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**Datasheet for the decision
of 10 July 2012**

Case Number: T 0298/08 - 3.5.06
Application Number: 02013763.4
Publication Number: 1271319
IPC: G06F 11/14, G06F 17/30,
G06F 11/00, G06F 11/20
Language of the proceedings: EN

Title of invention:

System and method for resolving conflicts detected during a
synchronization session

Applicant:

MICROSOFT CORPORATION

Headword:

Synchronisation conflict resolution/MICROSOFT

Relevant legal provisions:

EPC Art. 84

Relevant legal provisions (EPC 1973):

EPC Art. 54(1)(2), 56

Keyword:

"Novelty - yes"
"Inventive step - yes"



Case Number: T 0298/08 - 3.5.06

D E C I S I O N
of the Technical Board of Appeal 3.5.06
of 10 July 2012

Appellant:
(Applicant)

MICROSOFT CORPORATION
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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 15 June 2007
refusing European patent application
No. 02013763.4 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: D. H. Rees
Members: G. Zucka
C. Heath

Summary of Facts and Submissions

I. The appeal is against the decision by the examining division, with written reasons dispatched on 15 June 2007, to refuse European patent application 02013763.4 on the basis that the subject-matter of claim 1 of the main and of the auxiliary request was not inventive, Article 56 EPC 1973, in view of the following documents:

D1: US 5 926 816 A

D2: EP 1 014 629 A

II. A notice of appeal was received on 27 August 2007, the appeal fee being paid on the same day. A statement of the grounds of the appeal was received on 25 October 2007.

III. The appellant requested that the decision of the first instance be set aside and a patent granted on the basis of the main or auxiliary request filed with the grounds of the appeal. The appellant made a conditional request for oral proceedings.

IV. The board issued a summons to oral proceedings. In an annex to the summons, the board set out its preliminary opinion on the appeal, *viz.* that neither of the requests satisfied the requirements of Article 123(2), 84, and 56 EPC and that, in addition, the main request did not satisfy the requirements of Article 54 EPC. The following document was introduced by the board:

D4: W. Creekbaum: "Oracle8i Replication", Release 8.1.5, A67791-01, February 1999, retrieved from the Internet on 28 February 2012, URL:

http://docs.oracle.com/cd/F49540_01/DOC/server.815/a67791.pdf, Chapter 6

- V. In response to the summons, the appellant filed a new main and auxiliary request. In the course of the oral proceedings, the appellant filed a single new request, replacing the previously filed requests.
- VI. The appellant requests that the decision under appeal be set aside and a patent be granted on the basis of the claims filed during the oral proceedings, and a description and drawings to be adapted if necessary.
- VII. The independent claims are as follows:

Claim 1

"A computer-implemented method for resolving a conflict detected while synchronizing a first data object (324) in a first store associated with a mobile device (320) and a second data object (314) in a second store associated with a server (310), wherein

said first data object (324) comprises at least one property;

said second data object (314) comprises at least one property that corresponds to said at least one property of said first data object; and

said conflict occurs, if

said first data object (324) and said second data object (314) have been changed, and

said at least one property of said first data object and said at least one corresponding property of said second data object differ;

wherein

said at least one property of said first data object (324) is designated as a mergeable property and said at least one corresponding property of said second data object (314) is designated as a corresponding mergeable property; wherein each mergeable property has an associated predetermined preferred state for the mergeable property;

said first data object (324) and said second data object (314) being an email object, said mergeable property and said corresponding mergeable property being a read indicator, and said preferred state being an unread state

said computer-implemented method comprising:

determining if the conflict detected comprises a difference between the at least one mergeable property of said first data object (324) and the at least one corresponding mergeable property of said second data object (314); and

if so, merging said at least one mergeable property of said first data object (324) and respectively said at least one mergeable property of said second data object (314) to resolve said conflict by

storing said preferred state in said mergeable property, if the state of said mergeable property is different from said preferred state, and

storing said preferred state in said corresponding mergeable property, if the state of said corresponding mergeable property is different from said preferred state."

Claim 5 relates to a computer-readable medium having computer-executable instructions that correspond to the method features of claim 1.

Claim 8 relates to a system with features that correspond to the method features of claim 1.

VIII. At the end of the oral proceedings, the chairman announced the board's decision.

Reasons for the decision

1. Reference is made to the transitional provisions in Article 1 of the Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the European Patent Convention of 29 November 2000, for the amended and new provisions of the EPC, from which it may be derived which Articles of the EPC 1973 are still applicable to the present application and which Articles of the EPC 2000 shall apply. As far as the Implementing Regulations are concerned, the board refers to Article 2 of the Decision of the Administrative Council of 7 December 2006 amending the Implementing Regulations of the European Patent Convention 2000.

2. *Admissibility of the appeal*

In view of the facts set out at points I and II above, the appeal is admissible, since it complies with the EPC formal admissibility requirements.

3. *Admissibility of newly filed request*

Although the board had already set out in the summons to the oral proceedings that D1 discloses a "pre-

determined preferred state", viz. the value at either the client or the server, depending on information stored in a correspondence table, this issue was discussed at length for the first time only during the oral proceedings. In particular, the board pointed out for the first time during the oral proceedings that Table 2 on page 16 of the description of the application unambiguously shows an embodiment of claim 1 where the "pre-determined preferred state" is the earlier of the time values at the client and the server, i.e. it is not a fixed value that would not require first retrieving the value at the client or the server. The appellant had previously consistently argued that the "predetermined preferred state" had to be interpreted as a fixed state, which therefore distinguished from D1.

The board accepted that the appellant's new request was a fair attempt to overcome the objections that were raised in the summons and that were strengthened by the additional arguments which the board brought for the first time during the oral proceedings. In addition, the admission of the request at this stage did not result in any delay of the proceedings. It was therefore admitted.

4. *Clarity and added subject-matter in the new claims*

The board is satisfied that the new claims have overcome the objections under Article 123(2) and 84 EPC which were raised in the summons. In particular the claims now define the expression "conflict" according to the description and as it would be understood as a term of the art, and they now correctly define the

steps taken to resolve a conflict. The board does not see any further objections to the claims, considered alone, under these Articles. However the description still needs to be brought into correspondence with the new claims (see below).

5. *Novelty, Articles 52(1) and 54(1)(2) EPC 1973*

None of the documents cited in the search report or introduced by the board disclose a conflict resolution method for the synchronisation of email objects with an "unread" preferred state. The subject-matter of claim 1 is therefore novel.

The same argument holds for the independent claims 5 and 9, the subject-matter of which is therefore also novel.

6. *Inventive step, Articles 52(1) and 56 EPC 1973*

Now that the independent claims of the sole request specifically relate to synchronisation of email objects (in contrast to the independent claims of the main request in examination), the board finds it somewhat artificial to start from D1, which is concerned with synchronisation of general databases, as the closest prior art.

D2, in contrast, relates to a method for synchronising email objects between a client and a server, including the synchronisation of a read/unread indicator (see page 2, lines 38-41). The board therefore takes the view that the closest prior art for the problem-solution reasoning should be D2 rather than D1.

The method disclosed in D2 distinguishes itself from the subject-matter of claim 1 essentially in that it does not have the features of claim 1 which solve the problem of the "read" indicator of an email object being changed at both the client and the server side when the values to which it is changed differ. It would appear inevitable that such a situation will occur sooner or later in the synchronisation method of D2, at which point the skilled person will naturally wish to find a way to deal with it. He or she will then consult existing prior art which deals with synchronisation conflicts, e.g. D1 or D4.

D1 (see column 11, lines 4-8) discloses a method in which a detected conflict is resolved in favour of the client or the server, i.e. the value at either the client or the server will be chosen to resolve the conflict. This is the only automatic method of conflict resolution disclosed in D1. Any conflict which cannot be dealt with automatically is to be resolved manually (column 11, lines 8 and 9) but there is no further discussion of how it should be resolved. There is no suggestion of dealing with the situation by setting a variable to some fixed preferred state if it differs from said state, as is claimed. Thus the board concludes that applying the teaching of D1 to D2 would not make the claimed invention obvious. Starting from D1 would clearly also not alter this conclusion.

D4 discusses the various available conflict resolution methods available in a well-known database management system. However none of them is the replacement of a value differing from a fixed preferred state by said

state. It may be noted (as the board did in the summons) that the same effect would be achieved if, for a binary variable such the read state, one were to treat it as arithmetical and use the minimum or maximum value (whichever represented "unread") to resolve the conflict, this being one of the methods which is disclosed. However, not only would this be *ex post facto* reasoning, it would also not actually lead to the method claimed, even if it achieved the same result. The "minimum value" or "maximum value" conflict resolution methods of D4 involve comparing the values of the variable held at the client and the server, and determining what the maximum or minimum is, in order to then substitute it where necessary. The method as presently claimed merely involves determining that they are different and then substituting a fixed value. Therefore, even if the skilled person did combine the teaching of D2 and D4, the resulting method would not fall within the definition of claim 1.

The board therefore concludes that the subject-matter of claim 1 and, for similar reasons, the subject-matter of claims 5 and 8, is inventive, Articles 52(1) and 56 EPC 1973.

7. *The description*

The board notes that the embodiment described in connection with Table 2 on page 16 does not fall within the definition of the current independent claims. The description will therefore need to be amended to fulfil the requirements of Article 84 EPC.

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, with the order to grant a patent on the basis of the claims in the appellant's current request, and a description to be adapted thereto.

The Registrar:

The Chairman:

B. Atienza Vivancos

D. H. Rees