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**Datasheet for the decision
of 20 September 2018**

Case Number: T 0137/13 - 3.5.01

Application Number: 05739789.5

Publication Number: 1763764

IPC: G06F13/00

Language of the proceedings: EN

Title of invention:

A SYSTEM AND METHOD FOR ENHANCED MESSAGING AND COMMERCE

Applicant:

Energetic Power Investment Limited

Headword:

Content sharing / ENERGETIC POWER

Relevant legal provisions:

EPC Art. 54(1), 54(2), 56, 84

EPC 1973 Art. 54(3), 54(4)

Keyword:

Inventive step - allowing a user to experience content by selecting a playlist/webpage being experienced by another user (no - obvious)



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Case Number: T 0137/13 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 20 September 2018

Appellant: Energetic Power Investment Limited
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 August 2012
refusing European patent application No.
05739789.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: A. Wahrenberg
Y. Podbielski

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse the European patent application 05739789.5 on the ground that the subject matter of claim 1 of the main and two auxiliary requests lacked novelty over D1 (US 2004/003090 A1).

II. The appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of the requests refused by the examining division.

III. Claim 1 of the main request reads:

A method comprising:

making available a status indicator (525, 550) associated with a first user, the status indicator identifying a playlist of media content being experienced by the first user at the time of said making available or identifying a webpage being experienced by the first user at the time of said making available; and

providing to a second user, via a communication program, the status indicator for display along with an identifier of the first user in a selected user list displayed to the second user, so as to enable the second user to selectively experience the media content in the playlist or the webpage by selecting the status indicator.

IV. The first auxiliary request adds to claim 1 the following text after the first instance of the "status indicator":

"indicating a status of the first user and"; and the following text after the second instance of the "second user":

"in an instant messaging client of the second user to thereby display to the second user the identifier of the first user, the status of the first user and an identification of the playlist or the webpage".

V. The second auxiliary request adds to claim 1 the word "currently" immediately before the expression "*being experienced*" (all instances).

VI. In the grounds of appeal, the appellant argued that:

D1 did not disclose any status indicator for display alongside an identifier of a user, where the status indicator itself identified a playlist being experienced by that user at the time that the status indicator was made available.

The playlist discussed in paragraph [0029] of D1 was generated before any media was transmitted or played and, therefore, it could not relate to media content being experienced by the first user at the time of making available the status indicator.

Claim 1 (all requests) made it clear that the status indicator was something:

- that identified a playlist of media content or a webpage being experienced by a first user;
- for display to a second user in some form of visual icon/graphic;
- that could be selected by the second user so that he could experience the indicated playlist of media content or webpage.

The use of a status indicator as claimed had the technical effect of making it easier for users to initiate media-sharing sessions, and/or join in existing media-sharing sessions. Users could easily spot the status indicator and use it to identify playlists currently being experienced by a user and then join in on the experience without having to go through a protracted set-up process. The first user who was currently experiencing the media content did not have to set up a media sharing session in order to allow other users to share the experience; the status indicator automatically reflected what the first user was experiencing.

- VII. The Board set out its preliminary view in a communication accompanying the summons to oral proceedings. The Board considered that the invention as defined in the main and two auxiliary requests did not meet the requirements of Articles 54, 56, and 84 EPC. Document D7 (WO 2005/017660 A2) was cited as prior art under Article 54(3) EPC.
- VIII. The appellant did not submit any amendments or arguments in reply to the Board's communication. The appellant informed the Board by letter that it would not attend the oral proceedings.
- IX. The Board held oral proceedings in the appellant's absence and announced the decision.

Reasons for the Decision

1. *Background*

1.1 The invention is about content sharing using the status indicator in an instant messenger application.

1.2 In Figure 3 of the published application, a first user (Adrian, 500) is listening to the song "Faith" from the album "Faith" by George Michael. This information is shared in Adrian's status indicator (550). If a second user, say Tom, clicks on Adrian's status indicator, he will hear the same song.

In another example, the user Moe (590) is visiting the website "www.yahoo.com". By clicking on the hyperlink in Moe's status indicator (595), other users can access the same website.

2. *Main request - claim 1*

2.1 The method of claim 1 includes both examples in Figure 3 as separate alternatives.

It includes the steps of "making available" the status indicator of the first user and providing it to the second user. The status indicator is defined as something that:

- identifies a playlist of media content, or a webpage, "being experienced by the first user at the time of said making available";
- is displayed along with an identifier of the first user; and

- enables the second user to "selectively experience" the media content in the playlist or the webpage by selecting the status indicator.

2.2 *Main request - clarity*

The Board considers that claim 1 of the main request lacks clarity, contrary to Article 84 EPC.

The claim does not define the technical features required to "make available a status indicator" and to allow the user to "experience the media content or webpage". It is not clear what the first step adds given that the second step of providing the status indicator to the second user makes it available to the second user. Additionally, a user's experience is subjective and involves a plurality of senses.

2.3 *Main request - novelty over D1*

The examining division found that the subject matter of claim 1 of the main request lacked novelty in view of the disclosure in Figure 2, and paragraphs [0023], [0024], and [0035] to [0039], of D1.

Although the Board agrees with the examining division that the term 'status indicator' lacks a clear, technical meaning, the Board does not see any disclosure in D1 of an indicator that:

a) identifies a playlist that was being experienced by the first user at the time that the indicator was made available; and

b) is selectable by a second user so as to allow

that user to also experience the media content.

The nearest disclosure in D1 is the list of available selections in paragraph [0029], which is sent by a first user to other users, who may, then, request a particular selection to be played. Thus, D1 discloses an indicator that identifies a playlist and that is selectable by a second user (b). However, D1 does not disclose that the first user was already listening to (one of) the selections at the time of creating or sending the list (a). Thus, the Board takes the view that the subject matter of claim 1 of the main request is novel over D1.

2.4 *Main request - inventive step over D1*

In the Board's view, however, the difference over D1 does not provide an inventive step (Article 56 EPC).

The Board is not convinced that the invention makes it easier for users to initiate media sharing sessions, or join in existing media-sharing sessions. Claim 1 does not define how the media sharing is initiated. It does not exclude a set-up process, in which participating users have to join a session or group. Thus, in the Board's view, the difference over D1 merely relates to what the user wants to share. This is not a technical feature, which could contribute to inventive step.

The technical contribution is provided by the implementation of the non-technical user requirement. In the Board's view, it would have been obvious and straightforward to provide the necessary means for allowing the user in D1 to include, in the list, selections that he is currently listening to. It would

also have been obvious to provide those selections automatically.

2.5 *Inventive step over conventional IM*

Concerning the webpage alternative in claim 1 of the main request, the examining division argued that the "solution implemented for media content" was "immediately applicable to web, without the involvement of an inventive step". The examining division did not indicate how the media sharing in D1 should be modified to provide a "webpage", and the Board does not see it.

However, the Board takes the view that the webpage alternative would have been obvious over conventional instant messaging (IM) as described on page 1 and shown in Figure 2 of the published application.

Conventional IM had a status indicator that provided information about the user's online status. Including a status indicator in the form of a link to a webpage that the user is currently viewing merely amounts to a non-technical aim. The Board agrees with the examining division that, at this level of generality, a webpage does not constitute a technical means. At any rate, webpages and hyperlinks were notorious at the priority date, and it would have been obvious to share the content of a webpage by means of a link.

Therefore, the subject matter of claim 1 of the main request lacks inventive step (Article 56 EPC) also for that reason.

2.6 *Novelty over D7*

The International patent application D7 is prior art under Article 54(3) EPC 1973 because, although it was published after the priority date of the present application, it has an earlier effective date. The corresponding European application No. 04777563.0 designated all the EPC contracting states. Thus, the condition laid down in Article 54(4) EPC 1973 is satisfied.

D7 is novelty destroying for the invention as defined in claim 1 of the main request. In Figure 4A of D7 (see also paragraphs [0035], [0052] and [0053]), a first user (Peer 1) is listening to "Dorset Perception", while chatting with a second user (Peer 2). In the second user's chat client (CHAT MODULE DISPLAY 400), an icon indicates that Peer 1 is listening to "Dorset Perception". In response to selecting the icon (Figure 4B), the second user may initiate a content stream, or purchase the song.

D7 is not limited to music sharing. It allows the sharing of other user activities, such as online postings, by means of a URL (see paragraphs [0036] and [0041]). Thus, D7 anticipates both alternatives in claim 1 of the main request.

3. *First and second auxiliary request*

3.1 The reasons provided with regard to the main request are applicable also to the first and second auxiliary requests, because they already take account of the additional features of these requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated