Datasheet for the decision of 25 September 2005

Case Number: T 0153/05 - 3.2.04
Application Number: 01935704.5
Publication Number: 1284798
IPC: A63F 13/10
Language of the proceedings: EN
Title of invention: Providing advertising with video games
Applicant:
INTEL CORPORATION
Opponent: -
Headword: -
Relevant legal provisions:
EPC Art. 56, 83
Keyword: "Sufficiency of disclosure (yes)"
"Inventive step (yes)"
Decisions cited: -
Catchword: -
Case Number: T 0153/05 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 25 September 2005

Appellant: INTEL CORPORATION
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Decision under appeal: Decision of the Examining Division of the European Patent Office posted 29 September 2004 refusing European application No. 01935704.5 pursuant to Article 97(1) EPC.

Composition of the Board:
Chairman: M. Ceyte
Members: A. De Vries
T. Bokor
Summary of Facts and Submissions

I. The appellant lodged an appeal, received at the EPO on 1 December 2004, against the decision of the Examining Division notified by post on 29 September 2004, refusing the European patent application No. 01 935 704.5 filed as an international application PCT/US01/16224 and published under the international publication number WO-A-01/91869. The fee for appeal was paid simultaneously and the written statement setting out the grounds of appeal was filed on 27 January 2005.

II. The Examining Division held that the subject-matter of the pending claims did not meet the requirements of Articles 52 and 56 EPC having regard to the state of the art as disclosed in the following documents:


III. Oral proceedings were held on 25 September 2006. During the oral proceedings the appellant filed a new set of claims and requested as sole request that the decision under appeal be set aside and a patent be granted on the following documents:

- claims 1 to 25 as submitted during the oral proceedings of 25 September 2006

- description pages 2,2B filed 25 August 2006

2029.D
IV. The wording of the independent claims 1, 12 and 21 of the sole request is as follows:

1. A method comprising:
recognizing (10) user selections (16) of video game image elements (12; 14) wherein a hot clickable image element (14) is provided as one of the image elements (12; 14) in a video game;
displaying (38) an advertising in response to a selection (16) of said hot clickable image element (14);
collecting information about image elements that are not a hot clickable element but have been mouse click selected and providing that information to a web server at periodic intervals to enable incorporation of said selected image elements that are not hot clickable into the video game as image elements that are hot clickable;
and converting at least one of the frequently selected image elements that are not hot clickable into the video game as an image element that is hot clickable.

12. An article comprising a machine-readable storage medium (62) storing instructions that when executed enable a processor-based system (45) to:
recognize (10) user selections (16) of a video game image element (12; 14);
provide a hot clickable image element (14) as one of the image elements (12;14) in a video game;
display advertising (38) in response to selections (16) of said hot clickable image element (14);
collect information about image elements that are not hot clickable but have been mouse click selected and providing that information to a web server at periodic intervals to enable incorporation of the selected image elements that are not hot clickable into the video game as image elements that are hot clickable;
and convert at least one of the frequently selected image elements that are not hot clickable into the video game as an image element that is hot clickable.

21. A system comprising:
   a processor (46);
   a storage (50) coupled to said processor (46), said storage (50) storing instructions that enable the processor (46) to implement a video game, recognize user selections (16) of video game image elements (12;14), operate a hot clickable image element (14) as one of the image elements (12;14) in the video game, display an advertising in response to selections of said hot clickable image element (14), collect information regarding image elements that are not hot clickable but have been mouse click selected and provide that information to a web server at periodic intervals to enable incorporation of the selected image elements that are not hot clickable into the video game as image elements that are hot clickable, and convert at least one of the frequently selected image elements that are not hot clickable into the video game as an image element that is hot clickable.
Reasons for the Decision

1. The appeal is admissible.

2. Amendments

2.1 The board is satisfied that the amendments to the claims do not contravene Article 123(2) EPC.

2.2 Claim 1 as filed during the oral proceedings combines the features of originally filed claims 1 and 3, while incorporating features of the embodiment described on page 5, lines 16-32.

In particular, the added steps of collecting information and converting the clickable status of the element are based on page 5, lines 17-20, respectively, page 5, lines 23-25 and 27 in combination with page 5, lines 30-32.

The deletion of the feature of pausing from claim 1 with respect to previous versions is allowable as this feature was not present in the originally filed independent claims, and also does not feature in all the embodiments (cf. the embodiment of figure 6). Finally, this feature is not functionally related to the further features of claim 1.

2.3 Further independent claim 12 is directed at an article comprising a machine readable storage medium and is based on original claims 13 and 15, while independent claim 21 is directed at a system and is based on original claims 23 and 25. Both claims include
appropriately worded features analogous to those of method claim 1 that derive from the embodiment of page 5.

2.4 The dependent claims 2-9 correspond to originally filed claims 4 and 6-12; dependent claims 13-18 correspond to original filed claims 16 and 18-22; while dependent claims 22-24 correspond to the originally filed dependent claims 26, 29 and 30. The remaining dependent claims 10, 11, 19, 20 and 25 are based on page 3, lines 17-30.

2.5 Furthermore, the description has been brought into conformity with the amended claims and includes citations of the prior art documents D1 and D2.

3. Sufficiency of Disclosure

The Board is satisfied that the claimed invention is disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. In particular, as regards the feature of collection of information the Board holds that the skilled person will, firstly, understand the term "image elements that are not hot clickable" used therein, and, secondly, is able to directly and unambiguously derive at least one mode of implementation of this feature from the original disclosure using common general knowledge.

As argued by the Appellant, the term "not hot clickable image element" is contextually clear in distinguishing these elements from those that are hot clickable, where the term "hot" is commonly used in the present context.
to denote hyperlinking, see the definition of "hot clickable" given on page 3, lines 9 to 12. Thus, the "not hot clickable image elements" are those that are not so hyperlinked. The manner in which collection of information about such elements when mouse click selected is realized, is in part inferable from figures 3, 6 and 7, where steps 32, 82 and 96, respectively, presuppose the existence of predefined objects prior to determining whether the object is hot clickable or not. D1 in fact shows such predefined elements in the form of the list of N-data of image elements of interest for hyperlinking. Collection of the required information is then realized by comparison of the cursor coordinates upon occurrence of a mouse click with the image element's coordinates in a manner which is routinely practised in the field, i.e. belongs to the common general knowledge in the present field.

4. Inventive Step

4.1 Document D2 is considered to disclose the closest prior art for the reasons set out below:

This document, see abstract, relates to an interactive gaming scheme, which may be played via the internet, and which, see column 24, lines 19-22, displays advertising in response to selection of hyper-linked image elements. Advertising is furthermore provided selectively to a given player in dependence of that player's user profile, see abstract, while column 23, lines 48-59, considers re-evaluating user profiles with the aim of changing the particular selection of advertising by commencing or ceasing transmission of advertising. From this it may be inferred that D2 also
considers adding (or deleting) advertising, which may be accessed via hyperlinked image elements, or in other words, with adding hyperlinks. D2 is thus concerned with a similar purpose and effect as the present invention, which also seeks to add hyperlinks see page 5, final paragraph. For this reason D2 is considered as the most relevant prior art for assessing inventive step.

4.2 The method of present claim 1 differs from this known method in the following features:

− collecting information about image elements that are not a hot clickable element but have been mouse click selected and providing that information to a web server at periodic intervals to enable incorporation of said selected image elements that are not hot clickable into the video game as image elements that are hot clickable;

− and converting at least one of the frequently selected image elements that are not hot clickable into the video game as an image element that is hot clickable.

In the scheme of D2 addition can be decided, as noted above, on the basis of re-evaluated user profiles, which are in turn determined on the basis of data pertaining to selection of existing advertising presentations, e.g. by collecting statistical data on advertisement viewing (which advertisement has been viewed and when, how often, or how long), or by evaluating user queries or responses to queries, see column 25, lines 15-23 and 61-66, and column 26,
lines 56 to 65. The latter passage indicates that this may take the form of monitoring activation, i.e. selection of an existing hyperlinked image element, column 26, lines 61-62. D2 can thus be seen to collect data on selection of linked ("hot clickable") image elements, rather than non hot clickable elements as claimed. Moreover, D2 is not specific on how adding takes place, and thus includes all manners of addition, e.g. incorporation of a completely new, hyperlinked image element, or alternatively using a (non-linked) pop up window.

4.3 These differences have the effect of linking a not yet linked image element on the basis of selection of that element itself. This allows an owner to respond to user requests (for information) that he will not have anticipated. This is in turn motivated by his desire to supply additional goods and services (page 5, lines 27-30) and ultimately improve "commercialization of the economic value generated from these games" (page 2, lines 5-6). Within the wider framework of this aim and based on the above effect the following technical problem may be formulated: how to add hyperlinks in response to non-anticipated requests.

4.4 The claimed solution is not disclosed in any of the cited documents, nor does the Board consider it an obvious further modification of any of these documents' teachings based on the skilled person's common general knowledge.
4.4.1 In particular, none of the disclosed documents considers focusing on the (frequency of) selection of the non-linked image elements as a means of determining which additional elements need to be hyperlinked.

(a) D2, as noted, is interested only in existing advertising, and bases subsequent adaptations solely on advertising, and thus links, which were initially foreseen as of interest. It effectively teaches to extrapolate or predict future adaptations on the basis of usage of such existing, foreseen elements, as opposed to the claimed invention which seeks to measure unforeseen demand. This applies equally to addition and deletion of hyperlinks as derivable from column 27, lines 24-25 in conjunction with column 26, lines 58-65.

(b) Further relevant document D1, which also describes an interactive video game with hyperlinking of image elements to adverts (see e.g. column 8, lines 55-67), describes the use of a list of N-data comprising a set of predefined image elements of likely interest to a programmer (see column 7, lines 18-25). When first designing a given hyperlinked video game program a programmer chooses elements from the links. The list may also obviously be used for subsequent updates of a program, i.e. elements that were initially not selected and thus unlinked nevertheless remain of interest for a subsequent update. However, it is not derivable from D1 which method or criteria might be used to determine which of these predefined, unlinked elements are to be selected.
for subsequent linking. D1, therefore at best suggests the non selected items of the N-data list as candidates for subsequent linking, but fails to indicate any criteria or any mechanism by which an item might be selected from this list.

4.4.2 The Board also does not consider the claimed solution obvious having regard to common general knowledge of the skilled person. Thus, the approach of the claimed invention which may be regarded as seeking to measure unforeseen demand of an item itself (via its selection), in the view of the Board, represents too significant a departure from that of in particular D2 by which the demand is extrapolated from the usage of other elements. D1, which does not develop any approach in this regard, is even further removed.

4.4.3 Even if D1 and D2 are combinable as matter of obviousness, such a combination does not result in the subject-matter claimed. In particular, where D2 is silent on how to add a link, the skilled person would as a matter of obviousness consult D1, where the list of N-Data suggests use of its elements for hyperlinking. Alternatively, D1 could be used as a starting point: where D1 is silent on the criteria for selecting a new element for hyperlinking from the list of N-data (when updating an existing video program, see above), D2 provides an obviously suitable such set of criteria. In such an obvious combination data as to usage of existing links will be collected as taught by D2, and then used to select new links from a set of potential candidates for linking as taught by D1.
4.5 From the above the Board concludes that the method according to claim 1 involves an inventive step in the sense of Article 56 EPC as required by Article 52(1) EPC.

4.6 The same conclusions hold for independent claims 12 and 21 which incorporate the steps of the method of claim 1 in the form of corresponding instructions of an article with machine readable storage medium, respectively a system with processor and storage. These claims also meet the requirements of Article 52(1) EPC in conjunction with Article 56 EPC.

4.7 Finally, the dependent claims 2 to 11, 13 to 20 and 22 to 25, which concern particular embodiments of the invention also meet the requirements of Article 52(1) EPC.
Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to grant a patent on the basis of the documents stated in section III above.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte