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Datasheet for the decision of 14 February 2014

Case Number: T 0359/10 - 3.5.03

Application Number: 07001843.7

Publication Number: 1819126

IPC: H04L29/06, H04L12/24

Language of the proceedings: EN

Title of invention:
Bi-planar network architecture

Applicant:
Hewlett-Packard Company

Headword:
Network architecture/HEWLETT-PACKARD

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (no)

Decisions cited:

Catchword:

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Case Number: T 0359/10 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 14 February 2014

Appellant: (Applicant)	Hewlett-Packard Company 3000 Hanover Street, Palo Alto, CA 94304 (US)
Representative:	Rees, Simon John Lewis Haseltine Lake LLP Redcliff Quay 120 Redcliff Street Bristol BS1 6HU (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 7 October 2009 refusing European patent application No. 07001843.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. van der Voort
Members: B. Noll
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 07001843.7. The refusal was based on the ground that the subject-matter of claim 1 lacked an inventive step (Article 56 EPC) having regard, inter alia, to the following document:

D2: "ConSentry Networks' Secure LAN Controller Family", Sawyer J. H., NETWORKCOMPUTING", [Online], 13 October 2005.

II. With the statement of grounds of appeal the appellant filed sets of claims according to a main request and an auxiliary request. Oral proceedings were requested.

III. In a communication accompanying a summons to oral proceedings the board gave its preliminary opinion, in particular as concerned the interpretation of the claims and the question of inventive step of the subject-matter of claim 1 of each request.

IV. By a submission filed on 6 February 2014 the appellant informed the board that it would not attend the scheduled oral proceedings.

V. Oral proceedings were held on 14 February 2014 in the absence of the appellant.

The board understood the appellant to be requesting in writing that the impugned decision be set aside and that a patent be granted on the basis of claims 1 and 2 of the main request or claims 1 to 3 of the auxiliary request, both requests as filed with the statement of grounds of appeal.

At the end of the oral proceedings the board's decision was announced.

VI. Claim 1 of the main request reads as follows:

"A method for use with an electronic communication network, the network comprising a connectivity plane (110b) configured to perform a first plurality of network traffic control functions, the method comprising:

(A) installing a control plane (120) in the network;

(B) configuring the control plane to perform a second plurality of network traffic control functions on network traffic received by the control plane, the second plurality of network traffic control functions including at least two of network access control, application traffic control, and attack control;

characterised by:

(C) configuring the connectivity plane not to perform the second plurality of network traffic control functions."

Claim 1 of the auxiliary request reads as follows:

"A method for use with an electronic communication network, the network comprising a connectivity plane (110b) plane [sic] which comprises at least one network interconnect device (112, 114) and is configured to perform a first plurality of network traffic control functions, the method comprising:

(A) installing a control plane comprising at least one node (120) in the network;

(B) configuring the control plane to perform a second plurality of network traffic control functions on

network traffic received by the control plane, the second plurality of network traffic control functions including at least two of network access control, application traffic control, and attack control;

characterised by:

(C) configuring the at least one network interconnect device (112, 114) in the connectivity plane not to perform the second plurality of network traffic control functions."

Reasons for the Decision

1. *Procedural matters*

1.1 The board summoned to oral proceedings in accordance with Article 116(1) EPC following a request from the appellant. The appellant, which was duly summoned, confirmed in writing that it would not attend the oral proceedings (see point IV above).

1.2 The present decision is based on objections under Article 52(1) EPC in combination with Article 56 EPC which had already been raised in the board's communication. The appellant had the opportunity to present its comments on these objections and filed a formal reply without discussing the issues raised in the communication. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment at the oral proceedings on these issues but, instead, chose to rely on the arguments as set out in the statement of grounds of appeal, which the board duly considered below.

1.3 Under these circumstances, the board was in a position to give a decision which complied with Article 113(1) EPC.

2. *Claim 1 of the main request - inventive step (Article 56 EPC)*

2.1 Regarding claim 1 of the main request, D2, which relates to the setting up of control over a communication network as regards network access and security, is the most relevant prior art document. The network in D2 includes a router and a switch which serve to establish and control communication connections between nodes in a network and which perform a first plurality of network traffic control functions such as routing and switching (cf. page 1, the first paragraph after the heading "Getting Started"). The router and the switch thus constitute the connectivity plane in the terminology of claim 1. Further, the D2 network includes a CS2400 network secure LAN controller for exercising network access control (cf. the passages following the heading "Policy Restrictions"), application traffic control (cf. the penultimate paragraph on page 1) and attack control (cf. the first paragraph on page 2). Adding the CS2400 network secure LAN controller as a node in the network thus corresponds to installing a control plane which performs a second plurality of network traffic control functions on network traffic in the terminology of claim 1.

This disclosure of D2 was not disputed by the appellant.

2.2 D2 does not disclose the characterizing feature of claim 1, i.e. "configuring the connectivity plane not

to perform the second plurality of network traffic control functions".

2.3 Starting out from D2 and having regard to the above-mentioned distinguishing feature, the technical problem to be solved may be seen in appropriately implementing the various functions to be carried out for the network control.

2.4 The skilled person, starting out from D2 and faced with the problem identified above, would consider concentrating the network access control, the application traffic control, and the attack control such that these are performed solely by the CS2400 controller, since this configuration would evidently be optimal as regards the robustness of the network control; it would be counter-intuitive to configure the network such that one or more of these control functions would also be exercised by the connectivity plane, since fragmentation of control functions between different entities, i.e. between the CS2400 controller and the devices constituting the connectivity plane, would potentially create undesired interference and would therefore weaken network traffic control as a whole. The skilled person would thus arrive at the claimed subject-matter without the exercise of inventive skill.

2.5 The subject-matter of claim 1 therefore does not involve an inventive step (Articles 52(1) and 56 EPC). Hence, the main request is not allowable.

3. *Claim 1 of the auxiliary request - inventive step (Article 56 EPC)*

3.1 The reasoning given above in respect of claim 1 of the main request is based on the interpretation that the router and the switch in D2 constitute a connectivity plane, that the CS2400 controller is a node in the network which constitutes a control plane in the terminology of the application (see point 2.1 above), and that neither the router nor the switch exercises any control on network access, application traffic or attack.

3.2 The further features in claim 1 of the auxiliary request (see point VI above) therefore do not further distinguish the claimed method over D2. It follows that the method according to claim 1 of the auxiliary request does not involve an inventive step for the same reasons as set out in respect of the subject-matter of claim 1 of the main request (see point 2 above).

3.3 The auxiliary request is therefore not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Rauh F. van der Voort

Decision electronically authenticated