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**Datasheet for the decision
of 7 March 2007**

Case Number: T 1284/04 - 3.5.01

Application Number: 96902630.1

Publication Number: 0818015

IPC: G06F 17/60

Language of the proceedings: EN

Title of invention:

Method and apparatus of creating a financial instrument and
administering an adjustable rate loan system

Applicant:

King, Douglas L.

Opponent:

-

Headword:

Loan system/KING

Relevant legal provisions:

EPC Art. 52(2),(3), 56

Keyword:

"Inventive step (no)"

Decisions cited:

T 0641/00, T 0764/02, T 0258/03

Catchword:

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Case Number: T 1284/04 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 7 March 2007

Appellant: King, Douglas L.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 7 June 2004
refusing European application No. 96902630.1
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Steinbrener
Members: S. Wibergh
G. Weiss

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse the patent application on the ground that method claims 81 to 112 did not define patentable subject-matter (Article 52(2)(c) and (3) EPC). In an obiter dictum it was stated that the invention according to all claims 1 to 112 would lack an inventive step over common general knowledge (Article 56 EPC). Document DE-A-41 36 320 was cited as evidence that computer means and data processors had been used in the field of financial activities before the priority date of the application.
- II. The notice of appeal was received on 5 August 2004. The appeal fee was paid on the same day. In the statement setting out the grounds of appeal, received on 8 October 2004, it was requested that the decision of the examining division be set aside and a patent be granted on the basis of claims 1 to 112.
- III. In a communication annexed to a summons to oral proceedings, the Board expressed doubts with respect to the allowability of the amendments made to claim 81 before the examining division and the inventive activity of the subject-matter defined by claims 1, 40 and 81.
- IV. By letter dated 26 February 2007, the appellant filed an auxiliary request in which claim 81 had been amended in order to overcome the objections under Article 123(2) EPC.

V. Oral proceedings were held on 7 March 2007. The appellant argued that a new data processing architecture had been invented. The so-called account management data processor must not be considered as merely a general-purpose computer. It performed the additional task of periodically adjusting the level of compensation on financial contracts. According to the invention only a single data processor was needed whereas a conventional account management data processor would have to be combined with a further data processor. Functions were grouped in a specific way so that they could be re-used, thereby saving implementation time, processor power and communication bandwidth. The application of the "Comvik" approach according to decision T 641/00 was criticized as not complying with the EPC because it filtered out features not contributing to the technical character from the assessment of inventive step, these features being effectively considered as belonging to the prior art.

VI. The appellant requested that a patent be granted on the basis of claims 1 to 112 as annexed to the decision appealed (main request), alternatively that the case be remitted to the department of the first instance for further prosecution (first auxiliary request), or that a patent be granted on the basis of the claims of the main request but with claim 81 being replaced by the version submitted by letter of 26 February 2007 (second auxiliary request).

VII. Claim 81 of the *main request* reads as follows:

"A computer based method of supporting the creation, servicing and payment of financial contracts and the

operation of a plurality of financial accounts connected thereto having terms and conditions which provide repayment of monies tendered by one entity to another on a date or dates in the future, along with periodically provided compensation thereon, for the purpose of protecting the solvency of the issuing entity and providing reasonable compensation to contractholders said method comprising the steps of: storing the negotiated terms and conditions of a financial contract with an identified contractholder into at least one electronic database; periodically adjusting by an account management data processor coupled with the at least one electronic database the level of compensation on the financial contract to produce a rate of compensation tied to an external benchmark and to determined inputs based on such terms and conditions, allowing the issuing entity to establish a lower rate of compensation in any period in which its solvency or deteriorating credit quality, including with respect to the business activity to which the contract relates, is otherwise threatened in exchange for establishment of a higher rate of compensation during periods in which the results of a formula computation exceed certain preagreed levels; the account management data processor creates and maintains one or more accounts in the at least one electronic database to which funds received on the issuance of the financial contract are allocated; and utilizing one or more computers to interact and update said accounts maintained in said memory means and report the data contained therein."

Independent claims 1 and 40 define computer-based data systems processing financial contracts.

VIII. In claim 81 according to the *second auxiliary request* the last feature reads as follows:

"utilizing data processing means to interact and update said accounts maintained in said memory means and report the data contained therein."

IX. At the end of the oral proceedings, the Chairman announced the decision.

Reasons for the Decision

1. *Admissibility of the appeal*

The appeal complies with the requirements referred to in Rule 65(1) EPC and is therefore admissible.

Main request

2. *Article 52(2) and (3) EPC*

Claim 81 concerns a computer-implemented method. Pursuant to decision T 258/03 - Auction method/HITACHI (OJ EPO 2004,575) such a method has technical character and thus constitutes an "invention" within the meaning of Article 52(1) EPC.

3. *Article 56 EPC*

3.1 According to the approach defined in decision T 641/00 - Two identities/COMVIK (OJ EPO 2003,352), an inventive step can result only from claim features contributing

to a technical character. The Board regards this approach, which has been applied explicitly or implicitly by the Boards of Appeal for a long time (for references see T 764/02 - Banking services/ONLINE RESOURCES, point 11, not published in the OJ EPO), as well-established case law.

The Board would nevertheless like to add that the COMVIK approach does not consider the non-technical constraints as belonging to the prior art, but rather as belonging to the conception or motivation phase normally preceding an invention since they may lead to a technical problem without contributing to its solution. Such aspects have never been taken into account for assessing inventive step, irrespective of whether or not they were known from the prior art (cf also the decisions cited in "Case Law of the Boards of Appeal of the European Patent Office", 5th edition December 2006, chapter I.D.8.4).

In method claim 81, the operations of "storing" and "adjusting" data using a computer comprising a data processor and an electronic database are as such technical. However, the other method steps only reflect the concept of creating and administering financial contracts for obtaining an improved adjustable rate loan structure for financial institutions. That this concept is non-technical is undisputed (cf the grounds of appeal, point 2.5). Also the data on which the computer operates (account data, compensation rates etc.) are business-related.

- 3.2 The appellant has argued that a new data processing architecture has been invented (cf the grounds of

appeal, point 2.1). In particular, the so-called "account management data processor" could not be considered as merely a general-purpose computer since it performed the additional task of periodically adjusting the level of compensation on financial contracts. The Board nevertheless doubts that merely naming a processor "account management data processor" renders it technically distinguishable from a general-purpose data processor, the term "account management" being only a label for the (non-technical) task the data processor performs. In the Board's view, no feature in claim 81 serves to define special computer architecture. Also the description and the drawings are silent in this respect. The closest prior art can therefore be taken to be a general purpose computer of a kind used in the business sector (see e.g. DE-A-41 36 320 describing a computer-based method for implementing a financial concept involving adjustments of a compensation rate, cf the abstract or p. 1).

- 3.3 The appellant's arguments in favour of an inventive step are in the Board's view not convincing. The financial algorithm which the computer performs is in the Board's view a non-technical constraint as explained in decision T 641/00. The specific grouping of functions (cf section 2.5.2 of the grounds of appeal) is regarded as part of the financial concept. The application does not mention any re-use of sub-routines. The appellant claims advantages (implementation time, processor power, communication bandwidth) which the invention would obtain as compared with other possible configurations, but since the application is silent also in these respects such advantages (if any) cannot have been surprising. The technical problem therefore

is not to provide a better system for adjusting a compensation rate under the constraint of saving processor power, as argued by the appellant at the oral proceedings before the Board, but to implement the financial concept. A computer implementation including one or more computers and at least one electronic database is however conventional.

- 3.4 The subject-matter of claim 81 therefore lacks an inventive step (Article 56 EPC).

Auxiliary request 1

4. The appellant has requested that the case be remitted to the examining division if the Board finds that claim 81 of the main request does not fulfil the requirements of Article 123(2) EPC. Since the Board refuses the main request under Article 56 EPC, this request need not be considered.

Auxiliary request 2

5. In claim 81 according to the second auxiliary request the term "one or more computers" is replaced by "data processing means". This amendment does not change the technical content of the claim. The claimed subject-matter thus lacks an inventive step (Article 56 EPC) for the reasons already given with respect to the main request.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

T. Buschek

S. Steinbrener