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D E C I S I O N
of 19 September 2001

Case Number: T 1133/98 - 3.5.1

Application Number: 93309773.5

Publication Number: 0650071

IPC: G01S 5/14

Language of the proceedings: EN

Title of invention:
Natural environment observation system

Applicant:
HUDSON SOFT CO., LTD.

Opponent:

-

Headword:
Observation system/HUDSON SOFT

Relevant legal provisions:
EPC Art. 56, 113(1), (2)

Keyword:
"Inventive step (no)"
"A party's right to be heard who stays away from oral proceedings"
"Implicit withdrawal of auxiliary request"

Decisions cited:

-

Catchword:

-



Case Number: T 1133/98 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 19 September 2001

Appellant: HUDSON SOFT CO., LTD.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 20 July 1998
refusing European patent application
No. 93 309 773.5 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. S. Wibergh
P. H. Mühlens

Summary of Facts and Submissions

1. European patent application 93 309 773.5 was refused by a decision of the Examining Division dated 20 July 1998 because the subject matter of claim 1 of both a main and an auxiliary request lacked an inventive step having regard to the following documents:

D1: JP-A-04 297 882 (abstract)

D2: JP-A-05 002 064 (abstract).

2. The applicant appealed, submitting an English translation of D1 and requesting that the decision be set aside and that a patent be granted either according to the main request or the auxiliary request on file.
3. In an annex to a summons to oral proceedings the Board stated that it tended to agree with the objections raised by the Examining Division.
4. With letter of 20 August 2001 the appellant filed amended claim pages 8 and 9 and description pages 2 and 2a "to replace the corresponding pages presently on file".
5. Claim 1 of this set of claims reads as follows:

"1. An apparatus for providing tide information and astronomical information, the apparatus comprising:

 a satellite navigation receiver (10) for detecting longitude, latitude and height above sea level of an observer's location;

 a calendar means (11) for providing the present date and time;

a removable memory (9) for storing tide data and astronomical data including orbits of the sun, moon, planets, and constellations;

a selection means for selecting the tide information and astronomical information to be provided, wherein the tide information is selected from information including the times of high and low tides, and the astronomical information is selected from information including a whole sky chart and the rise time, set time and occurrence time at a particular elevation or azimuth of the sun, the moon, planets and constellations;

an arithmetic unit (17) programmed to process the tide and astronomical data stored in the memory in accordance with the observer's location to provide the selected tide information and astronomical information in accordance with the observer's location, wherein the astronomical data is processed in accordance with the present date and time to provide the selected astronomical information in accordance with the present date and time; and,

an output unit (13) for outputting the selected information."

(Two instances of the expression "present data and time" have been corrected to read "present date and time".)

6. In a fax received 13 September 2001 the appellant stated that he would not attend the oral proceedings.
7. Oral proceedings were held on 19 September 2001 in the absence of the appellant (Rule 71(2) EPC).

The Board noted that the appellant had requested with

letter of 20 August 2001 that the decision under appeal be set aside and that a patent be granted on the basis of

Claims: 1 to 3, filed with the letter of
20 August 2001;

Description: pages 2 and 2a, filed with the letter of
20 August 2001, the rest of the
description as originally filed;

Drawings: as originally filed.

8. At the end of the oral proceedings the Chairman announced the Board's decision.

Reasons for the Decision

1. *Basis for the decision*

- 1.1 Since the appellant did not attend the oral proceedings before the Board he has not had an opportunity to comment on the argumentation in the present decision concerning one of the features of the invention as claimed, namely the feature that the memory is removable (see point 3.5 below). The Board is nevertheless satisfied that Article 113(1) EPC has been complied with. At the time that the appellant announced by fax that he would not be attending the oral proceedings, this feature had already been added to claim 1. Hence the appellant could reasonably have expected the Board to consider the new feature, particularly with reference to the documents already

cited against claim 1, namely D1 and D2. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment on any objection the Board might have to the feature. Indeed it seems that the appellant did not wish to comment further, since the fax shows that the appellant saw a decision as the next step of the procedure, stating that "...we assume that... the Appeal Board will notify us of their decision in writing in due course". Under the circumstances the Board finds that a decision can be taken without further comment by the appellant.

- 1.2 The present decision is based on the claims filed with letter of 20 August 2001. Before that date the application was pursued on the basis of two requests, a main and an auxiliary request. Each request comprised two claim pages, numbered 8 and 9. Therefore, when the letter dated 20 August 2001 mentions the filing of "amended pages 2, 2a, 8 and 9 to replace the corresponding pages presently on file", they replace the claims of the previous main *and* auxiliary requests. It follows that the only claim version agreed by the appellant in the meaning of Article 113(2) EPC is the one filed with said letter.

2. *Amendments*

During the appeal proceedings claim 1 has been restricted by adding the features that the arithmetic unit is programmed to process astronomical *and tide* data, and the memory is *removable*. These features are disclosed in column 3, line 51 to column 4, line 1, column 2, lines 38 to 40 and column 4, lines 44 to 46 of the published application and are consequently not objectionable under Article 123(2) EPC.

3. *Inventive step*

3.1 Since novelty is not at issue, the question of inventive step can be dealt with immediately.

3.2 D1 (see the abstract) discloses an apparatus for providing astronomical information. It comprises a satellite navigation receiver (GPS) for detecting longitude, latitude and height above sea level of a user's location. An EEPROM (Electrically Erasable Programmable Read-Only Memory) stores astronomical data including information about orbits of the constellations. An arithmetic unit is programmed to process the astronomical data stored in the memory in accordance with the user's location to provide astronomical information for this location. The astronomical data is processed to provide the rise time and set time of the constellations. An output unit outputs this information. Hence, D1 discloses most features of claim 1 except those relating to tide information.

D2 (see the abstract) discloses a similar apparatus for providing tide information. Based on the user's current position and information about the lunar orbit stored in an EEPROM, the apparatus outputs the times for high and low tide.

3.3 The apparatus known from D1 contains a number of comparatively complex and expensive parts, such as a GPS receiver, a processor, EEPROM memory, and a display, which are used only to provide constellation data. It would have been obviously desirable to identify other useful functions which an apparatus having such advanced capabilities could perform at low

marginal cost. A search would reveal D2, a document which was all the more easy to find as it is by the same applicant as D1 and contains an identical block diagram. It was immediately clear that the apparatus of D1 could be used to display also tide data essentially by adding software. The skilled person, observing that knowledge of position and tide is essential for certain standard applications, in particular nautical navigation, would therefore have combined the teachings of D1 and D2. In order to compute the times for low tide and high tide, there must be provided sun and moon orbit data and/or tide information, and a calendar. The combined apparatus would furthermore have to contain selection means for selecting the kind of data to be displayed.

3.4 The appellant has argued that in D1 information is processed according to time but not date, as required by claim 1. It appears however that no useful tide or astronomical data can be computed unless date information is used. Moreover, a variable referred to as "present time t", as in D1 (see page 4, 2nd paragraph of the English translation), would in general not exclude date information.

3.5 The appellant has furthermore stressed the importance of the memory for storage of environmental data according to the invention being *removable*. This feature permits the astronomical and tidal information to be updated without the need to perform complex programming or to replace the apparatus in its entirety when it becomes outdated. Different memories (the description mentions IC cards and CD-ROMs) could provide data in respect of differing astronomical and tidal circumstances. For example, a card could be

dedicated to planet orbits and particular constellations.

Although these advantages may well exist, the Board is unable to accept that they indicate that the invention is non-obvious. In both D1 and D2 the data are stored in an EEPROM. This memory may not be removable, but its contents can be changed by means of re-programming. If reprogramming is seen as disadvantageous, the alternative approach to make the environmental data changeable by making the memory removable, as set out in claim 1, is standard practice since both IC cards and CD-ROMs are conventional kinds of data carriers. The adoption of a removable memory has no surprising effect in the context of the invention; the advantages mentioned are those which removable memories always offer compared with EEPROMs. Indeed, the description of the patent application does not describe this feature as exceptional or state any particular advantage associated with it.

3.6 The Board concludes that the subject-matter of claim 1 lacks an inventive step in view of D1 and D2 (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

S. Steinbrener