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**Datasheet for the decision
of 2 February 2022**

Case Number: T 0890/18 - 3.5.06

Application Number: 12737666.3

Publication Number: 2737402

IPC: G06F9/54

Language of the proceedings: EN

Title of invention:
WEB APPLICATION ARCHITECTURE

Applicant:
Apple Inc.

Headword:
Web application/APPLE

Relevant legal provisions:
EPC Art. 111(1), 113(1)
EPC R. 103(1) (a)
RPBA 2020 Art. 11

Keyword:
Substantial procedural violation - violation of the right to
be heard (yes) - reimbursement of appeal fee (yes)
Remittal to the department of first instance

Decisions cited:

R 0010/18

Catchword:



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Case Number: T 0890/18 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 2 February 2022

Appellant: Apple Inc.
(Applicant) One Apple Park Way
Cupertino CA 95014 (US)

Representative: Black, Diego
Withers & Rogers LLP
2 London Bridge
London SE1 9RA (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 23 October 2017
refusing European patent application No.
12737666.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Müller
Members: T. Alecu
B. Müller

Summary of Facts and Submissions

- I. This appeal is against the decision of the Examining Division to refuse the application. 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 one of two auxiliary requests, which are identical to those refused by the Examining Division. Oral proceedings were also requested "*[i]f the Board of Appeal is minded not allow [sic] the main request*".

- II. The appellant also claimed that its right to be heard under Article 113(1) EPC was violated, because the decision to refuse did not refer to any of its substantive arguments.

Reasons for the Decision

The application

1. The application relates to a web application architecture. It defines a wrapper application that runs on a standard browser and provides life cycle management for applications, such as e-mail, calendar etc.; these may use data from different web servers (paragraphs 2 to 4). Each application is opened in its own frame and may be moved to the front or remain in the background; in the latter case the execution state (including user interface context) is maintained. The wrapper also provides separate error handling for each application (paragraph 31).

The decision under appeal

2. The main request was refused (decision section 1.1) for a lack of inventive step starting from a document referred to as D1.
3. The Examining Division identified (point 1.1.2) five differences over document D1, and considered all of them to be separately obvious (1.1.3) as mere design options (first four) or straightforward implementation details (last one). Because *"the presence of each of the differences would be obvious to the skilled person and, when put together they do not produce any surprising technical effect greater than the mere sum of the partial effects"* (1.1.4), it was considered that the claimed subject matter was obvious in view of D1.

Article 113(1) EPC

4. As the appellant submitted (grounds of appeal, page 3), the reasoning provided in the decision is in essence the same as that provided in the summons to oral proceedings (dated 13 February 2017; point 3, and in particular point 3.4).
5. In response to that summons, with a letter dated 16 August 2017, the appellant filed the claims according to the three requests now on file, and provided counter-arguments to the analysis of the Examining Division in the summons. Notably, it was argued (page 2; see esp. paragraphs 5 and 9) that it was improper to consider the differences separately: *"the use of partial problem[s] and the subsequent piecemeal analysis of the inventiveness of the claims is not justified and incorrect in light of the synergistic interaction of the novel features of the claim"*.

According to the appellant, (page 2, see esp. paragraphs 6, 7 and 8) there was a *functional dependency* between the novel features, and therefore, as generally accepted in the context of the problem-solution approach, the claimed invention had to be considered as a whole. It was proposed that the features of the claims (of all requests) in combination solved the problem of improving the ability to handle and switch between applications.

6. These arguments are central to the reasons for the inventive-step objection: if the features cannot be separately considered, then the reasons put forward by the Examining Division fail to support the decision.
- 6.1 It is not apparent from the file that the Examining Division has considered the merits of the appellant's arguments. They are not addressed in the reasons of the decision, nor even mentioned in the facts and submissions (see point 5 of the decision), nor in the minutes of the oral proceedings, which took place in the absence of the appellant. Instead, the decision essentially repeats the arguments set forth in the summons, the only modification being that a further difference was acknowledged (the third, error handling). All five differences were still treated in terms of partial problems with no reference to the appellant's arguments.
- 6.2 Consistent with established case law of the boards of appeal (see R 10/18), the Board considers that the right to be heard is infringed in this case, because the Examining Division did not address in the reasons for its decision the submissions made by the applicant mentioned in point 5 above. On an objective basis, these submissions are decisive for the outcome of this

case. This infringement of the right to be heard constitutes a substantial procedural violation.

Remittal

7. A substantial procedural violation is a fundamental deficiency which, as a rule, constitutes a special reason for the Board to remit the case to the Examining Division for further prosecution (see Article 11 RPBA 2020; Article 111(1) EPC) without assessing the appeal as to its merits.
8. The Board further remarks that, as the appellant also submitted (grounds of appeal, page 7), the Examining Division did not bring documentary evidence to support the provided reasoning; this seems to relate, in particular, to the assertions that the differences were a matter of design choice.
9. With this decision, the Board does not take position on whether the main request should be granted or not. In particular, it does not decide against (does not "*not allow*") the main request, which was the condition under which the appellant had requested oral proceedings. The Board therefore is in a position to deliver this decision in writing, without holding oral proceedings.
10. The substantial procedural violation affected the assessment of inventive step, which is the only ground for refusal. It is therefore causally linked to the filing of the appeal, and the Board finds it equitable to reimburse the appeal fee (Rule 103(1) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:



L. Stridde

Martin Müller

Decision electronically authenticated