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**Datasheet for the decision
of 17 November 2022**

Case Number: T 1926/20 - 3.2.04

Application Number: 11769298.8

Publication Number: 2558172

IPC: A63B57/00, G06F17/30

Language of the proceedings: EN

Title of invention:
HOLE SELECTION SYSTEM AND METHOD

Applicant:
Schultz, Jonathan Dwight

Headword:

Relevant legal provisions:
EPC Art. 52, 56

Keyword:
Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 1926/20 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 17 November 2022

Appellant: Schultz, Jonathan Dwight
(Applicant) 37 Kildonan
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Representative: Carpmaels & Ransford LLP
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 17 June 2020
refusing European patent application No.
11769298.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Martin Gonzalez
Members: J. Wright
C. Heath

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the patent application.

The examining division held that claim 1 of the main request and auxiliary requests 1 and 3 before it lacked an inventive step over D1 with common general knowledge. All requests were filed on 20 April 2020.

- II. With letter of 31 October 2022 - received on 1 November 2022 - the appellant filed an amended main request in reply to comments made by the Board in its written opinion of 8 September 2022.

- III. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the main request of 31 October 2022, received on 1 November 2022, or in the alternative on the basis of auxiliary requests 1-4, filed as main request and auxiliary requests 1-3 on 27 October 2020.

- IV. Claim 1 of the main request reads as follows:

"A system for managing a green through providing variability in golf hole locations over time based on selecting a golf hole location on said green, the system comprising:

- a mobile GPS device;
- a processor;
- a memory; and
- a determination component stored in the memory, wherein said determination component is executed by said processor to:

- a) access a database, wherein said database comprises a plurality of said golf hole locations associated with said green;
- b) determine an available set of golf hole locations, wherein said available set of golf hole locations is determined by analyzing an attribute associated with each of said golf hole locations and removing a subset of golf hole locations from said plurality of golf hole locations based upon said analysis, wherein said attribute comprises at least one of a topographical characteristic, a schedule characteristic, a seasonal characteristic, a weather characteristic, a thermal characteristic, a green speed characteristic, and a difficulty characteristic; and wherein said analysis applies a geographic limitation based upon proximity to a previously used golf hole location and the time of last use of said previously used golf hole location;
- c) select said golf hole location on said green from said available set of golf hole locations; and
- d) output a presentation of said golf hole location on said green; and wherein said mobile GPS device prompts a user to mark a cup placement location and, said system confirms that said cup placement location corresponds to said golf hole location on said green."

V. In the present decision, reference is made to the following documents:

- D1 US 6,171,199 B1
- D2 US 2003/0149496 A1
- D3 US 2009/0082139 A1

D4 US 2009/0210263 A1

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

Claim 1 of the main request is compliant with Article 123(2) EPC. The feature in claim 1 of adding a geographical limitation based upon proximity to a previously used golf hole location and the time of its last use makes a technical contribution and should not be disregarded for the assessment of inventive step. Claim 1 involves an inventive step.

Reasons for the Decision

1. The appeal is admissible.
2. The invention relates to a system for designing golf hole placements on each green of a golf course, see paragraph [0001] of the PCT publication (WO 2011/130037). The system assists greens superintendents in selecting a golf hole location that is consistent with the goals of proper green management and providing a variability in the golf hole locations over time, see paragraphs [0004], [0006]. To achieve this aim, the system comprises a processor and a program that determines an available set of golf hole locations by analysing an attribute associated to each location (e.g. a topographical characteristic, a green speed or a difficulty characteristic) and removing a subset based upon said analysis, see paragraphs [0020], [0023]. The analysis applies an additional limitation for each location. This additional limitation is based upon proximity to and [time of] last use of a previously used golf hole location, to achieve a better distribution of foot traffic, see paragraphs [0004], [0022] and [0053]. The program then selects a golf hole

location from the remaining available set and outputs a presentation of the selected hole location, see paragraph [0020].

3. Amendments - Main request

3.1 The Board is satisfied that the claims according to the main request comply with the requirements of Article 123(2) EPC.

3.2 Claim 1 of the main request is based on originally filed claim 1 amended to add that the system comprises a mobile GPS device, as recited in originally filed dependent claim 17.

Claim 1 has also been amended to recite that the mobile GPS device prompts a user to mark a cup placement location and the system confirms that the cup placement location corresponds to the golf hole location. Basis for these amendments is found at paragraph [0065] of the original description.

Claim 1 has also been amended to require that the analysis to determine an available set of golf hole locations applies a geographical limitation based upon proximity to a previously used golf hole location and the time of last use of said previously used golf hole location. Basis for these features can be found at original description paragraph [0053].

3.3 Dependent claims 2-15 are based on originally filed dependent claims 2-4 and 6-16. Basis for dependent claims 16-18 can be found in the originally filed description paragraphs [0062] and [0063].

4. Main request - Inventive step

4.1 Document D1 is considered a suitable starting point for the assessment of inventive step. D1 is directed, as is the claimed invention, to a system for managing a green through providing variability in golf hole locations over time. As held by the division, the system of D1 provides a formula to modify the pin (hole) location so that the greens keeper can move the hole position every day or at some other regular interval, see col. 6, lines 29-34. It thus provides variability in golf hole locations over time in the normal sense of the term variability (OED: The fact or quality of being variable in some respect). This is so, even if the modification program and thus the hole locations variability in D1 is predictable, as put forward by the appellant.

4.2 Claim 1 of present main request thus differs from the known system of D1 at least in that it requires to apply a geographical limitation based upon proximity to a previously used golf hole location and the time of last use of said previously used golf hole location to the hole selection determination.

The division held for a similar feature that it did not make a technical contribution and disregarded it for the analysis of inventive step, see impugned decision section 8.1.

4.3 Contrary to the conclusions of the opposition division, the Board holds that the feature is not to be ignored in the inventive step assessment for the following reasons.

4.3.1 According to established case law, as reflected in the Guidelines GL19 (of November 2019, the valid version at the time of the decision) section G-VII-5.4 (Claims comprising technical and non-technical features), a feature should be excluded from the inventive step assessment if it does not contribute to the technical character of the invention, Article 52 in combination with Article 56 EPC. The reference in the division's analysis to GL19 G-II-5.4 (Plants and animal varieties) appears to be an error. Starting from D1, the distinguishing feature should be considered as adding a geographical limitation based upon proximity to a previously used golf hole location and its time of last use. In the Board's view, this is a technical feature having a technical effect. Indeed, as explained in original paragraph [0053] of the patent application, proximity to green areas with recent high foot traffic may be removed by using the claimed limitation. This contributes to a reduction in green wear and tear by suitably directing foot traffic over time, which is a technical effect serving a technical purpose.

4.3.2 The division also found that the feature's scope included embodiments where locations close to recently used ones were used. Such embodiments could result in an undesirable concentration of foot traffic around certain areas whilst leaving other areas unused. In the Board's view, concentration of foot traffic around one area or certain areas is a technical effect and contributes to technical character. Moreover, concentration of traffic in a given area or leaving other areas substantially unused (one effect implies the other) may be a desired technical effect for the green manager in some situations. Thus also from this perspective, the feature is considered to deliver a technical effect serving a technical purpose.

- 4.3.3 The feature is thus not to be ignored in the inventive step assessment.
- 4.4 In the light of the above technical effect, the problem to be solved can be formulated as how to modify D1's known program to provide variability in golf hole locations in order to improve or facilitate green maintenance.
- 4.5 D1 is aimed at maintaining the overall course difficulty. As described in column 2, lines 39-46 this is provided by correlating the slopes of all the holes such that the cumulation of all the slopes continues to provide the same course difficulty. Regarding maintenance, it only generally describes that it is known to move the cup daily or at regular intervals to protect the turf, see column 2, lines 51-53 and suggests using the information of the daily placement of the cup for better planning maintenance works, such as calculations for watering, fertilizer... or for determining the placement and flow levels of the watering heads, see column 7, lines 24 to 35. Merely changing cup location regularly is also what appears to be known from common general knowledge. This is already accomplished by the system of D1. Nothing else is suggested by the other prior art documents. D2 and D3 are directed to systems for improving a golf player's performance, e.g. by accurately determining distance to the pin, not to golf course or green maintenance. D4 relates to managing golf reservations. There is therefore no suggestion in the prior art to use proximity to a previously used hole location as a relevant parameter.

4.6 Hence, adding the time of use and proximity of a previously used hole criteria when selecting a new hole as claimed into a system for managing a green through providing variability in hole locations over time of the type of D1 is neither suggested nor rendered obvious by common general knowledge or the cited prior art.

4.7 Thus the subject-matter of claim 1 involves an inventive step within the meaning of Article 56 EPC.

Dependent claims 2 to 18 concern particular embodiments of the invention claimed in claim 1 and are likewise allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to grant a patent with the following claims and a description to be adapted:

Claims:

Nos. 1-18 according to the main request of 31 October 2022, received on 1 November 2022.

Description:

to be adapted

Drawings:

Figures 1 - 3 as published

The Registrar:

The Chairman:



G. Magouliotis

G. Martin Gonzalez

Decision electronically authenticated