

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 27 June 2023**

**Case Number:** T 0173/21 - 3.4.02

**Application Number:** 15813974.1

**Publication Number:** 3304524

**IPC:** G09B19/06, G06F3/01, G06F3/0488

**Language of the proceedings:** EN

**Title of invention:**

A METHOD AND SYSTEM FOR LEARNING LANGUAGES THROUGH A USER  
INTERFACE

**Applicant:**

ZING Technologies Inc.

**Headword:**

**Relevant legal provisions:**

RPBA 2020 Art. 12(4), 12(6), 13(2)

**Keyword:**

Late-filed request - should have been submitted in first-  
instance proceedings (yes) - admitted (no)  
Amendment after summons - exceptional circumstances (no) -  
taken into account (no)

**Decisions cited:**

**Catchword:**



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

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0173/21 - 3.4.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.02**  
**of 27 June 2023**

**Appellant:** ZING Technologies Inc.  
(Applicant) 108 West 13th Street  
Wilmington DE 19801 (US)

**Representative:** Patentanwaltskanzlei WILHELM & BECK  
Prinzenstraße 13  
80639 München (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 9 October 2020  
refusing European patent application No.  
15813974.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R. Bekkering  
**Members:** C. Kallinger  
B. Müller

## **Summary of Facts and Submissions**

- I. The appeal by the applicant (hereinafter "appellant") is against the decision of the examining division to reject the European patent application No. 15813974.1.
- II. With the statement setting out the grounds of appeal the appellant filed two sets of claims according to a main request and an auxiliary request and requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main or the auxiliary request.
- III. On 2 February 2023, the board summoned to oral proceedings and, in a communication pursuant to Article 15(1) RPBA 2020, set out its preliminary opinion with respect to the admittance of the pending requests.
- IV. In response to the summons, the appellant requested that a patent be granted *"based on the claims 1 to 9 of the main request filed July 29<sup>th</sup> 2020"*. In addition, the appellant announced that they would not attend the oral proceedings.
- V. On 27 June 2023 oral proceedings took place in the absence of the appellant.

## **Reasons for the Decision**

1. Main and auxiliary request

- 1.1 The appellant's main and auxiliary request are based on the claims as filed with the statement of grounds of appeal.
- 1.2 During the first-instance examination proceedings, the applicant filed several amended sets of claims. The claims according to requests on which the appealed decision is based were filed with a letter dated 28 July 2020 in reply to the communication annexed to the summons to oral proceedings in which the examining division presented its objections with respect to Articles 123(2) and 56 EPC. During the oral proceedings before the examining division, the subject-matter of the claims of the then main request was found not to be inventive (Article 56 EPC) and the then auxiliary request was not admitted into the proceedings (Rule 137(3) EPC).
- 1.3 In the case at hand, the Rules of Procedure of the Boards of Appeal in their version of 2020 apply in accordance with Article 25(2) RPBA 2020.
- 1.4 In view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, a party's appeal case should be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based (Article 12(2) RPBA 2020).

In contrast to this, in the case at hand, the current main and auxiliary requests were filed for the first time with the statement of grounds of appeal. According to Article 12(4) RPBA 2020, these requests are therefore to be regarded as an amendment to the party's case and may be admitted only at the discretion of the Board.

When filing the amended main and auxiliary requests with the statement of grounds of appeal, the appellant failed to provide reasons for submitting them for the first time in the appeal proceedings, contrary to the requirement under Article 12(4), third sentence, RPBA 2020.

In respect of the discretionary power according to Article 12(4) RPBA 2020, the board considers in particular the following aspects.

The subject-matter of independent claim 1 of the current main and auxiliary request is based on a combination of claims 1, 4, 5 and 6 of the main request of the appealed decision to which, in addition, several features from the description have been added. With respect to the original disclosure of the added features the appellant referred in particular to paragraphs [0039] and [0049] for the main request and Figures 2, 3, 5 to 24 and paragraphs [0005], [0036], [0038], [0044] to [0052] and [0070] for the first auxiliary request. The board is of the opinion that the amendments are complex as they comprise numerous features from different parts of the description and are, in the case of the auxiliary request, based in part on the disclosure of the Figures.

In addition, the subject-matter of the amended independent claims of both requests was not examined with respect to inventive step during the first-instance proceedings so that, if the requests were admitted, remittal of the case would become necessary. This would run against the principle of procedural economy.

1.5 What is more, under Article 12(6), second sentence, RPBA 2020 the board "*shall not admit ... requests ... which should have been submitted ... in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance*".

The board is of the opinion that the appellant could and should have submitted the amended requests already in the first-instance proceedings as the objections which lead to the refusal by the examining division were already known to the appellant. In addition, the appellant did not set out any circumstances (and the board fails to see any) which would justify the admittance of the new requests.

1.6 Therefore, the board, in exercising its discretion under Article 12(4) and (6) RPBA 2020, does not admit the current main and auxiliary requests into the appeal proceedings.

2. Further (second) auxiliary request

2.1 With a letter dated 23 June 2023 the appellant requested that a patent be granted "*based on the claims 1 to 9 of the main request filed July 29<sup>th</sup> 2020*". As the appellant did not explicitly withdraw the main and auxiliary request as filed with the statement of grounds of appeal, the board treats this further request as a further, i.e. second auxiliary request, based on the claims filed as main request with the letter dated 28 July 2020 (received on 29 July 2020).

2.2 This request is an amendment to the appellant's appeal case which was made after the notification of the summons to oral proceedings.

The appellant did not present any reasons which would justify that exceptional circumstances are present for the amendment to its appeal case and the board also cannot see any.

Therefore, in accordance with Article 13(2) RPBA 2020, the second auxiliary request is not taken into account.

## Order

### For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated