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**Datasheet for the decision  
of 14 April 2010**

**Case Number:** T 1632/07 - 3.5.05

**Application Number:** 97909567.6

**Publication Number:** 0934571

**IPC:** G06F 19/00

**Language of the proceedings:** EN

**Title of invention:**  
Data distribution system

**Applicant:**  
Algotec Systems Ltd.

**Headword:**  
Reconstruction of image data/ALGOTEC

**Relevant legal provisions:**  
RPBA Art. 15(3)

**Relevant legal provisions (EPC 1973):**  
EPC Art. 54(1),(2), 84, 106, 107, 108

**Keyword:**  
"Lack of clarity and support by the description (yes)"  
"Lack of novelty (yes)"

**Decisions cited:**  
J 0010/07

**Catchword:**  
-



Case Number: T 1632/07 - 3.5.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.05  
of 14 April 2010

**Appellant:**

Algotec Systems Ltd.  
Hamelacha 4, P.O. Box 2408  
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**Representative:**

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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 21 May 2007  
refusing European patent application  
No. 97909567.6 pursuant to Article 97(1) EPC  
1973.

**Composition of the Board:**

**Chairman:** D. H. Rees  
**Members:** M. Höhn  
P. Schmitz

## Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division dispatched on 21 May 2007, refusing European patent application No. 97909567.6 for lack of inventive step (Article 56 EPC 1973).
- II. The notice of appeal was received on 20 July 2007. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 20 September 2007 with attached set of claims 1 to 29. It was requested that "the application should be granted" and that "a patent should be granted" (see page 3, line 9, and page 4, lines 16 and 17, of the statement setting out the grounds of appeal). An "oral hearing" was requested if the appellant's arguments were not found convincing (see page 16, lines 13 and 14 of the statement setting out the grounds of appeal).

A summons to oral proceedings to be held on 14 April 2010 was issued on 12 January 2010. In an annex accompanying the summons the board informed the appellant that its request was taken as a request that a patent be granted on the basis of the amended set of claims 1 to 29 filed with the statement setting out the grounds of appeal. Since the appellant had referred to claim 1 of the main request according to the appealed decision and had stated that this claim 1 was amended with the set of claims attached to the statement setting out the grounds of appeal (see page 1 of the statement setting out the grounds of appeal), this amended set of claims was considered to be the main request in the appeal proceedings. The appellant had not indicated whether the first and second auxiliary

requests on which the appealed decision was also based were maintained. Neither the notice of appeal nor the statement setting out the grounds of appeal made a reference to these auxiliary requests. The board therefore interpreted the appellant's request such that the main request was the sole request in the appeal proceedings. The request for an "oral hearing" was taken as an auxiliary request for oral proceedings. The board expressed the preliminary opinion that the subject-matter of independent claim 1, *inter alia*, did not appear to fulfil the requirements of Article 84 EPC 1973 and of Article 54(1) and (2) EPC 1973, having regard to the disclosure of document

D5: ANDRESEN D. ET AL: "Scalability issues for high performance digital libraries on the World Wide Web", DIGITAL LIBRARIES, 1996; ADL '96, PROCEEDINGS OF THE THIRD FORUM ON RESEARCH AND TECHNOLOGY ADVANCES IN WASHINGTON, DC, USA, 13 May 1996 - 15 May 1996, pages 139-148, LOS ALAMITOS, CA, USA.

The board presented arguments on which its objections were based and commented on the appellant's submissions, which were not considered to be convincing.

- III. By facsimile received on 2 March 2010 the appellant informed the board that nobody would be attending the oral proceedings.
- IV. Independent claim 1 according to the sole request reads as follows:
- "1. An interactive method for allowing a user to obtain and on-line process image data for diagnostic purposes

from a server (29) having access to stored data (28) over a network with communication bandwidth restrictions, comprising:  
connecting a user's computer to the server (29) over a communication network;  
requesting specific image data for transmission from the server (29) to the user's computer;  
transmitting the requested specific image data over the network from the server (29) to user's computer; and  
reconstructing an image, from the image data; and image processing said image on said user's computer, characterized in that  
said connecting is using an industry standard browser on said user's computer;  
the method comprises:  
receiving from the server image reconstruction and processing software for the user's computer via said industry standard browser without any user intervention;  
said reconstructing comprises reconstructing using the reconstruction software on the user's computer to reconstruct a diagnostic quality image; and  
said image processing comprises image processing using said image reconstruction and processing software."

V. Since the appellant did not object to the board's interpretation of the appellant's request, the board proceeded on the basis that the appellant was considered to have requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 29 submitted with the statement setting out the grounds of appeal.

VI. Oral proceedings were held on 14 April 2010 in the absence of the appellant. After due deliberation on the

basis of the written submissions in the statement setting out the grounds of appeal and the request, the board announced its decision.

## **Reasons for the Decision**

### 1. Admissibility

The appeal complies with the provisions of Articles 106 to 108 EPC 1973, which are applicable according to decision J 10/07, point 1 (see Facts and Submissions, point II above). Therefore the appeal is admissible.

### 2. Non-attendance at oral proceedings

In its letter of 2 March 2010 the appellant announced that it would not be represented at the oral proceedings. The board considered it expedient to maintain the date set for oral proceedings. Nobody attended the hearing on behalf of the appellant.

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.

3. Article 84 EPC 1973

3.1 Claim 1 is directed to the use of an "industry standard browser". However, this expression has no clear meaning in the art and it is further not clear whether what is referred to are browsers at the priority date of the present application or at some other undefined time, the characteristics of the browser not even being known at the priority date. The expression objected to is therefore considered a relative term for which no basis in the original description can be found on which to base a clear definition. Claim 1 therefore lacks the clarity and support by the description required by Article 84 EPC 1973.

3.2 Further the expression "allowing a user to ... on-line process image data", while enjoying literal support from the description at page 6, line 18, is unclear. The skilled person would normally take this expression to mean that the processing took place at the server while from the appellant's arguments it would appear that what is intended is that the processing takes place at the client.

The afore mentioned objections notwithstanding, for the following interpretation of claim 1 the expression "industry standard browser" is taken broadly and the expression "allowing a user to ... on-line process image data" is, despite the board's doubts, interpreted in accordance with the appellant's argument.

4. Novelty - Article 54(2) EPC 1973

Claim 1 is directed to:

- a) An interactive method for allowing a user to obtain and on-line process image data for diagnostic purposes from a server having access to stored data over a network with communication bandwidth restrictions, comprising:
  - b) connecting a user's computer to the server over a communication network;
  - c) requesting specific image data for transmission from the server to the user's computer;
  - d) transmitting the requested specific image data over the network from the server to user's computer; and
  - e) reconstructing an image, from the image data; and image processing said image on said user's computer, characterized in that
    - f) said connecting is using an industry standard browser on said user's computer;
- the method comprises:
  - g) receiving from the server image reconstruction and processing software for the user's computer via said industry standard browser without any user intervention;
  - h) said reconstructing comprises reconstructing using the reconstruction software on the user's computer to reconstruct a diagnostic quality image; and
  - i) said image processing comprises image processing using said image reconstruction and processing software.

4.1 D5 discloses a method according to feature a) (see abstract and figure 1 with corresponding text in section 2). D5 does not explicitly deal with an online image processing for diagnostic purposes, but the disclosed method is suitable for diagnostic purposes, since the user can specify regions of interest of an image to be displayed at a higher resolution (see e.g.



section 3. Scalability of the ADL, page 141, column 2, first paragraph, "progressive multi-resolution and subregion browsing"). The resulting image can therefore equally be considered to be a "diagnostic quality image" (as referred to in feature h) of claim 1) being suitable for diagnostic purposes.

D5 further discloses features b) to f) and feature h) of claim 1 (see figure 1 and page 140, column 2, to page 142, column 2; in particular page 142, paragraph bridging columns 1 and 2). In contrast to the appellant's argumentation on page 7 of the statement setting out the grounds of appeal, the board interprets D5 as disclosing the use of a standard internet browser (see figure 1 using the Internet and HTTP protocol which implies the use of an Internet browser; see also page 141, column 1, last line of the third paragraph) and client side image processing (see page 142, column 2, first paragraph).

4.2 The board interprets the term "software" in a broad manner comprising not only executable programs but also other types of functional data. The image coefficient data disclosed in D5 is therefore considered to be "image reconstruction and processing software" according to features g) and i) of claim 1, since image coefficient data is received from the server via an Internet connection involving a browser (see page 141, column 1, third paragraph) and processed without any user intervention (see page 142, paragraph bridging columns 1 and 2). According to the present application, "without any user intervention" means that the user does not explicitly have to start a download of such software separately from requesting an image in a

higher resolution. This, however, is what happens in the system described by D5, because the retrieval of the image coefficient data for progressive image browsing is initiated by requesting an image (or part of it) in a higher resolution. No special intervention for download and processing of image coefficient data is necessary. The image coefficient data is used to process and to reconstruct the image by performing an inverse wavelet transformation on the client computer in accordance with feature i) of claim 1. This is different from the transmission of pure image data (see retrieval of regular thumbnail image files or the original large image, D5, page 142, column 1, second paragraph from the bottom, and column 2, third paragraph) which corresponds to feature d) of claim 1. Therefore features g) and i) are also anticipated by the disclosure of D5.

Thus, the subject-matter of claim 1 lacks novelty over the disclosure of D5.

5. Since the appellant did not react to the objections raised in the annex to the summons issued on 12 January 2010 by submitting arguments or by amending the claims, these objections still apply.

**Order**

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

The appeal is dismissed.

The Registrar

The Chairman

K. Götz

D. H. Rees