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**Datasheet for the decision
of 26 February 2010**

Case Number: T 1485/06 - 3.5.05
Application Number: 01949147.1
Publication Number: 1295195
IPC: G06F 1/00
Language of the proceedings: EN

Title of invention:

Electronic virtual certification by data processing method via a communication network

Applicant:

Choquet, Claude

Headword:

Electronic virtual certification/CHOQUET

Relevant legal provisions:

EPC Art. 52(1), 106, 107, 108, 113(1), 123(2)
EPC R. 111(1)
RPBA Art. 15(3),(6)

Relevant legal provisions (EPC 1973):

EPC Art. 56, 84
EPC R. 29(2)

Keyword:

"Non-appearance at oral proceedings"
"Clarity and support by the description (no)"
"Added subject-matter (yes)"

Decisions cited:

J 0010/07

Catchword:

-



Case Number: T 1485/06 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 26 February 2010

Appellant: Choquet, Claude
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 2 May 2006
refusing European patent application
No. 01949147.1 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: D. H. Rees
Members: P. Corcoran
P. Schmitz

Summary of Facts and Submissions

I. This is an appeal against the decision of the examining division to refuse the European patent application No. 01 949 147.1 published as International application PCT WO 01/98874. The decision was announced in oral proceedings held on 6 April 2006 and written reasons were dispatched on 2 May 2006.

II. In the decision under appeal, the subject-matter of claim 1 of the main request comprising claims 1-16 filed with the letter of 6 March 2006 was found to lack inventive step over prior art relating to "standard internet business processing systems". The examining division asserted that it was standard practice in the context of the Internet to use databases containing records accessible over a communication network and referred to online services such as Amazon (<http://www.amazon.com>) and eBay (<http://www.ebay.com>) as illustrative examples of the prior art on which its objection was based (cf. decision: II.1.1, p.2).

It was further argued to the effect that the features which distinguished claim 1 of the main request from the aforementioned prior art related to providing a technical implementation of a certification process. These features were found to follow directly from the specification of the certification process and thus not to involve an inventive step (cf. decision: II.1.2 and 1.3, p.3-4). Similar objections were maintained against the corresponding claims of three auxiliary requests also submitted with the letter of 6 March 2006.

III. Notice of appeal was filed with a letter dated 29 June 2006 and received at the EPO by telefax on the same date. A voucher for the payment of the appeal fee was attached thereto. The statement setting out the grounds of appeal was filed with a letter dated 4 September 2006 which was received at the EPO on the same date. A new set of claims 1-4 was submitted with said statement and a request for oral proceedings was made. A request for "accelerated issuance of the next office action" was received from the appellant's representative on 9 September 2009.

IV. In a communication accompanying a summons to oral proceedings to be held on 26 February 2010 the board gave its preliminary opinion that the appellant's request was not allowable.

In particular, objections were raised against all claims of the request under Article 84 EPC 1973 and against claim 1 under Article 123(2) EPC.

The board also noted that it was of the preliminary opinion that the application failed to disclose the claimed invention with sufficient clarity and completeness to comply with the requirements deriving from Article 83 and Rule 27(1)(e) EPC 1973. In this regard, the board made specific reference to the "notarization database" and "monitoring database" features of claim 4, and likewise to the terms "notarization process" and "monitoring process" used in the description.

V. Without prejudice to the preceding objections, the board further expressed its preliminary opinion, that

the application did not comply with the inventive step requirement of Article 52(1) EPC (cf. communication: point 6.).

- VI. In a letter which originated directly from the appellant and was received at the EPO by telefax on 26 January 2010, an enquiry was made as to whether it would be possible to delay the proceedings before the EPO until September 2010.
- VII. In a brief official communication dated 28 January 2010 and transmitted to the appellant by telefax on the same date, the board advised the appellant that any formal request which he wished to make would have to be submitted by his European professional representative and that if he wished to request a postponement of the scheduled oral proceedings his representative should be instructed accordingly. A copy of this official communication was also sent to the appellant's representative along with a copy of the appellant's letter referred to in VI. above. No further submissions were received from either the appellant or from his representative.
- VIII. The appellant has requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1-4 filed with the statement setting out the grounds of appeal dated 4 September 2006.

The further documents on which the appeal is based, i.e. the text of the description and the drawings, are as follows:

Description, pages:

1-15 as filed with the letter of 21 July 2005.

Drawings, sheets:

1/10-10/10 as filed on entry to the European phase.

IX. Independent claim 1 of the appellant's sole request reads as follows:

"A system for on-line certification of members over a communication network, comprising:

a data storage (3);

a controller (1) connected to the data storage (3);

said data storage comprising instructions stored therein for controlling the controller (1), the controller comprising means for registering (39) the members by storing data concerning the members into the data storage based on information provided by the members over the communication network following a member registration process under control of the controller;

means for collecting certification data (71, 75) for the individuals based on examined information provided by the members over the communication network following an examining process under control of the controller; said examining process being based on code, standard or law;

means for processing the examined information with respect to the process specification data;

means for updating certification records as a function of the examined information processed by the controller;

means for storing the certification records into the data storage (3);

means for updating access rights to selected elements of the certification records based on access right

information provided by the members over the communication network following an authorization process under control of the controller; and means for reporting the selected elements of the certification records corresponding to the access rights of a requester over the communication network following a report process under control of the controller in response to an information request received from the requester over the communication network."

Independent claim 4 of the request reads as follows:

"An electronic certification transaction system comprising:

a plurality of member sites (4) each one having an interface connectable to a network (32);

a center site (3) for providing services to the member sites (4), said center site having an interface connectable to each of said member sites interfaces (4) via said network (32), wherein said center site (3) comprises a controller (1) and a storage comprising:

a member database (39) for storage of the data concerning the members sites,

an authentication database (35) to verify each member site by password authentication,

a notarization database (38) to notarize transaction data of business transaction achieved between member sites,

a monitoring database (31) for monitored data concerning flow of information,

a contact amount main process database (37) for information of the contracted amount of the business transaction between member sites, a process report database (34) to supply various report and information to the respective member sites; and
a certification database for storage of the certification records."

- X. Oral proceedings were held as scheduled on 26 February 2010. As nobody was present on behalf of the appellant, the registrar phoned the representative's office. The representative could not be reached and the secretary was unable to confirm whether or not the representative intended to appear at the oral proceedings. The board therefore waited until 9.30 hours before declaring the proceedings open in the absence of the appellant. The chairman then summarised the relevant facts as appearing from the file and, after the board had deliberated on the basis of the appellant's written submissions, he proceeded to announce the decision.

Reasons for the Decision

1. *Admissibility*

- 1.1 The appeal complies with the provisions of Articles 106 to 108 EPC 1973 which are applicable according to J 10/07, point 1 (cf. Facts and Submissions, item III. above). Therefore it is admissible.

2. *Non-attendance at oral proceedings*

- 2.1 According to Article 116(1) EPC, oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. Oral proceedings provide an appellant with the opportunity to present its concluding comments on the outstanding issues (Article 113(1) EPC) with the aim of ensuring that the case is ready for a decision at the end of the oral proceedings (Rule 111(1) EPC; see also Article 15(3) RPBA).
- 2.2 The need for procedural economy requires the board to reach its decision as quickly as possible while giving the appellant a fair chance to argue its case. In the present case the holding of oral proceedings was considered by the board to meet both these requirements. The appellant had also made a request for oral proceedings. A summons was therefore issued.
- 2.3 Although, the letter from received at the EPO by telefax on 26 January indicated that the appellant was interested in obtaining a postponement of the scheduled oral proceedings, no formal request to this effect was received by the board despite the fact that the appellant had been advised that such a request would have to be submitted by his representative. Under the given circumstances, the board decided that a postponement of the oral proceedings would not be justified and that the twin requirements of fairness and procedural economy were best served by holding the oral proceedings as scheduled.

- 2.4 The board notes that in accordance with Article 15(3) RPBA, it 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 on its written case.
- 2.5 The appellant could reasonably have expected that during the oral proceedings the board would consider the objections and issues raised in the communication annexed to the summons to oral proceedings, (cf. Facts and Submissions, items IV. - VI. above). In deciding not to attend the oral proceedings, the appellant effectively chose not to avail of the opportunity to present its observations and counter-arguments orally but instead to rely on its written case.
- 2.6 The board considers that the reasons on which its decision are based do not constitute a departure from grounds or evidence previously put forward which would require that the appellant be given a further opportunity to comment.
- 2.7 In view of the foregoing, the board concludes that the appellant had an opportunity to present comments on the grounds and evidence on which the board's decision, arrived at during oral proceedings, is based. The right to be heard under Article 113(1) EPC has thus been satisfied despite the appellant's non-attendance at the oral proceedings.
- 2.8 The board notes that a professional representative has a duty to inform the European Patent Office as soon as

possible of a party's intention not to be represented at oral proceedings. Moreover, Article 6 of the code of conduct of members of the European Patent Institute, of which the representative is obligatorily a member, stipulates that the members are required to act courteously in their dealings with the European Patent Office. In the present case the representative provided neither an advance indication nor a subsequent explanation of his non-attendance. Even assuming that the representative had been waiting for instructions which he did not receive, the board considers that it would have been appropriate to telephone the registrar at or before the scheduled time for the opening of the oral proceedings to notify the board that he would not be attending.

3. *Article 84 EPC 1973*

3.1 Claim 1 is directed towards a system for on-line certification of members over a communication network. Claim 4 is directed towards an electronic certification transaction system. Referring to the provisions of Rule 29(2) EPC 1973, it is not apparent why it is appropriate to have more than one independent claim in the same category in the present case. In this regard the differences between claims 1 and 4, in particular in relation to the definition of the features concerned with the storage of data make it unclear as to what are the essential technical features of the invention (cf. claim 1: "a data storage (3)"; claim 4: "a storage" which comprises a plurality of databases).

3.2 Claim 1

3.2.1 The claim recites "means for collecting certification data (71, 75) for the individuals based on examined information provided by the members over the communication network following an examining process under control of the controller".

The reference sign 71 used in Fig. 7 refers collectively to four items of the flowchart with the following text captions: "consult welders current certification", "update welders current certification database", "update proof of welding log-book" and "update current engineer status report". The reference sign 75 in Fig. 7 refers to the item of the flowchart bearing the caption "update welders current certification database". The terms "welders current certification", "welders current certification database", "welding log-book" or a "current engineer status report" which appear in the captions of Fig. 7 are not explained further in the description.

In view of the foregoing, the board finds that the feature "means for collecting certification data" is unclear as it cannot be determined reliably either from the claim itself or from the description what technical limitation is implied by the recited "means". It is also not apparent what is meant by the specification "following an examining process under control of the controller". Neither the wording of the claim nor the description provide any identifiable indication as to what exactly the recited "examining process" entails or as to how the controller under whose control it is supposed to take place interacts with it.

3.2.2 The claim further recites "means for processing the examined information with respect to the process specification data". The board finds that this expression is unclear, in particular because it cannot be determined either from the claim itself or from the description what technical limitation is implied by the recited "means".

It is additionally noted in this regard that the term "the process specification data" has no apparent antecedent basis. Hence, the intended meaning of the formulation to the effect that the processing of the examined information is performed "with respect to the process specification data" is unclear in the given context.

3.2.3 The claim additionally recites "means for updating access rights to selected elements of the certification records based on access right information provided by the members over the communication network following an authorization process under control of the controller".

There is, however, no identifiable disclosure of "means for updating access rights" (emphasis added) as recited in the claim. In the board's judgement, this expression is unclear and also lacks support by the description.

3.3 Claim 4

3.3.1 With respect to claim 4, it is noted that the final feature of said claim is "a certification database for storage of the certification records". However, in Fig. 3 there is no "certification database" nor is such a

database mentioned in the associated text (cf. p.10 l.313 - p.11 l.347). It is therefore not apparent to which feature(s) of the description this claim feature is supposed to correspond.

On this basis, the board judges that the feature of "a certification database for storage of the certification records" lacks support by the description.

3.4 Similar observations to those set forth in 3.3 above apply to the "certification database" feature of dependent claim 2 and also to the "process report database" feature of dependent claim 3 which are likewise found to lack support by the description.

3.5 In view of the foregoing, the board finds that independent claims 1 and 4 do not comply with the requirements of Article 84 EPC 1973, in particular the requirements relating to clarity and support by the description. Dependent claims 2 and 3 also lack support by the description in respect of the features referred to in 3.4 above. Since the request does not meet the requirements of the EPC in this regard, the appeal must be dismissed.

4. *Further observations*

4.1 In view of the findings noted under 3. above it is not necessary for the board to give further consideration to the other issues raised in the communication accompanying the summons to oral proceedings, in particular the questions of added subject-matter (Article 123(2) EPC), sufficiency of disclosure (Article 83 EPC 1973) and

inventive step (Article 52(1) EPC and Article 56 EPC 1973).

4.2 For the sake of completeness, however, it is noted that the appellant made no submissions in response to the relevant observations set out in the board's communication. The board therefore sees no reason for revising its preliminary opinion in relation to the aforementioned issues.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

K. Götz

D. H. Rees