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**Datasheet for the decision
of 28 May 2020**

Case Number: T 1294/15 - 3.4.03

Application Number: 10799779.3

Publication Number: 2455904

IPC: G06Q30/02

Language of the proceedings: EN

Title of invention:

AFFILIATION APPORTIONMENT DEVICE, AFFILIATION APPORTIONMENT SYSTEM, AFFILIATION APPORTIONMENT METHOD, AFFILIATION APPORTIONMENT PROGRAM, AND COMPUTER-READABLE RECORDING MEDIUM

Applicant:

Rakuten, Inc.

Headword:

Relevant legal provisions:

EPC Art. 52(1), 56

Keyword:

Inventive step - main and auxiliary requests (no)

Decisions cited:

T 0258/03

Catchword:



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 1294/15 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 28 May 2020

Appellant: Rakuten, Inc.
(Applicant) 1-14-1, Tamagawa
Setagaya-ku
Tokyo 158-0094 (JP)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 February 2015
refusing European patent application No.
10799779.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman T. Häusser
Members: M. Papastefanou
T. Bokor

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division refusing the European patent application No. 10 799 779.3 on the ground that the subject-matter of the claims of the sole request before it did not involve an inventive step within the meaning of Article 56 EPC.

II. Reference is made to the following document, which is cited in the description of the present application:

D3: JP 2007 219860 A.

III. At the end of the oral proceedings before the board, the appellant's (applicant's) final requests were that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 14, which were filed with the entry into the European (EP) regional phase of the international application and underlie the impugned decision (as a Main Request).

As an auxiliary measure, the appellant requested that a patent be granted on the basis of claims 1 to 13 of the Auxiliary Request filed with the appellant's letter dated 28 April 2020.

IV. Claim 1 of the Main Request is worded as follows:

An affiliate reward dividing apparatus for dividing a reward between a content manager who manages content of explaining service or a commodity and an introduction page manager who introduces the content, the apparatus being arranged for referring to an affiliate database that stores an affiliate program for guiding a user

from an introduction page for introducing the content to an EC site which deals service or a commodity of the content, an amount of a reward, and a dividing ratio of the reward between the content manager and the introduction page manager, and the apparatus comprising:

a controller, when the user purchases a commodity or receives service in the EC site via the affiliate program in the introduction page, that receives use data from the EC site, refers to the affiliate database, and divides the amount of the reward and adds the resultant amount to a content manager database storing information of the content manager or an introducer database storing information of the introduction page manager, wherein when the controller receives use data from the EC site, the controller determines one of the content manager database and the introducer database, and adds the full amount of the reward to the determined database, on the basis of the dividing ratio stored in the affiliate database.

V. Claim 1 of the Auxiliary Request has the following wording:

An affiliate reward dividing apparatus for dividing a reward between a content manager who manages content of explaining service or a commodity and an introduction page manager who introduces the content, the apparatus being arranged for referring to an affiliate database that stores an affiliate program for guiding a user from an introduction page for introducing the content to an EC site which deals service or a commodity of the content, an amount of a reward, and a dividing ratio of the reward between the content manager and the introduction page manager, and the apparatus

comprising:

a controller, when the user purchases a commodity or receives service in the EC site via the affiliate program in the introduction page, that receives use data from the EC site, refers to the affiliate database, and adds an amount to a content manager database storing information of the content manager or an introducer database storing information of the introduction page manager, wherein when the controller receives use data from the EC site, the controller determines one of the content manager database and the introducer database, and adds the full amount of the reward to the determined database, on the basis of the dividing ratio stored in the affiliate database.

- VI. The appellant argued essentially that the claimed apparatus solved a technical problem using technical means in a non-obvious way. The appellant's arguments are dealt with in more detail in the reasons for the decision.

Reasons for the Decision

1. The appeal is admissible.
2. The claimed invention
 - 2.1 The claimed invention relates to an apparatus for dividing a reward between a content manager and an introduction page manager. Corresponding systems, a method, a computer program and a computer-readable medium are also claimed.

- 2.2 The main concept of the invention could be described as follows: a content manager (poster) produces/generates digital content explaining a service or a commodity (e. g. an advertisement). A content introducer (introduction page manager) posts and provides access to this digital content, e. g. via a website. The content leads a user who may view it, to an electronic commerce (EC) site that sells the explained (advertised) good or service. For every purchase carried out, a reward amount is generated, which has to be divided between the content manager and the content introducer. A program (affiliate program) divides the reward amount between the content manager and the content introducer according to a predetermined dividing ratio (e. g. 50%-50%, 20%-80% etc.) and credits the resulting amounts to the two parties.
- 2.3 In a conventional system the server divides the reward amount between the two parties each time a purchase takes place at the EC site and credits the resulting amounts to the respective databases of the two parties.
- 2.4 It is noted in the application that mathematical division is a resource-intensive operation in a server (i. e. computer), which, in case a high number of purchases take place at the EC site and hence a high number of rewards are generated, may increase the load at the server significantly. According to the application a different way of dividing the reward amount between the two parties is proposed: instead of dividing the reward amount after each purchase at the EC site, the apparatus credits the whole amount to one of the parties every time. Which party will be credited depends on the predetermined dividing ratio. For example, with a 50%-50% dividing ratio the amount is credited to each party alternately. With a 20%-80%

dividing ratio, one party is credited once and the other four times, etc. It is expected, that in the long term, i. e. after many transactions, the reward will be divided between the two parties according to the predetermined dividing ratio (see paragraphs [0004]-[0006], [0034] and [0046] of the published application).

3. The board accepts the appellant's explanations regarding the interpretation of claim 1 of the Main Request, in particular with respect to the feature that the controller *"divides the amount of the reward"* (see appellant's letter of 28 April 2020, point 3). The board interprets thus claim 1 as explained by the appellant, i. e. that the controller according to claim 1 of the Main Request does not divide the amount after each purchase at the EC site but that the reward is divided between the two parties over time.

Hence, the apparatus according to claim 1 of the Main Request corresponds essentially to the apparatus of claim 1 of the Auxiliary Request, which had been filed to clarify this issue. In the following, both requests are treated together, so when there is reference to "claim 1", this refers to both claim 1 of the Main Request and claim 1 of the Auxiliary Request.

Inventive step (Article 56 EPC)

4. It is common ground that such affiliate systems and apparatus existed in the state of the art before the priority date of the application. In paragraphs [0002] to [0006] of the published application such prior art systems are described and reference is made to document D3.

4.1 In the decision under appeal, the examining division used this description of the prior art in the application as the starting point for the assessment of inventive step (see point 16.1 of the reasons for the decision). The appellant did not contest this (see point 2 in section IV. on page 13 of the statement of the grounds of appeal) and the board does not see any reason to differ in this respect.

4.2 It also remained uncontested that the affiliate reward dividing apparatus according to claim 1 differed from the state of the art only in the way the reward amount is divided and credited to the content manager and the content introducer.

In the state of the art apparatus the affiliate program divides the amount of the reward according to a predetermined division ratio and credits the resulting amounts to the content manager and the content introducer after each purchase at the EC site.

According to the claimed apparatus the whole amount of the generated reward is credited each time either to the content manager or the content introducer as described under point 2.4 above.

5. It is explained in the application that mathematical division is a resource-intensive operation that increases the load on the affiliate server, which manages the distribution of the reward and hosts the affiliate program (see paragraphs [0005] and [0006]). In the claimed apparatus (and method) there is no need for a division of the reward amount since the whole reward amount is credited either to the content manager or to the content introducer. This reduces the load on the affiliate server (see paragraphs [0013],

[0014] and [0047] of the application). The appellant also argued that the amount of data communication was reduced by the claimed apparatus as well, because every time only one of the databases of the content manager or the content introducer needed to be accessed and not both as in the prior art (see page 3, third paragraph to page 4, first paragraph of the statement of the grounds of appeal).

6. The appellant submitted that, contrary to the opinion of the examining division, the claimed apparatus produced a technical effect, namely the reduction of the load on the affiliate server and the amount of data communication in the system, with respect to the known apparatus. Moreover, this technical effect was produced by the controller, which was a technical feature and not a part of a business method. This was all the more evident since this distinguishing feature did not alter the underlying business scheme (see, for example, points 1 to 5 in section III. on pages 6 to 9 of the statement of the grounds of appeal).

7. The board notes that the application provides no definition or description of the controller at all. In claim 1 the controller is defined only by its function. In the board's view, the controller could be a (part of a) computer program. In addition, a similar controller must also be included in the apparatus of the prior art, since corresponding actions take place: a reward amount is generated, divided and distributed to the two parties.

- 7.1 In the board's opinion it is only the way the controller operates (i. e. what it does) that distinguishes the claimed apparatus from the prior art. This is also recognised in the statement of the grounds

of appeal, which states that the solution to the problem of the prior art *"involves a device and apparatus ... and especially a particular way of operation a controller [sic], i.e. a method of operating a machine element for accessing data bases ..."* (see page 7, second paragraph).

8. Considering claim 1 as a whole, the board notes that the claimed apparatus is essentially defined by its function. The apparatus comprises generically defined technical means (databases, implicit computers/servers, a network etc.) which are characterised only by the way they operate. Crucially, the board is of the opinion that the operation of the claimed apparatus implements a business concept which relates to the division of a reward amount between a content manager and an introduction page manager according to a predetermined dividing ratio.

- 8.1 In the prior art, the division of the reward between the two parties is done according to a business scheme, which foresees the division of the reward amount according to the predetermined dividing ratio after each purchase at the EC site.

The division of the reward in the present application and claims is also done according to a business scheme, which foresees that the whole of the reward amount is credited to one of the parties, in such a way that over time the amount of the reward is divided between the two parties according to the dividing ratio.

- 8.2 In both cases, the board considers that the corresponding apparatus merely implements a business scheme. Contrary to the appellant's opinion, the board sees differences between the two business schemes. Even

if the main idea of dividing the reward between two parties according to a predetermined dividing ratio is the same, it is evident that the parties do not receive their corresponding reward in the same way in both cases. In particular, in the business scheme of the present application the parties do not receive their reward simultaneously since the full amount is credited only to one of them every time the reward is granted.

9. In the board's view the technical disadvantages encountered in the prior art apparatus, namely the increased load on the server and the increased data communication, are merely a result of the implementation of a specific business scheme, which imposes the division of the reward amount after each purchase at the EC site and calls for a corresponding mathematical operation by the controller in the server.

By implementing a different business scheme (the one described in the present application), the apportionment of the reward between the two parties is performed in a different way and the need for a division of the reward amount each time is eliminated, and so is the corresponding mathematical operation of the controller of the apparatus, which caused the increased load on the server and the increased data communication.

10. The board is thus convinced that any improvement in the operation of the server and the data communication is merely a side effect of modifying the underlying business scheme and is not the result of solving a technical problem by technical means.

It is established case law that *"method steps consisting of modifications to a business scheme and*

aimed at circumventing a technical problem rather than solving it by technical means cannot contribute to the technical character of the subject-matter claimed" (see for example T 258/03; published in OJ 2004, 575; Headnote II and points 5.5 to 5.7 of the Reasons). The board adheres to this case law.

11. The board's opinion is thus that the features distinguishing the apparatus of claim 1 (i. e. the way the controller operates) from the prior art relate to steps of a modified business scheme. Their implementation in the controller is limited to straightforward computer programming steps, which the board considers obvious for a skilled person. In the board's view, therefore, these features cannot provide a basis for inventive step.

12. The appellant further argued on the basis of a hypothetical claim, stripped of all "non-technical" wording. According to the appellant, such a claim would be formulated as follows (see point 10 of the appellant's letter dated 28 April 2020):

An amount dividing apparatus for dividing an amount between a first manager and a second manager, the apparatus being arranged for referring to a database, an amount, and a dividing ratio of the amount between the first manager and the second manager, and the apparatus comprising:

a controller that receives use data from a site, refers to the database, and adds the resultant amount to a first database storing information of the first manager or a second database storing information of the second manager, wherein when the controller receives use data from the site, the controller determines one of the first database and the second database, and adds the

full amount of the amount to the determined database, on the basis of the dividing ratio stored in the database.

- 12.1 According to the appellant, such a claim would be seen as a form of a dividing machine that achieves a mathematical division by using only adding operations, thereby reducing the load of the system, i. e. an improved dividing machine that exploits a mathematical concept for achieving a technical advantage. Such a claim *"would be examined normally, i.e. without resorting to the Comvik approach or trying to read business aspects into the claim"* (*ibid.*) Such a claim might be found new and inventive over the prior art. If, however, a claim which was limited further by adding the removed features - irrespective of whether those features would be technical or not - was found to be obvious only on the account of the non-technical elements added for the restriction, this would be incorrect and unjust (*ibid.* and point 8 of section III. of the grounds of appeal).
13. In the board's view the hypothetical claim as defined by the appellant would still relate to a business scheme and not to an apparatus for performing a mathematical operation or a "dividing machine".
- 13.1 Indeed, there is no mathematical operation of division taking place in the apparatus according to this hypothetical claim. Rather, the result of the operation of the controller is not the same, since instead of both of the two managers receiving a part of the amount (after the division), only one of them receives the whole amount. Hence, it cannot be said that the claim defines a controller that replaces the mathematical division of the amount with another mathematical

operation producing the same result.

- 13.2 Just like in claim 1 of the Main Request and the Auxiliary Request, the amount is divided between the two managers *over time*, i. e. the operation of the controller has to be repeated more than once in order to arrive at a division of the reward according to the predetermined dividing ratio. This requires a duration/ repetition of the operation and an agreement between the parties to accept this scheme. In the board's view, this implies some form of a business scheme.
- 13.3 In the board's view, therefore, the claim formulated by the appellant does not define an improved way of carrying out the mathematical operation of division, but merely defines an administrative (business) scheme that would achieve the same end result as the claimed invention, i. e. dividing the amount between the two managers according to a dividing ratio, over a longer period of time involving the generation and assignment of several (sub-)amounts. It is also apparent that during this (apparently inevitable) extended duration of the dividing method in larger part of the time the resultant division of the (total) amount would not correspond to the mathematically exact division of the (total) amount. Exact division could at most be achieved at certain points of time, depending on the division ratio and the number of sub-amounts generated.
14. Hence, the board concludes that the subject-matter of claim 1 of both the Main Request and the Auxiliary Request does not involve an inventive step within the meaning of Article 56 EPC as required by Article 52(1) EPC.

15. Since none of the requests on file is allowable, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated