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Datasheet for the decision of 8 July 2022

Case Number: T 0022/20 - 3.5.05

Application Number: 10730712.6

Publication Number: 2446385

IPC: G06F19/00

Language of the proceedings: EN

Title of invention:
ADHERENCE INDICATION TOOL FOR CHRONIC DISEASE MANAGEMENT AND METHOD THEREOF

Applicants:
Roche Diabetes Care GmbH
F. Hoffmann-La Roche AG

Headword:
Time window of interest/ROCHE

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

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

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Case Number: T 0022/20 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 8 July 2022

Appellant: (Applicant 1)	Roche Diabetes Care GmbH Sandhofer Strasse 116 68305 Mannheim (DE)
Appellant: (Applicant 2)	F. Hoffmann-La Roche AG Grenzacherstrasse 124 4070 Basel (CH)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 4 July 2019 refusing European patent application No. 10730712.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	E. Konak
	E. Mille

Summary of Facts and Submissions

I. The appeal is against the examining division's decision to refuse the application on the grounds that the main request and the first auxiliary request did not meet the requirements of Article 54 EPC in view of the following document:

D1: WO 2006/072416 A2

II. With their statement setting out the grounds of appeal, the appellants maintained these requests and filed auxiliary requests 2 and 3. They requested that the decision be set aside and that a patent be granted on the basis of one of these requests. They requested oral proceedings as an auxiliary measure.

III. In its preliminary opinion issued in preparation for the oral proceedings, the board raised objections under Articles 84 and 56 EPC and informed the appellants that it was minded not to admit auxiliary requests 2 and 3.

IV. Oral proceedings were held before the board.

V. Claim 1 is identical in both the main request and auxiliary request 1 and reads as follows:

"An adherence indication tool measuring adherence to following or achieving prescribed therapy steps to achieve stated target goals for improved chronic disease self-management comprising:

a memory containing data collected when the activities were accomplished;

a user interface facilitating selection of a plurality of adherence units, each adherence unit containing a plurality of rules governing activities which need to be accomplished in order to complete the prescribed therapy steps, and inputting of a specified time window of interest for the collected data;

a process determining total number of adherence units in the collected data which fall within the specified time window of interest;

a process counting each of the adherence units in the specified time window of interest as an adhered unit when the collected data indicates the accomplished activities were in accordance to the rules;

a process determining adherence as a percentage of the count for the adhered units to the total number of adherence units for the specified time window; and

an output at least one of the determined adherence percentage and adherence count for the specified time window."

Claim 1 of auxiliary request 2 differs from claim 1 of the higher-ranking requests in that the following text was added after the user interface feature:

"wherein the specified time window of interest is defined by a starting time and date, and an ending time and date;"

Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that the following text was added after the user interface feature:

"wherein the user interface is used to set a sequence and timing of the activities contained in each of the adherence units;"

Reasons for the Decision

1. Main request and auxiliary request 1

1.1 The contested decision found claim 1 of both the main request and auxiliary request 1 to lack novelty over D1.

1.2 The appellants contested this finding and argued that the following features of claim 1 were new:

L5) a user interface facilitating selection of a plurality of adherence units, each adherence unit containing a plurality of rules governing activities which need to be accomplished in order to complete the prescribed therapy steps, and inputting of a specified time window of interest for the collected data;

L6) a process determining total number of adherence units in the collected data which fall within the specified time window of interest.

1.3 Regarding the terminology used in claim 1, the appellants explained that an "adherence unit" was to be understood as a set of rules governing activities which needed to be accomplished in order to complete a prescribed therapy, as stated in the claim. An example for a "selection of a plurality of adherence units" in a user interface was the selection of meal adherence 308 in Fig. 12 of the application. The selection of "Start Time" 304 and "End Time" 306 in the same figure was an example of inputting a time window of interest in the user interface.

1.4 The contested decision found that the lower part of the screen 7 displayed in Fig. 2 of D1 disclosed feature

L6). The appellants argued that D1, Fig. 2 disclosed "Overall BG measurements: 37%" with the explanation that "100% equals 7 BG a day" and with individual percentages displayed for adherence to measurements before breakfast, after breakfast, before lunch, after lunch, before dinner, after dinner and at bedtime. Taking these seven measurements every day was a preset rule. Imposing this kind of rule on the patient would yield imprecise analysis results if, for instance, the patient were to skip a meal and conclude that their adherence to BG measurement was low. Instead, feature L6) determined the number of adherence units in the collected data. Accordingly, it would count the number of meals actually taken in the collected data and thus yield more precise analysis results.

However, taking seven BG measurements a day at these specified times is a specific set of rules (in the wording of the application at hand: a specific "adherence unit") disclosed in the example of D1, Fig. 2. The appellants' example concerns a patient who follows a different set of rules, or a different "adherence unit", which gives them the freedom to skip a meal. Since claim 1 is not limited to a specific set of rules or "adherence unit", the example is irrelevant for the assessment of whether feature L6) is disclosed in D1. As far as the specific set of rules of D1, Fig. 2 is concerned, it is clear that in order to display adherence percentages for "January 2004" the number of "adherence units" within this time window has to be determined. Therefore, this feature is not new.

1.5 Regarding feature L5), the appellants argued that it was not directly and unambiguously derivable from the user interface displayed in D1, Fig. 2 that it allowed the adherence unit – or especially the time window of

interest – to be selected. Whereas D1, page 9, lines 14 to 17 referred to the time period "since the previous measurement was performed, or since the person last looked at the overview screen, or since a set time mark", it was not disclosed that the patient could select the time period, let alone the ending time of the time period. It could be that the set time mark was preset. The effect of the selection possibilities in the user interface of claim 1 was that data could be evaluated more precisely and reliably for variable time windows.

However, if the patient wants to view a certain statistic for a certain time period on collected data, it is obvious that they should specify the type of statistic and the time window that is of interest to them. Otherwise the tool cannot know what the user wants. Letting a user input what they want is the straightforward implementation of a user requirement to establish a certain statistic.

1.6 Therefore, the subject-matter of claim 1 of both the main request and auxiliary request 1 does not involve an inventive step (Article 56 EPC).

2. Auxiliary requests 2 and 3

Under Article 12(4) RPBA 2007, the board has discretion to hold inadmissible requests which could have been presented in the examination proceedings. In the case in hand, even though the appellants could have filed further auxiliary requests in the examination proceedings, they decided not to. Further auxiliary requests 2 and 3 were filed for the first time with the statement setting out the grounds of appeal. The board informed the appellants in its preliminary opinion that

under the circumstances in hand it was minded not to admit the requests.

The appellants did not comment on the board's preliminary opinion. Therefore, the board saw no reason to change its preliminary opinion and did not admit auxiliary requests 2 and 3.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated