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Datasheet for the decision of 25 April 2017

Case Number: T 0648/12 - 3.4.03

Application Number: 03739003.6

Publication Number: 1508133

IPC: G09B9/00

Language of the proceedings: EN

Title of invention:
A TRAINING DEVICE USING ELECTRONIC WORKOUT SCRIPTS

Applicant:
NIKE Innovate C.V.

Headword:

Relevant legal provisions:
EPC 1973 Art. 56, 111(1)

Keyword:
Remittal to the department of first instance

Decisions cited:

Catchword:

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Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0648/12 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 25 April 2017

Appellant: (Applicant)	NIKE Innovate C.V. One Bowerman Drive Beaverton, OR 97005-6453 (US)
Representative:	McCartney, Jonathan William Haseltine Lake LLP Redcliff Quay 120 Redcliff Street Bristol BS1 6HU (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 10 November 2011 refusing European patent application No. 03739003.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Eliasson
Members:	M. Stenger
	C. Schmidt

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse European patent application no. 03739003 on the ground that the claimed subject-matter did not involve an inventive step within the meaning of Article 56 EPC.

II. The appellant requested the grant of a patent based on a main request and four auxiliary requests filed with the notice of appeal, and oral proceedings in the event that the board would not be minded to accept any of the above requests.

III. The following documents were referred to in the contested decision:

D1: US6059576 A
D2: US6027428 A
D3: US4571682 A
D4: US6287239 B1
D5: US486744s A

IV. In a communication, the board introduced a new citation, referred to as D6, containing screenshots of Polar's website (www.polar.fi) from 3 February 2002 and earlier, retrieved from Web.archive.org.
In the same communication, the board asked the appellant to indicate whether he would prefer to have the case decided by the board with regard to the new citation or to have the case remitted to the first instance for further prosecution.

V. With letter of 10 April 2017, the appellant requested to have the case remitted to the examining division.

VI. The wording of independent device claim 1 of the main request reads:

A training device, comprising:
a receiver (215) arranged to electronically receive data;
a sensor (221) arranged to detect at least one physical performance characteristic; and a display unit (219);
the training device being characterized in that it is for receiving and employing an electronic training script, and being further characterized in that:
the received data is an electronic training script defining a workout sequence in which a user is instructed to perform a plurality of activities, the script further defining quantities for the plurality of activities;
the at least one physical performance characteristic detected by the sensor (221) is a characteristic of at least one of the activities in the workout sequence; and
the display unit (219) is arranged to prompt the user to perform a next activity of the plurality of activities in the sequence designated by the electronic training script in response to a measurement of the at least one physical performance characteristic detected by the sensor indicating completion of the defined quantity of a previous activity in the sequence.

The wording of independent method claim 30 of the main request reads:

A method, comprising:
electronically receiving (215) data;
detecting (221), using a sensor, at least one physical performance characteristic; and
displaying (219) information to a user;

characterized in that the method is for receiving and employing an electronic training script, and being further characterized in that:
the received data is an electronic training script defining a workout sequence in which a user is instructed to perform a plurality of activities, the script further defining quantities for the plurality of activities;
the at least one physical performance characteristic detected by the sensor (221) is a characteristic of at least one of the activities in the workout sequence; and
the displayed information is a prompt to prompt the user to perform a next activity of the plurality of activities in the sequence designated by the electronic training script in response to a measurement of the at least one physical performance characteristic detected by the sensor indicating completion of the defined quantity of a previous activity in the sequence.

VII. The appellant's arguments, insofar as they are relevant to the present decision, may be summarized as follows:

The claimed invention was aimed at enabling an athlete to exercise effectively, without having to monitor continuously whether a quantity associated with an activity has been achieved.

Document D1, on the other hand, suggested a completely different approach than the invention, prompting the user to stop an activity if a movement exceeded a preset threshold. If used in the area of sports, the data collected by the device would be used to analyse and improve an individual's stroke technique, i.e., again to identify any incorrect movements.

The device of D1 was aimed at reducing injuries by preventing the user from continuing to perform an incorrect movement.
Hence, the device of D1 would not prompt the user to perform a next activity when an incorrect movement was detected.

D2 aimed at providing personalised real-time instructions to a user during physical fitness training. D2 did not provide a sensor arranged to detect a physical performance characteristic, upon completion of which the user was instructed to perform a next activity. Instead, D2 provided pre-recorded instructions in sequence until the end of that sequence without taking into account input (sensor) signals.

Since D1 and D2 provided different solutions to address different problems, the skilled person would not be motivated to combine D1 with D2.

Reasons for the Decision

1. Inventive step starting from document D1 (Article 56 EPC 1973)

1.1 In the appealed decision, the examining division held that the claimed subject-matter did not involve an inventive step in view of the combined teaching of documents D1 and D2.

1.2 Document D1, which was considered as closest prior art in the appealed decision, is directed at solving the problem of *preventing incorrect movements* with the aim of reducing injuries (column 1, lines 58-63) and training an individual to *make proper movements* (column

1, line 55), or phrased otherwise, assisting in training an individual in *proper posture* while executing an identified physical activity (column 2, lines 49-51).
The main application is thus in an industrial setting where workers are required to perform repetitive manual tasks (column 8, lines 22-25). As the examining division correctly observed, document D1 also discloses a further application in sports (column 10, lines 62). Here, data collected by the device of D1 may be used as a tool to aid in the analysis and improvement of the individual's stroke technique in, for example, golf (column 10, lines 65 to column 11, line 6). Hence, the sports application is also directed at making proper movements / having proper posture while executing a specific physical activity.

1.3 The present application, on the other hand, is directed at enabling an athlete to perform a *sequence of activities*, wherein each activity is performed until an associated quantity is completed, without the athlete having to monitor continuously whether that quantity has been completed (see [56] of the application).

1.4 Document D1 does not mention any sequence of activities. Actually, the only sequence or series that is disclosed in D1 is the series of notice levels which can be uploaded to the device (column 5, lines 59-66). These notice levels, however, do not correspond to a *workout sequence in which a user is instructed to perform a plurality of activities*, but rather to a plurality of degrees of (an angle of) a movement / posture associated to one single activity.

1.5 Thus, the claimed device and method are directed to a different purpose than the ones of document D1. The

board is also satisfied that this difference is brought out in the technical features of the two independent claims.

In the absence of any specific suggestion in D1 to do so, the board does not see any reason why the skilled person would consider modifying the device and method of D1 such that they would serve the different purpose of guiding an athlete through a predefined sequence of workout activities.

The board thus concludes that the skilled person, starting from D1, would not be motivated to combine D1 with any other prior art document that is directed to that different purpose.

Document D2 is one of those documents. The board thus concurs with the appellant in that the skilled person, starting from D1, would not be motivated to combine D1 and D2.

2. New citation D6

From personal experience, however, the board is aware that Polar Electro Oy in the past marketed the portable training device S710. Document D6 contains archived screen shots from the manufacturer's website from February 2002 and earlier.

It appears from document D6 that the portable training device S710 was sold before the oldest priority date claimed for the present application (30 May 2002).

Furthermore, it appears from D6 that S710 could be programmed by a computer via an infrared or sonic link using "Polar Precision Performance Software".

Training programmes could be downloaded to S710 that were capable of guiding a user through an interval training involving heart rate target zones (with heart rate limit pairs and visible and audible alarms) as well as recovery intervals. Further, S710 could be used to determine distance and speed.

Hence it appears that the portable training device S710 of Polar was directed at the same purpose as the claimed invention, and in addition that most of the features of the independent claims of the present requests were present in that device.

S710 and document D6 relating to it thus seem to be highly relevant for the assessment of novelty and inventive step.

3. In view of this new citation, it appears to be appropriate to remit the case to the department of first instance (Article 111(1) EPC 1973, see also Case Law of the Boards of Appeal, 8th edition, IV.E.7.2.2).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution.

The Registrar: The Chairman:

S. Sánchez Chiquero G. Eliasson

Decision electronically authenticated