

Internal distribution code:

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

**Datasheet for the decision
of 4 March 2022**

Case Number: T 1900/18 - 3.5.01

Application Number: 12798901.0

Publication Number: 2761561

IPC: G06Q30/02

Language of the proceedings: EN

Title of invention:

RECOMMENDING CONSUMER PRODUCTS USING PRODUCT-INGREDIENT
EFFICACY AND/OR USER-PROFILE DATA

Applicant:

Southam, Adam Gyles

Headword:

Ingredient-based product recommendation/SOUTHAM

Relevant legal provisions:

EPC Art. 84, 56

EPC R. 43(2)

RPBA 2020 Art. 13(1)

Keyword:

Claims - conciseness (no)

Inventive step - recommending wellness products (no - mere automation of standard medical practice) - improvement effect not made credible within the whole scope of claim

Decisions cited:

T 0056/01, T 0671/06, T 0537/04



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 1900/18 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 4 March 2022

Appellant: Southam, Adam Gyles
(Applicant) 3746 W. Lake Calhoun Parkway
Minneapolis, MN 55416 (US)

Representative: Forresters IP LLP
Skygarden
Erika-Mann-Straße 11
80636 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 23 February
2018 refusing European patent application No.
12798901.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: I. Kürten
E. Mille

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse application No. 12798901.0 according to the state of the file for lack of conciseness (Article 84 EPC in combination with Rule 43(2) EPC) and lack of inventive step (Article 56 EPC).
- II. The examining division considered that the then sole request comprised multiple independent claims in each of a plurality of claim categories, which did not fall within the exceptions of Rule 43(2) EPC and that the invention related to a non-technical method whose computer implementation was obvious to the skilled person in view of a general-purpose computer system. The technical features were also said to be known from D1 (US 2010/0262556 A1).
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision to refuse the application be set aside and that a patent be granted on the basis of the refused main request, filed on 9 May 2017, or on the basis of a first auxiliary request filed therewith. Oral proceedings were requested on an auxiliary basis.
- IV. In its preliminary opinion the Board tended to agree with the examining division on the issues of conciseness and inventive step. The Board also raised some additional clarity objections under Article 84 EPC. In a reply, the appellant filed a new second auxiliary request together with arguments in favour of clarity and inventive step.

V. The Board arranged for oral proceedings to be held. In the communication accompanying the summons, the Board addressed the appellant's inventive step arguments. In a response, the appellant announced that nobody would attend the oral proceedings. The oral proceedings were thus cancelled.

VI. The main request includes *inter alia* the following independent claims:

"1. A system for recommending wellness products, the system comprising:

means for receiving via the Internet at least one of a gender, age, wellness goal, medical condition, and biometric indicator for a user; and

means, responsive to the one of the gender, age, wellness goal, medical condition, and biometric indicator for the user and responsive to at least one scientific efficacy rating for a product ingredient contained in one or more ingestible wellness products in a database, for recommending a set of two or more wellness products to the user via an electronic device."

"2. A server for providing wellness product recommendations to users of one or more of user access devices, wherein the server is configured:

to receive at least one of a gender, age, wellness goal, medical condition, and biometric indicator for a user;

to identify one or more wellness products from a database of wellness products, based on at least one

scientific efficacy rating for a product ingredient contained in each product,

to output information regarding one or more of the identified wellness products to a device associated with the user, least one of the [sic] for recommending a set of two or more wellness products to the user via an electronic device."

"3. A method comprising:

defining in a memory a set of two or more product ingredients based on their respective scientifically determined efficacies for advancing a wellness goal or for treating or preventing a medical condition;

defining a set of two or [sic] wellness products, with each wellness product indicated as containing at least one ingredient in the set of product ingredients; and

presenting at least one of the two or more wellness products to a user for potential purchase."

"4. A non-transient machine-readable medium carrying:

a first set of machine-executable instructions for defining in a memory a set of two or more product ingredients based on their respective scientifically determined efficacies for advancing a wellness goal or for treating or preventing a medical condition; and

a second set of machine-executable instructions for defining a set of two or [sic] wellness products, with each wellness product indicated as containing at least one ingredient in the set of product ingredients."

"5. A non-transient machine-readable medium carrying a data structure, the data structure comprising:

a wellness product identifier;

an ingredient identifier logically associated with the product identifier, wherein the ingredient identifier is associated with an ingredient contained in the a [sic] product associated with the wellness product identifier; and

an ingredient efficacy indicator logically associated with the ingredient identifier, wherein the indicator indicates a scientific efficacy of the ingredient in promoting a well goal [sic] or treating or preventing a medical condition."

"8. An ecommerce system for over-the-counter health and fitness products, the system comprising:

means for determining the gender of a user; and

means, responsive to the determined gender of the user, for presenting a set of health and fitness products in a database to the user via an electronic device, wherein products in the set that are not scientifically recognized as effective for the identified gender are excluded or indicated as not recommended for the user, wherein the system may further include:

means for determining an age of the user; and

wherein products that are not scientifically recognized as effective for the determined gender and the determined age of the user are excluded or indicated as not recommended for the user."

"9. An ecommerce system for over-the-counter health and fitness products, the system comprising:

means for determining a medical condition of a user;
and

means, responsive to the identified medical condition of the user, for presenting a set of health and fitness products in a database to the user via an electronic device, wherein products in the set that are scientifically recognized as ineffective or contraindicative for the determined medical condition are excluded from the set or indicated as not recommended for the user."

"10. An ecommerce system for over-the-counter health and fitness products, the system comprising:

means for determining a medical condition of a user;

means for determining a fitness goal of the user; and

means, responsive to the determined medical condition and the determined fitness goal, for presenting a set of health and fitness products in a database to the user via an electronic device, wherein each product in the presented set is associated with a scientific efficacy rating and presented in rank order of efficacy for the fitness goal and/or medical condition of the user,

wherein products in the set that are scientifically recognized as ineffective for the fitness goal or contraindicative for the determined medical condition may be excluded from the set or indicated as not recommended for the user."

"12. An ecommerce system comprising:

a database of over-the-counter health and fitness products; and

means, responsive to a user profile, for recommending a set of one or more products from the database to a user associated with the user profile, based on independently assessed efficacy of ingredients of the products; and

means for accepting an online order for one or more of the recommended set of products from the user via an electronic device, wherein the system may further comprise:

means for awarding loyalty points to the user for the online order; and

means for sharing a portion of a user payment for the online order with a fitness club, personal trainer, massage therapist, or healthcare provider identified by the user, wherein the fitness club, personal trainer, massage therapist, or healthcare products are not retailers or wholesalers of the presented products."

"13. A memory device having stored thereon instructions for recommending health and fitness products based on efficacy ratings of ingredients in the products, wherein the memory device may further comprise one or more data structures as described herein."

"14. A method comprising receiving user profile data and inferring a medical condition or wellness goal and in response recommending one or more over the counter

wellness products based on efficacy ratings for the products relative to the inferred medical condition or wellness goal."

VII. The sole independent claim (claim 1) of the first auxiliary request is identical to claim 1 of the main request.

VIII. The sole independent claim of the second auxiliary request reads:

"1. A system for recommending wellness products, the system comprising:

means for receiving via the Internet at least one of a wellness goal and medical condition for a user; and

a recommendation engine, responsive to the one of the wellness goal and medical condition for the user and responsive to at least one scientific efficacy rating for the one of the medical condition and wellness goal for a product ingredient contained in one or more ingestible wellness products in a database, for recommending a set of two or more ingestible wellness products to the user via an electronic device based on the one of the wellness goal and medical condition for the user and based on the at least one scientific efficacy rating, wherein the at least one scientific efficacy rating is derived from medical evidence from millions of published scientific reports and clinical studies."

Reasons for the Decision

1. The invention

The invention concerns recommending wellness products, such as nutritional supplements or vitamins, that are effective for a user's medical condition or wellness goal (page 5, lines 6 to 15 of the published application).

The recommendation of products is based on the efficacy of their ingredients as obtained from scientific reports or clinical studies (page 16, lines 15 to 26).

2. Main request - clarity and conciseness

2.1 The Board agrees with the examining division that the claims of the main request are not concise (Rule 43(2) EPC).

2.2 The Board does not agree with the appellant's arguments that the independent claims describe interrelated aspects of the same invention or different solutions to the same problem.

2.3 Rule 43(2) EPC admits multiple independent claims in the same category only under certain conditions.

Firstly, under paragraph (a) if they relate to a plurality of interrelated products. This only applies to different objects that complement each other or work together to realise the invention (T 56/01 - *Network connection card/BELLSOUTH*, point 4.1; T 671/06, point 5.1). However, in the Board's view the systems of

claims 1, 2, 8 to 10, and 12 do not interact with each other. Rather, they are completely self-contained in performing the invention and seem to either comprise different aspects of the same system or define the same invention in different terms.

The same applies to the independent claims in the other two categories.

Secondly, under paragraph (c) if they provide alternative solutions to a particular problem. However, claims 1, 2, 10, and 12, which all relate to recommending wellness products, overlap considerably despite using different terms for many of the common features. Therefore, the Board considers that these claims do not relate to "alternative" solutions of the same problem, but to the same solution with a different level of detail (see T 56/01 *supra*, point 4.3). In contrast, claims 8 and 9 relate to a different problem, namely to *not recommending* wellness products. Hence, these claims do not provide alternative solutions to the *same* problem either.

The same applies to the independent claims in the other two categories.

2.4 Moreover, the Board considers that the individual independent claims are defined in overly broad and functional terms and are unclear.

Taking just one example, in claim 1, and most of the other claims, the wording "scientific efficacy rating [of product ingredients]" is unclear, as it lacks an established meaning in the art and the claim neither defines what is "scientific" nor what the efficacy is for. Since the medical condition and wellness goal are only optional, it is also unclear what the wellness products are recommended for.

2.5 Accordingly, the main request lacks clarity and conciseness (Article 84 and Rule 43(2) EPC).

3. First auxiliary request - clarity

Claim 1 of this request is identical to claim 1 of the main request. Accordingly, it lacks clarity (Article 84 EPC) for the reasons given under point 2.4 above.

4. Second auxiliary request - inventive step

4.1 Claim 1 of the second auxiliary request clarifies that the recommended products are for a user's wellness goal or a medical condition and that the "scientific efficacy rating" of a product ingredient is derived from medical evidence from published scientific reports and clinical studies. This request was filed in response to the Board's clarity objections raised for the first time in the communication under Rule 100(2) EPC. The Board, therefore, decided to admit the request into the proceedings (Article 13(1) RPBA).

4.2 The examining division considered that the invention, albeit as claimed in the main request, related to a non-technical method whose technical implementation was obvious when starting from a general-purpose networked computer system. The claimed technical features were also said to be known from D1.

4.3 The appellant argued that selecting wellness products that were effective for a particular medical condition or wellness goal was technical. Unlike D1 or standard medical practice, the recommended products in claim 1 were based on the efficacy of the products' ingredients for the user's wellness goal or medical condition, not

on the efficacy of the entire products. Hence, the invention provided a *"better recommendation of products"*, which were *"likely to be beneficial for the user defined goal"*.

- 4.4 The Board doubts that recommending wellness products is a technical problem. But regardless of this, the Board considers that the solution in claim 1 is not inventive because, at the level of generality claimed, it merely automates standard medical practice in a straightforward manner. Health practitioners typically recommend medical products based on their active ingredients. When doing so, they rely on the ingredients' efficacy, which is usually established through clinical studies. The restriction to "millions of published scientific reports and clinical studies" does not, in the Board's view, provide a technical limitation as the amount of literature is inconclusive in respect of the reliability of the literature's content.

Thus, the only technical features claim 1 adds to this known procedure are for its implementation by using the Internet and a "recommendation engine". In the Board's judgement, however, this implementation amounts to a straightforward automation in a general-purpose computing system, which would have been obvious to the skilled person.

- 4.5 Even if claim 1 was interpreted in light of the description, it would still not involve an inventive step. The algorithm in the description is based on the assumption that the effect of the ingredients is additive, i.e. that a product's efficacy is proportional to the number and efficacy of its ingredients (page 25). This, however, is a heuristic

assumption. In reality, ingredients often interact with each other and may either inhibit or enhance each other's effects. Consequently, when comparing two products, the product with more or more effective ingredients is not necessarily the more effective one.

- 4.6 Hence, the Board considers that the effect put forward by the appellant, i.e. providing a better recommendation of products, is not reliably achieved and, therefore, cannot be taken into account for inventive step (see e.g. T 0537/04 - *Slimmer's calculator/WEIGHT WATCHERS*, point 10).
- 4.7 Accordingly, claim 1 of the second auxiliary request lacks an inventive step (Article 56 EPC).
5. As none of the appellant's requests are allowable, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated