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Datasheet for the decision
of 19 October 2023

Case Number:	T 0462/20 - 3.5.06
Application Number:	14179503.9
Publication Number:	2813977
IPC:	G06N5/04, G06F17/30
Language of the proceedings:	EN

Title of invention:
The FSTP expert system

Applicant:
Sigram Schindler Beteiligungsgesellschaft mbH

Headword:
FSTP expert system/SCHINDLER

Relevant legal provisions:
EPC Art. 84

Keyword:
Claims - clarity (no)

Case Number: **T 0462/20 - 3.5.06**

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 19 October 2023

Appellant: (Applicant)	Sigram Schindler Beteiligungsgesellschaft mbH Inselstrasse 24-26 14129 Berlin (DE)
Representative:	Sigram Schindler Beteiligungsgesellschaft mbH Inselstrasse 24-26 14129 Berlin (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 30 September 2019 refusing European patent application No. 14179503.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Jimenez
Members:	T. Alecu
	M. Domingo Vecchioni

Summary of Facts and Submissions

I.   The appeal is against the decision of the Examining
        Division. The application was refused for lack of
        clarity (Article 84 EPC).

II.   The Appellant requested with the statement of grounds
        of appeal that the decision of the Examining Division
        be set aside and that a patent be granted on the basis
        of one of the requests underlying the decision under
        appeal, i.e. a main request and an auxiliary request.

III.   In a communication accompanying a summons to oral
        proceedings the Board informed the Appellant inter alia
        that it tended to confirm the decision of the Examining
        Division as to a lack of clarity.

IV.   The decision was announced in oral proceedings held in
        the absence of the Appellant, duly summoned but not
        appearing (Article 15(3) RPBA 2020).

V.   Claim 1 of the main request defines:

        *A method for analyzing of a technical teaching TT.p
        claimed invention in a patent's or patent application's
        claim over at least one document.i (and the technical
        teaching TT.i it discloses), PTR (Pair of TT.p and
        Reference set) denoting the set of information that
        includes the technical teaching (TT.p) and the
        technical teaching (TT.i) of the at least one and these
        document.i,
        whereby a technical teaching (TT) identifies
        ▪ A, B, C, D,... as the elements of the technical
        teaching (TT.p) to be analyzed,*

▪ *A.i, B.i, C.i, D.i,... as the peer elements in the TT.i's (of document.i, i=1,2,3,...) to these TT.p elements, and*
▪ *X.).n, X.i).n as the fundamental formal facts of these elements X/X.i=A/A.i, B/B.i, C/C.i....N=1,2,3..., whereby the user of this method interacts with this method's application by a computer system, which*
▪ *repeatedly reads information from, writes it into, copies it to, or transforms it from/to/within this computer system's various memory sections via their various interfaces during executing the steps (a)-(e), whereby this information comprises items of a*
▪ *first kind, given by the user, comprising information of items of a technical teaching (TT.p or TT.i) and a document pertinent to it comprising documents of a National Patent System comprising a nation's patent law, patent precedents, patent authority's regulations and/or sworn-in technical experts, documents regarding ordinary skill in the art pertinent to TT.p or prior art documents, disclosed in natural language and/or graphics in terms determined by terms/notations used by these documents, which are input to the computer system by the user, and a*
▪ *second kind, the below (a)-(d), which are generated by the execution of this method's steps (a)-(d), and whereby applying this method comprises at least once executing any one of the steps (a)-(e), i.e. compiling*
  (a) as (a) -item at least one first kind item into a second kind item of at least one technical formal fundamental fact of TT.p or a TT.i by defining formal descriptions of the first kind items,
  (b) as (b) -item, a second kind item of at least one technical formal fundamental TT.i fact disclosing its peer TT.p fact,
  (c) as (c) -item, a second kind item of at least one combination of the TT.i's technical secondary

formal facts either basic or semantic or pragmatic fact(s) as a formal expression which is supposed to anticipate TT.p,
(d) as (d) -item, a second kind item of at least one relation between items of (a) to (c) and/or commenting on it/ them, and
(e) inputting all such second kind items (a)-(d) into this information and defining all relations – as directed by the user – between all items in the information, such that a query for any first kind or second kind item in regard to the information of the technical teaching is replied to / answered by this method automatically and instantly by displaying to its user all this item's information and all its such relations to other items as facts indicating of (non)obviousness of a patent's or patent application's claim over the at least one document.i.

VI.   Claim 1 of the auxiliary request defines

A method for determination of facts indicating a (non)obviousness of a technical teaching TT.p claimed invention in a patent's or patent application's claim over at least one document.i and the technical teaching TT.i it discloses, PTR (Pair of TT.p and Reference set) denoting the set of information that includes the technical teaching (TT.p) and the technical teaching (TT.i) of the at least one and these document.i, whereby a technical teaching (TT) identifies
▪ A, B, C, D,... as the elements of the technical teaching (TT.p) to be analyzed,
▪ A.i, B.i, C.i, D.i,... as elements in the TT.i's (of document.i, i=1,2,3,...) corresponding to these TT.p elements, and
▪ X).n, X.i).n as the properties/attributes of these

*elements X/X.i=A/A.i, B/B.i, C/C.i....N=1,2,3... which
are logically equivalent to the elements
whereby the user of this method interacts with this
method's application by a computer system, which
repeatedly reads information from, writes it into,
copies it to, or transforms it from/to/within this
computer system's various memory sections via their
various interfaces during executing the steps (a)-(e),
wherein the user
(a) inputs to the computer system elements of TT.p
disclosed in natural language and/or graphics in terms
determined by terms/notations used by TT.p,
(b) identifies which elements in TT.p and TT.i
correspond to each other,
(c) compiles at least one of the elements into at least
one property/attribute X).n of TT.p or a TT.i and the
at least property/attribute X.i).n of TT.i disclosing
its corresponding TT.p property/attribute X).n, and
(d) inputs the properties/attributes X).n, X.i).n into
this information and defines all relations between all
properties/attributes X).n, X.i).n in the information,
wherein defining all relations includes a processing of
at least one property/attribute X).n of TT.p or X.i).n
of a TT.i and the at least property/attribute X.i).n of
TT.i disclosing its corresponding TT.p property/
attribute X).n to form an ANC (anticipates/not-
anticipates/contradicts) matrix defining the relation
between the at least one X.i).n and X).n by identifying
whether a X.i).n anticipates, not-anticipates or
contradicts the corresponding X).n as technical primary
facts,
(e) wherein from the ANC matrix are derived by the
computer system technical secondary facts being
▪ implication of the relation between X.i).n.'s and
X).n's,
▪ plcs fact which is derived from the ANC matrix by*

*pertinent and documented and enabling common sense/
engineering/natural law/ skill, wherein plcs is the
abbreviation of patent law carrying semantics, and/or*
▪ *pmgp fact which is derived from the ANC matrix by
applying patent law of the nation TT.p belongs to,
patent precedents, patent authority regulations, sworn-
in technical experts, wherein pmgp is the abbreviation
of patent monopoly granting pragmatics,
such that a query for any TT.p or TT.i element in
regard to the information of the technical teaching is
replied to / answered by this method automatically and
instantly by displaying to its user all TT.p or TT.i
element information and all its such relations to TT.i
elements as facts indication of (non)obviousness of a
patent's or patent application's claim over the at
least one document.i,
wherein the execution of the steps (a) – (e) takes
place on a D- and B-level of presentation of the
properties/attributes X).n/X.i).n of the TT.p/TT.i,
wherein D-level is disclosure level based on the
elements and their properties of TT.p given by the
wording of TT.p, and B-level presents the TT.p's
properties as binary attributes.*

Reasons for the Decision

The application

1.   The application relates to "*the FSTP Expert System*",
        which "*is capable of analyzing an emerging or already
        done 'classical MoT'/green/health/business/ ...
        invention and documents pertinent to it –
        patent(application)/prior art/skill/prosecution/
        litigation documents of a national patent system and
        its Highest Court's precedents [...] – for facts
        INDICATING its nonobviousness (incl. novelty) over this*

prior art, i.e.: NOT DECIDING on these problems"
(paragraph 1, A1 publication).

1.1   The system "*needs informal and formal descriptions of the technique teaching ('TT.p') to be analyzed and its alleged prior art technique teachings ('TT.i's')"*. A "*formal*" description of a TT requires the identification of its "*elements*" and the "*properties/ attributes of these elements*" (paragraph 7).

1.2   The system further uses inter alia the notions of (paragraph 9):
"*'technical fundamental informal facts' natural language descriptions of any TT and its relevant properties*",
"*'technical fundamental formal facts' their formal descriptions*".

1.3   The technical teachings are compared to each other by comparing elements with their "*peer elements*" further using "*secondary facts*", exemplified e.g. as (see the auxiliary request):
"*plcs fact which is derived [...] by pertinent and documented and enabling common sense/engineering/ natural law/ skill*",
"*pmgp fact which is derived [...] by applying patent law of the nation TT.p belongs to*".

Clarity

2.   The Examining Division was of the opinion (decision point 11) that the term "*technical teaching*" was not clearly defined for the skilled person, who was understood to be a technically skilled person in the field of computer-implemented inventions (ibid. 11.2). It stated inter alia (ibid. 11.3):
"*To define the 'TT.p' as identifying 'elements', 'peer elements' and 'fundamental formal facts' does not constitute a clear technical definition since the terms*

'elements', 'peer elements' and 'fundamental formal facts' themselves are not technically defined."

The Examining Division further explains at points 11.4 and 11.6 why, in its view, these terms are not clear even when considering the description.

3.   The Appellant argued (statement of grounds of appeal, response to 11.1 and 11.2) that:

"*The term 'technical teaching' is outlined on page 2, 2nd paragraph as follows: 'the term 'technique teaching, TT.p' of a patent (application) is well known as being the functional description of the solution of this patent's problem to be solved, it here is used to denote also the functional description of any procedure solving a given venture's problem of whatsoever type.' This description of the term 'technical teaching' as a well-known term will be underpinned by different cases of Case Law of the Boards of Appeal in which the term 'technical teaching' is used in exact the manner as described in the specification of the current application, as shown above.*"

It also submitted that the user of the claim, and the skilled person to be considered, is a "*patent practitioner with experience in computer science*" who "*is able to identify the (FSTP-)elements and input them into the FSTP-computer system*".

4.   Regarding the definition of the "elements", the Appellant concluded in its response to point 11.3:

"*It follows from the above that*
- an element is a formal keyword of a patent document,

- a peer element is a further element of a further
prior art document corresponding to said element, and
- a fundamental formal fact, also referred as formal
description of an element, is an attribute or
property."

5.   The Board notes that the claim defines a scheme for
       comparing a "*technical teaching*" with those of some
       prior art documents. The Appellant makes the case that
       the skilled person to be considered is a patent
       practitioner (with experience in computer science) to
       whom the term is well known.

5.1   The Board remarks that even if a term is well-known as
       a semantic concept, this does not imply that its
       computer implementation is clear. The skilled person
       needs to be able in particular to understand how to
       program the steps executed by the computer, where items
       or facts are generated by the computer. For this, it
       must be clear at least what the elements of a technical
       teaching are, and what the generation process entails.

6.   The Board is of the opinion that this is not the case
       here. For instance:

       (i)   it is not clear which "*formal keyword[s] of*
               a patent document", as the Appellant argues
               that the elements should be understood, may
               be "*identified*" as *elements* of a technical
               teaching, thus it is not clear what the
               elements are; n.b. there must be a
               distinction between a "formal keyword" and
               any other word;

       (ii)   it is not clear what the corresponding
               properties or *attributes* of these elements
               (thus of the keywords) may be;

(iii)   it is not clear what is a "*fundamental
         formal fact*" (what makes a fact fundamental
         or formal?);

(iv)   it is not clear what the *secondary facts*
         are and how they are derived by the
         computer system using applicable law.

7.   Thus the Board agrees with the Examining Division that
        claim 1 is not clear, Article 84 EPC.

8.   The analysis above holds for both requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

L. Stridde   A. Jimenez

Decision electronically authenticated