

**Internal distribution code:**

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

**Datasheet for the decision  
of 3 May 2024**

**Case Number:** T 1416/22 - 3.5.07

**Application Number:** 16745300.0

**Publication Number:** 3323056

**IPC:** G06F17/30

**Language of the proceedings:** EN

**Title of invention:**

Systems and methods for screenshot linking

**Applicant:**

rewardStyle, Inc.

**Headword:**

Screenshot linking/REWARDSTYLE

**Relevant legal provisions:**

EPC Art. 123(2)

RPBA 2020 Art. 12(3), 12(4), 12(5), 12(6), 13(1)

**Keyword:**

Amendments - main request and first, second and third auxiliary requests - allowable (no)

Admission of request not admitted by the examining division - fourth auxiliary request (not admitted)

Amendment to case - fifth and second auxiliary requests (not admitted)

Amendment to appeal case - amended third auxiliary request (not admitted)

**Decisions cited:**

G 0003/89, G 0001/93, G 0010/93, G 0001/16



**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 1416/22 - 3.5.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.07**  
**of 3 May 2024**

**Appellant:** rewardStyle, Inc.  
(Applicant) 3102 Oak Lawn Avenue, Suite 900  
Dallas, TX 75219 (US)

**Representative:** Uexküll & Stolberg  
Partnerschaft von  
Patent- und Rechtsanwälten mbB  
Beselerstraße 4  
22607 Hamburg (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 16 December  
2021 refusing European patent application  
No. 16745300.0 pursuant to Article 97(2) EPC**

**Composition of the Board:**

**Chair** J. Geschwind  
**Members:** R. de Man  
M. Jaedicke

## **Summary of Facts and Submissions**

I. The applicant appealed against the decision of the examining division refusing European patent application No. 16745300.0.

II. The contested decision cited the following document:

D7: EP 1 473 634 A1, 3 November 2004.

The examining division decided that the subject-matter of claims 1 to 21 of the main request and of claim 1 of each of the first, second and third auxiliary requests lacked an inventive step over document D7. The fourth auxiliary request was not admitted into the proceedings under Rule 116 and 137(3) EPC. In an *obiter dictum*, an objection under Article 123(2) EPC was raised to the main request and auxiliary requests 1 and 2.

III. With its statement of grounds of appeal, the appellant filed new fifth and sixth auxiliary requests.

IV. In a communication accompanying the summons to oral proceedings, the board cited the following document from its own knowledge:

D9: WO 01/61508 A1, 23 August 2001.

It expressed the preliminary opinion that the main request and the first, second and third auxiliary requests did not meet the requirements of Articles 84 and 123(2) EPC, that the subject-matter of claim 1 of the third auxiliary request lacked an inventive step both over document D7 and over document D9, and that

the fourth, fifth and sixth auxiliary requests should not be admitted into the appeal proceedings.

- V. With a letter submitted in preparation for the oral proceedings, the appellant filed an "Amended Third Auxiliary Request" to be considered after the sixth auxiliary request.
- VI. Oral proceedings were held as scheduled. At the end of the oral proceedings, the Chair announced the board's decision.
- VII. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request, of one of the first to sixth auxiliary requests, or of the amended third auxiliary request ("Amended Third Auxiliary Request").
- VIII. Claim 1 of the main request reads as follows:

"A method for analyzing screenshots of Internet content to identify links to resources, comprising:

accessing, by an application executing on a computing device (100) including a processor (121) coupled to a memory (122) for storing the application and a display device (124a-n) configured to display content, from storage to which a screenshot captured by a social media user using a screenshot capture device of the computing device (100) is stored, the screenshot including an image and a predetermined marker associated with the image that has been previously mapped to the image prior to being included with the image, the predetermined marker including a link to a resource;

detecting, by a marker detector of the application, the predetermined marker included in the screenshot;

identifying, by a link identifier of the application, using the predetermined marker, the link to the resource mapped to the image included in the screenshot and storing data associated with the image and the link in a social media account of the user;

accessing, by the computing device, the resource via the link; and

displaying, by the display device, an interface to allow purchase of a product displayed in the image in response to accessing the resource;

wherein the link to the resource mapped to the image included in the screenshot is linked to the resource using the predetermined marker and provided by a screenshot linking server communicable [sic] coupled with the application; and

wherein the predetermined marker includes metadata uniquely identifying the image included in the screenshot or the image is encoded with data corresponding to the predetermined marker."

- IX. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the text ", the predetermined marker including a link to a resource" has been removed.
- X. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that the text "and storing data associated with the image and the link in a social media account of the user" has been removed.
- XI. Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that the

text "and provided by a screenshot linking server communicable coupled with the application" has been removed.

- XII. Claim 1 of the fourth auxiliary request differs from claim 1 of the third auxiliary request in that the text ", a link to a resource can be identified from the predetermined marker" has been inserted at the end of the first "accessing" step and in that the following text has been added at the end of the claim:

"the method further comprising:

comparing the predetermined marker to a plurality of reference markers;

determining a match between the predetermined marker and one of the plurality of reference markers;  
and

selecting the link to the resource based on the one of the plurality of reference markers."

- XIII. Claim 1 of the fifth auxiliary request differs from claim 1 of the fourth auxiliary request in that the following text has been added at the end of the claim:

"wherein the predetermined marker includes a visual marker added to the image included in the screenshot by a social media application that uniquely identifies the image; and

wherein the predetermined marker includes a code comprising a string of characters that uniquely identifies the image."

- XIV. Claim 1 of the sixth auxiliary request differs from claim 1 of the fifth auxiliary request in that the following text has been added at the end of the claim:

"wherein accessing the resource via the link comprises accessing the resource responsive to selection of the link from a notification including the link that is received from a social media application."

XV. Claim 1 of the amended third auxiliary request reads as follows:

"A method for analyzing screenshots of Internet content to identify links to social media posts, comprising:

accessing, by a first application executing on a computing device (100) including a processor (121) coupled to a memory (122) for storing the first application and a display device (124a-n) configured to display content, from storage to which a screenshot captured using a screenshot capture function of the computing device (100) is stored, the screenshot including an image and a predetermined marker, wherein the predetermined marker includes information uniquely identifying the image;

identifying the image within the screenshot by segmenting the screenshot into a plurality of blocks and performing image entropy analysis on each block to identify one or more blocks of the screenshot that can be used to determine a portion of the screenshot that corresponds to the image;

detecting, by a marker detector of the first application, the predetermined marker included in the image of the screenshot;

identifying, by a link identifier of the first application, a deep link to a social media post, the social media post being associated with a social media application executable on the computing device, wherein identifying the deep link to the social media post comprises:



comparing the predetermined marker to a plurality of reference markers associated with the social media application;

determining a match between the predetermined marker and a first reference marker of the plurality of reference markers, the first reference marker being mapped to the deep link to the social media post; and

identifying the deep link to the social media post;

accessing, by the computing device, the social media post via the deep link; and

displaying, by the display device, an interface to allow purchase of a product displayed in the image in response to accessing the social media post;

wherein the predetermined marker further includes metadata uniquely identifying the image included in the screenshot or the image is encoded with data corresponding to the predetermined marker."

## **Reasons for the Decision**

1. The application relates to analysing images to identify a screenshot and to provide a link to another resource or content associated with the screenshot.

*Main request and first, second and third auxiliary requests*

2. *Added subject-matter*

- 2.1 Claim 1 of each of the main request and the first, second and third auxiliary requests refers to "a screenshot captured by a social media user using a screenshot capture device of the computing device (100)".

2.2 According to the appellant, this feature was based on the passage on page 28, lines 1 to 5, of the published application, which mentioned "screenshots captured by the device".

However, the "device" referred to on page 28 is the "client device 102" mentioned on page 27, line 23, which is an example of a computing device 100 on which applications are executed (see page 16, lines 26 to 29), not a "device" of such a computing device.

2.3 During the oral proceedings before the board, the appellant suggested that the board required a literal disclosure of the term "screenshot capture device".

This is not the case. The standard applied by the board is the well-established standard of direct and unambiguous disclosure of the claimed subject-matter (see G 3/89, OJ EPO 1993, 117, Reasons 3, and G 1/16, OJ EPO 2018, A70, Reasons 17 and 18). In the board's view, a "screenshot capture device" of a computing device is a hardware component of the computing device that implements screenshot capture functionality, not merely screenshot capture functionality which can be (and normally will be) implemented in software. No such hardware component is disclosed in the passage on page 27, line 23, to page 28, line 7, of the description.

2.4 Since, moreover, the board has not been able to identify any other passage in the application as filed that discloses a screenshot capture device, it concludes that the main request and the first to third auxiliary requests do not meet the requirements of Article 123(2) EPC.

*Fourth auxiliary request*

3. *Admission into the appeal proceedings*

3.1 The examining division decided not to admit into the proceedings the fourth auxiliary request, which had been filed during the oral proceedings, because, *prima facie*, the request did not overcome the objection of lack of inventive step.

3.2 In its statement of grounds of appeal, the appellant did not give any reason why the fourth auxiliary request should be admitted into the appeal proceedings.

Hence, in respect of the fourth auxiliary request, the statement of grounds of appeal does not set out clearly and concisely why it is requested that the decision under appeal be set aside, as required by Article 12(3) RPBA. For this reason alone, the board has discretion not to admit the request into the appeal proceedings (Article 12(5) RPBA).

3.3 Moreover, under Article 12(6), first sentence, RPBA, the board may admit a request which was not admitted in the first-instance proceedings only if the decision not to admit the request suffered from an error in the use of discretion or if the circumstances of the appeal case justify its admission. The presence of such an error or such circumstances was not argued by the appellant in its statement of grounds of appeal and is not immediately apparent from the file.

Only during the oral proceedings before the board did the appellant explain that the fourth auxiliary request had been filed in response to the examining

division's preliminary negative opinion which had been communicated to it one day before the oral proceedings before the examining division in a "minuted telephone conversation", which appears to be missing from the file but is mentioned in point 6 of the "Summary of Facts and Submissions".

However, the appellant did not argue that the amendments made in the fourth auxiliary request were a reaction to specific objections raised for the first time in that preliminary negative opinion or during the oral proceedings. The mere fact that the examining division expresses, either during the oral proceedings or shortly before the oral proceedings, the preliminary view that the amendments made did not overcome the objections raised in the communication annexed to the summons to oral proceedings does not create a situation in which the examining division cannot reasonably refuse to give consent to further amendments.

- 3.4 The board further notes that the addition of the feature "a link to a resource can be identified from the predetermined marker" to claim 1 *prima facie* introduces new issues under Article 84 EPC. First, it is grammatically unclear how this feature relates to the features preceding it. Second, claim 1 does not make clear how the three steps added at the end of the claim relate to the other steps of the method.
- 3.5 Moreover, in support of inventive step the appellant only referred to the paragraph bridging pages 57 and 58 of the description, which was said to describe the technical effect of the three added steps, thus leaving it to the board to complete its inventive-step argument.

3.6 In view of the above, the board does not admit the fourth auxiliary request into the appeal proceedings (Articles 12(3) to (6) RPBA 2020).

*Fifth and sixth auxiliary requests*

4. *Admission into the appeal proceedings*

4.1 The fifth and sixth auxiliary requests were filed for the first time with the statement of grounds of appeal. Their admission into the appeal proceedings is therefore at the board's discretion (Article 12(4), second sentence, RPBA 2020).

4.2 Contrary to Article 12(4), third sentence, RPBA 2020, in its statement of grounds of appeal, the appellant did not provide reasons for submitting these amendments only at the appeal stage.

4.3 In support of inventive step, the appellant merely stated that it is "of [the] view that the added features are neither described in nor obvious from D7 (or the other cited documents)". Hence, the statement of grounds of appeal does not sufficiently substantiate the fifth and sixth auxiliary requests within the meaning of Article 12(3) RPBA 2020, and for this reason alone the board need not admit them (Article 12(5) RPBA 2020).

4.4 In addition, the amendments made in the fifth and sixth auxiliary requests *prima facie* introduce new issues under Article 123(2) EPC:

- the features added in the fifth auxiliary request are based on original dependent claims 3 and 6, which are not disclosed in combination and, both

referring to the content of the "predetermined marker", cannot evidently be combined; moreover, they include further limitations ("by a social media application that uniquely identifies the image", "that uniquely identifies the image") which appear to have no basis in the application as filed;

- the further feature added in the sixth auxiliary request is based on original dependent claim 8 but adds a further limitation ("that is received from a social media application") which appears to have no basis in the application as filed.

4.5 In its written submissions in preparation for the oral proceedings and during the oral proceedings, the appellant chose not to comment on the admissibility of the fifth and sixth auxiliary requests.

4.6 In view of the above, the board does not admit the fifth and sixth auxiliary requests into the appeal proceedings (Articles 12(3) to (5) RPBA 2020).

#### *Amended third auxiliary request*

#### 5. *Admission into the appeal proceedings*

5.1 Claim 1 of the amended third auxiliary request is based on the third auxiliary request with amendments intended to address objections under Articles 84 and 123(2) EPC raised for the first time in the board's communication. In response to the board's objections of lack of inventive step, the appellant further incorporated the additional features of dependent claims 5, 7 and 15 of the third auxiliary request into claim 1.

- 5.2 The board has no objection to the admissibility of the amendments intended to address the board's objections under Articles 84 and 123(2) EPC.
- 5.3 The board is also in principle willing to consider amendments addressing the objections of lack of inventive step, in particular the objection based on document D9, which was introduced by the board in its communication.
- 5.3.1 However, the appellant substantiated the amended third auxiliary request in respect of inventive step only by stating that each of the newly added features "appears to be an inventive step over D7 and D9". Hence, the appellant again left it to the board to complete its inventive-step argument, contrary to Articles 12(4), third sentence, and 13(1), second sentence, RPBA 2020.
- 5.3.2 Moreover, again contrary to Articles 12(4), third sentence, and 13(1), second sentence, RPBA 2020, the appellant did not provide the board with an indication of a basis in the application as filed for the features taken from dependent claims 5, 7 and 15 of the third auxiliary request. These dependent claims are themselves based on original dependent claims 7, 9 and 18, but with a number of amendments that have no clear basis in the application as filed. For example, claim 1 now refers to "a deep link to a social media post" which, when accessed, results in the display of "an interface to allow purchase of a product". The appellant could have been expected to carefully review the amendments made and their basis in the application as filed, all the more so given that (non-)compliance with Article 123(2) EPC has been an important theme during the prosecution of the present application.

5.4 At the oral proceedings, the appellant stated that the large number of clarity and added-matter objections raised by the board in its communication had made it practically impossible to file an amended request that would be admitted and allowed by the board.

The board notes that the root cause for the present application's added-matter issues appears to have been the appellant's decision to submit, with its letter of 10 February 2020 filed with the examining division, a nearly fully redrafted set of claims, apparently corresponding to the granted claims of a US family member of the present application.

Although the examining division refused the application for lack of an inventive step and, in its *obiter dictum*, did not include clarity or added-matter objections to the third auxiliary request, in *ex parte* appeal proceedings the board sees no justification for not raising such objections of its own motion when it becomes aware of them (in accordance with G 10/93, Reasons 3 and 4). In particular, the board cannot identify a legitimate interest of the appellant in the grant of an independent claim that includes an undisclosed feature and therefore runs the risk of being caught in the "inescapable trap" of Article 123(2) and (3) EPC (see G 1/93, OJ EPO 1994, 541, Reasons 13).

Even though an objection under Article 123(2) EPC necessarily results from an amendment of the application, and the ultimate responsibility for any amendment always remains that of the applicant, the board would normally have admitted an amended request addressing the newly raised objections and not raising significant new issues (see point 5.2 above and see



Case Law of the Boards of Appeal, 10th edition, 2022, V.A.4.5.5, under a)). Claim 1 of the amended third auxiliary request indeed contains amendments which may well have overcome several of the board's objections (for example, it replaces "screenshot capture device" with "screenshot capture function"). However, these amendments were combined with the amendments discussed in point 5.3 above, which are insufficiently substantiated and raise new issues.

5.5 In view of the above, the board does not admit the amended third auxiliary request into the appeal proceedings (Articles 12(4) and 13(1) RPBA 2020).

6. Since none of the admitted requests is allowable, the appeal is to be dismissed.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

J. Geschwind

Decision electronically authenticated