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**Datasheet for the interlocutory decision
of 30 June 2023**

Case Number: T 1538/19 - 3.5.01

Application Number: 12852816.3

Publication Number: 2786334

IPC: G06Q40/02

Language of the proceedings: EN

Title of invention:

CONFIGURABLE BILLING WITH SUBSCRIPTIONS HAVING CONDITIONAL
COMPONENTS

Applicant:

Zuora, Inc.

Headword:

Configurable billing/ZUORA

Relevant legal provisions:

EPC R. 6(4), 6(5), 139

Keyword:

Correction of error - sufficiently proven what was really
wanted (yes)

Decisions cited:

G 0001/12, J 0008/19, T 0317/19, T 0444/20



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 1538/19 - 3.5.01

I N T E R L O C U T O R Y D E C I S I O N
of Technical Board of Appeal 3.5.01
of 30 June 2023

Appellant: Zuora, Inc.
(Applicant) 3400 Bridge Parkway, Suite 101
Redwood City, CA 94065 (US)

Representative: Hedges, Martin Nicholas
AA Thornton IP LLP
Octagon Point
5 Cheapside
London EC2V 6AA (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 23 November
2018 refusing European patent application No.
12852816.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: M. Höhn
C. Schmidt

Summary of Facts and Submissions

- I. This is an appeal against the examining division's decision to refuse European patent application No. 12 852 816.3, posted on 23 November 2018.

- II. On 22 January 2019, the applicant (hereinafter: appellant) filed a Notice of Appeal online (via CMS) in which it indicated that "With the online submission, we are requesting that the appeal fee (€ 1880) be debited from our deposit account". This amount also appeared in the "Amount to be paid" box on the accompanying EPO Form 1038 and was actually debited.

- III. In a communication dated 25 February 2020, the Board informed the appellant that, under Article 2(1), item 11 of the Rules relating to Fees, the reduced fee of EUR 1880 for appeal was due only on condition that the appellant was either a natural person or an entity referred to in Rule 6(4) and (5) EPC (i.e. a small or medium-sized enterprise, a non-profit organisation, a university or a public research organisation). The appeal fee for any other entity was EUR 2255. Since it was not immediately evident whether or not the appellant was an entity within the meaning of Rule 6(4) and (5) EPC, the Board asked the appellant to clarify this point.

- IV. On 6 March 2020, the appellant filed a further EPO Form 1038 requesting a debit of EUR 2255 (since payment of the difference of EUR 375 did not seem possible) and requested a correction of an error under Rule 139 EPC on the original EPO Form 1038 and in the Notice of

Appeal to reflect that the correct appeal fee had been paid.

- V. The appellant argued that it never had the intention to pay the reduced appeal fee. Neither in the Notice of Appeal nor in the statement setting out the grounds of appeal had the appellant claimed to be a natural person or an entity referred to in Rule 6(4) and (5) EPC. It referred to a declaration of the professional representative in charge of the filing of the appeal and the payment of the appeal fee and one of his assistant.

- VI. In a further communication, the Board set out its preliminary opinion that the appellant's request was not allowable.

- VII. In a response, the appellant filed a supplemental declaration of its professional representative dated 3 September 2020. In a further response, the appellant argued that the facts of the case on hand were similar to those underlying the decision T 444/20 of 22 January 2021 and that both cases should be treated equally.

Reasons for the Decision

- 1. The request for correction of the error under Rule 139 EPC on EPO Form 1038 and in the Notice of Appeal is admissible and allowable.

- 2. According to Rule 139, first sentence EPC, linguistic errors, errors of transcription and mistakes in any

document filed with the EPO may be corrected on request. The Boards of Appeal have accepted that errors regarding payment of the appeal fee, in particular the amount, on online forms can be corrected under Rule 139, first sentence EPC (see decisions J 8/19, T 317/19 and T 444/20, all referring to G 1/12).

3. In G 1/12, the Enlarged Board of Appeal has summarised the principles developed by the Boards of Appeal with regard to corrections under Rule 139, first sentence EPC (point 37 of the reasons):

- (a) The correction must introduce what was originally intended. The possibility of correction cannot be used to enable a person to give effect to a change of mind or development of plans. It is the party's actual rather than ostensible intention which must be considered.

- (b) Where the original intention is not immediately apparent, the requester bears the burden of proof, which must be a heavy one.

- (c) The error to be remedied may be an incorrect statement or an omission.

- (d) The request for correction must be filed without delay.

4. Despite its preliminary opinion the Board is convinced that by filing the appeal the appellant had the intention to pay the full appeal fee. In its supplemental declaration of 3 September 2020 the appellant's professional representative convincingly stated that it had never been his intention to pay the reduced fee - because his client never gave such an

instruction - and that the error occurred simply because a member of the support staff ticked the wrong box on the form which he then overlooked. This is also in line with point 5 of the declaration of the representative's assistant, dated 6 March 2020. The Board has no reason to mistrust these statements. By contrast, nothing in the file indicates that the payment of the full fee could not have been intended. The Board therefore concludes that, in this case, the submitted evidence meets the requirements set out by the Enlarged Board.

5. Thus the requirements (a), (b) and (c) set out in G 1/12 with regard to corrections under Rule 139 EPC (see point 3 above) are met. Furthermore, since the appellant filed the request for correction only one week after having received the Board's communication indicating for the first time that the prescribed appeal fee was not validly paid, the request is also filed in due time (see requirement (d) of G 1/12 cited above under point 3).
6. As a consequence, the appeal is retroactively deemed to have been filed, the correction under Rule 139 EPC having effect *ex tunc* (see G 1/12, reasons 37; T 317/19, reasons 2.5).
7. The Board notes that the appellant has now overpaid the appeal fee by the amount of EUR 1880 (see point IV, above), which is to be reimbursed.

Order

For these reasons it is decided that:

1. The request for correction under Rule 139 EPC is allowed.
2. The appeal is deemed to have been filed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated