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Datasheet for the decision of 13 February 2025

Case Number: T 1207/22 - 3.5.01

Application Number: 18752887.2

Publication Number: 3646276

IPC: G06Q50/00

Language of the proceedings: EN

Title of invention:
SYSTEMS AND METHODS FOR SELECTING CONTENT FOR HIGH VELOCITY USERS

Applicant:
Snap Inc.

Headword:
Adapting the complexity of content based on the content consumption rate/SNAP

Relevant legal provisions:
EPC Art. 56, 111(1)
RPBA 2020 Art. 11

Keyword:

Inventive step - providing content of different complexity based on content consumption rate (no - obvious implementation of non-technical requirement)
Remittal to the department of first instance (yes - uncertain whether search covered feature considered to be non-technical)

Decisions cited:

T 0641/00, T 0643/00, T 1351/04, T 1869/08, T 0306/10, T 1463/11, T 2539/12, T 2314/16, T 3176/19

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Case Number: T 1207/22 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 13 February 2025

Appellant: (Applicant)	Snap Inc. 3000 31st Street Santa Monica, California 90405 (US)
Representative:	Kramer, Dani Mathys & Squire The Shard 32 London Bridge Street London SE1 9SG (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 25 November 2021 refusing European patent application No. 18752887.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	W. Chandler
Members:	A. Wahrenberg
	L. Basterreix

Summary of Facts and Submissions

I. This case concerns the appeal against the examining division's decision to refuse European patent application No. 18752887.2 for lack of inventive step (Article 56 EPC).

II. In its decision, the examining division found that the claims of the main request and the first to third auxiliary requests did not involve an inventive step over a notoriously known general purpose networked computer system such as an Internet enabled smartphone. The distinguishing features of the invention were considered to be an administrative business scheme, and the implementation of this scheme on the notorious computer system would have been obvious using standard information technology.

The document D1 (Mark Robertson: "Watch Time: A Guide to YouTube's TOP Search Ranking Factor", 26 September 2014, https://tubularlabs.com/blog/youtube-watch-time) was cited but not used in the reasoning.

III. The appellant appealed and requested, in the statement of grounds of appeal, that the examining division's decision be set aside and that a patent be granted on the basis of the refused requests which were all refiled with the grounds of appeal.

IV. In the communication accompanying the summons to oral proceedings, the Board tended to agree with the examining division that the claimed invention lacked an inventive step.

V. During the oral proceedings, which were held as a videoconference, the appellant withdrew the second auxiliary request. The appellant's final requests were, thus, that the decision to refuse the application be set aside and that a patent be granted on the basis of the main request or the first or third auxiliary request filed with the grounds of appeal.

VI. Claim 1 of the main request reads:

A method of displaying online content, comprising:

receiving (705), by an electronic device, a plurality of user inputs, each input requesting a presentation of media content;

determining (810), by the electronic device, an elapsed time of the plurality of user inputs;

determining (710), by the electronic device, a consumption rate based on a number of the plurality of user inputs and the elapsed time; and

selectively presenting (720, 725, 730, 735) by the electronic device, additional content to the user based on the content consumption rate, wherein the selective presenting of the additional content to the user based on the content consumption rate comprises presenting (725) additional content of a first type having a first complexity when the consumption rate meets a first criterion and presenting (730) additional content of a second type having a second complexity otherwise, the second complexity being more complex than the first complexity, complexity being a measure of time necessary for consumption.

VII. The first auxiliary request replaces the last clause of claim 1, after "otherwise," with:

wherein the first type of content includes content

that has a number of words above a threshold, and wherein the second type of content includes content that includes fewer words than the threshold.

VIII. The third auxiliary request adds the following features at the end of claim 1 of the main request:

wherein the media content for which presentation is requested include ephemeral content and static content, the ephemeral content being available only until an availability time threshold; and

wherein the determination of the content consumption rate is based on user inputs and elapsed time for static content and ephemeral content with an availability time above the availability time threshold.

Reasons for the Decision

1. *Main request*

1.1 The invention relates to a method for selecting the type of additional content to be presented to a user online, for instance on a social media platform. According to claim 1, two categories of content are distinguished: low-complexity content and high-complexity content. The type of content presented to the user is selected based on the user's content consumption rate. A high content consumption rate may indicate that the user is rapidly skimming through content and is therefore unwilling or unable to engage with complex information (see paragraph [0028] of the published application). In such cases, content of lower

complexity may be provided to the user. Conversely, users exhibiting a low content consumption rate may be presented with more complex content that requires a greater amount of time to process (see paragraphs [0035] and [0036]).

However, claim 1 of the main request does not specify the relationship between the content consumption rate and the complexity of the content presented to the user.

The content consumption rate is determined based on the number of user inputs requesting presentation of content and the time elapsed between these inputs (see paragraph [0048]).

1.2 Applying the Comvik approach (T 641/00 – *Two identities/COMVIK*), the Examining Division considered that the presentation of content to a user based on the user's content consumption rate constituted an administrative scheme or business scheme, or alternatively a mental act, which did not involve any technical considerations or produce a technical effect. The division reasoned that the underlying mental concept of adapting the complexity of presented content to the recipient's capabilities was already known in contexts such as teaching or sales, and therefore did not contribute to inventive step.

In the examining division's view, the technical contribution of the claimed method lay solely in the implementation of this non-technical scheme through conventional information technology. Such implementation was regarded as a straightforward automation of an abstract concept, which did not render the scheme itself technical. Starting from a well-known

general-purpose networked computer system, it would have been obvious to the skilled person to implement the claimed method. The examining division found that there was no technical interaction between the non-technical scheme and its computer implementation capable of producing a further technical effect that could support an inventive step.

1.3 The appellant argued that the selection of content was based on an objectively measured content consumption rate, rather than on the user's mental abilities as suggested by the examining division in its teaching analogy. Accordingly, the determination and use of the content consumption rate was of a technical nature and did not constitute a business scheme or a mental act. The content consumption rate itself represented a technical metric.

The appellant further submitted that selecting content of varying complexity based on the user's content consumption rate produced several technical effects.

According to the appellant, the invention provided a more efficient mechanism for searching and retrieving content. Even if the user was not actively and deliberately seeking specific content, the claimed method still constituted a form of searching, since the content presented was tailored to the user's interactions with the computer system. The process was efficient in that it delivered content matching the user’s interests without requiring active user input.

As established in decision T 643/00 - *Searching image data/CANON*, the processes of searching for and retrieving content are technical tasks, and assisting a user in performing such a task constitutes a technical

effect.

Furthermore, referring to the decisions T 1351/04 - *File search method/FUJITSU* and T 2539/12 - *Searching a hierarchically structured database/SOFTWARE AG*, the appellant argued that the creation and searching of a database based on a novel metric - the content consumption rate - was technical, as it improved the way in which a computer system searched for information. Organising data according to content complexity amounted to a new database structure. Improved data structures enabling more efficient retrieval had previously been recognised as technical, for instance in T 3176/19 - *Data handling system/ Broadridge Financial Solutions*.

The appellant also contended that the claimed invention produced an additional bonus effect, namely a reduction in the amount of data transmitted, since only relevant content was presented to the user.

Finally, the appellant argued that document D1 constituted the closest prior art. The skilled person, starting from D1, would not have arrived at the subject-matter of claim 1 without the exercise of inventive skill, because D1 did not determine the content consumption rate as in claim 1.

1.4 The appellant's arguments do not persuade the Board.

Firstly, the Board considers that the notoriously known networked computer system referred to by the examining division constitutes a reasonable starting point for the assessment of inventive step. To demonstrate a lack of inventive step, it is not necessary to begin from the closest prior art in the sense of the document

having the greatest number of features in common with the claimed invention; rather, any reasonable starting point is sufficient.

1.5 Furthermore, whether a metric is calculated on an objective basis is not a decisive criterion for assessing its technical character. Numerous objective calculations serve no technical purpose - for example, calculations of a financial or administrative nature. A company's balance sheet or a mortgage repayment schedule may indeed be based on objective numerical data, but they are not of a technical nature.

The proper criterion for assessing technical character is whether a feature produces a technical effect or is at least based on technical considerations (see T 641/00 – *Two identities/COMVIK*; T 2314/16 – *Distributing rewards by assigning users to partial advertisement display areas/RAKUTEN*). In the present case, the appellant has invoked several alleged technical effects. The Board, however, is not persuaded that these effects are achieved, for the reasons set out below.

Presenting content to a user based on a content consumption rate does not constitute a search. A search involves the purposeful retrieval of specific information in response to a query. It presupposes a defined search request and the return of results matching that request. By contrast, providing content that a user might find interesting based on observed behaviour amounts to a recommendation rather than a search. Recommendation systems of this kind have consistently been regarded as non-technical by the Boards of Appeal (see, for example, T 306/10 – *Relationship discovery/YAHOO!* and T 1869/08).

The Board further observes that the claim does not define any specific database structure or other data organisation. Categorising data according to complexity amounts merely to assigning a label or attribute to the data. The claim does not specify how such categorisation is implemented at the structural level, and the choice of a suitable data structure for this purpose would be a routine matter for the skilled person, requiring no inventive effort.

Lastly, the Board is not convinced by the alleged "bonus effect" of reducing the amount of data to be transmitted. Such relative effects depend on the chosen point of comparison. Starting from a general-purpose computer system, as the Examining Division did, the Board fails to see how the transmission of content according to the claimed method would reduce overall data traffic. The appellant's argument that data traffic is reduced because the invention delivers content that is particularly relevant to the user is not persuasive. There is no causal link between the relevance of the content and the volume of data transmitted; rather, this concerns the subjective suitability of the content for the user's interests. In any event, a bonus effect cannot, by itself, support the presence of an inventive step, since the existence of a single obvious route leading to the claimed invention is sufficient to deny inventive step.

1.6 The Board does not recognise any technical effect arising from the presentation of content of varying complexity based on the user's content consumption rate, nor does it consider this concept to be based on technical considerations. Rather, it represents an idea that could be conceived by the notional business person

(see T 1463/11 – *Universal merchant platform/ CardinalCommerce*) or, more generally, by a non-technical person, namely, to present content whose complexity corresponds to the speed at which the user consumes content.

Accordingly, the Board concurs with the examining division that adapting the complexity of content according to the user's content consumption rate constitutes a non-technical aim, which may legitimately be included in the formulation of the objective technical problem under the Comvik approach.

1.7 The Board further concurs with the examining division that, starting from a general-purpose networked computer system, the objective technical problem is how to implement the non-technical concept of providing additional content whose complexity depends on the user's content consumption rate. Such an implementation would necessarily involve determining the content consumption rate. The Board considers that it would have been obvious to do so by measuring the number of user inputs requesting content and the time elapsed between these inputs; this approach is, in fact, almost self-evident. The remaining aspects of the computer implementation, including the organisation and presentation of the data, would have been straightforward and obvious to the skilled person.

1.8 For these reasons, the Board concurs with the examining division that claim 1 of the main request lacks an inventive step (Article 56 EPC).

2. *First auxiliary request*

2.1 Claim 1 of the first auxiliary request specifies that the first type of content includes content that has a number of words above a threshold, and the second type of content includes content that includes fewer words than the threshold.

2.2 In the Board's view, these features do not add anything of a technical nature. Accordingly, the reasoning set out for the main request applies equally to the first auxiliary request. The appellant has not submitted any additional arguments in support of this request.

3. *Third auxiliary request*

3.1 Claim 1 of the third auxiliary request adds that the media content for which presentation is requested includes ephemeral content, i.e content that is visible only for a certain period of time, and static content. The calculation of the content consumption rate is based on user inputs and elapsed time as in the main request for static content, and on an availability time for ephemeral content. In other words, the claim makes a distinction between static and ephemeral content and determines the content consumption rate differently for the two types of content.

3.2 As set out in point 1.7 above, the means to calculate the content consumption rate forms part of the technical implementation that the skilled person is tasked with. The third auxiliary request adds the recognition that there are two types of content - ephemeral and non-ephemeral - and that these should be treated differently when calculating the content

consumption rate. In the Board's view, this feature cannot be regarded as obvious in the absence of prior art. None of the cited documents discloses ephemeral content, nor has it been established that such content even existed at the priority date.

3.3 The examining division considered that this was an administrative i.e. non-technical requirement. Consequently, it is not clear if this feature was searched since no search is necessary for non-technical features.

3.4 Article 111(1) EPC gives the Board the discretion to either exercise any power within the competence of the department whose decision is appealed - in this case the examining division - or to remit the case to that department for further prosecution. Pursuant to Article 11 RPBA, the Board shall not remit a case to the department whose decision is under appeal unless special reasons exist. In the present case, the ongoing uncertainty as to whether certain subject-matter was searched constitutes such a special reason.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the examining division for further prosecution, including a search on the basis of the third auxiliary request filed with the statement of grounds of appeal.

The Registrar: The Chairman:

T. Buschek W. Chandler

Decision electronically authenticated