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Datasheet for the decision of 26 May 2023

Case Number: T 1439/20 - 3.5.01

Application Number: 14160380.3

Publication Number: 2779042

IPC: G06Q10/04

Language of the proceedings: EN

Title of invention:
Systems, devices, components and methods for monitoring, certifying and/or recertifying the performance of a building or structure

Applicant:
United States Green Building Council(USGBC)

Headword:
Building certification/USGBC

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - providing a building sustainability certificate based on water and energy consumption (no – not technical)

Decisions cited:
T 0115/85, T 0362/90, T 0641/00, T 1670/07

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Case Number: T 1439/20 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 26 May 2023

Appellant: (Applicant)	United States Green Building Council (USGBC) 2101 L Street, NW, Suite 500 Washington, DC 20037 (US)
Representative:	Lecomte & Partners 76-78, rue de Merl 2146 Luxembourg (LU)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 5 February 2020 refusing European patent application No. 14160380.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	M. Höhn
Members:	W. Zubrzycki
	C. Schmidt

Summary of Facts and Submissions

I. This is an appeal against the decision of the examining division to refuse European patent application No. 14160380.3 for lack of inventive step (Article 56 EPC).

II. The examining division held that the main request and first to third auxiliary requests did not involve an inventive step over a notoriously known networked information system, especially considering the disclosures of D1 (US2010/107076 A1), D2 (US2013/035992 A1) and D3 (US2007/219645 A1).

III. The appellant requested that the decision be set aside and a patent be granted on the basis of the refused requests.

IV. Claim 1 of the main request reads:

"*A method (70) for monitoring, certifying or recertifying performance of a building or structure, comprising:*

acquiring building or structure performance data corresponding to the building or structure, the performance data comprising at least three of water data, energy data, human experience data, transportation data, and waste data;

displaying, using at least one building or structure dashboard device (24, 26), the performance data to at least one of a building or structure user (28, 37) and a building or structure dashboard manager;

transferring at least portions of the performance data to a centralized web server CWS

(50);

comparing the performance data to benchmarks for relevant building performance information that have been calculated in the CWS using building performance data stored in the CWS acquired from other anonymous buildings or structures that are similar to the predetermined building or structure, and

on the basis of the comparison, automatically certifying or not certifying the building or structure as meeting predetermined building or structure performance certification standards."

V. Claim 1 of the first auxiliary request adds the following feature at the end of claim 1:

"*displaying, using the at least one building or structure dashboard device (24, 26), a certification level.*"

VI. Claim 1 of the second auxiliary request adds to claim 1 of the first auxiliary request the following feature after the first feature:

"*generating a score for the performance data received from the building or structure;*"

VII. Claim 1 of the third auxiliary request adds the following feature at the end of claim 1 of the second auxiliary request:

"*determining if building performance has fallen below expected levels and sending notifications to a building manager to take action.*"

VIII. In the communication accompanying the summons to oral proceedings, the Board set out its preliminary opinion that all requests lacked an inventive step over D3.

IX. The oral proceedings took place per videoconference on 26 May 2023. As per appellant's request, they were held jointly with oral proceedings for related case T 2751/18.

X. The appellant argued that claim 1 of the main request and the auxiliary requests involved an inventive step. Their relevant arguments are discussed below.

Reasons for the Decision

1. The invention

1.1 The claimed invention concerns certifying buildings based on sustainability criteria (published application, paragraphs [2] and [3]).

1.2 Claim 1 of all requests concerns a method which collects so called building performance data which relates to at least three of the following five categories: the use of water, the use of energy, the amount of waste produced, commuting methods used by occupants ("transportation data") and their experience, see [20] and [21]. While not claimed, but disclosed in the application, the data on water and energy use is obtained from meters in the building and the other three data categories are either provided by meters or input by the building's occupants into digital surveys, see [18] and [27].

1.3 The method transfers at least portions of the collected performance data to a central web server (CWS) which

compares this data to benchmarks calculated using corresponding data received from other anonymous similar buildings, see [22], [23] and [28]. On the basis of this comparison, the CWS certifies the building as meeting predetermined building or structure performance certification standards. While not claimed, the application discloses that the offered certification levels are "certified", "silver", "gold" and "platinum", see [55].

1.4 The collected performance data is displayed using "a dashboard device". From the application, the Board understands that it is a computer presenting a dashboard-based user interface ([43] and Figure 11). The first auxiliary request adds the display of the certification level.

1.5 The second auxiliary request adds further that the method generates a score for the received performance data. While not claimed, the score, which is intended to reflect the building's sustainability performance ([2] and [53]), is calculated by arbitrarily allocating points to the above five building performance categories and summing the points across all evaluated categories, see [53] and [54].

1.6 The third auxiliary request adds that the method determines if the building performance is below expected levels and, if so, it sends notifications to take action to a building manager, see [28].

2. Third auxiliary request, Article 56 EPC

2.1 The Board finds it efficient to analyse the most specific third auxiliary request first.

2.2 Although the examining division found that the subject-matter of claim 1 lacked an inventive step starting from a notoriously known networked information system, the Board agrees with the appellant that D3, concerning a remote building management system, is a more appropriate starting point for examining inventive step (grounds of appeal, page 7, last bullet point).

2.3 The Board starts from the embodiment in D3 which relates to Figure 2. In this embodiment, a plurality of building controllers 28 and 40 located in different buildings (paragraphs [27] and [28]) collect data from sensors and regularly upload it to a central building control processor 44. The central building control processor analyses the received data ([52] and [53]) and shows results on a workstation 50 ([35], first sentence, [39] and [41]).

2.4 It is common ground that the subject-matter of claim 1 differs from D3:

A) In that the central building control processor is implemented as a central web server (CWS).
B) In that the displaying device presents a dashboard-based user interface.
C) In that the collected data comprises at least three of water data, energy data, human experience data, transportation data, and waste data.
D) By generating a score for the performance data received from the building or structure.
E) By comparing the performance data to benchmarks for relevant building performance information that have been calculated in the CWS using building performance data stored in the CWS acquired from other anonymous buildings or structures that are similar to the predetermined building or structure.

F) By automatically certifying or not certifying the building or structure as meeting predetermined building or structure performance certification standards, on the basis of the above comparison.
G) By displaying a certification level.
H) By determining if building performance has fallen below expected levels and, if so, sending notifications to a building manager to take action.

2.5 In its preliminary opinion, the Board set out that feature A was an obvious design option, especially considering that D3 disclosed in a further embodiment a building management system which comprised a web server (D3, paragraph [106]). Feature B was considered as, firstly, relating to presentation of information as such, and therefore lacking technical character and, secondly, as being obvious in view of paragraph [103] of D3. The appellant did not take issue with this.

2.6 The appellant's arguments and discussion at the oral proceedings concentrated on distinguishing features C to H.

2.7 The Board agrees with the decision (see points 4.2.4 to 4.2.6, 5.2.3, 6.2.3 and 7.2.3) that the distinguishing features implement a non-technical method combining administrative steps with presentation of information (Article 52(2)(c) and (d) EPC). The Board judges that this method comprises:

- Collecting data comprising at least three of: water consumption, energy consumption, the amount of waste generated, commuting methods used by the occupants and their overall experience for multiple buildings.
- Certifying or not-certifying the building as meeting predetermined building certification standards based on

comparison to benchmarks calculated using data collected from other anonymous buildings that are similar to the building concerned.
- Calculating a score for a building based on the collected data.
- Presenting the determined certification level to a building manager and when the building's performance falls below expected levels, sending him notifications to take actions.

2.8 The appellant disputed this finding in the decision and contended that the method provided a technical contribution. He argued as follows:

2.9 Firstly, the claim implied that data listed in distinguishing feature C was obtained from electronic interfaces in the building. Thus, the data collection was a technical process.

However, the Board is not persuaded and agrees with the decision (see point 3.3) that collecting and analysing the data at issue is a non-technical business operation performed as part of building management.

Furthermore, it is established case law that a business step does not become technical by virtue of its technical implementation (see T 1670/07 - *Shopping with mobile device/NOKIA*, reasons, point 9). Thus, even assuming that the data is collected using technical means, this implementation feature does not convey technical character upon the non-technical decision to collect the data.

2.10 Secondly, the building was a technical system and the certification level and the performance score indicated this system's internal states and had technical

character. As set out in decisions T 115/85 and T 362/90, visualising internal states of a technical system had technical character, even in the absence of an indication of the action to be taken by the user.

The Board does not dispute that giving visual indications about internal states of a technical system is in principle a technical effect. However, like the decision (see points 1.5 and 2.5), the Board judges that the claimed method's output does not convey any technical information.

As set out above, the application discloses that the calculated score is expressed as an arbitrary number of points and the awarded certification level is an arbitrary label. As regards the notifications to take actions upon the performance falling below expected levels, they cover, at the general level at which they are claimed, non-technical business recommendations, such as "Your building seems to perform worse than other buildings. Hire someone to improve this".

In any event, the Board agrees with the decision (see point 4.3.6) that the claimed output is not comparable to that in cases underlying decisions T 115/85 and T 362/90. In those decisions, presented information indicated precise technical states, namely a specific event occurring in an input/output device of a text processing system (T 115/85) and an engaged gear of a driving vehicle (T 362/90). By contrast, the claimed output conveys no technical information.

2.11 Thirdly, the crucial idea of the invention was its community aspect, namely that the basis for assessing the building's performance was a comparison with other similar buildings. In view of the complexity of a

building, it would have been too limiting to claim a specific benchmarking algorithm or a specific way of calculating the performance score. Nevertheless, even at the general level claimed, the distinguishing features enabled the building manager to recognise how his building performed compared to the other buildings and to save natural resources, for instance water and energy. This was a technical effect.

The Board is not convinced and notes that the system of D3 already collects data on multiple buildings and analyses it. The actual distinction is the nature of analysis performed and its input. It might well be that the appellant had good reasons for not disclosing those aspects in more detail. However, as set out above, in the absence of further details, the method, set out in point 2.7 above, lacks technical character.

The Board is not convinced by the argument attempting to prove that this method derives technical character from (unclaimed) actions of the building manager. In addition to being speculative, this argument is a typical example of the "broken technical chain fallacy" in the sense of T 1670/07 *supra*, reasons, point 11.

2.12 Lastly, the invention did not seek a financial advantage and, therefore, did not constitute a business method. Rather, it solved the technical problem of promoting natural resources savings in buildings.

However, even assuming that they do not lead to a direct financial advantage, the building certification and scoring processes are, at the level at which they are disclosed, administrative steps falling under the scope of schemes, rules and methods for doing business (Article 52(2)(c) EPC). Furthermore, the technical

problem, put forward by the appellant, is not derivable from the application which does not disclose any output which indicates the usage of resources in a building or instructs the user how to save those resources.

2.13 Applying the COMVIK approach (decision T 641/00 - *Two identities/COMVIK*), the method set out in point 2.7 above is provided to the technically skilled person as a requirement specification to be implemented.

2.14 Starting from D3 and facing the problem of implementing this requirement, it would have been obvious to connect the building controllers to water and energy meters and provide a user interface enabling the user to input waste, transport and experience data.

Furthermore, it would have been self-evident to upload the collected data to the building control processor and to adapt it to determine a certification level and score for the building and to display them on the workstation. It would have been equally obvious to configure the building control processor to display unspecific notifications when the building performance is below expected levels.

2.15 Hence, claim 1 lacks an inventive step (Article 56 EPC).

3. Higher-ranking requests

Claims 1 of the main request, first auxiliary request and second auxiliary request are broader than claim 1 of the third auxiliary request and therefore lack an inventive step for the same reasons.

4. Since none of the appellant's requests is allowable, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek M. Höhn

Decision electronically authenticated