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**Datasheet for the decision
of 7 November 2023**

Case Number: T 1395/20 - 3.5.01

Application Number: 08758234.2

Publication Number: 2181429

IPC: G06Q40/00

Language of the proceedings: EN

Title of invention:

AN AUTOMATIC TRADING SYSTEM WITH COMPUTER AIDED DECISION-
METHODS OF WHEN TO BUY AND SELL ON STOCK EXCHANGES

Applicant:

Lanng, Soren

Headword:

Personal indicator/LANNG

Relevant legal provisions:

EPC Art. 56, 123(2)

Keyword:

Inventive step - criteria grid for entering criteria in a user
interface - assisting the user in performing a technical task
(no)

Decisions cited:

T 0643/00



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Case Number: T 1395/20 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 7 November 2023

Appellant: Lanng, Soren
(Applicant) Paseo de le Ribera 16, 4-1
08870 Sitges (ES)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 22 January 2020
refusing European patent application No.
08758234.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: A. Wahrenberg
C. Schmidt

Summary of Facts and Submissions

I. This case concerns the applicant's appeal against the examining division's decision to refuse European patent application No. 08758234.2.

II. In the statement of grounds of appeal the appellant did not explicitly state its requests, but merely referred to "claim 16" and "Auxiliary request 3".

In an "attachment" to the statement of grounds, the appellant referred to the refused main and auxiliary requests 1 and 2. The appellant stated that he "preferred to use auxiliary request 1, and if needed auxiliary request 3".

III. In the communication accompanying the summons to oral proceedings pursuant to Article 15(1) RPBA, the Board based its assessment of the case on the assumption that the appellant maintained the main request and the first and second auxiliary requests filed on 25 August 2019, on which the decision under appeal was based, and that "Auxiliary request 3" was a further auxiliary request.

IV. Although not requested by the appellant the Board considered oral proceedings to be expedient. In the communication under Article 15(1) RPBA accompanying the summons to oral proceedings, the Board tended to agree with the examining division that the main and first auxiliary request lacked an inventive step (Article 56 EPC), and that the main request contained added matter (Article 123(2) EPC). The Board furthermore did not see any error in the examining division's use of discretion under Rule 137(3) EPC not to admit the second auxiliary request. The Board tended to see the third auxiliary

request as inadmissible as it was not clearly defined.

V. The appellant returned the acknowledgement of receipt of the summons on 3 April 2023, but did not reply in substance to the Board's preliminary opinion. He did not provide the contact data which the EPO should use for sending the ViCo connection details, as requested in the summons to oral proceedings. The Zoom link for the oral proceedings, was sent to an email address which had been used previously in communication with the EPO. The appellant did not acknowledge receipt of the link.

VI. The oral proceedings took place by Videoconference on 7 November 2023. The appellant did not join the Zoom meeting.

VII. The claims assumed to be the main request start with claim 16 which reads:

A computer-implemented method for defining and back testing at least one personal indicator based on at least one user selectable timeframe/chart and user selectable criteria, the method comprising:

creating, by a computer, a criteria grid comprising a multidimensional set of timeframes and criteria, wherein one dimension comprises timeframes and one dimension comprises criteria, and wherein at least one timeframe in the timeframes dimension relates to at least one criterion in the criteria dimension;

displaying, by the computer, the criteria grid;

selecting in the criteria grid, by a user via the computer, at least one timeframe of a plurality of user selectable timeframes, wherein said selection at the same time is selecting a criterion among a plurality of user selectable criteria related to the selected

timeframe defining a personal indicator;

receiving or calculating, by the computer, for at least one selected timeframe at least one data set for the timeframe, wherein said data includes bar data and calculated technical indicator data from said timeframe;

back testing, by the computer, the personal indicator defined by the multidimensional set of the at least one selected timeframe and the at least one selected criterion, wherein the back testing is for each selected timeframe comparing the selected criteria in said timeframe with the related received/calculated data set;

displaying, by the computer, at least one value from said back tested personal indicator.

VIII. Claim 16 of the first auxiliary request adds to the main request "and to a financial instrument" at the end of the "creating" feature.

IX. Claim 16 of the second auxiliary request is identical to claim 16 of the main request.

X. The third auxiliary request was defined in the grounds of appeal as follows:

"Applicant add auxiliary request 3 in case needed for a grant, re-installing the step before he [sic] last step in claim 16:

Storing, by the computer, at least one value from said back tested personal indicator."

Reasons for the Decision

1. *Non attendance at the oral proceedings*

The duly summoned appellant did not attend the oral proceedings. In such a case, the appellant may be considered as relying solely on its written case (Article 15(3) RPBA).

2. *The requests*

2.1 The appellant's requests in the grounds of appeal and the "attachment" thereto are not clear. In particular, it is not clear whether the appellant maintains the refused main request and auxiliary request 2. That a certain request is "preferred" does not necessarily mean that the other requests are withdrawn.

In the communication accompanying the summons to oral proceedings, the Board pointed out the lack of clarity of the requests, and based its assessment of inventive step on the assumption that the appellant maintained all the refused requests.

The appellant did not dispute the Board's assumption. Therefore, the decision is made on the same basis.

3. *Main request*

The invention

3.1 The application relates, in general, to automated stock trading. The invention in claim 16 of the main request defines a computer implemented method for defining and "back testing" a "personal indicator" based on user selectable timeframes and criteria.

3.2 The claim does not give any context to the personal indicator or criteria. In the description (see for example page 1, lines 25 to 28), the personal indicator is described as an automated trading strategy which decides when to buy or sell a stock. It is defined based on a combination of criteria for example relating to technical indicators. Back testing such a personal indicator means testing the trading strategy on historical data.

3.3 In claim 16, the user may define the personal indicator by selecting a "timeframe" from a set of timeframes in a multidimensional "criteria grid". The timeframes are associated with criteria so that, by selecting a timeframe, the user also selects a criteria at the same time. However, it is not completely clear from the claim, or the description, how this works.

Figure 14 shows a "criteria grid" as a two-dimensional array of boxes that the user can select. It appears that, by selecting a row, the user selects a criteria (e.g. Close < MOV0) corresponding to the row, and by selecting a box in that row, the user selects a timeframe (M, 1, 2, 3) for that criteria. However, this is not reflected in the claim.

In the grounds of appeal, the appellant referred to a "one-click" functionality for activating or deactivating a criterion (see also the explanation of the demonstration of the invention at www.lanng.info/EPO/). This appears similar to the example in Figure 14, but is not apparent from the claim as it stands.

Since the appellant was not present at the oral proceedings to explain the invention, which would have been useful in this case, the Board has to base its assessment solely on the information in the application and the appellant's written submissions.

Inventive step

- 3.4 The examining division found that the claimed invention was an obvious implementation of a financial scheme on a notoriously known computer system. They considered the personal indicator to be a financial object for decision support during trading and test sessions, and the back testing to be a financial operation. No technical effect could be derived from this financial scheme. The computer implementation, in particular the provision of a user interface for data selection, would have been obvious to the skilled person at the level of generality of claim 16.
- 3.5 The appellant argues, starting from EP1952330A1 as the closest prior art, that the distinguishing feature of the claimed invention is the use of a criteria grid for adding and removing criteria, and that this is technical as it assists the user in performing a technical task similar to the one in T 643/00 - *Searching image data/CANON*. By means of the "one click" solution, the user may efficiently add criteria. Furthermore, in the appellant's view, the invention is

a "general purpose solution" which is not limited to financial criteria. It could be used for adding any type of criteria to a personal indicator. Thus, the objective technical problem solved by the invention is "how to efficiently develop and test a personal indicator".

3.6 The appellant's arguments do not convince the Board.

Even if claim 16 is not limited to back testing a trading strategy, it covers this subject-matter. It is enough that the claim covers something that would have been obvious to the skilled person for it to lack an inventive step (Article 56 EPC). Furthermore, the application does not disclose any examples of a personal indicator other than a strategy for buying or selling financial instruments.

Moreover, the Board is not convinced that the "criteria grid" assists the user in performing a technical task, simply because there is no technical task involved. The case T 643/00 concerned a particular arrangement of images of different resolution on the screen, enabling the user to efficiently search for images. In the Board's view, neither the facts nor the principles in T 643/00 are relevant to the present case.

3.7 Thus, the Board does not see that the criteria grid in claim 16 has a technical effect beyond that of allowing the user to select a criteria and time frames for the personal indicator. This would however have been normal user interface design.

3.8 Therefore, the Board agrees with the examining division that the subject-matter of claim 16 covers an obvious implementation of a non-technical method, and,

therefore, it lacks an inventive step (Article 56 EPC).

Added subject-matter (Article 123(2) EPC)

3.9 The examining division objected that claim 16 of the main request related to subject-matter extending beyond the content of the application as filed (Article 123(2) EPC). The original application defined the "personal indicator" as something that was used for taking a decision on whether to buy or sell a stock. However, in claim 16, the personal indicator could be anything that could be back tested. The examining division found that there was no basis for this generalisation.

3.10 The appellant has not provided any arguments why the examining division's objection of added subject-matter should be set aside, and the Board concurs with examining division's assessment.

4. *First auxiliary request*

4.1 The additional feature of claim 1 of the first auxiliary request that the timeframe relates to a financial instrument is already taken into account in the reasons given for the main request. Therefore, claim 1 of the first auxiliary request lacks an inventive step (Article 56 EPC).

5. *Second auxiliary request*

Admittance (Article 12(6) RPBA 2020)

5.1 The examining division did not admit the second auxiliary request under Rule 137(3) EPC since the

objections raised with respect to the main request applied to the second auxiliary request. Under Article 12(6) RPBA 2020, the Board shall not admit requests which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.

The Board does not see any error in the division's use of discretion. According to the established case law (see Case Law of the Boards of Appeal, IV.B.2.6.1), prima facie allowability is one of the criteria that the examining division may consider when exercising the discretion not to admit a request. Also, the appellant has not argued that there was an error in the examining division's exercise of discretion.

6. *Third auxiliary request*

Admittance

6.1 In the grounds of appeal, auxiliary request 3 is defined as follows:

"Applicant add auxiliary request 3 in case needed for a grant, re-installing the step before he [sic] last step in claim 16:

Storing, by the computer, at least one value from said back tested personal indicator."

It is not clear to the Board whether the additional feature of auxiliary request 3 should be inserted into claim 16 of the main request or the first auxiliary request. Therefore, the request is not clear. It is up

to the appellant to formulate its requests; the Board can only decide on what the appellant puts before it. Since the third auxiliary request is not clear, the Board cannot consider it. For these reasons, the Board finds the third auxiliary request inadmissible.

7. *Title and class*

7.1 Although there is no formal request to this effect, the appellant suggests that the title and classification of the application be changed.

The Board notes that the title and classification of the application is decided by the search division and may be amended at the discretion of the examining division. The purpose of the title and classification is to inform the public of the content of the application. The decision as to the title and classification does not affect the rights of the applicant. Therefore, the Board does not consider this to be an appealable matter.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated