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Datasheet for the decision
of 28 October 2010

Case Number: T 1262/08 - 3.5.01

Application Number: 01304418.5

Publication Number: 1158438

IPC: G06F 17/60

Language of the proceedings: EN

Title of invention:
Single click data synchronization of public and private data

Applicant:
fusionOne, Inc.

Opponent:
-

Headword:
Single click synchronisation/FUSION ONE INC

Relevant legal provisions:
-

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Inventive step - use of a server to identify data store (No -
routine design)"

Decisions cited:
-

Catchword:
-

Case Number: T 1262/08 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 28 October 2010

Appellant:	fusionOne, Inc. 55 Almaden Boulevard - Suite 800 San Jose California 95113 (US)
Representative:	Harris, Ian Richard D Young & Co LLP 120 Holborn London EC1N 2DY (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted 5 February 2008 refusing European patent application No. 01304418.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman:	S. Wibergh
Members:	W. Chandler
	P. Schmitz

Summary of Facts and Submissions

I.   This appeal is part of a series of appeals (also
        including T 1203/08, T 1263/08 and T 1266/08) from
        related applications that tackle the problems of
        synchronising information for a user having a PC and
        various portable devices, such as a laptop computer and
        a personal digital assistant (PDA), or mobile phone.

II.   The present appeal is against the decision of the
        examining division to refuse the European patent
        application No. 01304418.5 according to the state of
        the file. In the communication forming the basis of the
        decision, the division considered that claim 1 lacked
        an inventive step (Article 56 EPC 1973) over US-A-5 926
        816 (D6), which the division introduced into the
        proceedings in the above-mentioned communication, and
        the idea of the "vCard" as described in "vCard
        Overview", Internet Mail Consortium, 13 October 1998,
        retrieved from the internet:
        URL:www.imc.org/pdi/vcardoverview.html (D4), or "vCard:
        The Electronic Business Card", Internet Mail Consortium,
        1 January 1997, retrieved from the Internet:
        URL:www.imc.org/pdi/vcardwhite.html (D5) and the
        skilled person's common general knowledge.

III.   In the statement setting out the grounds of appeal, the
        appellant rebutted the examining division's arguments.
        The appellant also made an auxiliary request for oral
        proceedings.

IV.   In the summons, dated 28 June 2010, the Board scheduled
        oral proceedings for all four related appeals on the 27
        and 28 October 2010 with a reserve day on the

subsequent day. In the communication, the Board summarised the issues to be discussed and, in addition to tending to agree with the examining division's arguments starting from D6, also tended to consider that there was no inventive step starting from the idea of a private data account disclosed in the application.

V.   In a letter, dated 23 September 2010, the representative informed the Board of the appointment of a new representative.

VI.   In a letter, dated the same day, the new representative informed the Board that he was in the process of obtaining instructions from the appellant's US counsel and requested time to prepare written submissions in preparation for the oral proceedings. In a further letter, dated 27 September 2010, the representative requested a postponement of the oral proceedings in order to allow sufficient time to prepare and have written submissions approved.

VII.   The Board did not allow the postponement because the reason was not considered to be a serious substantive reason in the sense of the "Notice of the Vice-President of Directorate-General 3 of the European Patent Office dated 16 July 2007 concerning oral proceedings before the boards of appeal of the EPO" (SE No. 3 OJ EPO 2007, 115) that might justify a change of date. Moreover, the Board pointed out that the summons had already been issued on 28 June 2010 which seemed to have given the appellant enough time for preparation.

VIII.   In a reply, dated 1 October 2010, the appellant
        provided further arguments and filed a first auxiliary
        request.

IX.   At the oral proceedings, the appellant requested that
        the decision under appeal be set aside and that a
        patent be granted on the basis of the first auxiliary
        request filed with letter dated 1 October 2010, or the
        second auxiliary request submitted during the oral
        proceedings before the Board. The main request was
        withdrawn. At the end of the oral proceedings, the
        Chairman announced the decision.

X.   Claim 1 of the present main request (filed as first
        auxiliary request) reads as follows:

        "A method for transferring public information to a
        private information store maintained by a private
        information space manager, the method comprising,
            in response
                to a user connecting from a client device
        (100) to a public information source server (110) for
        selecting the public information from the public
        information source server,
                to the public information source server
        providing content to the user including, for each piece
        of contact (*sic*) that can be synchronized, a sync
        button (40) for display in association with the content
        at the client device, and
                to initiation of a sync request by the user
        selecting a said sync button,
            a sync server (130) identifying the private
        information store where the public information is to be
        stored and

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a server device engine (140) transferring the
public information to the identified private
information store for propagation to one or more
personal information devices associated with the
private information store."

Claim 1 of the present auxiliary request (filed as
second auxiliary request) adds to the end of the sync
server feature "wherein said private information store
is retained on behalf of the user on an intermediate
server which is coupled to a global communications
network", and replaces the part of the last feature
starting with "for propagation …" with "at least one
personal information device coupled via a
communications network to the private information store
exchanging information with the private information
store".

XI.   The appellant argued essentially as follows:

Private information spaces were known, the problem was
to organise them. Conventional data synchronisation was
a separate process from the data transfer aspect. The
invention integrated these aspects and was essentially
a form of "one-click" synchronisation.

The invention was the forerunner of "cloud computing"
where shared servers provided resources, software, and
data to computers and other devices on demand.

The invention differed from the vCard in that it was
possible to download information in a public
information space into a private information space. The
sync server was a separate service distinct from the

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user and the user was not the same as the administrator
of the data. The technical effect of the difference was
how to arrange data to be provided to user devices.

The prior art did not allow or suggest transferring
data to a synchronisation system from which the
information was propagated to the user's personal
devices. There was no hint to link web service
providers and a separate server. The prior art needed
multiple 1:1 connections between services and user
devices, whereas the invention allowed the connections
to be managed via the user's personal information store.

Reasons for the Decision

Admissibility of the appeal

1.   The appeal complies with the requirements referred to
        in Rule 99(2) EPC and is therefore admissible.

The application

2.   The present application concerns the problem of getting
        information from a website so that it can be
        transferred to the user's personal information devices
        (PIDs).

3.   Looking at Figure 2 of the application, the invention
        solves this problem by a method of selecting (10)
        desired data on the website ("public information
        source" in claim 1) and then clicking (40) on a "sync
        request" button that causes the data to be transferred
        (14) to storage that is under the user's control

("private information store") so that it can be
downloaded to the user's personal information devices.
The public information source covers any source of data
outside the user's control, i.e. mutually exclusive
with respect to the "private information store"
(paragraph 24 of the published application).

Requests in appeal

4.   At the oral proceedings the new representative
        explained that claim 1 of the first auxiliary request
        (now main request) was designed to define better the
        essential differences over the prior art. In particular,
        to emphasise the fact that in the invention an
        additional service, comprising a sync server, server
        device engine and (intermediate) storage, managed by an
        administrator managed the information and controlled
        the transfers from the public information source to the
        private information store.

5.   Although the claims of this request were filed late in
        the proceedings, the Board admits them because they are
        clearly a serious attempt to meet the outstanding
        objections without introducing any further objections
        and there was a good reason for the lateness, namely
        that the representative only took over the case at
        short notice and there was no postponement of oral
        proceedings (see above).

Inventive step

6.   In essence the claimed invention is a combination of
        the three concepts of transfer/synchronisation of data
        to personal information devices, using a button to

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facilitate selection of this data from a public information source and storing it in a private information store (on a separate server in the auxiliary request). In principle, a document showing any of these concepts could be used as a starting point for the discussion of inventive step and indeed in this case prior art for each has been discussed.

7.   The examining division chose to start from D6, which relates to a database synchroniser that keeps databases on a server and a client up-to-date and consistent. However, D6 goes into much more detail about the synchronising process than the present application and it does not explicitly address the object of the claim, namely transferring public information to a private information store maintained by a private information space manager. This may have been an acceptable approach for the claim that the division had before them in which the technical implications of the public and private information stores were rather more vague. However, in the Board's view, this is no longer the case because the appellant's amendments have clarified the role of these stores and the invention's role in interconnecting them via the sync server and server device engine.

8.   The opening part of the description of the application itself is relevant to the second and third starting points, namely transferring data from a private information store to a managed personal data store. In particular, the application acknowledges at paragraph 4 web portals that manage user data via a web browser and a user account. The user's data is "stored on a host server maintained by the web portal provider", i.e. on

a server separate from the user's computer. Paragraph
12 states that the Yahoo! calendar "allows a user to
pick certain events and click an add button, therefore
including it in the calendar, and subsequently allow a
user to run a separate synchronization process between
the calendar and a desktop application".

Main request

9.   The Board has difficulties identifying how the subject-
matter of claim 1 actually differs from this prior art.
Not explicitly disclosed are: that the button is a
"sync button" which initiates a sync request, that a
"sync server" identifies the private information store
where the public information is to be stored, and that
a "server device engine" transfers the data "for
propagation to one or more personal information devices
associated with the private information store". In the
Board's view, by using the formulation "for
propagating…" the last feature is not limited to an
actual synchronisation, but only covers the *possibility*
of such a synchronisation, which is clearly also the
case for any data transferred to a store under the
user's control. Thus, this feature is not really a
distinguishing feature. Regarding the "sync server",
the Board considers that in any practical
implementation of the private information store, there
must be some way of identifying it. Whether this would
be using an existing server in the portal such as the
server used to store the information or a separate
"sync server", or some other mechanism would depend on
the design of the system and cannot be seen to involve
an inventive step. Similarly, there must be some

mechanism for transferring the data that could be
considered to be a "server device engine".

10.   The Board also considers that the subject-matter of
       claim 1 is obvious over the disclosure in D4 or D5 of
       the electronic business card (vCard) that allows
       personal data to be transferred between devices. One
       application, described in D4, first page, penultimate
       full paragraph, is to embed a button on a website,
       which when clicked returns a vCard containing
       information about a business to the client machine. In
       the Board's view, using the wording of claim 1 this
       implies:

       A method for transferring public information (address
       of some cool business site) to a private information
       store (address book on client machine) maintained by a
       private information space manager (could be the user),
       the method comprising,
            in response
                    to a user connecting from a client device to
       a public information source server (cool business site)
       for selecting the public information (business address)
       from the public information source server,
                    to the public information source server
       providing content to the user including, for each piece
       of contact (i.e. "content", but in the case of the
       vCard, really a contact) that can be synchronized, a
       sync button (vCard button) for display in association
       with the content at the client device, and
                    to initiation of a sync request
       (transferring data from site to client is a form of
       "sync") by the user selecting a said sync button,

a server device engine transferring the public
information to the identified private information store
(some form of transfer mechanism is implicit) for
propagation to one or more personal information devices
associated with the private information store (as
mentioned above, the term "for propagation to …
devices …", is considered only to cover the *possibility*
of such a synchronisation, which is clearly also the
case for the any data transferred to the user's
computer).

11.   The subject-matter of claim 1 therefore only differs in
        that there is an additional server, namely a sync
        server identifying the private information store where
        the public information is to be stored. The appellant
        suggested that this solved the problem of arranging the
        data to be provided to user devices.

12.   In the Board's view, as mentioned above, the use of a
        server to organise data is a matter of routine design
        in this field, depending on the architecture of the
        system. This in turn would depend on administrative
        considerations such as who is to control the data and
        routine design considerations such as the source and
        quantity of data.

        Auxiliary request

13.   Claim 1 of the auxiliary request adds the features that
        the private information store is maintained on behalf
        of the user on an intermediate server which is coupled
        to a global communications network. In the Board's view
        this does not add anything new to the above argument
        starting from the prior art in the application since

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the web portal operator implicitly has such a separate
server. Starting from the vCard, the Board considers
that the use of this further intermediate server would
be an obvious consideration in the light of the
existence of such a web portal.

14.   The claim also replaces the "for propagating …" feature,
        which the Board finds not to be limiting, by a specific
        mention that at least one personal information device
        is coupled via a communications network to the private
        information store exchanging information with the
        private information store. The Board finds that this
        feature does not add anything inventive since it would
        be a self-evident requirement that any of the user's
        personal information devices should be connectable to
        the system to receive any useful information.

15.   The appellant argued that the invention was a
        forerunner of the concept of "cloud computing". However,
        in the Board's view the prior art had already disclosed
        the basis of this idea. The invention is at best the
        idea of shifting the control of the data from the
        provider of the information to a third party. However,
        in the Board's view the determination of who controls
        the information is purely an administrative decision
        and has no technical character in itself. The technical
        means remain essentially the same but are configured
        differently. Thus, such a difference could not
        contribute to inventive step anyway.

16.   Accordingly, the Board judges that the subject-matter
        of claim 1 of the main and auxiliary request does not
        involve an inventive step (Article 56 EPC 1973), so
        that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek   S. Wibergh