleaning company and encompass the following steps:

The user communicates his actual location to the company. Based on this, his availability schedule (user profile) and a cleaning plan for a building (location profile), the company assigns a cleaning task to the user - steps b) and d) to f) of claim 1. The user can either accept or decline the task and inform the company accordingly - step g). The company updates the cleaning plan accordingly (e.g., by assigning the task) and sends further instructions to the user - step h).

Organising and assigning tasks for employees, including considerations such as location, availability, and work

plans, is typically a responsibility of managers. In the Board's view, it is, thus, a manager, not the technically skilled person, who comes up with the above concept of assigning tasks. To do so does not require any technical knowledge about location-based services.

6. As the distinguishing features lack technical character, under the Comvik approach (*supra*) they can be included in the formulation of the problem to be solved. In other words, they are given to the technically skilled person, a programmer, as a set of requirements for implementation. The problem, thus, is to implement these requirements starting from the closest prior art.

As the claim, and indeed the description, lack any technical implementation details the implementation cannot serve as a basis for an inventive step.

The mere allocation of various functions to the mobile device and server - such as the mobile device providing location information and the server performing the task assignment based on that information - is a self-evident consequence of the given requirements.

7. During oral proceedings the appellant argued that the use of "time" in the location-based service was a crucial technical parameter, as it linked the user and location profiles. The appellant further explained that the user would only receive additional instructions if he accepted a task, which saved bandwidth. This was different from the situation in T 1082/13 - *Computer implemented system offering replacement services for applying tax legislation/SAP*, Catchword 2 where the time was used as a non-technical "timeout" condition. In contrast, in the invention, time was not just an

administrative parameter, but also provided a technical effect that was not found in the prior art documents.

8. The Board judges that the term "time" as used in the claim, refers to its ordinary meaning of organising tasks based on the availability of users. This can be accomplished through the use of a timetable, and therefore, is considered an administrative function. The Board disagrees with the appellant's argument that time is related to efficiency, such as its use for an efficient implementation of the aforementioned administrative concept. Such a use is not derivable from the claim.
9. The appellant further argued that claim 1 was not simply a digital version of a traditional paper-based task assignment process. If the server simply automated such a traditional process, it would broadcast tasks to all mobile devices, similar to conventional location-based services. However, the invention differed in that it minimised network usage by initially sending a task to a first device and only sending it to other devices if the first device rejected it. This approach may seem obvious in hindsight, but it was not previously known in the prior art.
10. The Board is not convinced by the appellant's argument for several reasons.

Firstly, assigning tasks sequentially based on users' acceptance is inherent to the non-technical, administrative concept as outlined in point 5, above.

Secondly, broadcasting tasks to all users contradicts the idea of using profiles, which is to select those users who, based on their profile or availability, can

potentially accept a task. This is the opposite of selecting all users, regardless of their availability, for example in the case of firefighters responding to a fire alarm.

Additionally, from a technical perspective, broadcasting data in the context of location-based services is not practical because data should only be provided to users at a specific location (and time), not to all users of the service.

Therefore, the Board judges that any potential technical effect resulting from the underlying administrative concept, such as a reduction in network traffic, is a mere bonus effect not achieved by specific technical means and, hence, does not contribute to inventive step.

11. Lastly, the appellant argued that one inventive aspect was that the location-based service depended on the actions of other users, specifically, whether or not they accepted a given task. This aspect was not present in the prior art. Furthermore, there were many possible ways to automate a paper-based task assignment process, for example using emails. The process of arriving at the claimed solution was not a straightforward one.
12. This argument fails as claim 1 mostly defines an administrative concept that is given to the skilled person for implementation, as previously stated in point 5.

The Board considers that starting from a known location-based service infrastructure, the skilled person would have arrived at the claimed solution simply by implementing the given administrative

requirements in a straightforward manner.

13. In summary, the Board judges that the distinguishing features fall, at the level of generality defined in the claim, on the business side of the line between technical and non-technical subject-matter. Therefore, regardless of their novelty or innovation, they cannot be considered when assessing inventive step.

As the claimed invention, in so far as it has technical character, is obvious in the light of a conventional infrastructure for location-based services, claim 1 does not involve an inventive step (Article 56 EPC).

Further remarks

14. The appellant's argument that the application had been granted in several countries, including China, Japan, and the USA, to support novelty and inventiveness of the claims is noted by the Board. However, it is not decisive for the present case.

The examination proceedings of patent offices are independent and the patent laws in different jurisdictions are not harmonised. Furthermore, different prior art may be considered by these offices. Therefore, the fact that the application has been granted in other jurisdictions does not provide any indication as to whether the requirements of the EPC are met.

15. The appellant's argument that the prior art document D2 (EP 2 308 217 B1), which was cited as anticipating the technical features of claim 1, had been granted by the EPO is also not relevant to the present case.

The fact that a patent has been granted, especially if it belongs to a different field, does not support the appellant's case. It is not possible to draw general conclusions from a granted patent, as the decision to grant a patent is based on a specific set of circumstances. In this case, the features of claim 1 differ from those of D2, and the Board is not privy to the considerations the examining division used to evaluate these features.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

M. Höhn

Decision electronically authenticated