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**Datasheet for the decision
of 30 July 2024**

Case Number: T 1469/20 - 3.5.01

Application Number: 16198766.4

Publication Number: 3171322

IPC: G06Q30/02

Language of the proceedings: EN

Title of invention:

A WEB APPLICATION TOOL FOR INCREASING SALES IN STORES

Applicant:

Bremer, Mattias

Headword:

Store tool/BREMER

Relevant legal provisions:

EPC Art. 56, 84, 113(1)

Keyword:

Inventive step - updating screen content in real time (no - obvious)

Claims - clarity - (no - relative and subjective terms)

Decisions cited:

T 0843/91, T 1741/08



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Case Number: T 1469/20 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 30 July 2024

Appellant: Bremer, Mattias
(Applicant) Tehtaankatu 26 B 47
00150 Helsinki (FI)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 2 January 2020 refusing European patent application No. 16198766.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: A. Wahrenberg
E. Mille

Summary of Facts and Submissions

- I. This case concerns the appeal against the examining division's decision to refuse the European patent application No. 16198766.4 for lack of clarity (Article 84 EPC) and lack of inventive step (Article 56 EPC).
- II. The decision referred to the following prior art documents:

D1: Intel: "2014 Guide to Intel Retail Solutions | 1 The Retailers' Guide to Creating PERSONALIZED SHOPPING EXPERIENCES", 31 December 2013; and

D2: Atos: "The Future of In-Store Shopping", 30 November 2013.
- III. The appellant filed notice of appeal on 10 March 2020 and grounds of appeal on 24 April 2020.
- IV. The appellant filed further submissions on 26 November 2021, 12 January 2022, 28 June 2022, 19 July 2022, 16 June 2023, 9 October 2023, 31 October 2023, 3 November 2023, 20 November 2023, 23 November 2023, 30 December 2023.
- V. The Board issued summons to oral proceedings on 11 March 2024. In the communication accompanying the summons, the Board considered that the appellant's requests were unclear. The Board tended to the view that the claims of Annex 1 and Annex 7 filed on 16 June 2023 lacked clarity. Furthermore, the Board did not see any inventive difference over D1. The appellant's request for the reimbursement of the appeal

fee was considered to be unfounded.

- VI. The appellant filed further submissions on 12 April 2024, 12 May 2024, and 8 July 2024.
- VII. Oral proceedings took place by videoconference on 30 July 2024. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of a main request filed as annex 1 on 16 June 2023 or alternatively of an auxiliary request filed with letter dated 23 November 2023 (the annotated claims). The appellant further requested the reimbursement of the appeal fee. At the end of the oral proceedings, the Board announced its decision to dismiss the appeal.
- VIII. Claim 1 of the main request reads:

A method for improving store operation by operating a store tool made of tablets with a wireless device and wireless capabilities with sound and changeable and accessible screens with an application, connected to a database, consisting of 2 types of user interfaces, a central interface and a user interface with content folders swiftly operated and changeable and accessible via designated internet pages by the staff in a store at product places, with a wide variety of storage constructions, displaying changeable and accessible content to customers at placements in real time, said store tool functions on said tablets with said application allowing changeability and accessibility, in real time, for said staff while performing daily tasks in said store, said tablets with said application working wirelessly for movability operated by said staff and managers allowing and demanding said staff and said managers, daily, to create, change, supply and

upload product ideas, text and sound, not relying on price rebates, said product ideas combining 1-3 products at a time with said store's lead products to said tablets with said application and as directing said tablets with said application to correspond to products depicted in said product ideas providing value added by increasing return through changing, creating and supplying content displayed and directing sales to other products with said tablets with said application, work atmosphere through changing, creating and supplying content daily with said tablets with said application, return achieved with said tablets with said application, attention in areas where supplying content with said tablets with said application, service through providing said product ideas for said lead products in said store, increasing sales of expiring products especially in the fresh food, meat and fish section through directing, changing, creating, supplying and adding content with said tablets with said application at said expiring products and creating inexpensive sales in said store through supplying content created by staff, with said tablets with said application forming advertisement and pleasant associations, comprising:

providing said tablets with said wireless device with said sound and said changeable and accessible screens and with said application consisting of said 2 types of user interfaces, said central interface and said user interface, viewable through said designated internet pages connected to said database, controllable by said staff and said managers directly in said store functioning on said tablets showing and playing provided content at their respective said placements in said store to said customers via said user interface or user interfaces that can be controlled by said central

interface;

providing said tablets with said application with said user interface or interfaces in said store controlled by said staff with one set of said content folders for pictures, pictures with text, text and moving pictures and sound or music and another set of said content folders for similar content, but in multiple picture display making one or many said product idea combinations creatable, changeable, accessible, suppliable and uploadable in said store by said staff, while doing daily tasks, on the same internet page, with the possibility to create and combine text and said product ideas in one or many picture combinations and sizes on the same internet page with said product ideas and ad text corresponding to each said product idea in said content folders on any interface, so that each set of said content folders are connected to said designated internet page that shows and plays the corresponding said product ideas on that interface's said designated internet page on said tablet with said application, in real time;

providing said tablets with said application with said central user interface, operable through said designated internet page, through which said user interfaces' internet pages can be created, functioning on said tablet or a computer or a mobile phone device connected to the internet controlled by said manager or said staff with the same said user interface functions, said content folders and said text adding capabilities for each said user interface in said store or stores;

providing said wireless device in said store for said operation of said tablets with said application always enabling possibility of display at said

placement with products chosen in said content especially in said fresh food, meat and fish section where there are shelves, trays and a wide variety of other storage constructions;

providing said content by said staff and said manager forming said advertisement, increasing said value added at said placements by uploading said product ideas, not relying on price rebates, corresponding to products at said placement directly via said user interfaces' said designated internet pages displayed on said tablets with said application, preferably in said fresh food, fish and meat sections where food waste is the highest and at said expiring products or at other selling times uploading said sound or music to products creating said pleasant associations and added text for added said attention at the location of products;

providing said staff and said manager with said tablets with said application to change and provide said content for products daily, during the day and in real time, while doing daily tasks, via said user interfaces' said designated internet pages for products at said placements and direct sales towards other said expiring products adding more said attention in the form of said sound or music and said text to said content close to expiry of said expiring products in said store to increase said value added.

IX. Claim 1 of the auxiliary request removes from claim 1 of the main request:

- "accessible" in lines 2, 4, 6 of the first paragraph, line 1 of the second paragraph, and line 5 of the third paragraph;
- "swiftly" in line 4 of the first paragraph;

- "wide variety" in line 5 of the first paragraph;
- "pleasant associations" in the last line of the first paragraph;
- "but in multiple picture display" in lines 3 and 4 of the third paragraph;
- "where there are shelves, trays and a wide variety of other storage constructions" at the end of the fifth paragraph; and
- "creating said pleasant associations" in the sixth paragraph.

X. Further submissions by the appellant were received on 31 July 2024, 7 August 2024, and 29 September 2024.

Reasons for the Decision

1. *Main request, clarity (Article 84 EPC)*
 - 1.1 The examining division objected to the clarity of the terms "inexpensive", "swift", "accessible", "wide variety", "multiple picture display", and "pleasant association[s]" in claim 1 (Article 84 EPC).
 - 1.2 The Board shares this view for the terms "inexpensive", "swift", "wide variety" and "pleasant association". While these terms each have a dictionary definition as pointed out by the appellant, they do not define the claimed subject-matter in a clearly delimiting and objective way. All of the terms are relative, and the Board does not consider that the context of claim 1 gives them a sufficiently clear and specific meaning. Furthermore, what counts as a "pleasant association" is subjective and, therefore, this term does not

objectively define the scope of protection.

- 1.3 Article 84 EPC requires that the claims be clear on their own. Nevertheless, turning to the description, the Board does not see that it provides a technical context which gives the unclear terms a specific and clear technical meaning.
- 1.4 The fact that the claim can be interpreted, essentially by disregarding the relative and subjective terms which are not clearly limiting, does not mean that the claim can be allowed as it stands. Clarity is a requirement separate from novelty and inventive step, and allowing unclear terms to remain in the claim places an undue burden on the reader seeking to determine the scope of protection.
- 1.5 The fact that "inexpensive" and "pleasant association" are non-technical concepts which as such do not count for inventive step, does not matter for the question of clarity.
- 1.6 Apart from the unclear terms discussed above, the Board considers that claim 1 lacks clarity also for the following reasons.

The Board takes issue with the whole claim, which is not in the standard form of a patent claim. The claim is rather in the form of a long, continuous text, with much repetition, and it is largely focusing on the effects of the invention rather than its features. This makes it difficult, if at all possible, to identify the technical features of the invention, let alone determine how those features fit together.

The central concept in claim 1 is a "store tool" made

of wireless tablets. The tablets are operated by staff via one (or both?) of two user interfaces and Internet pages to display content to customers in a store. The tablets have screens, and these are, indeed, the only display devices mentioned in claim 1. It also appears that the display of content takes place via one (or both?) of the user interfaces, which are on the tablets. In other words, it seems that the tablets are used, both for operating the Internet pages by staff, and for displaying content to the customer. However, this is not clearly specified in claim 1. Indeed, claim 1 also suggests that staff may use another device such as a computer or a mobile phone to access the central user interface and update the Internet pages, which indicates that there may be other devices that are part of the overall system or tool. In the Board's view, the link between how content is created by staff and how it is displayed to customers is not clear in claim 1. The claim does not specify the technical system for this sufficiently clearly.

2. *Main request, inventive step (Article 56 EPC)*

2.1 The examining division considered that claim 1 lacked an inventive step over a notoriously known computer system comprising a processing unit, a computer-readable medium, a display, and I/O units, and with the ability to run applications with interfaces, including web pages, and connected to a database. It was, moreover, notoriously known to create web pages with updatable content. The location of the screens had no technical relevance, but was considered to be a mere business choice related to their placements next to products in a store. The only technical contribution of the invention lay in the implementation of non-technical matter on the notoriously known computer

system and this would have been obvious to the skilled person.

- 2.2 The examining division also stated that both D1 and D2 disclosed the use of contextual advertising in stores to optimize sales and reduce food spill, among other claimed advantages. D1 and D2 disclosed interfaces on screens next to products or on the user devices to recommend other products or offer contextual promotions. The examining division did not see any technical differences over D1 or D2 which provided an inventive step. The inclusion of staff in the method led to a broken technical chain (T 1741/08 - *GUI layout/SAP*), and, therefore, there was no technical effect in having staff create the content.
- 2.3 In the communication, the Board considered that claim 1 was largely anticipated by the disclosure of D1. D1 disclosed digital screens in a store. These screens could be used to display product information including images and video (see e.g pages 4 and 5). The screens were wireless-enabled (the bottom part of page 13) and could be controlled from a central computer (see the text box in the upper right corner, and the Figure on page 14). D1 did not explicitly mention web pages but the Board tended to consider that it would have been an obvious (and known) format for providing information on a screen. The remaining features in claim 1 related to unclear relative terms, non limiting use features, and technical and non-technical effects to be achieved (desiderata). Therefore, the Board did not see anything inventive over D1 (Article 56 EPC).
- 2.4 The appellant argued that the invention in claim 1 provided several advantages by displaying content to customers "in real time" at placements in the store

(line 6 in claim 1). According to the appellant, "real time" related to the movement of the customer. In other words, the screen was switched on only when the customer approached it. As support for this feature, the appellant pointed to paragraph [0017] of the description, which stated that content from security cameras usually covering every isle in a store can be used by the tool interface controller to adjust and present screen content and sound for the customer in real time. Thus, the appellant argued that the invention provided the following "inventive steps":

- There are electricity saving because the tool operates in real time for a period of time e.g. 10 min, instead of e.g. 20 hours per day.
- When the nearest screen comes on in real time, it is better noticed than one or several screens further away from a person.
- These features had not been available in retail until now. Enormous costs in retail lead to a higher cost of food. Inventions that make POS marketing more effective, and at the same time save costs, is therefore imperative for the whole industry.
- Creating content from file or a database in real time has not been available before. This can today be done at a minimal cost with Open AI/Chat GPT.
- As an example, content made for one store can traditionally cost as much as 1.000 to 5.000 Euros when produced by a professional visual marketer.
- The invention also has a shoplifter deterring effect: When a screen operating in real me comes alive

with content near a potential shoplifter, it is noticeable and might deter a thief.

2.5 The Board does not see that the invention as claimed has the effects argued by the appellant. In the Board's view, the term "real time" in this application is broad and not specifically limited to a user-tracking system which reacts to the detection of a person appearing. The term real time in claim 1 could also mean that the content is presented on the screen as soon as it is uploaded, i.e. that the content is updatable in real time. This is typical for networked systems, which allows for the transfer of data with little or no delay, i.e. in real time. Thus, without any further features specifying the user detection, the tool referred to in claim 1 does not provide any technical effects beyond a standard Internet based system.

2.6 For these reasons, the Board concludes that claim 1 lacks an inventive step (Article 56 EPC).

3. *First auxiliary request*

3.1 Even though claim 1 of this request removes some of the unclear features discussed in points 1.1 to 1.5 above, the additional clarity and inventive step objections in points 1.6 and 2 still apply, so that this request is, therefore, not allowable.

4. *Request for the reimbursement of the appeal fee*

4.1 The appellant requested the reimbursement of the appeal fee by reason of a substantial procedural violation. He argued that he did not have an opportunity to comment on the examining division's clarity objection, which was raised for the first time in the decision to refuse

the application, and, therefore, his right to be heard under Article 113(1) EPC was not respected. The appellant furthermore argued that the lack of inventive step was not proven or shown by referencing prior art and the appellant's arguments were not adhered to.

4.2 The Board does not consider that there was a violation of Article 113(1) EPC.

It is true that the lack of clarity of the particular wording "inexpensive", "swift", "accessible", "wide variety", "multiple picture display", and "pleasant association", was pointed out for the first time in the refusal. However, a clarity objection was raised against the previous claim, in particular concerning the indefinite terms "easily", "firmly", "fast", "idea", "resize", "reshape", "acquirable online", and "increasing the well being". Thus, it should not have been a surprise that the examining division might have objections against an amended claim including partly synonymous and equally indefinite terms.

4.3 As for the objection of lack of inventive step, the examining division gave reasons and referred to prior art (notorious prior art and D1 and D2), and they considered the appellant's arguments. Just because those arguments were not found to be convincing does not mean that they were not considered and that there was a substantial procedural violation.

5. *The submissions received after the oral proceedings*

5.1 The Board's decision terminates the appeal proceedings. A decision that is announced during oral proceedings takes effect immediately. After this, the Board is no longer empowered or competent to take any further

action apart from drafting the written decision (see for example T 843/91, OJ EPO 1994, 818). Therefore, the appellant's submissions must be left without consideration.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated