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Datasheet for the decision
of 31 January 2018

Case Number: T 1957/13  -  3.5.05
Application Number: 07101398.1
Publication Number: 1953659
IPC: G06F19/00
Language of the proceedings: EN

Title of invention:
A method for effecting computer implemented decision-support in prescribing a drug therapy

Applicant:
Daintel ApS

Headword:
Drug prescribing database/DAINTEL

Relevant legal provisions:
EPC Art. 56
RPBA Art. 12(4)

Keyword:
Inventive step - (no)
Late-filed request - admitted (no)
Decisions cited:

Catchword:
Case Number: T 1957/13 - 3.5.05

DECISION
of Technical Board of Appeal 3.5.05
of 31 January 2018

Appellant: Daintel ApS
(Applicant)
Islands Brygge 39
2300 Copenhagen S (DK)

Representative: Høiberg P/S
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Decision under appeal: Decision of the Examining Division of the European Patent Office posted on 25 March 2013 refusing European patent application No. 07101398.1 pursuant to Article 97(2) EPC

Composition of the Board:

Chair A. Ritzka
Members: F. Cretaine
F. Blumer
Summary of Facts and Submissions

I. This appeal is against the decision of the examining division, posted on 25 March 2013, refusing European patent application No. 07101398.1 on the grounds of added subject-matter (Article 123(2) EPC), lack of clarity (Article 84 EPC) and lack of novelty (Article 54 EPC) in respect of the disclosure of D1: US 2002/091546.

II. Notice of appeal was received on 4 June 2013, and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 2 August 2013. The appellant requested that the decision be set aside and that a patent be granted on the basis of the claims of a main request or first to eleventh auxiliary requests, all requests filed with the statement setting out the grounds of appeal. The claims of the eighth auxiliary request were identical to the claims on which the decision was based. In addition, oral proceedings were requested in case the board did not allow the main request.

III. A summons to oral proceedings was issued on 17 November 2017. In a communication preliminary dated 4 December 2017, the board gave its preliminary opinion on the file pursuant to Article 15(1) RPBA. In particular, it questioned the admissibility of the main request under Article 12(4) RPBA and also indicated that this request did not appear to meet the requirements of Articles 84 and 56 EPC. It further expressed the opinion that the first to eleventh auxiliary requests did not meet the requirements of Article 56 EPC. In that respect it relied on the common general knowledge of the skilled person, in particular as exemplified in

IV. By letter of 23 January 2018 the appellant informed the board that it would not attend the oral proceedings.

V. Oral proceedings were held on 31 January 2018 in the absence of the appellant. The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the main request or, subsidiarily, on the basis of any of the first to eleventh auxiliary requests, all requests as filed with the statement setting out the grounds of appeal dated 2 August 2013. After due deliberation on the basis of the written submissions, the board's decision was announced at the end of the oral proceedings.

VI. Independent claim 1 according to the main request and the first auxiliary request reads as follows:

"A computer-implemented method for reducing the size of a rules database for decision-support in prescribing a drug therapy of a patient having a disease or a discomfort, the rules database comprising a table having rows and columns with one or more columns of decision parameters (DP) representing patient data, and one or more columns of prescription information (PI) representing elements of the prescription, where each row contains a set of decision parameters (DP) and a set of prescription information (PI) corresponding to the set of decision parameters (DP) in the same row, the method comprising

- finding a prescription information (PI) value that corresponds to a specific set of decision parameter (DP) values having cell content in common, which they
do not have in common with other sets of decision parameter (DP) values,
- adding a row to the table, where the common decision parameter (DP) values are present and leaving the remaining decision parameter (DP) values empty,
- copying the common prescription information (PI) value to the added row,
- removing the prescription information (PI) value from the rows that have these sets of DP values, and
- removing rows that have no prescription information (PI) values."

Claim 1 according to the second auxiliary request is amended with respect to claim 1 of the main request by:
- replacing the feature "finding a prescription information (PI) value" with the feature "finding a set of one or more prescription information (PI) values" and
- replacing the feature "removing the prescription information (PI) value" with the feature "removing said prescription information (PI) value".

Claim 1 of the third auxiliary request is amended with respect to claim 1 of the main request by replacing the wording "A computer-implemented method for reducing the size of a rules database" with the wording "A computer-implemented method for improving readability and reducing the size of a rules database"

Claim 1 of the fourth and fifth auxiliary requests is amended with respect to claim 1 of the main request by replacing the wording "a table having rows and columns" with the wording "a table having rows and columns forming cells".
Claim 1 of the sixth auxiliary request is amended with respect to claim 1 of the main request by:
- replacing the wording "a table having rows and columns" with the wording "a table having rows and columns forming cells",
- replacing the feature "finding a prescription information (PI) value" with the feature "finding a set of one or more prescription information (PI) values" and
- replacing the feature "removing the prescription information (PI) value" with the feature "removing said prescription information (PI) values".

Claim 1 of the seventh auxiliary request is amended with respect to claim 1 of the main request by:
- replacing the wording "A computer-implemented method for reducing the size of a rules database" with the wording "A computer-implemented method for improving readability and reducing the size of a rules database",
and
- replacing the wording "a table having rows and columns" with the wording "a table having rows and columns forming cells".

Claim 1 of the eighth and ninth auxiliary requests reads as follows:
"A method for reducing the size of a rules database for decision-support in prescribing a drug therapy of a patient having a disease or a discomfort, the rules database comprising a first table having rows and columns with one or more columns of decision parameters (DP) representing patient data, and one or more columns of prescription information (PI) representing elements of the prescription, where each row contains a set of decision parameters (DP) and a set of prescription
information (PI) corresponding to the set of decision parameters (DP) in the same row, the method comprising
a. finding, in the first table, one or more prescription information (PI) columns and one or more
decision parameter (DP) columns and a prescription information (PI) value for each prescription
information (PI) column and a decision parameter (DP) value for each decision parameter (DP) column, so 15
[sic!] that all rows in the first table that have all these decision parameter (DP) values in the
corresponding columns, the found prescription information (PI) columns will have the found
prescription information (PI) values,
b. adding a row to the first table, where the found
decision parameter (DP) values are inserted into the
corresponding decision parameter (DP) columns and
leaving remaining decision parameter (DP) values empty,
c. copying the found prescription information (PI)
values to the added row into the corresponding columns,
d. removing the prescription information (PI) values
from the corresponding columns in all other rows that
have this set of decision parameter (DP) values in the
corresponding DP columns
e. removing rows that have no prescription information
(PI) values, whereby a second table different from the
first table is obtained, and repeating steps a) to e)
at least once."

Claim 1 of the tenth and eleventh auxiliary requests
comprises all the features of claim 1 according to the
eighth auxiliary request with the exception of the
wording "whereby a second table different from the
first table is obtained, and repeating steps a) to e)
at least once", which has been deleted in step e.
All the requests comprise further independent claims directed to a rules database obtained by the method of claim 1, a computer programmed to carry out the method of claim 1 and a computer program for carrying out the method of claim 1.

The eighth and tenth auxiliary requests comprise a further independent claim directed to a method for effecting a drug prescription decision using the obtained rules database.

**Reasons for the Decision**

1. **Admissibility of the appeal**

   The appeal complies with Articles 106 to 108 EPC (cf. point II above) and is therefore admissible.

2. **Non-attendance at oral proceedings**

   The appellant decided not to attend the scheduled oral proceedings. Pursuant to Article 15(3) RPBA, the board is not obliged to delay any step in the appeal proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

   Hence, the board was in a position to announce a decision at the end of the oral proceedings.

3. **Main request - admissibility**

   The claims of the main request are identical to the claims of the request filed on 15 October 2008 after receipt of the European search opinion. By letter of
26 January 2010 the appellant submitted an amended set of claims without mentioning that the previous set of claims filed on 15 October 2008 was maintained. In the annex accompanying the summons to oral proceedings dated 16 February 2012, the examining division stated that the examination had been carried out only on the set of claims submitted with the letter dated 26 January 2010. This implicit finding of the examining division that the set of claims submitted with the letter dated 15 October 2008 had been withdrawn was not challenged by the applicant in its letter of response dated 6 February 2013. As a consequence the set of claims filed on 15 October 2008, i.e. the claims of the present main request, was not decided upon by the examining division.

In the statement setting out the grounds of appeal, the appellant did not give any reason why it again submitted a request which had been withdrawn and thus not decided upon in the first-instance proceedings. In particular, it did not address the clarity objection (Article 84 EPC), raised by the examining division in respect of the claims submitted on 15 October 2008, that the iterative character of the method taught by the whole description was not defined in the claims. Further, although the appellant was forewarned by the board in the annex accompanying the summons to oral proceedings that the admissibility of the main request was an issue to be discussed (see point 4.1), it did not submit any argument in response and decided not to attend the oral proceedings.

For these reasons the board, exercising its discretionary power under Article 12(4) RPBA, decides not to admit the main request into the appeal proceedings.
4. First auxiliary request

This request differs from the main request in the addition of a dependent claim 2 defining the step of repeating the steps of claim 1, meaning that the set of claims according to the first auxiliary request defines an iteration process.

The application relates in substance to a reorganisation process for medical data presented in a table for further lookups which could be performed either by a computer (see page 10 of the description, lines 11 to 17) or by a doctor (see page 3, lines 14 to 25). Since the whole information content of the data present in the initial table is not changed by the reorganisation process, the result achieved is merely a different presentation of the information. This reorganisation is described in detail with reference to tables 3 to 7 in the description and has been even more thoroughly described by the appellant in the Appendix provided with the statement of grounds of appeal. The process is iterative (see page 5, line 14: "Repeat the following process" and the two examples described in relation to tables 1 and 2 and tables 3 to 7, respectively). Further, in the only two examples given in the description with respect to tables 1 and 2 and 3 to 7, and further explained in detail in the Appendix provided by the appellant, a removal of rows occurs after the last iteration. From the description it is also clear that the reorganisation process can equally be performed by a human being only, without the help of a computer.
Claim 1 defines only the very first step in the reorganisation process described in the application, without specifying any iteration step. The rearrangement of information present in the initial table, defined by the steps of claim 1, is a process which can be performed manually by a person, as also exemplified by the Appendix provided by the appellant. In the board's judgement it involves only a basic understanding of the table's organisation in rows, columns and cells and the routine identification of rows presenting common cells for the purpose of suppressing redundant cells in the table, which is a common objective in the field of data storage (see for instance D3, abstract and paragraphs [0002] and [0003]). Furthermore, the technical advantage of the resulting table may well be an expected and thus unsurprising reduction in the number of cells. However, the readability of the whole table is not definitely improved, contrary to what is argued by the appellant, since the number of operations needed to read the prescription values for a defined set of decision parameters remains substantially the same. The board therefore judges that the process steps defined by claim 1 lie within the general design competence of the skilled person and do not require inventive skills. Moreover, executing the process steps on a general-purpose computer, as implied by the wording "computer-implemented method" in claim 1, merely amounts to the automation of the mental process performed by the person reorganising the table and is not considered to involve an inventive step, in accordance with the case law of the boards of appeal.

For these reasons, the board judges that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).
5. Second auxiliary request

Claim 1 differs from claim 1 according to the first auxiliary request only in that it defines finding more than one PI value in an iteration round, instead of identifying the PI values one by one at each finding step. In the board's judgement, this additional feature is straightforward for the skilled person when it comes to identifying a set of decision parameters having cell content in common. Therefore, claim 1 does not involve an inventive step (Article 56 EPC).

6. Third auxiliary request

Claim 1 differs from claim 1 according to the first auxiliary request only in that it specifies that the method is "for improving readability".

This additional feature, however, defines only an aim to be achieved. Moreover, the board is not convinced that the rearrangement of the initial table through the claimed process does improve readability (see point 4 above). Therefore, the board judges that claim 1 does not involve an inventive step (Article 56 EPC).

7. Fourth auxiliary request

Claim 1 differs from claim 1 according to the first auxiliary request only in that it specifies that the rows and columns of the table are "forming cells". This feature is, as already acknowledged by the appellant (see the statement setting out the grounds of appeal, 7.1), common knowledge. Therefore, the board judges that claim 1 does not involve an inventive step (Article 56 EPC).
8. Fifth auxiliary request

Claim 1 is identical to claim 1 according to the fourth auxiliary request. Therefore it does not involve an inventive step (Article 56 EPC).

9. Sixth auxiliary request

Claim 1 differs from claim 1 according to the first auxiliary request only by the features already introduced by the second and fourth auxiliary requests. Since these features are obvious for the skilled person (see points 5 and 7 above) and are juxtaposed in the claim, the board judges that claim 1 does not involve an inventive step (Article 56 EPC).

10. Seventh auxiliary request

Claim 1 differs from claim 1 according to the first auxiliary request only by the features already introduced by the third and fourth auxiliary requests. Since these features are obvious for the skilled person (see points 6 and 7 above) and are juxtaposed in the claim, the board judges that claim 1 does not involve an inventive step (Article 56 EPC).

11. Eighth auxiliary request

Claim 1 is identical to claim 1 according to the request on which the decision was based.

In the board's judgement, the Article 56 EPC objection raised in point 4 above with respect to the first auxiliary request is valid for claim 1, since this claim defines substantially the same subject-matter,
using a slightly different wording and further defining the iteration, and is based on the same just two examples presented in the description and detailed in the Appendix provided by the appellant with the statement setting out the grounds of appeal.

Therefore the board judges that claim 1 does not involve an inventive step (Article 56 EPC).

12. Ninth auxiliary request

Claim 1 is identical to claim 1 according to the eighth auxiliary request. Therefore it does not involve an inventive step (Article 56 EPC).

13. Tenth auxiliary request

Claim 1 differs from claim 1 according to the eighth auxiliary request only by deletion of the feature "whereby a second table different from the first table is obtained, and repeating steps a) to e) at least once" in step e. Therefore it does not involve an inventive step (Article 56 EPC).

14. Eleventh auxiliary request

Claim 1 is identical to claim 1 according to the tenth auxiliary request. Therefore it does not involve an inventive step (Article 56 EPC).

15. Conclusion

The main request is not admitted into the proceedings, and the first to eleventh auxiliary requests are not allowable under Article 56 EPC for lack of inventive step of their respective claim 1.
Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated