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Boards of Appeal

Chambres de recours

Case Number: T 0528/07 - 3.5.01

DECISION
of the Technical Board of Appeal 3.5.01
of 27 April 2010

Appellant: Accenture Global Services GmbH
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Representative: Rocke, Carsten
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 14 November 2006
refusing European application No. 02800218.6
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: S. Wibergh
Members: K. Bumès
P. Schmitz

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 02800218.6.
- II. According to the decision under appeal, the closest prior art document D2 (US-A-5 893 091) rendered the invention obvious.
- III. In the statement setting out the grounds of appeal dated 6 March 2007, the appellant requested that the decision under appeal be set aside and a patent be granted based on a first set of claims 1-22 (main request) or a second set of claims 1-17 (first auxiliary request) filed with the same letter. Claims 1-17 according to a second auxiliary request were subsequently filed by letter dated 21 January 2010. The appellant also submitted an auxiliary request for oral proceedings.
- IV. Claim 1 of the *main request* reads:

"1. A computer system for providing a business-to-business relationship portal presenting business opportunity information to permissioned users comprising:

 - a) a network of computers including a server and a plurality of client computers capable of communicating with said server;
 - b) said server being programmed to send files to create a graphical user interface on a display of at least one of said client computers via browser software executing on said at least one client computer;

- c) said graphical user interface including a login page to identify permissioning that the user will have within the system;
- d) said graphical user interface including a briefing page having a plurality of channels with links to respective portal applications; wherein the channels contain substantially real-time data from the portal applications, wherein the user selects a specific time-frame for content retrieval and sees new items added to the portal within the selected time-frame;
- e) said briefing page including a link to a create opportunities application enabling the entry of information related to new business opportunities, said server being programmed to restrict use of said create an [sic] opportunities application to a create-opportunity set of permissioned users;
- f) said portal applications including an opportunities application that displays business opportunities based on user permissioning;
- g) said portal applications including a catalog application that displays catalog content related to the business opportunities based on user permissioning;
- h) said portal applications including at least one communication application that displays communication items related to the business opportunities based on user permissioning;
- i) said server being programmed so as to enable an administration set of permissioned users to set user permissioning related to said business opportunities".

V. Claim 1 of the *first auxiliary request* specifies in feature d) that the channels "appear as boxes on a user's screen and contain hyperlinks to respective portal items" and "include summaries of aggregated data

from a variety of portal and/or non-portal based applications". Furthermore, in feature i) it is added that "said at least one communication application includes each of the following communication applications:

an alert application that displays alerts based on user permissionning;

a discussion application that displays discussion items based on user permissionning; and

a task application that displays task items based on user permissionning".

VI. Claim 1 of the *second auxiliary request* adds to the first auxiliary request the feature "the alerts being associated to file catalog content items within the portal".

VII. In a communication the Board stated that it agreed with the examining division that the subject-matter of claim 1 of the main request was a mixture of technical and non-technical features and that the invention merely seemed to display desired information, or a corresponding link. As to the case-law referred to by the appellant the Board noted that decision T 643/00 stated that an arrangement of menu items *might* be determined by technical considerations, not that it always was; that the general views expressed in decision T 49/04 might not represent established jurisprudence; and that the invention with which decision T 467/03 was concerned was not comparable with the present one since it concerned data exchanges across different data formats, an area in which the electrical engineer was the sole skilled person.

VIII. Oral proceedings were held on 27 April 2010. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the claims of the main request or auxiliary request 1, both filed with the statement setting out the grounds of appeal dated 6 March 2007, or auxiliary request 2 filed by letter dated 21 January 2010.

Reasons for the Decision

The invention

1. Claim 1 of the main request

The invention in accordance with claim 1 is a computer system for providing a business-to-business relationship portal. Its purpose is to facilitate the exchange of information between parties for example in business launch centres (which is the preferred embodiment, cf p. 1 of the published application WO-A-03/030044 under the heading "Field of the Invention"). It presents business opportunity information to permissioned users. In case of a business launch centre an "opportunity" is eg "any e-business that is being evaluated by one of the launch centers" (cf p. 19 of the application, l. 25-27).

"Business opportunity information" is eg company background information or financial information, and "permissioning" refers to users' rights to view and/or modify information (cf p. 9, heading "Opportunities"). The channels, which may appear as boxes on the user's screen, contain links to portal applications and may include summaries of aggregated data from the

applications (p. 7, top; p. 6, l. 31-34).

"Applications" are in the Board's understanding application programs.

Inventive step

2. Article 27 TRIPS

2.1 The invention as claimed consists of a mixture of technical and non-technical features, the non-technical features relating to a business-to-business relationship portal such as a launch centre, ie an entity arranged to provide new businesses with resources for rapidly and successfully building, launching and scaling their business (cf p. 2, l. 10-12). In order to examine this type of subject-matter the Board would normally apply the "Comvik approach" (cf T 641/00 "Two identities/COMVIK", OJ EPO 2003,352). The appellant has however argued that since Article 52(1) EPC in its revised version had been brought into line with Article 27(1) TRIPS it had to be interpreted in the light of the object and purpose of this agreement. The wording of Article 52(1) EPC:

European patents shall be granted for any inventions, in all fields of technology...

implied not only that there could be no "non-inventions" (ie exclusions of the kind enumerated in Article 52(2) EPC) in a field of technology, but also that the examination for inventive step had to be handled in a way to ensure that patents were indeed "available and patent rights enjoyable", as required by Article 27(1) TRIPS. It was not permitted to treat

features involving non-technical aspects as part of the object to be achieved by the invention. Business-driven aspects (such as the aim to develop profit-bringing products) were behind every invention, and were regularly ignored in the formulation of the problem. All features of a claim contributed to an inventive step, although it was permissible to attach more weight to the technical ones.

- 2.2 The Board is aware that the Comvik approach often leads to the conclusion that an invention involving non-technical aspects merely solves a trivial technical problem. But this is not an inevitable outcome. As soon as an invention solves a technical problem in a non-obvious way patent protection is in principle available even if the claim in addition contains non-technical features (cf T 769/92 "Sohei", OJ EPO 1995,525). A frequent case is however that technical features, such as the client-server system in the present case, are known as such but are used for a non-technical purpose. According to the Comvik approach, a claim feature is regarded either as being a mere expression of a non-technical "framework" or as constituting a technical feature that contributes to an inventive step. The appellant seems to argue that such a grouping of features should not be performed, or at least that the "framework" should to some degree also contribute to the inventive step.

- 2.3 The Board does not share the appellant's opinion that TRIPS would require a modification of the Comvik approach. Article 27(1) TRIPS stipulates that, subject to the provisions of its paragraphs 2 and 3, patents shall be available for any inventions, whether products

or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. At the revision conference in the year 2000, Article 52(1) EPC was amended to include the expression "in all fields of technology" to bring it explicitly into line with the TRIPS agreement. TRIPS does not give a definition of the term "technology" but leaves it to the member states and their jurisdiction to define and apply this concept (cf J. Straus, "Bedeutung des TRIPS für das Patentrecht", GRUR Int. 1996, No. 3, 179, points 35 and 36). The Board accepts that in the present case the claimed subject-matter is technical, ie an invention within the meaning of Article 52(1) EPC, and therefore open to patent protection. However, under Article 27(1) TRIPS a patent shall only be granted if it is new and involves an inventive step. Again, TRIPS does not stipulate how these requirements are to be applied. Article 27(1) TRIPS reflects on the one hand a minimum consensus and on the other hand the member states' unreadiness uniformly to define the patentability requirements (cf J. Straus, *loc. cit.* point 47). The TRIPS member states are free to adopt different standards for each patentability requirement, such as inventive step (cf Nuno Pires de Carvalho, "The TRIPS Regime of Patent Rights", 2nd edn., The Hague, 2005, 191). The Comvik approach is one facet of the standard applied by the EPO.

3. The jurisprudence of the Boards of Appeal

3.1 The appellant has cited several decisions of the Boards of Appeal in order to demonstrate that the display of data can have technical character. One of these

decisions is T 717/05 "Auxiliary game/LABTRONIX CONCEPT INC.", not published in OJ EPO. The appellant quotes its point 5.4:

... any display of information of the internal state of an apparatus conveys a cognitive content to the user, as this is the fundamental reason for its existence. To exclude all such systems from patent protection cannot be seriously envisaged.

3.2 Decision T 717/05 concerned a game apparatus. Its internal state reflected the state (outcome) of game events. The present Board is inclined to agree with the appellant that if the display of information about the outcome of games played on a computer has technical character, as held in the cited decision, then it may well follow by analogy that the information displayed in present claim 1, albeit not concerned with games, contributes to an inventive step. The Board will therefore review the jurisprudence of the Boards of Appeal on this point.

3.3 T 717/05 relies for authority (see its point 5.5) on decision T 115/85 "Computer-related invention/IBM", OJ EPO 1990,030. Decision T 115/85 states (at point 7) that *"giving visual indications automatically about conditions prevailing in an apparatus or system is basically a technical problem"*. This statement was explained in decision T 833/91 (dated 16 March 1993, not published in OJ EPO) in the following way (point 3.1): *"Even though the decision [ie T 115/85] does not specify said 'event' or 'condition' by way of examples, it is therefore to be concluded that they*

were basically of a technical nature such as, for instance, an event calling for an error message".

3.4 Thus two different interpretations of decision T 115/85 exist in the jurisprudence: either the visual indications must concern *technical* conditions of the system in order to relate to a technical problem (T 833/91), or they may also concern *non-technical* conditions (T 717/05).

3.5 The present Board will follow the more restrictive approach according to which only technical conditions of a system can be taken into account. This line has also been taken in other decisions of the Boards of Appeal (see eg T 790/92, point 4.6; T 953/94, point 3.1; T 1161/04, point 4.5; T 1567/05, point 3.7; T 756/06, point 13). Moreover, the clear character of exception of this approach appears to be more consistent with the exclusion of "presentations of information" pursuant to Article 52(2)(d) EPC.

3.6 The present Board will therefore regard features that indicate non-technical conditions of the claimed system, such as data relating to a business undertaking, as *not* contributing to an inventive step.

4. The prior art

A suitable starting point is the notorious client-server system of which D2 gives an example.

5. Obviousness

5.1 The "computer system for providing a business-to-business relationship portal presenting business opportunity information to permissioned users" according to claim 1 contains the following network features:

a) a network of computers including a server and a plurality of client computers capable of communicating with said server,

b) said server being programmed to send files to create a graphical user interface on a display of at least one of said client computers via browser software executing on said at least one client computer.

The appellant accepts that the combination of these features is known as such.

5.2 Technical character is furthermore provided by the features concerning the permissioning (which has the effect of enabling and disabling functionalities):

c) said graphical user interface including a login page to identify permissioning that the user will have within the system,

e)... said server being programmed to restrict use of said create an opportunities application to a create-opportunity set of permissioned users,

f)... based on user permissioning,

g)... based on user permissionning,

h)... based on user permissionning;

the links (which serve as addresses):

d) said graphical user interface including a briefing page having a plurality of channels with links to respective portal applications....,

e) said briefing page including a link to a create opportunities application enabling the entry of information....;

the setting of a time-frame:

d)... wherein the user selects a specific time-frame for content retrieval and sees new items added to the portal within the selected time-frame;

and the displaying of data:

d)... wherein the channels contain substantially real-time data from the portal applications....,

f) said portal applications including an opportunities application that displays business opportunities....,

g) said portal applications including a catalog application that displays catalog content....,

h) said portal applications including at least one communication application that displays communication items.... .

5.3 The appellant acknowledges that the techniques for achieving the above functions are known, and indeed they are so presented in the description (since no implementation details are given).

5.4 The remaining features in claim 1 owe, in the Board's view, their existence to the underlying business model. In particular, the information contents enumerated in features e), f), g) and h) are meaningful only to the human mind:

e)... information related to new business opportunities;

f)... an opportunities application that displays business opportunities;

g)... a catalog application that displays catalog content related to the business opportunities;

h)... communication items related to the business opportunities.

5.5 Finally, feature i) is based on an administrative hierarchy:

i) said server being programmed so as to enable an administration set of permissioned users to set user permissioning related to said business opportunities.

5.6 The Board can therefore not see that claim 1 contains any feature making a non-obvious technical contribution to the prior art.

- 5.7 The appellant has argued that the overall combination of the features has a synergistic effect because they cooperate to solve the technical problem of facilitating the exchange of information and supporting rapid information sharing (cf the letter dated 21 January 2010, page 3).

The Board is not convinced that there is an (unexpected) synergistic effect since features do not interact merely because they have a common goal. But even if there was such an effect it could only exist on a business level. On a technical level nothing in the claim is surprising: the use of a client-server system facilitates the exchange of information and support information sharing (that is what it is for); and the kind of information displayed or transmitted (opportunities, catalogues) has nothing to do with the rapidity with which signals travel from user to user. Furthermore, if the invention has the effect of reducing the traffic load on the net - as has been argued - this is due to user restrictions rather than, say, a protocol determining how the computers transmit data packets over the communication channel. In other words, the load is reduced by non-technical rather than technical means (also referred to in the jurisprudence of the Boards as a "circumvention" of the technical problem).

- 5.8 It follows that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC 1973).

6. The auxiliary requests

6.1 In accordance with the *first auxiliary request*, the channels "appear as boxes on a user's screen" and "include summaries of aggregated data from a variety of portal and/or non-portal based applications". The first feature relates to the manner information is displayed, something which is normally regarded as non-technical, and the summaries could be the result of a mental act. The claim further includes an alert application, a discussion application that displays discussion items and a task application that displays task items. From a technical point of view the first two applications merely involve the sending of messages, and the third application the inputting of data defining a "task". None of these features involves non-obvious technical considerations.

6.2 Claim 1 of the *second auxiliary request* states that the alerts are associated with file catalog content items within the portal. Such a specification of informational content does not involve technical considerations.

6.3 It follows that the subject-matter of claim 1 of the auxiliary requests does not involve an inventive step (Article 56 EPC 1973).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

U. Bultmann



The Chairman:

S. Wibergh