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**Datasheet for the decision
of 1 March 2018**

Case Number: T 1722/12 - 3.5.01

Application Number: 07758678.2

Publication Number: 1999708

IPC: G06Q30/00

Language of the proceedings: EN

Title of invention:

SYSTEM FOR MANAGING DYNAMIC PLACEMENT OF ADVERTISEMENTS IN
ELECTRONIC INFORMATION PAGES

Applicants:

Alcatel Lucent
Greeneden U.S. Holding II, LLC

Headword:

Dynamic ad placement / ALCATEL LUCENT - GREENEDEN U.S HOLDING
II

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - dynamic placement of advertisements (no - not
technical) - technical effect - controlling communication load
at contact center (no)

Decisions cited:

T 0154/04, T 0641/00, T 1463/11, T 0483/11, T 1173/97,
T 1543/06



Beschwerdekammern

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Case Number: T 1722/12 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 1 March 2018

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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 March 2012
refusing European patent application No.
07758678.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: A. Wahrenberg
P. Schmitz

Summary of Facts and Submissions

- I. The examining division refused the European patent application No. 07758678.2 for lack of inventive step (Article 56 EPC). This is an appeal against that decision.

- II. The examining division considered that the method as defined in claim 10 of the main request contained a mixture of technical and non-technical features. The technical character of the invention was said to reside in a server comprising a storage and being connected to a network and adapted for processing data. The remaining features of the claim were considered to define a business process or administrative process, which did not solve any technical problem. Therefore, the examining division concluded that the invention in claim 10 did not involve an inventive step over a general-purpose networked data processing system. System claim 1 was considered to lack an inventive step for the same reasons. Furthermore, the examining division was of the opinion that claims 9 and 1 of the sole auxiliary request did not add anything technical over the main request. Therefore, also the auxiliary request was found to be unallowable for lack of inventive step.

- III. In the statement of grounds of appeal, dated 5 July 2012, the appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of the main request or auxiliary request 1 filed therewith, and corresponding to the requests before the examining division.

- IV. In a communication accompanying a summons to oral proceedings, the Board set out its preliminary observations agreeing with the examining division's conclusion that the claimed invention lacked an inventive step over a standard networked computer system.
- V. With a letter dated 29 December 2017, the appellant filed auxiliary requests 2 to 4. The letter contained further arguments in favour of inventive step of the subject-matter in the main request.
- VI. The Board held oral proceedings in the appellant's absence. The appellant had informed the Board in advance that it would not attend.
- VII. In summary, the appellant's requests were that the decision of the examining division be set aside and that a patent be granted on the basis of the main request or auxiliary request 1 filed with the statement setting out the grounds of appeal, or auxiliary requests 2 to 4 filed with letter of 29 December 2017.
- VIII. Claim 10 of the main request reads:

A method for selecting and serving advertisements, the method executed by software (124, 125, 126) stored on an advertisement server (120, 122, 123) connected to a data-packet network (102), comprising steps of:

a) storing advertisements associated with individual advertisers in a storage accessible to the network-connected advertising server (120, 122, 123); the advertisers having at least one contact center (103) including resources (113, 114) for processing incoming transactions;

b) monitoring availability of the advertiser's resources (113, 114) over the data-packet network (102) by a software routine (127) connecting to a router (112) at the contact center (103); and

c) serving advertisements to users (110, 111) viewing the advertisement and connected to the data-packet network (102) based at least in part on information about advertiser's resources (113, 114) determined in step b).

IX. Claim 8 of auxiliary request 1 reads (additions over the main request are indicated in underlined and deletions in strike-through):

A method for selecting and serving advertisements, the method executed by software (124, 125, 126) stored on an advertisement server (120, 122, 123) connected to a data-packet network (102), comprising steps of:

a) storing advertisements associated with individual advertisers in a data storage (123) accessible to the network-connected advertising server (120, 122, 123); the advertisers having at least one contact center (103) including resources (113, 114) for processing incoming transactions; the advertisements including dynamic contact objects having contact information for the contact center resources (113, 114);

b) monitoring availability of each of the advertiser's resources (113, 114) over the data-packet network (102) by a software routine (127) connecting to a router (112) at the contact center (103); and

c) selecting at least one contact object for insertion in an associated advertisement and serving the advertisements to users (110, 111) viewing the advertisement and connected to the data-packet network (102) based at least in part on about the monitored availability of the advertiser's resources (113, 114) determined in step b), in order to control the contact center resources' (113, 114) communication load.

- X. Method claim 10 of auxiliary request 2 differs from the main request by the addition of the following text at the end:

" , said method further comprises: determining a real-time or near real-time availability status of contact agents of said contact center (103) associated with an advertisement prior to serving (208) said advertisement, embedding (207) one or more contact objects in the advertisement based on the determined availability status of the contact agents prior to serving (208) said advertisement, and serving (208) the advertisement via said data-packet network (102)".

- XI. Claim 10 of auxiliary request 3 differs from the second auxiliary request by the addition of the following text at the end:

" , wherein said system determines, based on said real-time or near real-time availability status, whether a live contact agent is available for a specific communication medium, and, if said live contact agent is available for said specific communication medium, the system embeds appropriate contact information associated with said specific communication medium into said advertisement".

XII. Claim 10 of auxiliary request 4 differs from the third auxiliary request by the addition of the following text at the end:

" , and, if no live contact agent is available, the system embeds static contact information into said advertisement, but no live contact links.

XIII. The appellant's arguments were essentially the following:

The features identified by the examining division as non-technical were not non-technical "as such", because they interacted with the technical features of the claim for solving a technical problem (see T 154/04 - "Estimating sales activity / DUNS LICENSING ASSOCIATES", OJ EPO 2008, 46). Therefore, they had to be taken into account for inventive step.

When determining the technical character of an invention, the entire invention as defined by the combination of all features had to be considered. It was not permissible to pick individual features, and look at them in isolation. By looking at the technical features individually without considering the features' contribution to the overall invention, an interaction between the features, which may form the basis for the technical character of the invention, could not be duly considered in the assessment of the inventive step of the invention.

Some of the features identified as non-technical by the examining division were clearly technical. Step a) concerned the storing of data electronically in a data storage. Step b) relating to the monitoring of the advertiser's resources at the contact center required

technical actions such as the storing and processing of the relevant data to determine the current status of the resources. Furthermore, step c) also required technical actions involving the transmission of data over a data network.

The claimed invention had the technical effect of managing the communication load of the advertiser's resources at the contact center. *All* the features of the invention cooperated and interacted with one another to achieve that effect. Therefore, none of them was non-technical "as such".

While advertising merely for the sake of making people buy a certain product or service could be considered as a non-technical feature, the process of strategically selecting and serving an advertisement at a certain instance and/or with a certain content with the aim of managing the communication load of the advertiser's resources was a technical feature, which had to be taken into consideration in assessing novelty and inventive step.

The invention did not manage the communication load after user requests had reached the contact center, but rather before the user even initiated a request and before the request was transmitted to the contact center. This had the advantage that the data traffic across the Internet data network connecting the users with the contact center was reduced.

Real time management of the communication load of the advertiser's resources at the contact center could only be achieved as part of a technical invention. Therefore, the term "real time" gave the invention additional technical character.

Reasons for the Decision

1. *Background*

1.1 The invention concerns advertising. The purpose of advertising is generally to attract potential customers to a business. However, there may be times when the advertiser is lacking the resources to serve those customers adequately. For example, the advertiser's contact center may be understaffed, or the number of incoming customer transactions may be higher than usual. This may lead to long waiting times, or even the loss of customers. The invention addresses this problem by dynamically placing advertisements taking account of the current availability of the advertiser's resources at the contact center (see the published application at page 2, lines 13 to 17, and at page 10, lines 23 to 28).

1.2 The dynamic placement of advertisements concerns the time of placement of an advertisement as well as the content of the advertisement (page 9, lines 28 to page 10, line 9). For example, if it is determined that the contact center is reachable via a particular communication means, say telephone, then, the contact information in the advertisement is updated to reflect this (it will be a telephone number). Conversely, if there is no agent available to answer calls, the advertisement may include static contact information, such as a Web address.

1.3 In the invention, the advertisements are served by an advertisement server to users over a data-packet

network. The advertiser's contact center is connected to the same network. It processes transactions received from the users.

The advertisement server runs software for storing the advertisements in a data storage, for monitoring the availability of the advertiser's resources at the contact center over the network, and for selecting and serving the advertisements to the users based on the availability of the advertiser's resources.

2. *Main request, inventive step*

2.1 The examining division's reasoning and the arguments in the grounds of appeal focused on method claim 10. The Board will do the same. Nevertheless, the same reasons are applicable also to system claim 1.

2.2 The examining division considered that the method in claim 10 of the main request contained a mixture of technical and non-technical features. The established approach for dealing with such mixed-type inventions is the "COMVIK approach" (see T 641/00 - Two identities / COMVIK, OJ 2003, 352).

In the COMVIK approach, the non-technical features do not contribute to inventive step. Instead, they may be part of the problem in the form of a non-technical requirement specification given to the skilled person to implement.

2.3 In the present case, the disputed point concerns which features of the invention are non-technical, i.e. what goes in the non-technical requirement specification.

The examining division argued that the following steps

in claim 10 were non-technical:

- (a) storing advertisements;
- (b) monitoring availability of the advertiser's resources at the contact center; and
- (c) serving advertisements to users based on at least in part on information about the advertiser's resources determined in step (b).

The appellant argued that *all* of the features in claim 10 were technical, because they *all* interacted for solving the technical problem of managing the communication load on the contact center.

- 2.4 The Board does not fully agree with the approach taken by the examining division. Indeed, step (a) involves storing data in a data storage, which is a technical activity involving technical means.

In T 1463/11 - "Universal merchant platform / CardinalCommerce", it was held that a non-technical requirement specification cannot include any technical means, no matter how trivial or notorious. Those features should instead be evaluated for obviousness as part of the technical implementation. The Board shares this view. Therefore, while the advertisement itself is cognitive content, which belongs in the non-technical requirement specification, the step of storing it is part of the technical implementation.

- 2.5 On the other hand, the Board does not agree with the appellant that selecting and serving advertisements solves a technical problem.

Advertising is meant to attract customers to a business. By placing an advertisement, the advertiser

is hoping to increase customer demand. That is what advertising is all about. Conversely, by not placing the advertisement, the effect of the advertisement is not there. Naturally, the effect of a particular advertisement on customer demand is neither certain, nor predictable; it depends on the customer's subjective response to the advertisement as well as on the product or service in question. If advertising has any objective, credible effect at all, it is not a technical effect; it is an effect on business load.

- 2.6 The appellant argued that, since the dynamic placement of advertisements controlled the users' behaviour such that a user would not be tempted to send a request to the contact center, the amount of network traffic resulting from customer requests was reduced. This was a technical effect that contributed to inventive step.

The Board is not persuaded. Firstly, claim 10 of the main request does not say that the incoming transactions are received over a network. Therefore, there can be no effect of those transactions on a network.

Secondly, even if the transactions were received over a network, the effect on network traffic would be a direct translation of the corresponding effect on customer demand. In other words, the technical character comes from the context of a networked communication system rather from the advertisement *per se*. As stated in the headnote of T 483/11 - "Document summary/ARIZAN CORPORATION", a feature does not automatically inherit the technical character of the context in which it occurs. The feature must, itself, make a contribution to that technical context.

2.7 Indeed, any message that is transmitted over a network has an effect on network traffic. That is just a normal and inevitable consequence of sending (or not sending) the message. However, that does not make the message content or the decision of when to send (or not to send) the message technical. In the Board's view, a further technical effect, which goes beyond the inherent effect of the message on the network is required. The Board sees no such further technical effect caused by the selection and serving of advertisements in claim 10.

The requirement of a "further technical effect" was first introduced in connection with computer programs in T 1173/97 - "Computer program product/IBM", OJ EPO 1999, 609. However, the principle holds also for other non-technical subject-matter, which inherently has some "technical" effect (see the Case Law of the Boards of Appeal, 8th edition, I.D.9.1.3 e) and T 1543/06 - "game machine/GAMEACCOUNT")

2.8 For these reasons, the Board judges that the selection and serving of advertisements based on the availability of the advertiser's resources at the contact center goes in the non-technical requirement specification. Starting from a standard networked computer system, the technical problem is how to implement the requirement specification.

2.9 The skilled person given the task of implementing the non-technical requirement specification would have had to provide suitable means for obtaining the availability information, and for selecting and serving the advertisements to the users based on it.

It would have been necessary to store the

advertisements in some accessible data storage. Obtaining the availability information via the network by connecting to a router at the contact center would have been an obvious option. Furthermore, there would have had to be some means for selecting the advertisements and transmitting them to the users.

2.10 For these reasons, the skilled person would have arrived at the subject-matter of claim 10 without inventive skill. Therefore, the Board concludes that the subject-matter of claim 10 lacks an inventive step (Article 56 EPC).

3. *Auxiliary request 1*

3.1 Compared to claim 10 of the main request, claim 8 of auxiliary request 1 additionally specifies that the advertisements include "dynamic contact objects" having contact information for the contact center resources, and at least one contact object is selected for insertion in an associated advertisement. Furthermore, Claim 8 explicitly defines the effect of controlling "the contact center resources' communication load".

3.2 For the reasons provided in points 2.5 to 2.7 above, the Board does not consider the effect of controlling the communication load at the contact center to be a technical one. It does not make a difference that the effect is spelled out in the claim.

3.3 The contact objects in claim 8 are contact information (see the published application at page 9, lines 28 and 29), which is part of the advertisement content. As such, a contact object is not a technical feature, which contributes to inventive step. Nor is the decision of which contact object to insert into which

advertisements. The technical implementation of the dynamic insertion of contact objects into advertisements would have been straightforward and obvious to the skilled person.

3.4 For these reasons, auxiliary request 1 does not provide anything inventive over the main request.

4. *Auxiliary request 2*

4.1 Auxiliary request 2 does not build on auxiliary request 1. It starts from the main request and adds the following steps to the method in claim 10:

determining a real-time or near real-time availability status of contact agents of the contact center associated with an advertisement prior to serving said advertisement; and

embedding one or more contact objects in the advertisement based on the determined availability status of the contact agents prior to serving the advertisement.

Claim 10 of the second auxiliary request also specifies that the advertisement is served via the data-packet network.

4.2 The appellant argued that the determining of a real-time or near real-time availability status could not be done without technical means. Therefore, this feature had to be taken into account for inventive step.

4.3 The Board agrees that the determination in real-time requires some technical means. However, the idea to base the advertisements on the availability status is a

non-technical one, and it already includes an aim to obtain as accurate information as possible. Furthermore, it implies that the availability status is determined before the advertisement is served.

Claim 10 of auxiliary request 2 does not specify any particular technical means for determining the availability status in real-time. Therefore, the implementation of the determination is merely to provide suitable means for realising the non-technical idea. This is not inventive.

4.4 As set out in paragraph 3.3. above, inserting contact objects into the advertisements does not provide an inventive step. The Board does not see that replacing the word 'inserting' by 'embedding' makes any difference in this regard.

4.5 Furthermore, transmitting the advertisements over the network would have been an obvious means for serving the advertisements to the users. Indeed, there are few other options available for dynamic placement of advertisements.

4.6 For these reasons, the subject-matter of claim 10 of auxiliary request 2 does not involve an inventive step (Article 56 EPC).

5. *Auxiliary request 3*

Claim 10 of auxiliary request 3 differs from auxiliary request 2 by the feature of determining, based on the availability status, whether a live contact agent is available for a specific communication medium and, if so, embedding appropriate contact information

associated with the communication medium into the advertisement.

For the same reasons as provided above with regard to the higher ranked requests, the Board considers this to be a non-technical idea, of which the implementation would have been obvious.

6. Auxiliary request 4

Claim 10 of auxiliary request 4 differs from auxiliary request 3 in that, if there is no "live" contact agent available, the system embeds static contact information into said advertisement. This is no more technical than the live contact information in auxiliary request 3. Therefore, the subject-matter of claim 10 of auxiliary request 4 lacks an inventive step, for the same reason as auxiliary request 3.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated