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**Datasheet for the decision  
of 18 January 2022**

**Case Number:** T 0541/19 - 3.5.05

**Application Number:** 13818810.7

**Publication Number:** 2943850

**IPC:** G06F3/00, G09B19/00

**Language of the proceedings:** EN

**Title of invention:**

EXERCISE DEMONSTRATION DEVICES AND SYSTEMS

**Applicant:**

Akopian, Aram

**Headword:**

Replaceable musical accompaniment/AKOPIAN

**Relevant legal provisions:**

EPC Art. 56

RPBA Art. 12(4)

**Keyword:**

Inventive step - main request (no)

Late-filed request - request could have been filed in first  
instance proceedings (yes) - admitted (no)



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Case Number: T 0541/19 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 18 January 2022**

**Appellant:** Akopian, Aram  
(Applicant) 8 Arakir 51st Street  
Yerevan 0037 (AM)

**Representative:** Brand Murray Fuller LLP  
50 Eastcastle Street  
London W1W 8EA (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 5 December 2018  
refusing European patent application No.  
13818810.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** E. Konak  
F. Blumer

## **Summary of Facts and Submissions**

I. The appeal is against the examining division's decision to refuse the application. The examining division decided that claim 1 of the sole request then on file did not involve an inventive step (Article 56 EPC) with regard to the following document:

D1: US 2004/103222

II. With his statement setting out the grounds of appeal, the appellant maintained this request as his main request and filed a first auxiliary request. He requested that the decision be set aside and that a patent be granted on the basis of one of these requests. He requested oral proceedings as an auxiliary measure.

III. In its preliminary opinion issued in preparation for the oral proceedings, the board raised objections under Article 56 EPC and informed the appellant that it was minded not to admit the first auxiliary request into the appeal proceedings.

IV. In his reply, the appellant withdrew his request for oral proceedings. No further response to the board's preliminary opinion was provided. The scheduled oral proceedings were thus cancelled.

V. Claim 1 of the main request reads as follows:

"A system comprising a robot programmed to demonstrate physical exercises, wherein the robot can connect through the Internet to a remote server, with which it

can exchange data between the remote server's database and the robot's memory, whereby a musical accompaniment of an exercise is provided from the database, the musical accompaniment having a rhythm, the musical accompaniment not being permanently fixed and being replaceable, whereby the musical accompaniment is matched to an exercise from the database-provided musical accompaniments having a rhythm, determined by means of beats per minute calculation, suitable for the said exercise."

VI. Claim 1 of the first auxiliary request reads as follows (with the additions with respect to the main request underlined):

"A system comprising a robot programmed to demonstrate physical exercises, the robot comprising:

a. a microcontroller (21 );

b. memory (22);

c. motion parts (23);

d. speakers (24);

e. a remote control (25), wherein the microcontroller, the memory, the motion parts and the speakers are permanently connected and contained within one housing, wherein the robot can connect through the Internet to a remote server, with which it can exchange data between the remote server's database and the robot's memory, whereby a musical accompaniment of an exercise is provided from the database, the musical accompaniment having a rhythm, the musical accompaniment not being permanently fixed and being replaceable, whereby the musical accompaniment is matched to an exercise from the database-provided musical accompaniments having a rhythm, determined by means of beats per minute calculation, suitable for the said exercise."

## **Reasons for the Decision**

1. Main request - Inventive step (Article 56 EPC)
  - 1.1 The contested decision found claim 1 of the main request to lack an inventive step with regard to D1.
  - 1.2 The appellant objected to D1 being an appropriate choice for the closest prior art since D1 was in a different technical field with a different purpose, namely multimedia input output devices for the purpose of communication between a user and a computer, whereas the technical field of the invention at hand was "physical exercise demonstration devices".
  - 1.3 The board does not share this view. First, there is no such technical field as "physical exercise demonstration devices". A television does not fall into different technical fields depending on the content of the TV programme it displays (e.g. physical exercise programmes versus cooking programmes). It could legitimately be argued that robotics and HCI (human-computer interaction) are not exactly the same technical field, but they are obviously related technical fields. Robots require programming and interact with humans. The closest prior art can legitimately be chosen from a technical field related to the claimed invention. Therefore, D1 is indeed an appropriate choice for the closest prior art.
  - 1.4 The appellant argued that device 7 in D1 did not play music or demonstrate physical exercises and that its movements were simple movements of the arms, head or mouth. However, what is relevant from a technical point of view, i.e. for the assessment of inventive step, is

whether this device can play audio and move. It clearly does both. Whether the content of the audio played is "music" or whether a movement qualifies as "physical exercise" are not technical distinctions.

- 1.5 Selecting an audio file which has a certain rhythm or beats per minute is per se technical, but the description acknowledges that the invention uses prior-art methods for this purpose (see the description, paragraphs [51] and [52]).
- 1.6 Regarding the issue of the rhythm of the selected musical accompaniment being suitable for an exercise, the appellant argued that this had the technical effect of making it considerably easier for the user to follow the exercise movements and solved the objective technical problem of providing an exercise routine with a musical accompaniment which is straightforward for the user to follow and repeat. He gave the example of aerobics to illustrate this point. The board does not agree. Whether a user finds it easy or difficult to follow an exercise is not a technical but a psychological matter. Aerobics is not technical. Therefore, this distinguishing feature does not solve any objective technical problem.
- 1.7 For these reasons, claim 1 of the main request does not involve an inventive step (Article 56 EPC).
2. Admissibility of the first auxiliary request (Article 12(4) RPBA 2007)
  - 2.1 In accordance with Article 12(4) RPBA 2007, the board has discretion to hold inadmissible requests which could have been presented in the examination proceedings.

- 2.2 In the case at issue, the appellant was informed of the preliminary opinion of the examining division that his sole request (i.e. the main request at hand) did not meet the requirements of Article 56 EPC by the examining division's email of 31 October 2018, which is attached to the minutes dated 2 November 2018 of the telephone consultation of 31 October 2018. The appellant replied to this preliminary opinion by the email of 5 November 2018, which is attached to the minutes of the oral proceedings. In this email, he argued that the examining division did not appreciate the crucial difference between the robot of the current application and the device of D1 that, whereas the device of D1 required an intermediary to connect to the internet, the robot of the application at issue could connect directly and could thus be used in isolation. He stated that he could amend claim 1 accordingly to demonstrate this difference. However, he did not do so. Instead, the appellant first filed the corresponding amendments as the first auxiliary request together with the statement setting out the grounds of appeals.
- 2.3 Therefore, since the first auxiliary request could have been presented in the examination proceedings, the board does not admit it into the appeal proceedings (Article 12(4) RPBA 2007).
3. Since there is no allowable request, the appeal has to be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated