

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 6 February 2024**

Case Number: T 0756/21 - 3.5.01

Application Number: 15900975.2

Publication Number: 3333780

IPC: G06Q10/02, G06Q50/14, G06Q50/30

Language of the proceedings: EN

Title of invention:
AIRLINE-TICKET SALES SYSTEM

Applicant:
Nomura Research Institute, Ltd.

Headword:
Airline ticket sale/NOMURA

Relevant legal provisions:
EPC Art. 111(1), 113(1)
EPC R. 103(1) (a), 111(2)
RPBA 2020 Art. 11

Keyword:
Substantial procedural violation (yes)
Remittal to the department of first instance (yes)
Reimbursement of the appeal fee (yes)

Decisions cited:

T 1557/07, T 1366/05



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0756/21 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 6 February 2024

Appellant: Nomura Research Institute, Ltd.
(Applicant) 1-9-2, Otemachi,
Chiyoda-ku,
Tokyo
1000004 (JP)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 29 January 2021
refusing European patent application No.
15900975.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Höhn
Members: L. Falò
E. Mille

Summary of Facts and Submissions

- I. This is an appeal against the examining division's decision to refuse European patent application No. 15900975.
- II. The application was refused on the ground of lack of inventive step of claim 1 of all requests in view of a notorious networked computer system.
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and the case be remitted to the first instance because of lack of sufficient reasoning in respect of the main and first auxiliary request, as well as lack of reasoning in respect of the second auxiliary request, and that the appeal fee be reimbursed. In case of non-remittal, the appellant requested that a patent be granted on the basis of the main or of the first to fifth auxiliary requests, filed or re-filed with the statement of grounds of appeal. The main, first, second and fifth auxiliary requests corresponded to the refused main, first, second and third auxiliary requests, respectively. There was a further auxiliary request for oral proceedings.
- IV. In the communication pursuant to Article 15(1) RPBA, the Board set out its preliminary view that the appellant's right to be heard had been respected and that the decision was sufficiently reasoned in respect of the main and first auxiliary request. However, the decision was not sufficiently reasoned in respect of the second auxiliary request, as it provided no reason as to why claim 1 was not considered inventive. The Board moreover took the view that all requests lacked

an inventive step (Article 56 EPC) in view of a notorious networked computer system.

V. In a letter of reply the appellant filed two new auxiliary requests (auxiliary request 2' and auxiliary request 3') and provided further arguments concerning the lack of sufficient reasoning and the presence of an inventive step.

VI. Oral proceedings took place on 6 February 2024. At the end of the oral proceedings the appellant confirmed that their requests were as follows:

- that the decision under appeal be set aside and the case be remitted to the examining division for lack of sufficient reasoning in respect of the main and first auxiliary request as well as lack of reasoning in respect of the second auxiliary request, and the appeal fee be reimbursed.

- in case of non-remittal, that a patent be granted on the basis of the set of claims of the refused main request or of auxiliary requests 1, 2, 2', 3, 3', 4, 5, to be considered in this order.

VII. In view of the Board's decision (see below) there is no need to recite the wording of claims of any of the requests.

VIII. At the end of the oral proceedings, the chairman announced the decision of the Board.

Reasons for the Decision

1. The invention concerns a computer-implemented system for selling airplane tickets (page 1, lines 7 to 10).

In some cases, it can be advantageous for an airline to sell tickets at a discount, rather than leaving them unsold. However, in the long run this may reduce the willingness of the passengers to pay regular fares, and thus bring about a collapse of the price system (page 1, lines 13 to 20).

Some known prior art systems randomly select destinations from a user-defined wish list. However, this may still not be sufficient to sell tickets for less popular destinations (page 1, line 24 to page 2, line 28).

2. According to the invention, tickets to be sold to a user are selected by taking into account the effective unused capacity for each available flight and airport.

The user provides a condition, such as desired dates and times for inbound and outbound flights. The system determines a list of candidate round-trip flights satisfying the condition, and assigns each a weight based on the number of the available tickets for each flight and the overall number of available tickets for the corresponding destination airport (page 14, lines 14 to 30; page 15, lines 19 to 29; page 17, lines 4 to 14, page 29, lines 5 to 30, Figures 18 and 19). The system then randomly selects a flight by drawing lots according to a probability distribution reflecting the calculated weights, and sells the corresponding ticket to the user (page 9, lines 6 to 9; page 29, lines 5 to 32).

Sufficiency of the reasoning and right to be heard -
Article 113(1) and Rule 111(2) EPC

3. The appellant argued that the decision was not sufficiently reasoned in respect of the main and first

auxiliary request because of the use of generic statements or mere assertions not accompanied by concrete reasons, and it was not reasoned at all in respect of the second auxiliary request. Therefore, it did not comply with the requirements of Rule 111(2) EPC. The appellant further argued that their right to be heard (Article 113(1) EPC) had not been respected because at least one of their main arguments in favour of inventive step had not been discussed at all by the division. The division's reasoning in respect of the appellant's main arguments should be derivable, at least implicitly, from the decision alone and not from ancillary documents such as the minutes. A proper reasoning in the first instance decision was essential in order to carry out a judicial review and to give the appellant the possibility to adequately prepare the appeal.

4. The right to be heard under Article 113(1) EPC requires that the parties be given an opportunity not only to present comments, but also to have those comments considered, that is, reviewed with respect to their relevance for the decision on the matter. Although a decision does not have to address each and every argument of a party in detail, it must comment on the crucial points of dispute to give the losing party a fair idea of why its arguments were not considered convincing (see for example decision T 1557/07 of 9 July 2008, reasons, point 2.6). The deciding department may refute arguments implicitly, and may disregard irrelevant arguments (Case Law of the Boards of Appeal, 10th edition 2022, III.B.2.4).
5. In the present case, the appellant had two main arguments in favour of the presence of a technical effect. The first concerned an alleged saving of

computer resources (see for example the applicant's letter of 4 December 2020, point 1.2), and the second concerned the achievement of a balanced distribution of weights, an optimised seat occupancy, a maximisation of transport capacity and a uniform degradation across the fleet (see for example the applicant's letter of 4 December 2020, point 1.1; summary of the applicant's arguments in the decision, points 4.2 and 6).

6. The Board is satisfied that the first argument has been sufficiently addressed under point 5.4 of the decision.
7. It is apparent from the minutes of the oral proceedings (see page 4, point 1) that the second argument has been heard, discussed and taken into account by the division. Moreover, it appears from the minutes that the appellant was able to understand, if not agree with, the counter-arguments put forward orally by the examining division. Therefore, the Board concludes that the appellant's right to be heard was respected.

However, the Board judges that the decision is not sufficiently reasoned, contrary to the requirements of Rule 111(2) EPC, because it does not provide a clear explanation as to why this argument has been found unconvincing.

8. In particular, under point 5.3. of the decision it is stated that *"an even or optimum seat distribution does not correspond to any technical parameters, as e.g. it does not respond to any load distribution or fuel allocation on the plane, but rather to having enough passengers so that it is worth in an economic sense to make the flight to that destination (see also the description, sections Background Art and Problems to be solved by the invention)"*. This passage appears to

refer to the effects of the ticket sale system on a single plane, rather than across the fleet, and thus is not suitable to address the appellant's argument.

9. Under points 7.1 and 7.3 of the decision it is stated that "*There would be no technical benefit from the even distribution of passengers...The effects claimed by the applicant are, at the level described by the whole application, merely speculative and not derived by any of the features of the application*". Also in this case, the passage does not appear to specifically refer to the alleged technical effects over the whole aircraft fleet. Even if it were so interpreted, it would still not explain why these effects are not considered to be credibly achieved by the claimed features.

10. The Board further agrees with the appellant that the decision does not meet the requirements of Rule 111(2) EPC, because it provides no reason why the subject matter of the second auxiliary request is not considered inventive. Point 11 of the decision is limited to the mere statement of the conclusions reached by the examining division, namely that "*the second auxiliary request does not meet the requirements of Article 52(1) EPC because the subject-matter of claim 1 does not involve an inventive step within the meaning of Article 56 EPC*". Point 12 summarises the appellant's arguments in favour of patentability, but does not provide any counter-argument.

Considering that claim 1 of the second auxiliary request combines the features of claim 1 of the main and first auxiliary request, and that the minutes of the oral proceedings make reference to the "arguments already given", it could be argued that the examining division found the request not inventive for the same

reasons provided for the higher ranking requests. On the other hand, a combination of features may in principle give rise to a further synergistic effect. However, as mentioned above, the decision gives no indication of the division's line of reasoning. The mere summary of a party's submissions cannot replace the reasoning proper to a deciding body (see for example decision T 1366/05, reasons, points 4 and 5).

Conclusion

11. In view of the above, the Board concludes that the decision does not meet the requirements of Rule 111(2) EPC. This is a fundamental deficiency in the first instance proceedings and constitutes a special reason for remitting the case (Article 11 RPBA).
12. Accordingly, the Board exercises its discretion under Article 111(1) EPC to set the decision aside and remit the case to the examining division for further prosecution.
13. Reimbursement of the appeal fee in full is equitable in view of the substantial procedural violation (Rule 103(1)(a) EPC).

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 for further prosecution.
3. The appeal fee shall be reimbursed.

The Registrar:

The Chairman:



T. Buschek

M. Höhn

Decision electronically authenticated