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**Datasheet for the decision  
of 18 February 2011**

**Case Number:** T 0823/07 - 3.5.01

**Application Number:** 01931940.9

**Publication Number:** 1292903

**IPC:** G06F 17/30

**Language of the proceedings:** EN

**Title of invention:**

Searching apparatus and a method of searching

**Applicant:**

Adknowledge, Inc.

**Opponent:**

-

**Headword:**

Identifying commercial suppliers/ADKNOWLEDGE

**Relevant legal provisions:**

EPC Art. 123(2)

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

EPC Art. 56, 84, 85

**Keyword:**

"Inventive step - no (main and first auxiliary requests)"  
"Amendment admissible - no (second auxiliary request)"

**Decisions cited:**

T 0333/95, T 0641/00, T 0643/00, T 0928/03, T 0154/04,  
T 1143/06

**Catchword:**

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Case Number: T 0823/07 - 3.5.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.01  
of 18 February 2011

**Appellant:** Adknowledge, Inc.  
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**Representative:** Ahmad, Sheikh Shakeel  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 17 November 2006  
refusing European patent application  
No. 01931940.9 pursuant to Article 97(1) EPC  
1973.

**Composition of the Board:**

**Chairman:** S. Wibergh  
**Members:** R. R. K. Zimmermann  
P. Schmitz

## Summary of Facts and Submissions

- I. European patent application No. 01931940.9 (international publication No. WO 01/90917) claimed priorities from previous applications, the earliest filed on 24 May 2000, for an apparatus and a method for identifying a desired commercial supplier from a search result list displaying entry items and associated images in response to a specified input keyword.
- II. The application was refused by a decision of the examining division on the basis of a main request and a (first) auxiliary request submitted by the applicant with a letter dated 15 September 2006. The decision posted in writing on 17 November 2006 cited, as the reason for the refusal, lack of inventive step in the light of prior art document D1 (US-A-5 930 474, published 27 July 1999).
- III. Claim 1 of the main request read as follows (brackets <sup>1</sup><...>, <sup>2</sup><...> etc added for convenience of reference):
- "1. Searching apparatus configured to identify commercial suppliers (111, 112, 113) in response to a specified keyword, the apparatus comprising:  
input means arranged to receive an input keyword;  
searching means (401) configured to search <sup>1</sup><a database> (402) indexed with respect to specified keywords to identify <sup>2</sup><displayable text items related to> said input keyword, each <sup>3</sup><item> regarding one of said commercial suppliers (111, 112, 113) <sup>4</sup><>;  
image storage means (405) arranged to store graphical images <sup>5</sup><>, each graphical image identifying or being associated with a commercial supplier (111, 112, 113);

linking means configured to link each stored graphical image with a respective one of the displayable text <sup>6</sup><items> to form a respective stored results entry, the stored results entry in use being arranged to present the text <sup>3</sup><item> and graphical image for simultaneous display; and

output means (403) configured to supply data defining a displayable list of said stored results entries assembled by said linking means, thereby enabling a user to identify a desired commercial supplier from the list of stored results entries when the list is displayed, based upon the graphical image of each stored results entry."

Claim 1 of the first auxiliary request differed from the wording above only by the feature "in a plurality of formats" added to the claim at the passage indicated by brackets <sup>5</sup><> above.

IV. The appellant (applicant) lodged an appeal against the decision of the examining division on 25 January 2007, paying the appeal fee on the same day. A statement setting out the grounds of appeal was received by the EPO on 23 March 2007.

V. In a communication, the Board notified the appellant of its provisional opinion that the examining division was considered to be essentially right in denying patentability of the claimed invention for lack of inventive step.

Following a reply letter where the appellant defended its position and maintained the requests, the Board summoned the appellant to oral proceedings.

- VI. Oral proceedings before the Board were held on 18 February 2011. The matter was discussed with the appellant on the basis of the requests filed on 15 September 2006 and a second auxiliary request filed during the oral proceedings.
- VII. The appellant has requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request or the first auxiliary request submitted with letter of 15 September 2006 before the examining division, or the second auxiliary request filed during the oral proceedings before the Board.
- VIII. The second auxiliary request included amended independent claims, the amendments to claim 1 were as follows:
- <sup>1</sup><...>: "an index database"  
<sup>2</sup><...>: "text-entries in the index database which include"  
<sup>3</sup><...>: "entry"  
<sup>4</sup><...>: "and comprising displayable text items including a title, a description of a product or service and a URL"  
<sup>6</sup><...>: "entries"
- IX. The Board raised objections with respect to the definition of an "index database" in claim 1 of the second auxiliary request for lack of clarity and added subject-matter.
- X. According to the appellant, this amendment was disclosed in the application as filed; the definition "index database" could be clearly derived from the

abstract and had a basis in the description at page 5, lines 12 to 14, page 7, lines 7 to 12, page 11, lines 5 to 13, and page 12, lines 19 to 24 (citations refer to the international publication).

The arguments submitted in support of inventive step are summarized as follows: The present invention addressed an important problem with conventional search engines, namely that users had to read the entire text of each single item of the search results to assess its relevance and to identify commercial suppliers in the result list. To solve this problem, the invention proposed a completely new format of the user interface by including text entries and graphical images identifying or associated with commercial suppliers simultaneously into the search result listings. This concept enabled the user to spot the relevant information without having to provide the name of a desired commercial supplier beforehand as search data.

The new format of the user interface reduced the mental effort required from the user in scanning through the listings. Such type of improvement of a user interface was acknowledged as a technical invention by the case law of the European Patent Office. In support of this submission, the appellant cited the decisions T 333/95 - Interactive animation/IBM, and T 643/00 - Searching image data/CANON, T 928/03 - Video game/KONAMI (not publ. in OJ EPO). The finding in T 1143/06 - Data selection system/BRITISH TELECOMMUNICATIONS (not publ. in OJ EPO) did not apply to the present invention; in that case the user had to perform significant cognitive steps from the information presented on the screen in order to determine the relevance of the information

presented. The present invention provided an image store containing different graphical images, each of which was linked to a respective text item and, if displayed in conjunction with textual search results, enabled the user to determine the relevance of each search result without having to read the whole listings.

Another important technical advantage was that any ordering of search results was effectively overridden by simultaneously displaying the graphical images. The user could easily identify the search result likely to be most relevant without having to read the search list from the beginning.

A further important technical advantage was that the graphical images could provide additional information to the user which might not be apparent from the associated text item itself. By displaying images associated with the search result, the invention filled in the informational gaps left by the traditional manner of displaying search results as text entries.

The invention, therefore, provided a technical tool for overcoming such problems associated with the known formatting of textual search results. Document D1 did not disclose the use of image storage means for storing images associated with commercial suppliers. The yellow balls and similar graphical items referred to in document D1 were not images associated with or logos identifying individual suppliers and did not provide a link between text entries of the search result list and commercial suppliers.

On the basis of these differences, the present invention was clearly novel and inventive over the prior art.

### **Reasons for the Decision**

1. The appeal, although admissible, is not allowable since the main and first auxiliary requests do not comply with the requirement of inventive step whereas the second auxiliary request could not be admitted in view of an inadmissible amendment.

#### Main request

2. The apparatus of claim 1 does not meet the requirement of inventive step (Article 56 EPC 1973) in the light of document D1, considered to form the closest prior art and the appropriate starting point for assessing inventive step.
3. Document D1, in particular figure 6, discloses a searching apparatus (yellow pages search engine 620, see column 15, lines 53 ff.) configured to identify commercial suppliers ("Bill's hardware" etc, see column 16, lines 49 ff.) in response to a specified keyword (keyword search, see col. 16, lines 17 ff.). An input means (Netscape browser interface) receives search requests; a search database (yellow page database 245) allows for a "key word search", i.e. the database is indexed with respect to keywords in field 1785 (figure 17); an image storage means is arranged to store graphical images ("graphic... one of the generic images stored on the server", see col. 24, lines 59 ff.);



"information included within the yellow pages database 245 may, for example, include ... graphical display or text advertisements", see column 10, lines 9 to 30); a linking means (search engine 620 and activity block 530 in figure 6) links the stored graphical image ("ball") with a text item ("entry's title") for a simultaneous display of the text item and the graphical image (see col. 24, lines 59 ff.); and, finally, an output means (Netscape browser interface, see box 335 in figure 6) supplies the search results as assembled by the linking means, enabling the user to identify a commercial supplier from the listings displayed.

4. It is uncontroversial that the invention claimed is distinguished from the search engine of document D1 in that

(A) the images stored by the image storage means identify or are associated with commercial suppliers;

(B) the linking means links such images, i.e. images which identify or which are associated with commercial suppliers, with the corresponding text item to form listings (stored results entries) to display each text item and corresponding graphical image simultaneously;

(C) so that when the listings are displayed the user is enabled to readily identify a desired commercial supplier from the graphical image.

5. These features, however, derive in a straightforward manner from an underlying concept which lacks technical character and does thus not provide a technical contribution to the prior art.

In fact, displaying logos of commercial suppliers in combination with information concerning products, services etc provided by such suppliers is a presentation of information which exclusively addresses the mental and cognitive activities of users. There is no direct causal relationship to the technical solution of a technical problem. Even if it is true that presenting information according to this concept enables the user to identify the desired supplier and the associated listings more easily and quickly than with the prior art system, this result would be entirely subjective depending on the mental furniture of the user.

6. As follows from decision T 1143/06, the manner how cognitive content is presented to the user may only contribute to the technical solution of a technical problem if the manner of presentation (exceptionally) shows a credible technical effect (see 5.4 of the Reasons of the decision). Non-technical features and aspects of an invention should not be given any weight in assessing inventive step. If they belong to the general framework in which the invention evolves, they may be used in formulating the relevant technical problem (see decision T 641/00 - Two identities/COMVIK, OJ EPO 2003, 352).
  
7. There has been no proof of any such technical effect of the present concept of presenting information, beyond the alleged advantages which concern the mental and cognitive activities of the user. The only credible technical effects result from the computer implementation of this concept.

This circumstance distinguishes the case from the decisions cited by the appellant in support of its arguments (see X. above). In all these decisions, the board concluded on the existence of a technical contribution over the prior art. The technical contribution resulted from overcoming physical limitations of the size and resolution of computer screens (T 643/00, T 928/03) and from the functions of a "new input device" conferring technical character (T 333/95). Neither one of the decisions derives the technical character of a feature or activity from the mental effort required or any similar effect; these are only secondary considerations. Moreover, in the context of inventive step, caution is required in applying old decisions concerning non-technical subject-matter like decision T 333/95 since the relevant case law has experienced some important development as explained in decision T 154/04 - Estimating sales activity/DUNS LICENSING ASSOCIATES, OJ EPO 2008, 46.

In the present case, the only relevant technical aspects of the invention are standard programming features for implementing the idea of displaying search results in connection with supplier logos on a computer system. The programming and implementation of this idea is obvious in the light of the prior art.

8. In fact, document D1 already indicates that "[if] some other graphic is to be displayed, then the name of that graphics image format file is entered into this field" (see col. 24, lines 62 ff.).

Striving to solve the technical problem of providing the search engine of document D1 with the additional

functionality of combining individual logos of commercial suppliers with the associated search results, a skilled person would immediately recognise from document D1, figure 17 that merely the name in field 1750 had to be changed from pointing to a more or less fixed graphic (bullet) to a logo associated with the commercial supplier identified in name field 1705.

There are no technical difficulties to overcome in providing an image database of commercial supplier logos and establishing an appropriate cross reference to the said name fields 1705 and 1750 of the data stored in the yellow pages database 245 of the prior art system.

9. For these reasons, the invention according to claim 1 of the main request does not meet the requirement of inventive step.

#### First auxiliary request

10. The amendment of claim 1 according to the first auxiliary request is only a clarification of the concept that the images displayed with the listings are specific images or logos identifying or being associated with respective commercial suppliers, and not merely a fixed graphic or bullet as in document D1, which is identical for all entries of a search list.

Since the reasons given above for lack of inventive step already take this clarification and interpretation of the graphical images into account, the very same reasons for lack of inventive step hold for claim 1 of the first auxiliary request.

Second auxiliary request

11. The second auxiliary request was submitted during the oral proceedings before the Board. The request, however, is not admitted to the proceedings since the new definition of an "index database" in claim 1 is unclear and extends the subject-matter of the application beyond the content of the application as originally filed.
  
12. An "index database" is, according to its normal meaning, a database of indexes. Such a database is not the same as a "database indexed with respect to specified keywords", a definition to be found in the original text of the application.

The term "index database" is not used; it appears only in the abstract. However, as determined by Article 85 EPC 1973, the "abstract shall serve the purpose of technical information only; it may not be taken into account for any other purpose...", ie in particular the abstract does not belong to the "content of the application" for the purpose of Article 123(2) EPC and may not serve as a basis for determining the subject-matter of the invention.

The other passages in the application cited by the appellant are related to a keyword index for a database and to "additional indexes", but not to anything which could be used to construe and understand the definition "index database". It is actually not clear at all to which feature the term "index" in this context refers.

The definition of an "index database", therefore, renders claim 1 unclear; since this unclarity might cause serious problems to assessing patentability of the invention and to determining the protection conferred by the application, the amendment is not acceptable under Article 84 EPC 1973.

13. Any unclear definition which is not found in essentially identical terms in the application as filed cannot be said to be derivable directly and unambiguously from the application. The definition of an "index database" in claim 1 hence extends the original content of the application and infringes Article 123(2) EPC.
14. Considering that the second auxiliary request was late submitted during the oral proceedings before the Board and the amendments requested are *prima facie* not allowable for the reasons above, the Board determines not to admit the second auxiliary request into the proceedings.
15. In summary, none of the requests before the Board justifies the reversal of the decision under appeal.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

T. Buschek

S. Wibergh