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Datasheet for the decision
of 25 May 2023

Case Number:	T 0151/21 - 3.5.07
Application Number:	14748932.2
Publication Number:	2954428
IPC:	G06F17/00, G06Q30/02
Language of the proceedings:	EN

Title of invention:
Methods and apparatus for efficient execution of modules

Applicant:
The Nielsen Company (US), LLC

Headword:
Module execution/THE NIELSEN COMPANY

Relevant legal provisions:
RPBA 2020 Art. 12(4), 12(6)
EPC Art. 123(2)

Keyword:
Amendment to case - request no longer maintained in first-instance proceedings - main request (not admitted)
Amendments - first to fourth auxiliary requests - allowable (no)

Decisions cited:
T 0003/90

Case Number: T 0151/21 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 25 May 2023

Appellant: (Applicant)	The Nielsen Company (US), LLC 150 North Martingale Road Schaumburg, IL 60173 (US)
Representative:	Samson & Partner Patentanwälte mbB Widenmayerstraße 6 80538 München (DE)
Decision under appeal:	Decision of the Examining Division of the European Patent Office posted on 18 September 2020 refusing European patent application No. 14748932.2 pursuant to Article 97(2) EPC

Composition of the Board:

Chair	J. Geschwind
Members:	R. de Man
	C. Barel-Faucheux

Summary of Facts and Submissions

I.   The appellant (applicant) appealed against the decision
        of the examining division refusing European patent
        application No. 14748932.2, which was published as
        international application WO 2014/123819.

II.   The examining division decided that the subject-matter
        of claims 1 and 15 of the main request and of the first
        and second auxiliary requests extended beyond the
        content of the application as filed, contrary to
        Article 123(2) EPC. The subject-matter of claims 1, 14
        and 15 of the main request and of the first, second and
        third auxiliary requests lacked an inventive step.

III.   With its statement of grounds of appeal, the appellant
        resubmitted the claims filed with the letter of
        17 January 2017 as its main request and maintained the
        main request and the first to third auxiliary requests
        considered in the decision under appeal as its first to
        fourth auxiliary requests.

IV.   In a communication accompanying the summons to oral
        proceedings, the board expressed the preliminary view
        that the main request should not be admitted into the
        appeal proceedings and that the first to fourth
        auxiliary requests did not comply with Articles 84
        and 123(2) EPC.

V.   With a letter dated 20 March 2023, the appellant
        maintained its main request and filed amended first to
        fourth auxiliary requests.

VI.   In a subsequent letter, the appellant informed the
        board that it would not attend the oral proceedings.
        The board then cancelled the oral proceedings.

VII.   The appellant requests that the decision under appeal
        be set aside and that a patent be granted on the basis
        of the claims of the main request or, in the
        alternative, of one of the first to fourth auxiliary
        requests.

VIII.   The text of the main request need not be reproduced
        here.

IX.   Independent claim 15 of the first auxiliary request
        reads as follows:

        "A first module (206) comprising;
            an identification generator (302) to generate a
        first module identifier after the first module (206)
        has been instantiated by first instructions included in
        a first advertisement (204) on a webpage (200);
            a component loader (304) configured to load a
        component (208) that is included in the first
        instructions, the component being a module utilized by
        another module, the first module (206) configured to
        monitor presentation of the first advertisement (204)
        with the component (208);
            a communication interface (306) to communicate a
        message including the first module identifier to a
        datastore (704) included in a message interface (320)
        for retrieval by the component (208), the message
        including a request for the component (208) to
        communicate with the first module (206); and
                a listener (308) to:
                    monitor the message interface (320) to
        determine whether a second module (212) has

communicated a second module identifier to be stored in the datastore (704) of the message interface (320) for retrieval by the component (208), the second module (212) having been instantiated by second instructions included in a second advertisement (210) on the webpage (200); and

in response to determining that the second module identifier has been communicated to the message interface (320), distribute a message instructing the component (208) to communicate with the second module (212) through the message interface (320) utilizing the second module identifier, the second module (212) to monitor presentation of the second advertisement (210) with the component (208) using second messages stored on the datastore, the second messages including:
      - the second module identifier,
      - requests for data, or
      - data to be used by the component,
the second module identifier causing the component to retrieve the data from the message interface, wherein the webpage is presented in an environment that restricts cross-domain communication between the first module (206) and the component (208), the second module (212) and the component (208), and the first module (206) and the second module (212)."

X.   Independent claim 15 of the second auxiliary request reads as follows:

"A first module (206) comprising;
      an identification generator (302) to generate a first module identifier after the first module (206) has been loaded by first instructions included in a first advertisement (204) on a webpage (200);
      a component loader (304) configured to load a component (208) that is included in the first

instructions, the component being a module utilized by another module, the first module (206) configured to monitor presentation of the first advertisement (204) with the component (208);

a communication interface (306) to communicate a message including the first module identifier to a datastore (704) included in a message interface (320) for retrieval by the component (208), the message including a request for the component (208) to communicate with the first module (206); and

a listener (308) to:

monitor the message interface (320) to determine whether a second module (212) has communicated a second module identifier to be stored in the datastore (704) of the message interface (320) for retrieval by the component (208), the second module (212) having been loaded by second instructions included in a second advertisement (210) on the webpage (200); and

in response to determining that the second module identifier has been communicated to the message interface (320), distribute a message instructing the component (208) to communicate with the second module (212) through the message interface (320) utilizing the second module identifier, the second module (212) to monitor presentation of the second advertisement (210) with the component (208) using second messages stored on the datastore, the second messages including:

- the second module identifier, and
- requests for data,

the second module identifier causing the component to retrieve the data from the message interface."

XI.   Independent claim 15 of the third auxiliary request reads as follows:

"A first module (206) comprising;

an identification generator (302) to generate a first module identifier after the first module (206) has been instantiated by first instructions included in a first advertisement (204) on a webpage (200);

a component loader (304) configured to load a component (208) that is included in the first instructions, the component being a module utilized by another module, the first module (206) configured to monitor presentation of the first advertisement (204) with the component (208);

a communication interface (306) to communicate a message including the first module identifier to a datastore (704) included in a message interface (320) for retrieval by the component (208), the message including a request for the component (208) to communicate with the first module (206); and

a listener (308) to:

monitor the message interface (320) to determine whether a second module (212) has communicated a second module identifier to be stored in the datastore (704) of with [sic] the message interface (320) for retrieval by the component (208), the second module (212) having been loaded by second instructions included in a second advertisement (210) on the webpage (200); and

in response to determining that the second module identifier has been communicated to the message interface (320), distribute a message instructing the component (208) to communicate with the second module (212) through the message interface (320) utilizing the second module identifier, the second module (212) to monitor presentation of the second advertisement (210) with the component (208) using second messages stored on the datastore, the second messages including:

- the second module identifier, and

- requests for data,
the second module identifier causing the component to
retrieve the data from the message interface."

XII.   Independent claim 15 of the fourth auxiliary request
         reads as follows:

"A first module (206) comprising;
     an identification generator (302) to generate a
first module identifier after the first module (206)
has been loaded by first instructions included in a
first advertisement (204) on a webpage (200);
     a component loader (304) to load a component (208)
that is included in the first instructions, the first
module (206) to monitor presentation of the first
advertisement (204) with the component (208);
     a communication interface (306) to communicate a
message including the first module identifier to a
datastore (704) associated with a message interface
(320) for retrieval by the component (208), the message
including a request for the component (208) to
communicate with the first module (206); and
     a listener (308) to:
          monitor the message interface (320) to
determine whether a second module (212) has
communicated a second module identifier to be stored in
the datastore (704) of the message interface (320) for
retrieval by the component (208), the second module
(212) having been loaded by second instructions
included in a second advertisement (210) on the webpage
(200); and
          in response to determining that the second
module identifier has been communicated to the message
interface (320), distribute a message instructing the
component (208) to communicate with the second module
(212) through the message interface (320) utilizing the

second module identifier, the second module (212) to
monitor presentation of the second advertisement (210)
with the component (208) using second messages stored
on the datastore, the second messages including:
        - the second module identifier, and
        - requests for data,
wherein the webpage is presented in an environment that
restricts cross-domain communication between the first
module (206) and the component (208), the second module
(212) and the component (208), and the first module
(206) and the second module (212)."

XIII.   The appellant's arguments, where relevant to the
        decision, are discussed in detail below.

Reasons for the Decision

1.   It is well established in the case law of the boards of
        appeal that the appellant's statement that it would not
        take part in the oral proceedings is to be understood
        as a withdrawal of its request for oral proceedings in
        the absence of any indication to the contrary (see
        decision T 3/90, OJ EPO 1992, 737, Reasons 1, and Case
        Law of the Boards of Appeal, 10th edition, 2022, III.C.
        4.3.2). The decision can therefore be taken without
        holding oral proceedings.

2.   The application relates to web pages with dynamic
        elements and proposes a technique to allow code modules
        loaded in a web page to share the same instance of a
        component which provides common functionality.

Main request

3.   *Admission into the appeal proceedings*

3.1   The main request corresponds to the set of claims filed
        with the letter of 17 January 2017. These claims were
        replaced with an amended set of claims filed with the
        letter of 23 January 2018.

3.2   Since the main request is not one of the requests on
        which the decision under appeal is based, it represents
        an amendment of the appellant's case to be admitted
        only at the board's discretion (Article 12(2)
        and 12(4), first and second sentence, RPBA 2020).
        However, the statement of grounds of appeal did not
        provide reasons for filing this request in the appeal
        proceedings (Article 12(4), third sentence, RPBA 2020).

        Moreover, requests which have not been maintained in
        the first-instance proceedings are not to be admitted,
        unless the circumstances of the appeal case justify
        their admittance (Article 12(6), second sentence,
        RPBA 2020).

3.3   In its letter of 20 March 2023, the appellant explained
        that the main request returned to the last claim set
        which had not been objected to by the examining
        division as extending beyond the content of the
        application as filed. Since the examining division had
        raised an inventive-step objection against that claim
        set and had maintained the same line of reasoning in
        the decision under appeal, reverting to that claim set
        during the first-instance proceedings would have had no
        chance of success. However, since the board now tended
        to agree that the examining division's reasoning was
        not fully convincing, the appellant should be allowed

to pursue the broader set of claims which had not been objected to under Article 123(2) EPC.

The appellant added that if the main request were not admitted, applicants would be obliged either to file an appeal rather than continue prosecution before the examining division or to present all the rejected claim requests in the oral proceedings. Neither solution seemed satisfactory.

3.4   The board notes that it was the appellant's deliberate decision to respond to the inventive-step objection raised against the set of claims filed on 17 January 2017 by replacing them with a set of claims of narrower scope instead of maintaining them as a main request and filing an auxiliary request. The board fails to see what would be problematic or unsatisfactory about an appellant maintaining, instead of withdrawing, a request which it considers to be allowable. The primary purpose of the appeal proceedings is to review the decision under appeal, not to give the appellant the opportunity to reconsider procedural decisions made earlier.

Hence, the board does not consider that the circumstances of the appeal case justify the admittance of the main request.

3.5   For these reasons, the main request is not admitted into the appeal proceedings (Article 12(4) and (6) RPBA 2020).

First to fourth auxiliary requests

4.   *Admission into the appeal proceedings*

4.1   The first to fourth auxiliary requests are based on the
          main request and first to third auxiliary requests
          admitted and refused by the examining division, which
          were amended in response to clarity and added-matter
          objections raised by the board in its communication.

4.2   Since most of the objections raised by the board had
          not been raised earlier in the proceedings, the
          admission into the appeal proceedings of the first to
          fourth auxiliary requests is justified by exceptional
          circumstances (Article 13(2) RPBA 2020).

First auxiliary request

5.   *Added subject-matter - Article 123(2) EPC*

5.1   Claim 15 of the first auxiliary request is directed to
          a "first module" which is "instantiated by first
          instructions included in a first advertisement on a
          webpage" and which comprises "a component loader
          configured to load a component that is included in the
          first instructions".

5.2   In its communication, the board indicated that the
          feature "a component loader to load a component
          included in the first instructions" in claim 15 of the
          then first auxiliary request did not appear to have a
          basis in the application as filed

          In addition, it pointed out that the "component loader"
          was part of the "first module" which was "instantiated"
          or loaded by the "first instructions" included in the

first advertisement. It was unclear how the component
loaded by the component loader could be included in
those "first instructions".

5.3   In its letter of 20 March 2023, the appellant
        reproduced paragraph [0028], in which it underlined the
        following sentences:

        "The component loader 304 of the illustrated
        example loads components (e.g., module 208) to be
        utilized by the module 206. For example, the
        component loader 304 may instruct a user computer
        106 to load an instance of a specific component
        into memory so that the module 206 can access
        functions provided by the component."

        It argued that the component was included in the first
        instructions, which were also the instructions
        instantiating the first module. The instructions were
        "illustrated in Fig. 4 (paragraphs [0006], [0039]) and
        include with reference sign 406 the instruction to load
        components".

5.4   Figure 4 is a flow chart showing the operation of the
        first module and its component loader. There is no
        indication in Figure 4 and paragraphs [0006] and [0039]
        that the component being loaded is included in the
        first instructions which loaded the first module.
        Paragraph [0028] does not disclose this, either.

5.5   In the board's understanding of the application, the
        "first instructions" included in the first
        advertisement are merely intended to load the first
        module from the data collection facility 105 to which
        the user computer is connected via a network (see
        paragraphs [0014] and [0020]) and do not include any

component to be loaded by the component loader of the
first module. The passages cited by the appellant do
not contradict this understanding.

5.6   Since the feature of claim 15 "a component loader to
        load a component included in the first instructions"
        does not have a basis in the application as filed, the
        first auxiliary request does not comply with
        Article 123(2) EPC.

6.   As the first auxiliary request is not allowable for the
        reasons given above, there is no need to consider the
        other objections raised in the board's communication.

Second, third and fourth auxiliary requests

7.   *Added subject-matter – Article 123(2) EPC*

7.1   Claim 15 of the second and third auxiliary requests
        also includes the feature "a component loader
        configured to load a component that is included in the
        first instructions".

        Claim 15 of the fourth auxiliary request includes the
        feature "a component loader to load a component that is
        included in the first instructions".

7.2   Hence, the objection raised in point 5. above also
        applies to claim 15 of the second, third and fourth
        auxiliary requests, which consequently do not comply
        with Article 123(2) EPC.

8.   Since none of the requests admitted into the appeal
        proceedings is allowable, the appeal is to be
        dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

S. Lichtenvort   J. Geschwind

Decision electronically authenticated