

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ X ] To Chairmen
- (D) [ - ] No distribution

**Datasheet for the decision  
of 28 June 2011**

**Case Number:** T 0677/08 - 3.5.01

**Application Number:** 04015116.9

**Publication Number:** 1589451

**IPC:** G06F17/60, G06F17/30

**Language of the proceedings:** EN

**Title of invention:**

A data processing method, system and computer program for providing a payment

**Applicant:**

SAP AG

**Headword:**

Payment processing/SAP

**Relevant legal provisions:**

EPC 1973 Art. 56  
EPC 1973 R. 67, 68(2)  
EPC Art. 116  
RPBA Art. 11

**Keyword:**

"Reimbursement of appeal fee (no)"  
"Remittal to department of first instance (no)"  
"Inventive step (no) - both requests"

**Decisions cited:**

T 1599/06, J 0007/83



Case Number: T0677/08 - 3.5.01

**D E C I S I O N**  
**of the Technical Board of Appeal 3.5.01**  
**of 28 June 2011**

**Appellant:** SAP AG  
(Applicant) Dietmar-Hopp-Allee 16  
69190 Walldorf (DE)

**Representative:** Richardt Patentanwälte  
Wilhelmstraße 7  
65185 Wiesbaden (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted 23 November 2007  
refusing European patent application No.  
04015116.9 pursuant to Article 97(1) EPC 1973.**

**Composition of the Board:**

**Chairman:** S. Wibergh  
**Members:** P. Scriven  
P. Schmitz

## **Summary of Facts and Submissions**

- I. The appeal is against the Examining Division's decision to refuse European patent application 04015116.9.
- II. The Examining Division took its decision at oral proceedings. Concerning those proceedings, the following is relevant to the appeal.

After the Examining Division had arranged oral proceedings, and sent a summons, the applicant requested that the oral proceedings be held by video conference.

By communication of 18 September 2007, the Examining Division informed the applicant that it did not accede to that request, because there was no video conference room available for the date already set.

The applicant then, by letter of 2 October 2007, filed further arguments regarding the request that oral proceedings be held by video conference; the Examining Division dispatched EPO form 2008A, indicating that the date fixed for the oral proceedings was maintained.

Oral proceedings were held, as scheduled, before the Examining Division. The applicant's representative was present.

- III. The Examining Division refused the application on the grounds that claim 1 according to the main request, and according to auxiliary requests I and II, did not involve an inventive step. It was of the view that the invention amounted to an implementation, involving only generic technical means, of a non-technical payment scheme.

The decision gave no reasons for not allowing the request that oral proceedings be held by video conference.

- IV. In the statement setting out the grounds of appeal, the appellant requested that the Examining Division's decision be set aside, and that a patent be granted on the basis of the main request, or auxiliary requests I or II, underlying the Examining Division's decision. The appellant also requested that the appeal fee be refunded, due to a substantial procedural violation.
- V. The Board arranged oral proceedings for 28 June 2011. They were held as scheduled. In the course of them, the appellant filed a new auxiliary request. At the end of the oral proceedings, the appellant requested that the decision under appeal be set aside, and that a patent be granted on the basis of the main request, filed with the letter of 31 August 2007 before the Examining Division, or of the auxiliary request filed during oral proceedings before the Board. It also requested that the case be remitted to the department of first instance, because of a procedural violation, and that the appeal fee be reimbursed.
- VI. Claim 1 according to the main request reads as follows.

*A data processing method comprising:*

*- entering data values into respective data entry fields of an electronic data entry form (122) of a first computer (104) of a payer, the data values specifying one or more payments to be provided from the payer to a payee,*

- entering an identifier of a web service into the first computer,
  
- initiating a data processing step for providing a payment on the basis of the data values entered into the electronic data entry form of the first computer,
  
- sending signalling data (132) for signalling scheduling, initiation, performance and/or completion of the data processing step to a web service (108), the signalling data comprising payment advice data, the signalling data to be used for controlling the processing of the payment by the payee's computer,
  
- sending a result of the data processing step to a third computer (100) of the payee, the third computer being coupled to the web service, wherein the third computer comprises a reminder module (244) for determining that a payment is overdue and a result processing module (242), wherein the reminder module employs the payment advice data of the signalling data from the web service to find out if processing of the overdue payment was initiated, wherein the reminder module invokes a timer module (240) of the third computer if the result processing module determines that signalling data containing the respective payment advice data of the overdue payment has been received by the web service, wherein the timer module is set for a predetermined amount of time to allow for the processing of the overdue payment, wherein the reminder module initiates the sending of a payment reminder if the predetermined amount of time expires without arrival of the overdue payment at the third computer.

VII. Claim 1 according to the auxiliary request reads as follows.

*A data processing method comprising:*

*- entering data values into respective data entry fields of an electronic data entry form (122) of a first computer (104) of a payer, the data values specifying one or more payments to be provided from the payer to a payee, the entering of the data values being performed by receiving an XML document (102) by the first computer, the XML document carrying the data values and mark-up data being descriptive of the assignment of the data values to the data entry fields of the electronic data entry form and an identifier of a web service, and automatically entering the data values into the respective data entry fields and automatically entering the identifier of the web service into the first computer,*

*- initiating a data processing step for providing a payment on the basis of the data values entered into the electronic data entry form of the first computer,*

*- sending signalling data (132) for signalling scheduling, initiation, performance and/or completion of the data processing step to a web service(108), the signalling data comprising payment advice data, the signalling data to be used for controlling the processing of the payment by the payee's computer,*

*- sending a result of the data processing step to a third computer (100) of the payee, the third computer being coupled to the web service.*

VIII. The appellant's arguments regarding inventive step can be summarized as follows.

The Examining Division had, wrongly, included almost all of the technical features in the formulation of the technical problem, had ignored the fact that the use of a web service was a technical feature, and had ignored the efficient use of processing and transmission resources which were technical advantages of the invention.

The use of a web service was not obvious, at least not in the role assigned to it in claim 1 according to the main and auxiliary requests.

The term *web service* should not be interpreted, as paragraph [0002] of the application as published might suggest, as *any mechanism by which an application or data processing service can be provided to other applications on the Internet*, but more restrictively involving a UDDI registry, and signalling using XML messages as set out in paragraphs [0003] - [0008].

Even if he formulated the idea of using a web service, the skilled person would have been immediately faced with difficulties: the need for a different infrastructure, the need for reprogramming, and the need to adapt the data reception routines in the third computer. He would have seen more disadvantages than advantages.

IX. The appellant's arguments regarding the alleged substantial procedural violation can be summarized as follows.

The examining division committed a substantial procedural violation by incorrectly exercising its discretion when refusing the request to hold oral proceedings by video conference. The Examining Division

refused the request because no video conference facilities were available on the date already set. In the Notice of the Office in OJ EPO 2006, 585, it was set out that the examining division had a discretionary power and would, on a case by case basis, decide on the suitability of video-conferencing. Suitability concerned the individual case with regard to its content and the run of the case and not with regard to technical or organisational circumstances. The organisational circumstances were not case-specific but, rather, external circumstances. There was no necessity to hold the video conference on the same day for which oral proceedings had been appointed.

The Examining Division also committed a substantial procedural violation by not giving, in its final decision, any reasons as to why the request for a video conference was refused. In particular, the Examining Division had failed to engage with the further arguments filed by letter of 2 October 2007.

## **Reasons for the Decision**

1. Introduction
- 1.1 The invention relates to a data processing method for providing a payment. A payer identifies and initiates a payment, and informs the payee of that. From time to time, the payee will send reminders for unpaid bills. However, before sending a reminder, he checks to see whether payment has recently been initiated. If it has, then no reminder is sent, unless too much time has elapsed. The idea is only to send reminders when they



can be useful.

- 1.2 The steps of the method are carried out by, or using, computers.
  - 1.2.1 A first computer takes the role of, or is used by, the payer. It fills in, or is used to fill in, an electronic form that identifies a payment; it initiates the payment, and it informs a web service that it has done so.
  - 1.2.2 A second computer takes the role of, or is used by, a bank. It is involved in the actual payment, and informs the payee when payment has been effected.
  - 1.2.3 A third computer takes the role of, or is used by, the payee. It generates reminders for overdue payments, consults the web service to find out whether payment has been initiated, and, if it has, sends the reminder only if the payment has still not been received within a predetermined time.
- 1.3 The main and auxiliary requests are directed to different parts of that method. In the main request, it is the sending, or not, of reminders; in the auxiliary request, it is the way in which the payer identifies and initiates payment.
  - 1.3.1 Claim 1, according to neither request, mentions the second (bank's) computer.
  - 1.3.2 In claim 1 according to both requests, the information that a payment has been initiated is sent, in the form of signalling data, to a web service.

2. The main request
- 2.1 Claim 1 defines a method in which the first (payer's) computer is used to enter data in an electronic form, to identify a web service, to initiate a payment process, and to send signalling data to the web service. The third (payee's) computer has a reminder module and a timer module. These function such that, when a reminder is due, the web service is consulted to see whether the payment has been initiated, and, if it has, sends the reminder only after a predetermined amount of time has expired, as indicated by the timer module.
- 2.2 The technical features defined in claim 1 are the first and third computers, each of which can communicate with the web service. The first computer can be used to fill in an electronic form, to initiate a payment, and to send signalling data to the web service. The third computer has the reminder and timer modules, can send data to the web service, and can receive data from it.
- 2.3 The functions of the first and third computers can be provided by general purpose computers. It is common ground that having regard to what would be a conventional implementation of the underlying business method, viz. a distributed information system comprising multiple general-purpose computers, the only technical feature which could contribute to inventive step is the use of a web service.
- 2.4 The Board interprets the term "web service", in the light of paragraph [0002] of the description, as *any mechanism by which an application or data processing*

*service can be provided to other applications on the Internet.*

- 2.5 The appellant argued, with references to paragraphs [0003] - [0008], for a more restrictive interpretation, involving a UDDI registry, and signalling using XML messages. It argued that the broad definition in paragraph [0002] was not supported by paragraphs [0003] - [0007], and that the latter should be considered when interpreting the claims.
- 2.6 The Board does not agree. The statement at [0002] is a straightforward definition, while [0003] - [0008] refer to some examples (see [0003] ... *Examples of publicly available Web services today include ...*, and [0005] ... *One Example of Web services ...*). The enumeration of some narrowly-defined examples does not replace the broad definition, and the Board sees no reason to interpret the term, used in claim 1 without qualification, as restricted to (some of) the examples.
- 2.7 The skilled person, charged with automating the business method, starting from a distributed information system comprising general-purpose computers, must provide means for the computers to exchange messages. That falls within the meaning of "web service", the only question being whether or not it is "on the Internet". The internet, by its nature, is a means of interconnecting computer networks, and the Board can see no inventive step there. The Board concludes that the use of a web service does not involve an inventive step (Article 56 EPC 1973).

- 2.8 The Board, therefore, finds that the main request is not allowable.
- 2.9 In addition, the Board considers that, even if the term "web service" were interpreted narrowly, there would still be no inventive step.
- 2.9.1 From the explanations given during oral proceedings, and following the hints at [0002] - [0008] of the application, the Board understands a web service, in the appellant's narrow sense, to be a mechanism intended to simplify transactions over the Internet. One of the ways that is achieved is by using XML for exchanging messages. Another is the provision of a UDDI registry.
- 2.9.2 In that light, the invention amounts to the skilled person choosing to use a web service to do precisely what a web service is meant to do.
- 2.9.3 The skilled person, faced with the task of simplifying the provision of payments to the payee (the third computer of claim 1 is the payee's computer) would be incited to use a web service. The incitement does not come from the conventional network, but rather from the concept of a web service itself.
- 2.9.4 The appellant argued that even if the idea of using a web service had occurred to the skilled person, it would not have been obvious to assign it the role defined in claim 1. The Board cannot follow that argument. As the appellant conceded during the oral proceedings, the second (bank's) computer (although it is not defined in claim 1) is relatively tightly controlled. In contrast, the first (payer's) computer can be of many different types running very different

programs. The benefits of a web service are most clearly obtained in the more heterogenous environment. It is, then, not the in communications with the second computer for which the web service is most appropriate, but communications between the first and third computers.

2.9.5 The appellant also argued that the skilled person would be immediately faced with difficulties, even if the idea of using a web service were formulated. These difficulties were the need for a different infrastructure, the need for reprogramming, and the need to adapt the data reception routines in the third computer. Those difficulties meant that the skilled person would see more disadvantages than advantages. The Board does not find that convincing. The skilled person, faced with a technical problem, must expect to have to change something. He would consider the advantages in relation to the difficulty of achieving them, and would arrive at a decision that the work was, or was not, worth doing. The simple fact that there are difficulties, which is what the appellant's argument amounts to, does nothing to show which way that decision would be taken. In addition to that, the invention as claimed does not remove any of those difficulties, but simply accepts them.

2.9.6 The Board, therefore, can see no inventive step, even if the term "web service" were given the appellant's narrow interpretation.

3. The auxiliary request

3.1 According to claim 1 of this request, the data used to fill in the electronic form is extracted from an XML document. The signalling is sent to the web service,

but the claim does not define anything concerning reminders.

- 3.2 It is common ground, that the use of XML for sending payment data from the third computer to the first, the automatic entering of that data into a form, and the sending of the signalling data to the web service would not be part of a conventional implementation.
- 3.3 Although claim 1 does not mention reminders at all, the purpose of sending the signalling data to the web service is the same as in the main request. That is, it allows the third (payee's) computer to see whether payment has been initiated. The purpose of the XML document is to allow data automatically and reliably to be extracted and inserted into the correct fields of the electronic form. The Board sees this juxtaposition of the web service and the XML document as just that, a juxtaposition. They are each there for their individual purposes, and so their contribution to inventive step is to be assessed separately.
- 3.4 The use of the web service has been discussed in relation to the main request. It does not involve an inventive step. The question to be addressed here, then, is whether the XML document involves one.
- 3.5 In the application as filed (for example at [0041] and [0048]), the XML document was set out as an optional feature, but the appellant argued that it nevertheless yielded its own advantages. It was the use of XML, rather than an unstructured format, that allowed the data to be reliably extracted and inserted in the correct fields. In the prior art, those data would have had to be entered manually, or to be extracted from an unstructured document. Both of those were error

prone. The invention was not.

- 3.6 The Board considers that the automation of data entry does not, in itself, involve an inventive step. The question is whether using XML to structure the data would have been an obvious way for the skilled person to do it.
- 3.7 As with the web service, the use of XML comes down to using something for the purpose for which it was intended. In this case, it is structuring data so that it can be easily extracted.
- 3.8 The Board, therefore, finds that the subject matter of claim 1 does not involve an inventive step (Article 56 EPC 1973).
4. The request for remittal to the department of first instance
- 4.1 The appellant submitted that the Examining Division committed a substantial procedural violation because it exercised its discretion incorrectly when refusing the request to hold oral proceedings via video conference. This justified the remittal to the department of first instance.
- 4.2 Article 11 of the Rules of Procedure of the Boards of Appeal of the EPO (RPBA, OJ EPO 2007, 536) stipulates that a board shall remit a case to the department of first instance if fundamental deficiencies are apparent in the first-instance proceedings, unless special reasons present themselves for doing otherwise. In the present case, the Board cannot see a deficiency which is fundamental.

4.3 According to Article 116 EPC, an applicant has a right to oral proceedings which means he has a right to appear in person before the Examining Division in order to discuss the case. In proceedings before the Examining Division, the applicant can request that oral proceedings be held as a video conference, as set out in the Notice from the Office (OJ EPO 2006, 585). The decision to accept the request for a video conference falls under the discretion of the Examining Division. If a first instance department is required to exercise its discretion, it should have a certain degree of freedom when exercising that discretion, without interference from the Boards of Appeal. A Board of Appeal should only overrule the way in which a first instance department has exercised its discretion if it comes to the conclusion that the wrong principles were applied, that no account was taken of the right principles, or that the discretion was exercised in an unreasonable way (see references in Case Law of the Boards of Appeal of the European Patent Office VII.E. 6.6). This is not the case here.

4.4 In point 2 of the Notice from the Office, it is set out that the Examining Division has a discretionary power and will, on a case by case basis, decide on the suitability of video-conferencing. Whether a case is suitable encompasses not only the substance of the case, but also organisational matters. The Examining Division has to take the principle of procedural economy into account. If no video conference room is available for the given date, that means that a new date would have to be found which is suitable for the three members of the division; a new room has to be booked, etc., all of which involves organisational effort which could have been avoided if the request for video-conferencing had been filed earlier. If the



Examining Division wants to avoid that and stick to the original date, then it has exercised its discretion according to valid principles. It cannot be said that the fact that no video conference room is available is not case-related, since postponing the original date and finding a new one are indeed matters related to the individual case at hand. Thus, the Board sees no procedural violation in the refusal of the request to conduct oral proceedings in the form of a video conference.

4.5 The Board does not consider that the applicant's right to be heard was violated, because the applicant appeared in the oral proceedings and could present his case. The appellant's representative argued that he should have been given the opportunity for a video conference because, being in his own environment with his own facilities, he would have been able to argue the case better. He would have been more relaxed and concentrated. As set out above, Article 116 EPC gives the applicant the right to present his case orally before the Examining Division but does not give him the right to do so in the form of a video conference.

4.6 The appellant also submitted that the Examining Division committed a substantial procedural violation by not giving reasons, in their final decision, for the refusal of the request to hold oral proceedings by video conference.

4.7 The Board does not fully agree. According to Rule 68(2) EPC 1973, decisions of the EPO which are open to appeal shall be reasoned. By not allowing the video conference, the Examining Division took a procedural decision, by which the appellant was adversely affected. The final decision should have dealt with

the question, in particular the additional arguments filed with letter of 2 October 2007. Failing to give reasons for rejecting them was a procedural violation.

4.8 However, the Board does not consider the procedural violation to be a fundamental one. A fundamental procedural violation is an *objective deficiency affecting the entire proceedings* (J 7/83, OJ EPO 1984, 211). In the present case, the substantive decision to refuse the application for lack of inventive step was sufficiently reasoned. Moreover, in the communication of 18 September 2007, the Examining Division gave a reason why the video conference was not allowed, i.e. because there was no video conference room available for the given date. From this, it is clear that the request was not refused arbitrarily but based on a criterion which, as set out above, is a legitimate one. Failing to address the additional arguments, presented in the applicant's letter of 2 October 2007, which the Examining Division must have seen, since they replied to it by saying that the original date was maintained, is not a deficiency affecting the entire procedure which would justify remittal to the Examining Division.

5. The request for reimbursement of the appeal fee

5.1 According to Rule 67 EPC 1973, reimbursement of the appeal fee *shall be ordered ... where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.*

5.2 In the present case, the appeal is not allowable, as set out above. For that reason alone, the request for reimbursement of the appeal fee cannot be allowed.

- 5.3 In addition, the Board does not consider that there was a substantial procedural violation. That is a second reason why the request for reimbursement of the appeal fee cannot be allowed.
- 5.4 Finally, the Board does not consider that reimbursement would be equitable in any case, because there was no causal link between the procedural violation and the necessity to file an appeal. The reimbursement would only be equitable if the procedural violation, i.e. the insufficient reasoning, were the principal factor which had triggered the filing of the appeal and payment of the appeal fee (see e.g T 1599/06 of 13 September 2007). However, the application was refused for lack of inventive step, and so the appellant would have had to file the appeal even if the Examining Division had sufficiently reasoned its refusal of the request for a video conference. Accordingly, reimbursement of the appeal fee would not have been equitable. That is a third reason why the request for reimbursement of the appeal fee cannot be allowed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

T. Buschek

S. Wibergh