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**Datasheet for the decision  
of 16 September 2008**

**Case Number:** T 1338/05 - 3.5.05

**Application Number:** 97890210.4

**Publication Number:** 0844551

**IPC:** G06F 1/00

**Language of the proceedings:** EN

**Title of invention:**  
Computer security system

**Applicant:**  
Veneklase, Brian J.

**Opponent:**  
-

**Headword:**  
Call back security system/VENEKLASE

**Relevant legal provisions:**  
EPC Art. 113  
RPBA Art. 15(3)

**Relevant legal provisions (EPC 1973):**  
EPC Art. 56, 84

**Keyword:**  
Clarity - no (main and auxiliary request)

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1338/05 - 3.5.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.05  
of 16 September 2008

**Appellant:**

Veneklase, Brian J.  
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**Representative:**

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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 18 May 2005  
refusing European application No. 97890210.4  
pursuant to Article 97(1) EPC 1973.

**Composition of the Board:**

**Chairman:** D. H. Rees  
**Members:** M. Höhn  
P. Schmitz

## Summary of Facts and Submissions

I. This is an appeal against the decision of the examining division dated 18 May 2005 to refuse application number 97890210.4. The decision was based on prior art documents

D1: WO9519593 A1 and

D2: GB2229020 A.

According to the decision independent claim 1 of the main and the auxiliary request lacked an inventive step (Article 56 EPC 1973) in the light of the disclosure of prior art document D1 when combined with the teaching of document D2.

II. In the notice of appeal it was requested that the decision to refuse be set aside. In the statement setting out the grounds of appeal it was further requested that a patent be granted on the basis of the claims of the appended main request or auxiliary request. Oral proceedings were also requested as an auxiliary measure.

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

"1. A security access restriction system (10, 20) to restrict access by an individual to a computer (80, 402), which security access restriction system upon receiving a first password sent by a first individual (18) via a first communications channel (82, 412) generates a second password and sends this second password to a second and authorized individual (85)

which may or may not be the same as said first individual via a second communications channel (84), both the identity of the second individual (85) and the second communications channel (84) being associated with the received first password, said second communications channel (84) employing one out of a variety of communications media, and the security access restriction system (10, 20) preventing said access of the first individual (18) to said computer (80, 402) until said second password is returned to it within a certain period of time after said first password was received."

Independent claim 7 defines a corresponding method.

Independent claims 1 and 6 of the auxiliary request add "wherein said second password has a programmable length" at the end of the claim.

IV. The appellant argued that the amended claim 1 according to the main request differs from D1 as closest prior art. According to D1 all users use the same broadcasting channel of a paging system. Thus all users receive all messages, the user for whom the message is intended being indicated by an identifier. Accordingly, an encryption is necessary in D1 in order to ensure that only a person holding the receiving and encryption device will be able to return the transformed second password. It would clearly not have been obvious to simply dispense with the encryption of the second password shown in D1. In addition, in the presently claimed invention the transfer of the second password to the host system had to be performed within a certain time limit. Concerning the auxiliary request, the

appellant argued that the second password having a programmable length provided for an inexpensive but effective security measure.

With regard to objections under Article 84 EPC 1973 raised in an obiter dictum of the appealed decision the appellant argued that contrary to the examining division's view a "second individual" may or may not be identical with a "first individual", just as the owner of a house may or may not be identical with its resident. Further the amended independent claims were believed to be now sufficiently supported by the description and the drawings.

- V. A summons to oral proceedings to be held on 16 September 2008 in accordance with the appellant's request was issued on 10 June 2008. In a communication accompanying the summons the board expressed the preliminary opinion that the subject-matters of the independent claims of both the main request and the auxiliary request did not satisfy the requirements of Article 84 EPC 1973 and were considered obvious in the light of document D1 when combined either with the skilled person's common general knowledge or with the teaching of D2 (Article 56 EPC 1973). The board gave its reasons for these objections and why the appellant's arguments were not convincing. In particular, the board argued that it sees a difference between the first and the second individual and that in case the second password is sent to a second individual being remotely located from the first individual, the second individual will not be able to return the second password via the first communications channel. The board further argued that it is not clear what

restriction is intended by the feature "employing one out of a variety of communications media" and there appears to be no technical significance in the feature that the identity of the authorized second user is "associated with the received first password".

VI. Nobody appeared to represent the appellant at the oral proceedings on 16 September 2008. The board contacted the representative by telephone and was informed that nobody would attend the oral proceedings, which were then held in the appellant's absence.

VII. The appellant had requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the main request (claims 1 to 7) or the auxiliary request (claims 1 to 6) filed with the letter dated 28 September 2005.

VIII. After deliberation the board announced its decision.

### **Reasons for the Decision**

1. The appellant was duly summoned, but did not appear in the oral proceedings, without having notified the board in advance. The board would like to point out that advance notice of absence should have been given, if only as a matter of courtesy. According to Article 15(3) RPBA the board shall not be obliged to delay any step in the 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. Further since the appellant had been informed in the board's communication of the

objections against the application, there can be no question of the appellant being taken by surprise and the appellant's right to be heard has been observed (Article 113 EPC).

**Main request**

2. Clarity of independent claims 1 and 7 (Article 84 EPC 1973)

The board is of the opinion that the expressions "first individual" and "second individual" indicate that there is a difference between the first and second individuals. In comparison to "owner" and "resident" which can be both properties of a single person, two individuals cannot be considered the same person. Therefore, the formulation of independent claims 1 and 7 that the second individual may or may not be the same as the first individual is unclear. Only when it is specified that the first and second individuals are not the same, as in dependent claim 2, can the formulation of this feature be considered clear and supported by the description.

Moreover the board notes that if it were to accept the proposition that the "first individual" and the "second individual" can be the same, then it would have to conclude that so can the "first communications channel" and the "second communications channel" (as indeed asserted in the applicant's letter of 15 March 2005, page 2, lines 12 to 14). However if the channels were the same the invention would not work as described, also giving rise to a lack of clarity objection.

It is not specified in the claims how the second password is returned to the computer. According to the description this is done via the first communications channel (see e.g. column 6, lines 45 to 54). However, if the second password were sent to a second individual remotely located from the first individual, a possibility covered by the claim, the second individual would not be able to return the second password via the first communications channel. As there is no disclosure of a third communications channel and it further appears that the only alternative, to do so via the second channel, would not work with all the embodiments of the invention (e.g. pagers only receive and cannot send information) a further lack of clarity arises.

It is not clear what restriction is intended by the feature "employing one out of a variety of communications media". The board takes it simply to mean that the designer of the system has the choice of a number of media for the second communications channel from which he can choose one or possibly more. It is not required that any particular embodiment must use more than one medium. The board notes that this interpretation appears to be what is disclosed in the description - see e.g. column 6, lines 37 to 44. This "feature" would be true whether or not it was specified *expressis verbis* in the claims, and therefore has no limiting effect on the claimed subject-matter. The inclusion of an apparently limiting "feature" which has no actual restrictive effect is considered misleading and therefore unclear.

Similarly, in contrast to the second communications channel there is no technical significance in the



feature that the identity of the authorized second user is "associated with the received first password". There is no mention in the application that the authorized second user's identity is used, in contrast to the second communications channel which is identified in relation to the received first password and is therefore associated with the first password. However, even this latter association need not always be the case, according to the description. A pager system may be used for the second communications channel. As it is well known in the art (see prior art documents, in particular D1) that pager systems use a single frequency and broadcast their messages to all pagers simultaneously, it is not clear what a "second communications channel" associated with the received first password would mean in this case, where in fact a pager identifier would be associated with the password. Thus, the inclusion of this feature in the independent claims is also regarded as unclear and misleading.

The subject-matter of claims 1 and 7 therefore lacks clarity under Article 84 EPC 1973. The request is therefore not allowable.

The board further notes that the appellant has not responded to the reasoned objection raised in the communication accompanying the summons to oral proceedings that the claimed subject-matter did not involve an inventive step. The board sees no reason to change its opinion on this point.

**Auxiliary request**

3. Claims 1 and 6 of this request comprise the same features objected to in section 2 above and, hence, lack clarity for the same reasons (Article 84 EPC 1973). This request is therefore equally not allowable.

The board again notes that the appellant has not responded to the reasoned objection raised in the communication accompanying the summons to oral proceedings that the claimed subject-matter of this request too did not involve an inventive step. The board again sees no reason to change its opinion on this point.

4. Since there is no allowable request the appeal must be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar

The Chairman

K. Götz

D. H. Rees