Internal distribution code:

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

Datasheet for the decision of 12 January 2021

Case Number: T 0552/14 - 3.5.01

Application Number: 06739187.0

Publication Number: 1866885

IPC: G06Q30/00

Language of the proceedings: EN

Title of invention:
APPARATUS AND METHODS FOR PROVIDING QUEUE MESSAGING OVER A NETWORK

Applicant:
Ticketmaster

Headword:
Queue message/TICKETMASTER

Relevant legal provisions:
EPC Art. 54(1), 54(2), 56

Keyword:
Inventive step - making queuing more efficient (no - not technical)

Decisions cited:

G 0002/88, G 0003/08, T 0641/00, T 0172/03, T 0049/04, T 0154/04, T 1543/06, T 1670/07, T 1143/06, T 1562/11

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0552/14 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 12 January 2021

Appellant: (Applicant)	Ticketmaster 8800 Sunset Blvd. 6th Floor West Hollywood CA 90069 (US)
Representative:	f & e patent Fleischer, Engels & Partner mbB, Patentanwälte Braunsberger Feld 29 51429 Bergisch Gladbach (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 25 October 2013 refusing European patent application No. 06739187.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. This case concerns the appeal of the applicant against the decision of the examining division to refuse the European patent application No. 06739187.0 for lack of novelty (Article 54(1) and (2) EPC).

II. The examining division found that the subject-matter of the independent claims distinguished itself from notorious prior art merely by non-technical aspects. The examining division concluded that the claimed subject-matter lacked novelty.

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

IV. The Board arranged for oral proceedings to be held. In the communication accompanying the summons to oral proceedings, the Board tended to agree with the examining division that the invention differed from the prior art merely by non-technical features. Under the well-established "Comvik approach", such features could not contribute to inventive step (Article 56 EPC).

V. In reply to the Board's communication, the appellant announced that nobody would attend the oral proceedings. The oral proceedings were thus cancelled.

VI. Claim 1 reads:

A method of processing electronic queue data, the method comprising:

receiving in a queue a ticket-related request for a resource from a first user;

determining or estimating the number of ticket-related requests that are in a first electronic queue;

based at least in part on the number of the ticket-related requests that are in the first electronic queue and historical queue abandonment data, selecting a notification-type regarding the queue to be provided to the first user that has a ticket-related request in the queue; and

transmitting a notification corresponding to the notification-type to a terminal associated with the first user that has a ticket-related request in the queue, wherein the notification type includes an indication to the user that the requested resource will not be available when an estimate indicates the requested resource will not be available when the first user's ticket-related request is serviced.

VII. The appellant's arguments can be summarised as follows:

In accordance with the case law of the Boards of Appeal (e.g. G 3/08 - *Programs for computers*, and T 1543/06 - *Game machine/GAMEACCOUNT*), features which were *prima facie* non-technical could interact with the other features of the claims such that the new combination of features had a different technical character to that of the group of remaining features of the claim when considered on its own.

In the approach adopted in T 641/00 (*Two identities/ COMVIK*), an invention consisting of a mixture of technical and non-technical features having technical

character as a whole was to be assessed with respect to the requirement of inventive step by taking account of all those features which contribute to the technical character whereas features making no such contribution could not support the presence of an inventive step.

Notifying the user that the requested resource would not be available reduced the length of the queue because most users would abandon the queue under those circumstances. This was a technical effect that contributed to the technical character of the invention.

Furthermore, the notification helped the user to perform the task of requesting a resource more efficiently because, due to the notification, the user could decide early in the process to abandon his request and instead request an alternative resource. According to T 49/04 (*Text processor/Walker*), allowing the user to perform his task more efficiently was a technical problem.

Since the claimed method was performed automatically without involving a human, it had technical character.

Reasons for the Decision

1. *The invention*

1.1 The invention concerns a method of processing electronic queue data and providing queue messaging over a network. The idea is essentially to notify the customer having requested a resource, such as an event ticket or tickets, whether the resource is likely to be

available when the request is serviced. The estimate is based on the number of requests in the queue and historical queue abandonment rates (and certainly also the available quantity of the resource in question). Based on the notification, the customer can decide to abandon or stay in the queue.

2. *Technical character*

2.1 The Board agrees with the examining division that a method of processing queue data comprising receiving a ticket request, estimating whether the requested ticket will be available when the request is serviced, and notifying the user if it is estimated that the ticket will not be available, does not on its own solve a technical problem. This subject-matter is, as the examining division said, an organisational matter.

2.2 The appellant argued that the method had technical character since it made queuing more efficient.

2.3 The Board is not convinced by the appellant's arguments.

Although queues may have technical applications, the act of queuing *per se* is an administrative (or abstract mathematical) concept. Thus, it follows that improving such a non-technical activity, by allowing it to be performed more efficiently, is not a technical problem.

In any case, the alleged efficiency is not achieved by the claimed method, because it relies on the user taking appropriate action. A chain of effects which is broken by the intervention of the user cannot be taken into account (see decision T 1670/07 - *Shopping with*

mobile device/NOKIA, points 10 and 11).

2.4 Concerning T 49/04, the Board notes that it has not been followed in later cases (see e.g. T 1143/06 - *Data selection system/BRITISH TELECOMMUNICATIONS*, and T 1562/11 - *Closing out white space/SAP*). Nevertheless, the technical character in T 49/04 was based on *how* content was presented to the user. In the present case, it is the *message content itself* that allows the user to queue more efficiently.

2.5 The Board agrees that a computer-implemented method has technical character overall. However, in the present case, the technical character of the computer-implemented method derives solely from the computer implementation; it is not an effect of the method *per se*.

3. *Novelty*

3.1 The examining division argued that the lack of technical contribution over the prior art (a notorious computer system) resulted in a lack of novelty (Article 54(1) and (2) EPC). As support for this approach, the examining division referred to decisions G 2/88 (*Friction reducing additive*), T 172/03 (*Order management/RICOH*), and T 154/04 (*Estimating sales activity/DUNS LICENSING ASSOCIATES*).

3.2 The cited decisions indeed seem to suggest that only technical features can establish novelty. However, the individual statements made in these decisions have to be seen in the context of the decision as a whole and not just in isolation. None of the decisions applies the "approach" to a computer-implemented invention.

3.3 G 2/88 includes the following statement:

"a claimed invention lacks novelty unless it includes at least one essential technical feature which distinguishes it from the state of the art".

The statement was made in the specific context of use claims where the only novel feature lay in the purpose of the use. The Enlarged Board discussed the difference between a purpose having a technical effect, and a purpose that merely existed in the mind of the person carrying out the invention, and was therefore subjective rather than objective. While the former conferred novelty on the known use, the latter did not. The Enlarged Board of Appeal did not consider whether objectively distinguishing features involving non-technical aspects, for example computer-implemented method steps, could establish novelty over, say, a computer.

3.4 In T 172/03, the Board stated that the patentability of an invention, for which inventive step was a requirement, had to arise from features and aspects of the invention from which a technical solution to a technical problem could be inferred and which were thus of technical character (point 3).

This statement seems to suggest that novelty, which is also a patentability requirement, can be based only on technical features.

The Board in T 172/03 went on to state that the term "state of the art" in Article 54 EPC should be understood as "state of technology". In other words, the state of the art was limited to technical information. This seems to be consistent with a

technical novelty requirement, because if non-technical features cannot be prior art, they cannot logically be novel either.

Nevertheless, the case in T 172/03 was decided on inventive step (Article 56 EPC). The Board did not elaborate further on the question of "technical novelty".

3.5 In T 154/04, the Board summarised the case law on computer-implemented inventions. It was said that non-technical features "as such" did not provide a technical contribution to the prior art and were thus to be ignored in the assessment of novelty and inventive step (point 5(f)). However, also in T 154/04, the case was decided on other grounds than novelty.

3.6 The question of "technical novelty" is complex, and has potential implications on many areas of patent law, such as the assessment of the same invention in Article 87 EPC, as well as added matter under Articles 76 and 123(2) EPC.

In the present case, the Board does not need to decide on this issue, because the notorious computer system is clearly prior art under Article 54(2) EPC. Therefore, the case can be decided on inventive step.

4. *Inventive step*

4.1 Applying the Comvik approach as correctly identified by the appellant, and starting from the notorious computer system comprising two computers connected by a network, the technical problem solved by the invention boils down to the implementation of the non-technical method defined in 2.1 above. The implementation involves the

first computer receiving the request from the second computer (the user's terminal), estimating the availability of the requested resource, and transmitting the notification to the second computer. In the Board's view, this type of client-server implementation would have been a matter of routine for the skilled person. Therefore, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar: The Chairman:

T. Buschek W. Chandler

Decision electronically authenticated