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

Datasheet for the decision of 2 June 2020

Case Number: T 2012/17 - 3.5.07
Application Number: 11849211.5
Publication Number: 2652635
IPC: G06F17/30, G06F21/00,
     H04L29/08, G06Q30/02, G07F7/10
Language of the proceedings: EN

Title of invention:
Providing a customized application to a user terminal

Applicant:
Intellipocket OY

Headword:
Customised application/INTELLIPOCKET

Relevant legal provisions:
EPC Art. 113(1)
EPC R. 103(1)(a)

Keyword:
Substantial procedural violation – violation of the right to be heard (yes)
Remittal to the department of first instance – fundamental deficiency in first instance proceedings (yes)
Decisions cited:
T 0763/04, T 1557/07
Case Number: T 2012/17 - 3.5.07

DETECTION
of Technical Board of Appeal 3.5.07
of 2 June 2020

Appellant: Intellipocket OY
(Applicant)
Hiilikatu 3
00180 Helsinki (FI)

Representative: Papula Oy
P.O. Box 981
00101 Helsinki (FI)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 25 April 2017
refusing European patent application
No. 11849211.5 pursuant to Article 97(2) EPC

Composition of the Board:
Chairman R. Moufang
Members: R. de Man
M. Jaedicke
Summary of Facts and Submissions

I. The applicant (appellant) appealed against the decision of the Examining Division refusing European patent application No. 11849211.5, published as international application WO 2012/080578 and claiming a priority date of 17 December 2010.

II. The contested decision mentioned the following documents:

D2: EP 1 182 589 A2, published on 27 February 2002;

The Examining Division decided that the subject-matter of claim 1 of the main request and the first to fifth auxiliary requests lacked inventive step over document D1.

III. In a letter dated 1 April 2016, filed in response to a communication of the Examining Division, the appellant had referred, inter alia, to the following document:


IV. In its statement of grounds of appeal, the appellant maintained the requests considered in the decision under appeal. It requested 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, one of the first to fifth auxiliary requests.

V. In a communication issued under Rule 100(2) EPC, the Board informed the appellant of its intention to set aside the decision under appeal, to remit the case to the Examining Division for further prosecution and to order reimbursement of the appeal fee under Rule 103(1) (a) EPC. In response, the appellant agreed to remittal without oral proceedings before the Board being held first.

VI. Independent claim 1 of the main request reads as follows:

"A method for providing a user terminal (1-80; 6-80; 7-80_1 ... 7-80_n) with a customized web application, wherein execution of the web application requires a respective copy of the web application at the user terminal and an application server (1-20), and wherein the web application is customized in respect of user-specific parameters and terminal-specific properties, the method comprising the following acts performed by an application server (1-20), the application server comprising an equipment database (1-24) for storing terminal-specific properties in respect of a plurality of different user terminals:

- storing a template for the customized web application and a feature set for each of several terminal types;
- receiving a set of requests (2-2, 2-14; 6-81) for creation of the customized web application;
- determining the user-specific parameters and a type of the user terminal based on the set of requests
(2-2, 2-14; 6-81) for the customized web application;
- determining the terminal-specific properties based on the determined type of the user terminal;
- creating the customized web application based on the template, the user-specific parameters and the terminal-specific properties;
- inserting the customized web application into a set of delivery files for a data communication system (1-50) and transmitting (2-26) the set of delivery files to the user terminal; and
- caching the customized web application and/or parameters for re-creating the customized web application at least for a specified validity period of the customized web application."

VII. The text of claims 2 to 14 of the main request, and that of the claims of the auxiliary requests, is not relevant to this decision.

**Reasons for the Decision**

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

2. The invention

2.1 The application relates to "web applications" which are to be downloaded to user terminals such as mobile phones. According to paragraph [0018] of the published application, the term web application refers to "a set of information material from which web pages may be constructed". Examples of such information are "images, text, code segments in markup languages such as HTML and XHTML, stylesheets such as CSS, script languages
such as JavaScript, video and audio, as well as various browser plug-in content such as Flash, Silverlight and Java Applet content".

2.2 The invention seeks to provide web applications customised to user-specific parameters and terminal-specific properties (paragraph [0006]). Essentially, this is achieved by providing, at an application server, a customisable web application template and, in response to requests specifying user-specific parameters and a user-terminal type, creating the customised web application on the basis of the template, the user-specific parameters and terminal-specific properties corresponding to the user-terminal type.

3. Right to be heard - Article 113(1) EPC

3.1 The right to be heard under Article 113(1) EPC encompasses the right of a party to have its comments considered in the written decision (see decision T 763/04 of 22 June 2007, reasons 4.3 and 4.4). Although a decision does not have to address each and every argument of a party in detail, it must comment on the crucial points of dispute to give the losing party a fair idea of why its arguments were not considered convincing (see decision T 1557/07 of 9 July 2008, reasons 2.6).

3.2 In this case, a crucial point of dispute was whether document D1 disclosed "web applications".

3.2.1 According to the European search opinion, document D1 disclosed a web application in the form of "application 122 to communicate with a web service" on page 5, lines 16 and 17. In its communication dated 1 July 2016
and its decision, the Examining Division additionally referred to page 18, lines 10 to 13.

3.2.2 Throughout the first-instance proceedings, the appellant repeatedly contested that document D1 disclosed web applications.

In its letter of 1 April 2016, it argued that, as evidenced by document D6, at the priority date of the application, the term "web application" had a definition established by the W3C standardisation body. The Board notes that, according to document D6, the term refers to a web page or collection of web pages delivered over HTTP which uses server-side or client-side processing to provide an "application-like" experience within a web browser.

In its next letter dated 16 January 2017, submitted in response to the summons to oral proceedings before the Examining Division, the appellant reiterated this argument by referring to its previous response.

During the oral proceedings before the Examining Division, the appellant argued that a web application was run within a web browser, was not a stand-alone application and could not be equated to the application 122 in document D1 (see points 8, 9 and 20 of the minutes).

3.2.3 In the contested decision, the Examining Division did not mention the appellant's arguments with respect to the term "web application" but merely referred to the passages on page 5, lines 16 and 17, and page 18, lines 10 to 13, of document D1. The first passage states that "[t]he terminal 100 uses the applications 122 to access or otherwise communicate with a web
service 110, or other schema-defined services such as but not limited to SQL databases". The second passage explains that "application generation and customization can be initiated by the user of the terminal 100 discovering the web service 110 using such as but not limited to: a device browser; an email attachment; or a dedicated web service discovery application". From neither passage is it evident whether the Examining Division considered that the applications 122 satisfied the definition of a "web service" as put forward by the appellant or whether (and why) it took the view that the definition proposed by the appellant, for which document D6 was cited as evidence, was considered too narrow.

3.3 A further crucial point of dispute was whether document D1 disclosed the claimed step of the application server creating the customised web application ("the following acts performed by an application server ... creating the customized web application based on the template ...").

3.3.1 In its letter dated 16 January 2017, the appellant pointed out that, in document D1, the customisation of the application templates was carried out by the developer/user and not "solely and completely by the application server" as required by claim 1. During the oral proceedings before the Examining Division, the appellant again stressed that, in document D1, customisation was performed by the user (see point 10 and also point 13 of the minutes of the oral proceedings before the Examining Division).

3.3.2 In its decision, however, the Examining Division did not acknowledge the step of the application server creating the customised web application as one of the
differences. Nor did it explain why it disagreed with the appellant on this point.

3.4 Hence, the contested decision neither explicitly nor implicitly addresses the appellant's arguments with respect to at least two crucial points of dispute. It follows that the Examining Division infringed the appellant's right to be heard and thus committed a substantial procedural violation.

3.5 The inventive-step objection being the only ground for the refusal, this procedural violation was causal for the appeal. Reimbursement of the appeal fee under Rule 103(1)(a) EPC is therefore equitable.

4. Remittal

4.1 Given that in document D1 an "application template" is customised by a developer/user (or "an independent customization provider 120") who may essentially freely rewrite the template with the help of a development environment (see page 5, lines 11 to 15; page 16, line 18, to page 18, line 8; Figure 6), the templates of document D1 appear to be unsuitable for automated customisation. It is therefore questionable whether document D1 is a suitable starting point for assessing inventive step of the subject-matter of claim 1 of the main request.

4.2 However, inventive step still has to be assessed with respect to documents D2 to D5.

Moreover, the precise technical meaning of, inter alia, the term "web application" and the feature "wherein execution of the web application requires a respective copy of the web application at the user terminal and an
application server" may need further investigation in light of the technical explanations and examples given in the application and the common general knowledge of the skilled person.

4.3 Hence, it is appropriate to remit the case to the Examining Division for further prosecution on the basis of the main request. In addition, the appeal fee is to be reimbursed.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution.

3. The appeal fee is to be reimbursed.

The Registrar: 

The Chairman:

S. Lichtenvort 

R. Moufang

Decision electronically authenticated