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**Datasheet for the decision  
of 18 March 2009**

**Case Number:** T 0710/06 - 3.5.05

**Application Number:** 02290281.1

**Publication Number:** 1262902

**IPC:** G06F 19/00

**Language of the proceedings:** EN

**Title of invention:**

System and method to assist a dentist or dental surgeon in performing dental procedures

**Applicant:**

Vannoye, Michel

**Opponent:**

-

**Headword:**

Step-by-step guidance to dentists/VANNOYE

**Relevant legal provisions:**

EPC Art. 23(3), 52(1), 123(2)

EPC R. 142

RPBA Art. 15(2), 15(3)

**Relevant legal provisions (EPC 1973):**

EPC Art. 54(2), 56, 84, 106, 107, 108

EPC R. 67

**Keyword:**

Inventive step (no)

Postponement of oral proceedings (no)

**Decisions cited:**

J 0010/07

**Catchword:**

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Case Number: T 0710/06 - 3.5.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.05  
of 18 March 2009

**Appellant:** Vannoye, Michel  
4, rue du Moulin des deux Croix  
F-78860 Saint Nom la Bretèche (FR)

**Representative:** Fruchard, Guy  
Cabinet Boettcher  
22, rue du Général Foy  
F-75008 Paris (FR)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 1 March 2006  
refusing European application No. 02290281.1  
pursuant to Article 97(1) EPC 1973.

**Composition of the Board:**

**Chairman:** D. H. Rees  
**Members:** A. Ritzka  
G. Weiss

## Summary of Facts and Submissions

I. This appeal is against the decision of the examining division dispatched 1 March 2006, refusing European Patent Application No. 02290281.1 for the reason that claim 1 did not involve an inventive step having regard to the disclosure of

D1: WO 01/08076 A.

II. Notice of appeal and the statement setting out the grounds of appeal were filed on 27 April 2006. The appeal fee was paid on the same day.

The appellant requested that the appealed decision be cancelled, that the objective technical problem defined by the applicant in amended page 2 of the description filed on 23 September 2004 be declared acceptable, that it be declared that claims 1 and 2 on file satisfy the requirements of the European Patent Convention and that the refund of the appeal fee under Rule 67 EPC 1973 be ordered. Further, an auxiliary request for oral proceedings was made.

III. On 8 December 2008 the board issued an invitation to oral proceedings scheduled to take place on 18 March 2009 accompanied by a communication. In the communication the board interpreted the term "dental protocol" and presented objections under Articles 84 EPC 1973 and 123(2) EPC with respect to claim 1.

Further, the board expressed the preliminary view that claim 1 did not appear to involve an inventive step having regard to the disclosure of any one of D1,

D2: US 5,454,722 A and  
D3: WO 00/60522 A.

Moreover, the board commented on the request for refund of the appeal fee.

- IV. In his letter of 11 February 2009 the appellant requested that the oral proceedings be postponed to an undefined date for the reason that the French firm in the name of Dental On Line, in which the appellant (applicant) was a shareholder, was facing financial difficulties as evidenced by copies of letters of the URSSAF and the CIC bank. Dental On line had applied for a credit. The appellant requested that the oral proceedings be postponed until a decision of the bank was obtained.
- V. The board considered that according to the presented evidence Dental On Line was in financial difficulties, but that the evidence did not indicate that the appellant himself was facing financial difficulties. The board observed that the appellant had paid a renewal fee of 1100 € a few days before, which was considered to be an indication that he was not prevented by legal reasons from continuing the proceedings, according to Rule 142 EPC. The board informed the appellant that the date for the oral proceedings was maintained.
- VI. In his letter of 13 March 2009 the appellant stated that the decision to maintain the date for oral proceedings was unfair, since the appellant was directly summoned to an oral proceedings thirty two

months after filing the appeal and that refusing to postpone the oral proceeding for some months was unfair under these circumstances. Further, the ground for the refusal was that the appellant was not prevented by legal reasons as he paid the annuity and this ground had not been discussed with the representative. For these reasons it was requested once more that the oral proceedings be postponed. Moreover, an amendment of claim 1 was made, the request for refund of the appeal fee was withdrawn and arguments with respect to inventive step were presented. Finally, it was announced that a copy of this letter would be sent to the quality control service.

VII. The board considered the arguments and informed the appellant in a communication of 16 March 2009 that the date for the oral proceedings was maintained.

VIII. Oral proceedings took place as scheduled on 18 March 2009. Neither the appellant nor his representative attended the hearing.

After deliberation on the basis of the submissions and requests of 27 April 2006, 11 February 2009 and 13 March 2009 the board announced its decision.

IX. Claim 1 read as follows:

"A system for providing a guidance to dentists in applying dental protocols, comprising:

a central server (98) having storage (102) including a plurality of image presentations relating to different dental protocols;

a plurality of satellite installations each including a patient dental chair (84) with [sic] with the usual dental drill and other dental equipment (89), a video monitor (90), a computer and local storage (92); communication means adapted to allow each satellite installation to receive from said central server image presentations relative to said dental protocols; characterized in that the monitor is mounted adjacent the dental chair (84) for viewing by a dental surgeon, while operating on the patient; and in that said system includes controls operable from said satellite installations for controlling the presentation to guide the dentist on a step-by-step basis through the dental protocol while he is operating on the patient."

## **Reason for the Decision**

### 1. *Admissibility*

The appeal complies of the provisions of Articles 106 to 108 EPC 1973, which are applicable according to J 0010/07, point 1 (see Fact and Submissions point II above). Therefore it is admissible.

### 2. *Procedural matters*

#### 2.1 Request for postponement of oral proceedings

In the appellant's letter of 11 February 2009 facts and evidence were presented that the firm Dental On Line was in financial difficulties. The appellant was said to be a shareholder of Dental On Line, without

presenting any evidence for this fact. Therefore, the board considered that the presented facts and evidence only showed that Dental On Line was in financial difficulties and that they did not indicate that the appellant, who is Mr. Vannoye rather than Dental On Line, was in financial difficulties. Moreover, considering that the appellant had paid a renewal fee of 1100 € on 9 February 2009, the board considered that he was not prevented by legal reasons from continuing the proceedings and therefore the provisions of Rule 142 EPC did not apply. The board informed the appellant on 19 February 2009 by fax that the date for oral proceedings was maintained.

In his letter of 13 March 2009 the appellant requested again that the oral proceedings be postponed referring to the general principle of fairness. The appellant considered it to be unfair that, after having directly been summoned to an oral proceedings thirty two months after the filing of the appeal, it was refused to postpone the hearing for some months.

According to Article 15(2) RPBA a change of date for oral proceedings may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request. The board notes that in view of the workload of the Boards of Appeal this discretion is exercised strictly based on the presented facts and evidence. This complies with the general principle of fairness as this principle balances the interests of the community of all parties and the public, since any postponement of a hearing in a specific case causes delays in other proceedings. In the present case the presented facts and submissions were not considered to

be serious substantive reasons justifying a postponement of the oral proceedings, as stated in the board's communication of 19 February 2009.

The appellant argued that the board's ground for refusing to postpone the oral proceedings was that the appellant was not prevented by legal reasons as he paid the annuity; the fact that this ground was not discussed with his representative before maintaining the date for oral proceeding did not comply with the general principle of fairness.

The board notes that the appellant was informed on 19 February 2009 that the facts and submissions presented in his letter of 11 February 2009 were not considered to justify a postponement of the oral proceedings and that the date for oral proceedings was maintained. It was then up to the appellant or his representative to present further arguments and evidence justifying a postponement. In fact, in his letter of 13 March 2009, the appellant's representative requested the postponement again and argued on the basis of the general principle of fairness. However, no further facts and evidence with respect to the financial difficulties were presented. The board considered the arguments presented in the letter of 13 March 2009 and did not see any further facts, evidence or arguments justifying the postponement of the oral proceedings.

## 2.2 Non-attendance of oral proceedings

Neither the appellant nor its representative attended the oral proceedings which was requested by the



appellant and to which the appellant was duly summoned, see Facts and Submissions point III above.

Article 15(3) RPBA stipulates that the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Thus, the board was in a position to take a decision at the end of the hearing.

### 2.3 Sending a copy of the letter of 13 March 2009 to the quality control service

The appellant's representative announced in point 7 of his letter of 13 March 2009 that he was sending a copy of this letter to the quality control service "considering the total absence of support of [the] objections on the inventive activity, and [the board's] declaration that [it was] not bound by the guidelines for substantive examination."

The board notes that according to Article 23(3) EPC in their decisions the members of the Boards of Appeal shall not be bound by any instructions and shall comply only with the provisions of the EPC.

### 3. *Interpretation*

Claim 1 refers to the term "dental protocols". Based on [0003] to [0005] of the description the term "dental

protocol" is interpreted as a sequence of steps constituting a dental procedure.

4. *Novelty and inventive step*

D1 is considered to be the most relevant prior art document.

D1 discloses a system comprising a centralised information source, and a communication carrier for the transmission of information via a modem to a remote terminal provided in a medical practitioner's surgery. The remote terminal may include a personal computer, input means such as a keypad and mouse and display means such as a computer monitor and a printer. The remote terminal is suitable for *inter alia* storage of patient records. See page 6, lines 14 to 20. The centralised information source may include a main database and be adapted to receive update information from disease information sources, to convey software updates and to receive other database information. See page 6, line 30 to page 7, line 2.

The centralised information source including a main database implies a central server having storage. The remote terminals including a personal computer with a monitor correspond to satellite installations with a computer and a monitor. The remote system being suitable for storage of patient records imply a local storage. The input means including a keypad and a mouse imply controls operable from the satellite installations for controlling the presentation.

The components of the system intended for use in a medical practitioner's practice are connected to the centralised database via a modem or other telecommunication means, see D1, page 6, lines 8 to 12. This implies the provision of communication means adapted to allow each satellite installation to receive data from the central server.

The subject-matter of claim 1 is considered to differ from the system of D1 in that

- the system is explicitly intended for providing guidance to dentists in applying dental protocols,
- the storage includes a plurality of image presentations relating to different dental protocols,
- the satellite installations include a patient dental chair with the usual dental drill and other dental equipment,
- the communication means are used for downloading image presentations relative to dental protocols,
- the monitor is mounted adjacent the dental chair for viewing by a dental surgeon, while operating on the patient,
- the presentation guides the dentist on a step-by-step basis through the dental protocol while he is operating on the patient.

Thus, it is novel.

The board sees two technical contributions underlying claim 1 when compared with D1, namely:

- (1) to adapt the system disclosed in D1 for providing guidance to dentists; and

(2) to allow the guidance to be given on a step-by-step basis while operating on a patient.

As to the first contribution, it corresponds to a solution of the problem of making the system of D1 more generally applicable, which problem arises naturally without requiring further motivation. Since D1 itself suggests adaptation to dentists (page 18, lines 20 to 22), the solution is obvious. Moreover the steps to be taken are considered to be equally obvious.

The skilled person would understand that in a system adapted for providing a guidance to dentists in applying dental protocols, a patient dental chair with the usual dental drill and other dental equipment and appropriate data, i.e. image presentations relating to different dental protocols, included in the storage of the central server, are needed and that the communication means is used to transmit these appropriate data, i.e. image presentations relating to different dental protocols, to each satellite installation.

The second contribution corresponds to the solution of another problem which arises naturally, that is how to make the training system more useful. D1, at page 14, lines 19 to 22 indicates that the system may further be useful to assist in the diagnosis of a patient's medical condition, i.e. during the exercise of medical treatment on a patient. The skilled person would understand that this necessitates consulting the information during diagnosing a patient. The skilled person would further understand that the system may

equally be useful in other variations of medical treatment, e.g. a surgery. As the animation may be stopped at any time (see D1, page 8, lines 22 and 23), the system is able to give a step-by-step guidance.

Moreover, a solution to this problem is considered to be also obvious from common everyday experience, namely to make the training material available during the execution of the procedure one is not familiar with - this is known from cookery books, car maintenance manuals, installation guides of all sorts, including computerised guides, etc.. It is a fundamental characteristic feature of common everyday experience that it is commonly known. Contrary to the appellant's view in point 4 of his letter of 13 March 2009 such notoriously known common knowledge does not need to be supported by written evidence.

Thus, the skilled person would (not just could, as argued by the appellant) attempt to adapt the system of D1 to be available during the execution of dental procedures. Putting the monitor near the chair and providing means for the dentist to control the timing and course of the presentation would then be immediately obvious steps to take, a view which the appellant seems to share (see letters dated 13 November 2003 and 23 September 2004 points 4 and 5 respectively).

As D1 at page 7, lines 9 to 12 states that the doctor has the ability to demonstrate to a patient *inter alia* surgical procedures through a viewing mechanism on a computer, the skilled person would understand that when used to assist in the diagnosis, as suggested at page 14, lines 19 to 22, or to provide step-by-step

guidance in an operation, the doctor must be able to view what is displayed on a monitor. The skilled person would understand that providing guidance on a step-by-step basis while operating on a patient requires that the dentist/ dental surgeon is able to see the monitor while operating on the patient. It would be obvious to mount the monitor adjacent the dental chair for viewing by the surgeon while operating on the patient, since it lies in the normal professional activity of the skilled person to arrange a monitor where it is needed.

The appellant has argued *inter alia* that a prejudice against employing dental training systems during execution of the procedure existed. The burden of demonstrating such a prejudice is on the appellant; a simple assertion is not sufficient. In general there may be many reasons why competitors may not have previously produced systems conformant to the claims. In the particular case it may have been for economical reasons as it appears quite likely that it was only in a period not long preceding the priority date of the present application that the means to carry out this invention (e.g. high-speed network access and high-performance graphics on PCs) became available at a price making the claimed invention commercially viable.

The only "evidence" of a prejudice that the appellant has put forward in the appeal procedure, for the first time in his letter of 13 March 2009, is the alleged statement of the examiner "that she would never go to a dentist who is looking to a monitor while operating her." Even if the board considered this to be sufficient evidence of a prejudice, it would not be evidence of a technical prejudice, i.e. that the system

as claimed was impractical or would not function, but merely evidence of a belief that such a system would not be acceptable to the user. Only a technical prejudice would have to be considered in the assessment of inventive step.

The appellant stated in point 6 of his letter of 13 March 2009 that "the basic principles of the examination according to which any doubt on the exact content of the prior art shall profit to the applicant" were violated by the assertion that it was likely that the invention became feasible shortly before the application was filed. The board notes that, firstly, the assertion was not made in the context of the interpretation of the prior art as to its content. Thus, the mentioned basic principles were not violated. Secondly, the board observes that, when a party alleges a prejudice, the burden of evidence is on the party. When a board evaluates presented facts and submissions and considers that they do not present sufficient evidence for an alleged prejudice, the board does not need to present counterevidence for its considerations.

Therefore, the subject-matter of claim 1 does not involve an inventive step.

As to the appellant's request to declare that the objective technical problem defined by the applicant in amended page 2 of the description filed on 23 September 2004 was acceptable, the board notes that, as discussed above, they consider the problem underlying claim 1 to be making the system of D1 more generally applicable and more useful in addition to training purposes.

**Order**

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

The appeal is dismissed.

Registrar:

Chairman:

K. Götz

D. H. Rees