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**Datasheet for the decision  
of 18 July 2023**

**Case Number:** T 1685/19 - 3.4.03

**Application Number:** 08798704.6

**Publication Number:** 2191383

**IPC:** G06Q10/00, G06F15/02, G07F17/32

**Language of the proceedings:** EN

**Title of invention:**  
TRACKING, CORRELATING, AND PROCESSING MULTI-USER ONLINE  
SESSIONS

**Applicant:**  
Sony Computer Entertainment America LLC

**Headword:**

**Relevant legal provisions:**  
EPC Art. 56  
RPBA Art. 12(4)  
RPBA 2020 Art. 12(2)

**Keyword:**

Inventive step - (no) - mixture of technical and non-technical features

Late-filed request - submitted with the statement of grounds of appeal - request could have been filed in first instance proceedings (yes) - admitted (no)

**Decisions cited:**

T 0258/03

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1685/19 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 18 July 2023**

**Appellant:** Sony Computer Entertainment America LLC  
(Applicant) 2207 Bridgepointe Parkway  
San Mateo, CA 94404 (US)

**Representative:** D Young & Co LLP  
120 Holborn  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 22 January 2019  
refusing European patent application No.  
08798704.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairwoman** D. Prietzel-Funk  
**Members:** M. Stenger  
A. Böhm-Pélissier

## **Summary of Facts and Submissions**

- I. The appeal concerns the decision according to the state of the file of the Examining Division to refuse European application no. 08 798 704. The contested decision refers to the Examining Division's communication dated 9 February 2018. In this communication, which was sent together with the summons to oral proceedings, the Examining Division set out that the then only request lacked an inventive step under Article 56 EPC starting from D4 (US 2006/287096 A1). In addition, the decision refers to D2 (US 6 101 480 A) and D5 (US 2004/097287 A1). D1 (US 2006/200374 A1) was discussed during the examination procedure. D3 (US 2007/201482 A1) was cited in the supplementary European search report.
- II. With its statement setting out the grounds of appeal, the appellant requested that the contested decision be set aside and that a patent be granted on the basis of the claims as refused by the Examining Division (main request) or on the basis of auxiliary requests 1 or 2 filed with the statement setting out the grounds of appeal.  
In the event that the Board were not minded to allow the main request, oral proceedings before the Board were requested.
- III. After having received a communication setting out the preliminary opinion of the Board, the appellant, with letter dated 9 June 2023, submitted arguments and, with letter dated 4 July 2023, indicated that neither the appellant nor the representative would be attending the oral proceedings scheduled for 11 July 2023 and withdrew the request for oral proceedings.

IV. Claim 1 of the main request has the following wording (labeling a), b), ... inserted by the Board):

- a) *A method for scheduling an online session in a system which maintains profile data associated with users, the profile data defining*
- b) *user interests and*
- c) *times that the user is likely to be available, the method comprising:*
- d) *monitoring online behaviors of the potential users; and*
- e1) *developing the profile data of the potential users to detect*
- e2) *user interests*
- e3) *and times that the user is likely to be available*
- e4) *based upon the online behaviors of the potential users;*
- f) *determining desired time slots for an online session;*
- g1) *determining potential users to participate in the online session by searching profile data associated with a requesting user and other users to determine potential users as those users*
- g2) *who share common interests with the requesting user*
- g3) *and whose profile indicates that they are likely to be available at a desired time slot;*
- h) *sending invitations to the potential users;*
- i) *receiving responses to the invitations thereby identifying participants for the online session; and*
- j) *entering the online session into the calendars of the participants of the online session.*

- V. Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that feature e4) is replaced by feature e4') as follows (labeling e4') and underscore of added aspects added by the Board):

e4') *based upon the online behaviors of the potential users, the detected times including session durations;*

- VI. Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that features d), e3) and f) are replaced by features d'), e3') and f') as follows (labeling d'), e3') ... and underscore of added aspects added by the Board):

d') *monitoring online behaviors of the potential users including when the potential users log onto a server, how long the potential users are online and what activity the potential users are engaged in during a session; and*

e3') *and respective probabilities of times that the user is likely to be available*

f') *determining desired time slots for an online session by estimating from the probabilities of times that a user is likely to be available the chance that all players of the online session will be online at a desired time slot;*

- VII. The relevant arguments of the appellant may be summarized as follows

(a) Main request

D4 related to events already in progress, while the application related to managing invitations for future events. The features distinguishing the subject-matter of independent claim 1 from D4 did not relate to mere administrative considerations, but reduced network traffic and the burden of the system managing the invitations.

(b) Auxiliary requests 1 and 2

Auxiliary requests 1 and 2 could not have been filed during the first instance proceedings, because the Examining Division had, for all intents and purposes, indicated that it would not accept any amendments to the claims.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The application

The application concerns a method for scheduling online sessions. For this purpose, user profiles are created using the monitored online behaviour of potential participants. When a particular user requests an online session, the user profiles are used to determine which other users could be interested in joining and are likely to be available for this online session. These are then invited and, after they have replied, the online session is entered into their calendars.

3. Closest prior art, D4

D4 concerns a method for setting up online game sessions where potential participants are invited based

upon their user profiles which are created by tracking the users' activities (see e.g. paragraphs [10], [49], [58] and [70]). D4 thus relates to the same purpose as the application and discloses most of its technical features. Therefore, D4 is suitable to represent the closest prior art, in line with the finding of the Examining Division.

4. Claim 1 of the main request, inventive step

4.1 Distinguishing features

In substance, the Examining Division identified the following features as distinguishing the subject-matter of claim 1 of the main request from D4

- properties that the user is likely to share with other users are the times that the user is likely to be available;
- desired time slots for an online session are determined;
- the profile furthermore indicates that the users are likely to be available at the desired time slot;
- the online session is entered into the calendars of the participants of the online session.

The appellant did not contest this finding of the Examining Division and the Board, in particular in view of paragraphs [10], [49], [58], [63] to [68] and [70] of D4, sees no reason to disagree.

The Board notes that the distinguishing features identified by the Examining Division correspond to features c), e3), f), g3) and j) as defined above.



#### 4.2 View of the Examining Division

The Examining Division accepted that although D4 tracked time data, it was not used for the matchmaking. However, it set out that the administrative, non-technical online time data would be given to the skilled person in the form of a parameter for the matchmaking as a requirement for implementation. In the absence of any technical details concerning the implementation, this was to be regarded as not involving an inventive step.

#### 4.3 Submissions of the appellant

The appellant submitted that technical problems present in D4 were handling the large number of potential players who might join an online session, invitations to candidate session joiners who might be uninterested or unavailable and that only players currently playing were eligible to be invited to join.

The application solved these problems by potentially contacting a lower number of potential users in line with their predicted individual schedules. Individual users would thus not receive irrelevant or unwanted requests incompatible with their availability, which could cut down on network traffic. Reducing the number of invitations a user will receive while still allowing them to select the activities they are predicted to enjoy most was a clear technical benefit over the prior art. The burden upon the system handling the invitations would be reduced, offering a clear technical advantage.

The appellant furthermore emphasized that D4 related to the creation of an immediate online session. D4 contained no suggestion that the organised game session might take place in the future rather than in the present. Thus, there was no planning of a specific time for the event and D4 was an unsuitable starting point for scheduling events at a point of time in the future.

Further, starting from D4 which related to finding the best active session to join, the skilled person would not consider the content of D1, which related to scheduling activities between users having on-line calendar information available to a network.

#### 4.4 Findings of the Board

##### 4.4.1 Event organized in the future, entry into calendars - features f) and j)

Generally, the time at which an event is to be organised, e.g. in a week's time instead of tomorrow, or more generally in the future instead of in the present, depends on organisational circumstances. Such organisational circumstances may include, for instance, considerations as to the availability of resources (e.g. is the car required to go to the beach available right now or only tomorrow) or legal restrictions (an event for children, for example, may have end before 9 p.m. depending on the age of the participants).

In any case, organisational circumstances like that are non-technical requirements imposed on the organizer (and thus, in an environment where computers are used, on the skilled person) which *per se* do not achieve any technical effect. Therefore, contrary to the submissions of the appellant, it does not matter that

D4 generally refers to immediate events, or that only players currently playing are eligible to join. Consequently, the skilled person would readily adapt the system of D4 to scheduling events in the future (or, in the language of claim 1, at a desired time slot as defined in feature f)) if it received such a requirement, despite the submission of the appellant that D4 contained no suggestion that the organized event could be in the future and that D4 was an unsuitable starting point for scheduling events in the future.

In addition, once D4 is adapted to schedule events in the future, entering such events into the calendar of the participants as defined in feature j) is (at least at the abstract level at which it is claimed) only a further administrative requirement given to the skilled person for implementation.

4.4.2 Reducing the number of invitations, network traffic and burden on the system managing the invitations - features c), e3) and g3)

Sending invitations only to persons who are likely to be available and not to persons who are unlikely to be available (and thereby, in the present case and as mentioned by the appellant, reducing the number of candidate session joiners/potential players) is *per se* not a technical concept, but rather an organisational or administrative one.

In addition, this concept has been generally known for a long time. For instance, it is common sense not to ask football players to go to the cinema on a day on which they have training, because it is unlikely that they are available.

In that manner, the number of invitations sent and received is reduced, and in a computerized system, this reduces network traffic and the burden of the system handling the sending of invitations, as submitted by the appellant. However, this effect would be achieved by a modification of the underlying organisational or administrative concept (which in addition was generally known) as set out above, thereby circumventing a technical problem rather than solving it by technical means. The corresponding features c), e3) and g3) thus cannot contribute to the technical character of the subject-matter claimed and cannot therefore be taken into account for assessing inventive step (see also decision T 258/03, Headnote II. and section 5.7 of the reasons).

Consequently, features c), e3) and g3) equally have to be seen as administrative requirements or constraints given to the skilled person for implementation.

#### 4.4.3 Objective technical problem

It follows from the above that the objective technical problem can be formulated as how to implement the non-technical requirements of additionally taking into account the likely availability of the potential users at a desired time in the future as expressed by features c), e3), f), g3) and j) in the system of D4. This is in line with what the Examining Division set out.

#### 4.4.4 Implementation/adaptation of D4

Scheduling events taking place in the future using computer systems was generally known at the priority date of the application (see, e.g. D1 to D3, abstracts, and D5, paragraphs [47] and [48]). Adapting the system

of D4 to scheduling events in the future and to enter them into the calendars of the participants, thereby implementing features f) and j), would thus not have presented any technical difficulty to the skilled person.

The times when the potential users are likely to be available mentioned in distinguishing features c), e3) and g3) are detected based upon the online behaviours of the potential users according to feature e4), which are monitored according to feature d). These features are formulated in a very abstract manner and (in combination with features c), e3) and g3)) effectively do not go beyond the mere wish/the mere idea to determine these times from the monitored online behaviour.

Nevertheless, monitoring online behaviour of users by means of computers can be considered to be technical. Such monitoring was, however, not only generally known at the priority date of the application, but also e.g. from D4. As noted by the Examining Division, D4 even discloses monitoring or tracking time aspects of the user behaviours. For instance, the amount of time spent online is mentioned (paragraph [4]) and the time played is part of the profile summary of the players (paragraphs [61] and [63]). Determining from this data the likely availability of a player at a given time and including it in the user profile as defined in features c), e3) and g3) would not have presented any technical difficulty to the skilled person in view of its common general knowledge alone.

As a mere example, the Board notes that D1 explicitly mentions the determination of the likely availability of persons from history data (see paragraph [62]). However, as set out above, the Board holds that the skilled person would not have required the teaching of

D1 to do so in the system of D4. Instead, its common general knowledge would have sufficed. Thus, the submission of the appellant that the skilled person starting from D4 would not have considered the content of D1 does not apply.

#### 4.4.5 Conclusion

It follows from the above that the skilled person, starting from D4, would have had no difficulties to solve the objective technical problem of implementing the non-technical requirements of additionally taking into account the likely availability of the potential users at a desired time in the future in the system of D4.

Therefore, it would have implemented features c), e3), f), g3) and j) into the system of D4 without the exercise of an inventive activity thereby arriving at the subject-matter of claim 1 of the main request without the exercise of an inventive step within the meaning of Article 56 EPC.

#### 4.5 Additional remark

Irrespective of the above and as a side remark, the Board notes that according to feature h), invitations are sent to the potential users. That is, the sending of invitations is not limited to the potential users determined to participate in the online session according to features g1)/g2)/g3). Instead, according to the wording of the claim, invitations are sent to all potential users, i.e. to the ones defined in features d), e1) and e4) whose online behaviour is monitored and whose profile data is developed.

Thus, the effect referred to by the appellant that a lower number of users is contacted, i.e. that less invitations are (potentially) sent out, is not even necessarily achieved by the features of claim 1.

5. Auxiliary request 1

The claims of auxiliary request 1 were submitted for the first time with the statement setting out the grounds of appeal. Under Article 12(4) RPBA 2007 which applies here, the Board has the discretion not to admit requests that could and should have been presented in the first instance proceedings.

The appellant submitted that the Examining Division, under the header "Concluding fundamental observations" of the communication dated 9 February 2018, had set the requirement for an amendment to not be rejected at a level that would have been impossible to meet, irrespective of the merits of any such amendment. The claims of auxiliary request 1 could thus not have been presented in the first instance proceedings as the applicant was, for all intents and purposes, informed that the Examining Division would not accept any amendments to the claims.

The Board accepts that the Examining Division, under the header "Concluding Fundamental Observations", had stated that it appeared that some of the objections raised could not be overcome by amendment. In addition, it had stated that further amendments which *prima facie* did not appear to overcome the aforementioned deficiencies might be rejected under Rule 137(3) EPC. These statements could be interpreted as indicating that the Examining Division was of the (preliminary)

opinion that it would be difficult to make amendments that would be accepted.

However, the expressions "there appears to be no possibility of overcoming them by amendment" and "Rule 137(3) EPC may be invoked" make it clear that the Examining Division had not yet reached a final decision concerning that issue. In addition, the Examining Division had, under the same header, also explicitly drawn the attention of the applicant to the final date for making written statements and amendments in preparation for the oral proceedings.

Thus, the statements of the Examining Division referred to by the appellant can not be interpreted as precluding the acceptance of any amendments, contrary to the submissions of the appellant. Therefore, these statements should not have dissuaded the then applicant from filing amendments.

Moreover, the additional aspect of "the detected times including session durations" in feature e4') was not present in any of the claim sets filed during the first instance proceedings. The only possible basis therefor can be found in the description. This aspect was thus never assessed by the Examining Division. Its filing only with the statement setting out the grounds of appeal therefore makes a review of the decision under appeal as stipulated by Article 12(2) RPBA 2020 impossible in that respect because the examining division did not have an opportunity to set out its opinion on this aspect, which could then be reviewed in appeal. A corresponding request thus not only could, but should have been filed during the first instance proceedings, at the latest during the first instance oral proceedings.



Instead of submitting such a request, the then applicant chose to withdraw its request for oral proceedings. It thereby effectively renounced to the possibility to react to the objections of the Examining Division set out in the communication dated 9 February 2018 during the first instance proceedings by amended claims.

In view of the above, the Board does not admit auxiliary request 1 under Article 12(4) RPBA 2007.

6. Auxiliary request 2

The same considerations as set out above for auxiliary request 1 apply to auxiliary request 2 as well. Therefore, the Board does not admit auxiliary request 2 under Article 12(4) RPBA 2007 as well.

7. The main request does not fulfill the requirements of Article 56 EPC. Auxiliary requests 1 and 2 are not admitted by the Board under Article 12(4) RPBA 2007. Thus, the appeal must fail.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairwoman:



S. Sánchez Chiquero

D. Prietzel-Funk

Decision electronically authenticated