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**Datasheet for the decision
of 29 January 2014**

Case Number: T 0460/09 - 3.5.01

Application Number: 04029153.6

Publication Number: 1669913

IPC: G06Q10/00

Language of the proceedings: EN

Title of invention:

Sensitivity based data processing apparatus and method

Applicant:

DEUTSCHE BÖRSE AG

Headword:

Sensitivity approach/DEUTSCHE BÖRSE

Relevant legal provisions:

EPC 1973 Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

T 0388/04



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0460/09 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 29 January 2014

Appellant: DEUTSCHE BÖRSE AG
(Applicant) Neue Börsenstrasse 1
60487 Frankfurt am Main (DE)

Representative: Grünecker, Kinkeldey,
Stockmair & Schwanhäusser
Leopoldstrasse 4
80802 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 24 September
2008 refusing European patent application No.
04029153.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: S. Wibergh
Members: R.R.K. Zimmermann
D. Prietzel-Funk

Summary of Facts and Submissions

- I. European patent application no. 04029153 concerns a data processing apparatus and a method for processing data structures having first, second, and fourth data fields. The search division issued a non-search declaration under Rule 45 EPC 1973. In the following examination, the examining division raised an objection under Article 52 (2) and (3) EPC. According to the reasons given in the communications of the examining division, the claimed subject matter did not extend beyond a mathematical algorithm and a method for doing business implemented by a program for a conventional computer. The application was refused on these grounds in a decision according to the state of the file on 24 September 2008.

- II. The appellant lodged an appeal against this decision on 4 December 2008, requesting that the decision be set aside and a European patent be granted on the basis of the claims, description and drawings on file, i.e. description and drawings as originally filed and claims 1 to 24 as filed with a letter of 20 December 2005. Furthermore, auxiliary oral proceedings have been requested.

- III. According to the grounds of appeal received by the EPO on 4 February 2009, the invention provided an improved approach to determining resource amounts, for example scheduling processor time in a multiprocessor system or booking compartments in a stock house. The invention could be applied in the financial field, but also in various other technical fields. This should be taken into account when assessing the patentability of the invention. The novel and inventive contribution of the invention mainly resided in using sensitivities to

specified parameters for determining the respective resource amount, preventing the resources from being unequally executed. Hence, the claimed subject matter was not devoid of any technical character. Therefore, neither the non-search declaration issued by the search division nor the objection regarding excluded subject-matter as raised by the examining division were justified. Moreover, in the light of the available prior art, the invention had to be considered also as novel and inventive.

- IV. The Board summoned the appellant to oral proceedings. In a communication pursuant to Article 15 (1) RPBA, the Board made the following observations on the merits of the appeal (point 3 of the communication):

"The board concurs with the appellant's view that the claimed subject matter is not excluded from patentability under Article 52(2) and (3) EPC since the claim wording undoubtedly refers to a computer implementation of a method, although the method may be in the financial field of asset management. However, the claimed and disclosed technical aspects of the computer implementation merely allude to common elements of software design and development. The sensitivity based approach of the invention to which the appellant referred relates at best to an abstract algorithm, for example claims 1 and 12, or explicitly to a financial method, for example dependent claims 11 and 23. Both abstract algorithms and financial methods are as such excluded from patentability and hence normally can make no technical contribution to the prior art. It is not enough that a claim covers technical embodiments, as

argued by the appellant in the paragraph bridging pages 3 and 4 in the statement of grounds of appeal. It must be limited to it (cf T 388/04 "Undeliverable mail/PITNEY BOWES" OJ EPO 2007,016 Headnote 2: Subject-matter or activities that are excluded from patentability under Article 52(2) and (3) EPC remain so even where they imply the possibility of making use of unspecified technical means.). It has to be expected therefore that the decision under appeal has to be eventually maintained, however on grounds of lack of inventive step. In this situation, where a prior art search is not necessary to arrive at a final conclusion on the appeal, remittal of the case to the examining division for carrying out a search would not accord with the requirements of procedural economy. "

- V. In a letter of 15 January 2014, the appellant informed the Board that it would not attend the forthcoming oral proceedings. The appellant withdrew expressly its request for oral proceedings and requested that the Board issued a decision in writing. The Board then cancelled the oral proceedings.

Reasons for the Decision

The appeal, although admissible, is not allowable. The decision of the examining division has to be confirmed, albeit for the grounds of lack of inventive step (Article 52(1) EPC and Article 56 EPC 1973). The reasons have been given in the Board's communication cited above in point IV. After reviewing its - unchallenged - concerns as communicated to the appellant, the Board confirms those objections.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

S. Wibergh

Decision electronically authenticated