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**Datasheet for the decision
of 20 February 2009**

Case Number: T 0477/06 - 3.5.01

Application Number: 02790676.7

Publication Number: 1463983

IPC: G06F 1/00, H04N 7/167

Language of the proceedings: EN

Title of invention:
Processing data

Applicant:
Thomson Licensing

Opponent:
-

Headword:
Content protection system/THOMSON LICENSING

Relevant legal provisions:
EPC Art. 52(1); 54(3)
PCT Art. 8(2)(b)

Relevant legal provisions (EPC 1973):
EPC Art. 54(1),(2),(4); 87(1), (4)
EPC R. 23a

Keyword:
"Priority valid (no)"
"Novelty (no)"

Decisions cited:
-

Catchword:
See reasons, point 4 f.



Case Number: T 0477/06 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 20 February 2009

Appellant: Thomson Licensing
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Representative: Kerber, Thierry
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 21 October 2005
refusing European application No. 02790676.7
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: S. Steinbrener
Members: R. R. K. Zimmermann
G. Weiss

Summary of Facts and Submissions

- I. European patent application No. 02 790 676.7 relating to a content management and protection system was filed by CANAL+ TECHNOLOGIES S.A. (FR) on 12 December 2002 and published as International Publication No. WO-A-03/050661. The application claims priority from European patent application No. 01 403 228.8 filed by the applicant on 12 December 2001.
- II. The examining division refused the application for lack of novelty over US-A-6 128 605 (document D1) by a decision posted in writing on 21 October 2005.
- III. The application has been transferred to THOMSON LICENSING S.A. (FR) which lodged an appeal against the refusal decision on 21 December 2005, paying the appeal fee on the same day. In a letter received 21 February 2006, the appellant filed a statement setting out the grounds of appeal including amended claims in accordance with two auxiliary requests.

In a communication annexed to summons to oral proceedings, the Board raised objections against the claims and introduced European patent publication No. EP-A-1 182 874 as an intermediate document (document D8). The corresponding application (No. 0 402 349.5) had been filed by CANAL+ TECHNOLOGIES S.A. (FR) on 24 August 2000 and was published on 27 February 2002. The Board stated that this application seemed to anticipate the subject matter of the claims then under consideration and noted that to the extent that the document anticipated the subject matter of the application the priority claim was not

valid since the applicant could claim priority for the first filing only.

By letter dated 2 October 2008, the appellant filed a main and auxiliary set of amended claims and argued that document D8, while mentioning the possibility to record scrambled data first and to obtain the access rights for it afterwards, did not describe how this was done. The claims were thus novel over document D8, which was citable only under Article 54(3) EPC.

Claims 1 of the two requests filed with letter dated 2 October 2008 read as follows:

Claim 1 according to the main request:

"Apparatus (2000) for processing data, comprising:
means (5550) for receiving encrypted data (5602) comprising at least one control word necessary for descrambling scrambled content (800), wherein the apparatus does not have access rights for the encrypted data (5602);
means (2100) for storing the encrypted data;
means (5000) for obtaining the access rights for the stored encrypted data;
means for retrieving the stored encrypted data;
means (5000) for decrypting the retrieved encrypted data to obtain the at least one control word; and
means (2300) for storing the at least one control word in place of the stored encrypted data, so as to enable descrambling of the scrambled content."

Claim 1 according to the auxiliary request:

"Apparatus (2000) far processing data, comprising:
means (5550) for receiving encrypted data (5602)

comprising at least one control word necessary for descrambling scrambled content (800);
means (2100) for storing the encrypted data, if the apparatus does not have access rights for the encrypted data;
means (5000) for obtaining the access rights for the stored encrypted data, if the apparatus does not have access rights for the encrypted data;
means for retrieving the stored encrypted data, if the apparatus does not have access rights for the encrypted data;
means (5000) for decrypting the retrieved encrypted data to obtain the at least one control word, if the apparatus does not have access rights for the encrypted data, or the received encrypted data, if the apparatus has access rights for the encrypted data; and
means (2300) for storing the at least one control word in place of the stored encrypted data, so as to enable descrambling of the scrambled content."

IV. Oral proceedings before the Board took place on 14 November 2008. The subject matter of document D8 was discussed in detail.

The Board drew specific attention to figures 15 and 16 of document D8 describing the wrapping up, and the converse process, of access and content management data like Control Words CW, usage rules URM, and entitlement management messages EMM into one encrypted data packet. These packets, the Content Management Messages (CMM), were stored independently of the content data in the so-called hdvr_file.management_data part of a mass storage media like the hard disk video recorder HDVR as described in document D8 at paragraphs 189 to 200, for

example. It drew furthermore attention to figure 29 and paragraph 283 showing the formation of the Content Management Messages CMM, and to the various scenarios and models of using locally recorded content described in document D8 as the push mode, the pay-per-view model, or the post-purchase super-distribution (see paragraphs 158 ff., 283, 291 ff., 320 ff., 345, and 348 ff.).

The Board explained to the appellant that the European patent application No. 00 402 349.5 published as EP-A-1 182 874 (document D8) was deemed to be withdrawn with effect of 28 August 2002 for not paying the designation fees. Although the content of the application, i.e. of document D8, was for these reasons not prior art in terms of Article 54(3) EPC, this earlier application was to be considered the first filing of the invention presently claimed.

V. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 6 according to the main and auxiliary requests, both requests filed with the letter dated 2 October 2008.

VI. According to the appellant, the claimed invention was specifically disclosed in figure 24 of the present application, showing the two situations dealt with in the present claims, namely on the left side of the figure the case when access rights were available at the time of the recording of the content, and on the right side of the figure the case when such access rights had to be obtained after the recording of the content has taken place.

The essential feature distinguishing the claimed invention from the system described in document D8 was the storing of the Control Word within the Content Management Message CMM. If the access rights were not yet available at the time of recording, the system did not simply store the decrypted Control Word, but the original Entitlement Control Message ECM in place of the Control Word. By using the original encrypted Entitlement Control Message instead of the clear Control Word, the system allowed the recording of content data by preserving at the same time the protection of the content against unauthorised descrambling.

In document D8, it was only the clear Control Word, possibly encrypted by a local key, which was stored in the Content Management Message, a system clearly different from the present invention. Since any difference ensured novelty, document D8 did not anticipate the present invention and hence, the European patent application No. 00 402 349.5 did not render the priority claim of the present application invalid.

VII. At the end of the oral proceedings, the Board declared the debate closed.

Reasons for the Decision

1. The appeal, although admissible, is not allowable since the subject matter of the claims does not meet the

requirement of novelty as set out in Articles 52(1) EPC and 54(1) and (2) EPC 1973.

2. It was undisputed by the appellant that document D8 disclosed those features of claim 1 (both requests) which define the functions of the apparatus for the case when the apparatus has access rights for encrypted data, the encrypted data comprising the at least one control word necessary to descramble the scrambled content.

In fact, the digital content protection system of document D8 comprises a mass storage device which receives and stores scrambled content data as well as encrypted data comprising the at least one Control Word CW for descrambling the scrambled content data (see for example document D8, figures 15 and 16 with paragraphs 189 to 191).

It is noted that the term "encrypted data" may be referred to the ECMs (Entitlement Control Messages) as broadcast by the content provider, for example, or to the local 'ECMs' called Content Management Messages CMMs (see document D8, paragraph 289 at page 28, line 25 f.) since both data comprise the at least one Control Word CW for descrambling the scrambled content data. Having regard to the subject-matter as claimed however, the later interpretation is more appropriate and applied in the following.

Moreover, the term "access rights" in the expression "access rights for encrypted data" is understood to refer to the rights of accessing the (scrambled) content associated with the respective ECM and CMM.

This meaning follows clearly from the present description, WO-Publication, page 42, line 6f., page 43, line 20 ff., and page 64, line 16 f., 21 f., and 32.

The system of document D8 is able to retrieve the Content Management Messages CMM and to pass them to a decryption stage 1024 for decrypting the CMM to obtain the control words used to descramble the scrambled content (see paragraph 191 with figure 16).

3. Claim 1 (both requests) defines further functional means for processing the data in the case when the apparatus does not have the access rights for the encrypted data. These functional means render the apparatus suitable for storing the encrypted data, for obtaining the access rights, for retrieving the stored encrypted data, for decrypting the retrieved encrypted data to obtain the at least one control word, and for storing the at least one control word in place of the stored encrypted data.

These functions are also anticipated by the digital content protection system of document D8. It actually allows to obtain the rights to replay a recording in different scenarios, either after the recording has been made or prior to the recording (see for example document D8, paragraph 159 and paragraphs 193 with 321 and 332). As indicated in paragraph 214, the system ensures the validity of the associated rights at the time of using the recorded content by comparing the usage rules presented in the recorded CMM with the rights acquired by the subscriber and included in the security module SM of the Content Management and

Protection System CMPS. As specifically pointed out in paragraph 283 at page 27, lines 56 to 58, the system is able to supply the Control Words to the security module for creation of current Content Management Messages to be recorded and for eventual content usage, when the Entitlement Control Messages prohibit access to a current programme, for example, if only a deferred usage on the locally recorded content is possible as in the case of the push mode or impulse buying of recorded content (i.e. when some payment for using a previously recorded content is required, see paragraph 345).

In the context of deferred content usage, the system of document D8 allows the updating of the Content Management Messages stored by the mass storage device as follows from the examples described in paragraphs 51, 188, 215, 220, 303 ff., 327, and 345. In the case where a hard disk video recorder (HDVR) is the preferred mass storage device, the updated Content Management Messages are reinserted into the management data part of the video file, containing the stored Content Management Messages (see, for example, paragraphs 198 and 215). Since these messages are stored in encrypted form (see figures 15 and 16), the functions of updating and reinserting updated Content Management Messages imply that a stored CMM, and thus also the control word(s) and content usage rules embedded in the CMM, have to be retrieved, decrypted, modified, encrypted, and again stored in place of the original Content Management Message.

Document D8, therefore, fully anticipates the features and functions of the claimed apparatus for the case

when the apparatus has initially access rights as well as for the case when it has not.

4. Document D8 is the publication of the European application No. 00 402 349.5. Since the designation fees have not been paid, the content of this application does not form prior art within the meaning of Article 54(3) EPC and (4) EPC 1973 according to Rule 23a EPC 1973. However, the application has been filed by the same applicant and earlier than the priority application, European patent application number 01 403 228.8, from which the present application derives its priority date. In view of the fact that the claimed subject-matter is anticipated by the earlier application, the priority application is not the first application in terms of paragraphs (1) and (4) of Article 87 EPC 1973, which provisions are applicable in the present case (see Article 8(2)(b) PCT). Furthermore, since the earlier application has been published (document D8), the exceptive clause of paragraph (4) does not apply so that the present priority claim is not valid to the extent the claimed invention is directly and unambiguously derivable from application No. 00 402 349.5.

5. Hence, under these conditions, the present application enjoys priority only from the date of filing so that in so far document D8 forms an ordinary piece of prior art in terms of Article 54(2) EPC. In the present case, for the reasons already given in points 2 to 4 above, document D8 destroys novelty in claim 1 of both requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

T. Buschek

S. Steinbrener