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Datasheet for the decision of 19 April 2016

Case Number: T 2247/10 - 3.5.06

Application Number: 98907612.0

Publication Number: 1004068

IPC: G06F1/00

Language of the proceedings: EN

Title of invention:
TECHNIQUES FOR USING DESCRIPTIVE DATA STRUCTURES

Patent Proprietor:
Intertrust Technologies Corporation

Opponents:
FRANCE TELECOM
FRKelly

Headword:
Descriptive data structure/INTERTRUST

Relevant legal provisions:
RPBA Art. 15(3), 15(6)
EPC 1973 Art. 56
EPC Art. 123(3)

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Keyword:
Inventive step - main request and auxiliary requests 1 and 2 - (no)
Extension of protection - auxiliary request 3 - (yes)

Decisions cited:

Catchword:

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Case Number: T 2247/10 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 19 April 2016

Appellant: (Patent Proprietor)	Intertrust Technologies Corporation 920 Stewart Drive Sunnyvale, CA 94085 (US)
Representative:	Williams, Michael Ian Cleveland 10 Fetter Lane London EC4A 1BR (GB)
Respondent: (Opponent 1 - opposition withdrawn)	FRANCE TELECOM 6 Place d'Alleray 75015 Paris (FR)
Representative:	Santarelli 49, avenue des Champs-Elysées 75008 Paris (FR)
Respondent: (Opponent 2 - opposition withdrawn)	FRKelly 27 Clyde Road Ballsbridge Dublin 4 (IE)
Representative:	Wallace, Alan Hutchinson FRKelly 4 Mount Charles Belfast, Northern Ireland BT7 1NZ (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 19 September 2010 revoking European patent No. 1004068 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	W. Sekretaruk
Members:	G. Zucka
	M. Müller

Summary of Facts and Submissions

I. The appeal of the patent proprietor as sole appellant and currently sole remaining party to the proceedings in respect of the substantive issues is against the decision by the opposition division, with reasons dispatched on 20 September 2010, to revoke European patent number 1004068.

II. The following documents were referred to in the grounds for the decision:

O1: EP 0 715 243 A1
D3: C. Lagoze: "The Warwick Framework"; D-Lib Magazine; July/August 1996

III. A notice of appeal was received from the patent proprietor on 8 November 2010, the appeal fee being paid on the same day. The appellant requested that the decision under appeal be set aside and the patent be maintained as granted.

IV. A statement of the grounds of the appeal was received on 14 January 2011. The appellant requested the maintenance of the patent in the form of a main request, identical to the first auxiliary request on which the appealed decision was based, or first to third auxiliary requests. The appellant made a conditional request for oral proceedings.

V. With a letter received on 12 September 2011, the respondent as sole remaining opponent withdrew its opposition.

VI. The board issued a summons to oral proceedings. In an annex to the summons, the board set out its

preliminary, negative opinion on the appeal. The oral proceedings took place in the absence of the appellant, as it had previously announced.

VII. The patent is being considered in the following form:

Description:
Columns 1 to 26 as granted.

Claims:
Main request: 1 to 21 as received on 14 January 2011.
First auxiliary request: 1 to 21 as received on 14 January 2011.
Second auxiliary request: 1 to 21 as received on 14 January 2011.
Third auxiliary request: 1 to 21 as received on 14 January 2011.

Figures:
Pages 21 to 34 (figures 1A, 1B, 2A, 2B, 3 to 5, 5A, 6, 6A, 7 to 9, 10A and 10B) as granted.

VIII. The independent claim 1 of the main request reads as follows:

A method of using a descriptive data structure in an electronic appliance, the method comprising:
receiving a first secure container, said first secure container comprising at least content (102) and associated controls (316A);
receiving a second secure container independently from the first secure container, said second secure container comprising at least a descriptive data structure (200) including information at least in part describing or representing a format of said first secure container content; and at least one

rule (316) designed at least in part to control access to said descriptive data structure (200);

using said second container rule (316) to gain access to at least a portion of said descriptive data structure (200); and

using said descriptive data structure portion in the process of making at least one use of said first secure container content (102).

IX. Compared to the main request, claim 1 of auxiliary request 1 contains the additional, penultimate step of "using said descriptive data structure to convert a generic user application into a specialised user application that is optimised for the first secure container" and a new reference to "in the specialised user application" after the word "portion" in the last step.

X. Claim 1 of the auxiliary request 2 reads as follows:

A method of using a descriptive data structure in an electronic appliance, the method comprising:

receiving a first secure container, said first secure container comprising at least content (102) and associated controls (316A);

receiving a second secure container independently from the first secure container, said second secure container comprising at least two descriptive data structures (200), each including information at least in part describing or representing a format of said first secure container content; and at least one rule (316) designed at least in part to control access to said descriptive data structure (200);

choosing one of the two descriptive data structures (200) to be used along with the first container (102);
using said second container rule (316) to gain access to at least a portion of said chosen descriptive data structure (200);
using said chosen descriptive data structure portion to convert a generic user application into a specialised user application that is optimised for the first secure container; and
using said chosen descriptive data structure portion in the specialised user application in the process of making at least one use of said first secure container content (102).

XI. Claim 1 of the auxiliary request 3 reads as follows:

A method of using a descriptive data structure comprising the steps of:
authoring content at a value chain participant (602) using the descriptive data structure;
packaging the content (102) with associated controls (316A) in a first secure container;
delivering the first secure container to an end user (606); and
delivering a second secure container to the end user independently of the first secure container, the second secure container comprising at least the descriptive data structure and at least one rule designed at least in part to control access to said descriptive data structure;
receiving the first secure container at an end user electronic appliance;
receiving the second secure container at the end user electronic appliance independently from the first secure container;

using said second container rule (316) to gain access to at least a portion of said descriptive data structure (200);
using said descriptive data structure portion to convert a generic user application into a specialised user application that is optimised for the first secure container; and
using said descriptive data structure portion in the specialised user application in the process of making at least one use of said first secure container content (102).

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

Reasons for the Decision

1. *The appellant's non-attendance at the oral proceedings*

The appellant's representative announced in a letter dated 26 February 2016 that no-one would attend the oral proceedings for the proprietor. No substantive response was made to the board's arguments. The oral proceedings were held on 19 April 2016, in the absence of the appellant. In accordance with Article 15(3) RPBA, the board relied for its decision only on the appellant's written submissions. The board was in a position to decide at the conclusion of the oral proceedings, since the case was ready for decision (Article 15(6) RPBA), and the voluntary absence of the appellant was not a reason for delaying a decision (Article 15(3) RPBA).

2. *The context of the invention*

2.1 The invention relates to using a machine readable "descriptive data structure" comprising a representation of the format and characteristics of rights protected content delivered in a secure data structure (see paragraphs [0001] and [0019] of the published patent).

2.2 The rights protected content can be of a variety of types of digital information. Paragraph [0035] mentions for example images, sound, video and computer programs.

2.3 Figures 2A and 2B give two examples of descriptive data structures (200 and 200') for newspaper (102) and fashion magazine (106) type content (see paragraphs [0031] to [0033]). Whereas the descriptive data structures in figures 2A and 2B are delivered within the same container as the content (100A and 100C), according to claim 1 of the patent they are delivered in a separate container along with associated rules to control access to the descriptive data structure (see also paragraph [0034]).

2.4 Figure 5 shows an example system architecture which is explained in paragraphs [0038] to [0041]. Applications (506) ask an electronic appliance (500) to retrieve descriptive data structure (200). The electronic appliance reads the descriptive data structure and provides it to the application subject to conditions specified in the associated rules. Based on the descriptive data structure the application can request the appliance to extract and provide parts of the rights protected content.

3. *Inventive step, Article 56 EPC 1973 — main request*

3.1 As far as claim 1 of the main request is concerned, O1 relates to a digital rights management system in which digital works are divided into two files, *viz.* a contents file and a description tree file (page 5, lines 10 to 11). Figure 5 illustrates the layout of an example contents file, with the detailed layout of Story A (510 in figure 5) given in figure 6 (page 5, lines 16 to 23). Description trees consist of descriptor blocks or d-blocks, the contents of which are illustrated in figure 7 (page 5, lines 25 to 26). The structure of the description tree mirrors the structure of the contents file, as illustrated in figures 8 and 9, showing the description trees corresponding respectively to figures 5 and 6 (page 5, lines 39 to 44).

3.2 In the decision under appeal the opposition division considered the subject-matter of claim 1 of what was then the main request to differ from the disclosure of O1 in that the second secure container also comprises at least one rule designed at least in part to control at least one use of or access to the descriptive data structure and the method comprises the use of the second container rule to gain access to at least a portion of said descriptive data structure (see the decision, point 10.1.2.4). With respect to what was then the first auxiliary request, which corresponds to the present main request, the division considered the existence of two files in O1 to disclose the feature of claim 1 that the second secure container is received independently from the first secure container (see the decision, point 11.1).

3.3 The appellant argues that since the first and the second containers are received "independently" in claim 1, they must be received separately, in such a way that the receipt of one container does not rely on receipt of the other. The board cannot follow this argument, as the patent documents (in particular paragraph [34] of the published patent) provide no basis for the appellant's assertion that "independently" receiving two containers, in the context of the patent, means anything beyond the descriptive data structure being in another file than the content file, which is clearly disclosed in O1 (see O1, page 5, line 10).

3.4 The appellant argues that the content file and the description tree files in O1 are "inseparable" and delivered together. Therefore the appellant considers the feature of independently receiving the first and the second containers not to be disclosed in O1. The board cannot follow this assertion either, as the contents file and the description tree in O1 are stored separately in content storage (1204 in figure 12) and descriptor storage (1203 in figure 12), which might be different types of storage media and might even be on separate physical devices (page 7, lines 53 to 58). Therefore the board agrees with the opposition division as regards the distinguishing features of claim 1 over O1.

3.5 According to the appealed decision (see section 10.1.2.6) the objective technical problem to be solved by the present invention is how to modify the system of O1 so as to prevent free usage of (redistributed) description trees, "redistributed" data meaning data that were at some point legally acquired by a user, but that through digital copying, ended up in the hands of a user who did not pay for it. The appellant argues

that this problem contains a pointer to the solution, since it implies that free usage of description tree files would have been contemplated by the skilled person, whereas O1 actually teaches that a description tree file is inseparable from a content file. As the appellant's assertion, that the contents file and the description tree file in O1 are inseparable, cannot be followed, the board is not convinced by the appellant's objections to the opposition division's formulation of the objective technical problem.

3.6 The appellant argues that the skilled person would not modify the system of O1, as a description tree file needs to be freely accessible in O1 and it would go against the teaching of O1 to attach rules to it. It objects to the opposition division's statement that the present invention stems from the recognition of commercial value of a description tree. The board agrees with the appellant that the present invention is not necessarily concerned with the commercial value of a description tree. The motivation to protect any kind of data may arise for various reasons. However the board shares the view of the opposition division that a description tree is itself a particular type of content and no inventive step would be required to protect the description tree as well when the content itself is protected (see the appealed decision, 10.1.2.7). The board holds that the skilled person was well aware at the priority date that, in the words of one of the documents cited by the first instance, *i.e.* D3 (see page 4, paragraph with the subtitle "Metadata and data have similar behaviors and characteristics"), "strictly partitioning the information universe into data and metadata is misleading. What may appear to be metadata in one context, may look very much like data in another. ... Like other data it may have associated

metadata and, notably, terms and conditions that protect it as an intellectual object. This recursive relationship of data and metadata may nest to an arbitrary level." Thus, in O1, if the circumstances of a particular context require the description tree file, which is metadata of the data in the contents file, to be protected, the skilled person would do so without demonstrating the presence of an inventive step.

3.7 Hence the board judges that the subject-matter of claim 1 of the main request does not involve an inventive step, Article 56 EPC 1973.

3.8 For the sake of completeness, the board notes that claim 1 of the main request also lacks an inventive step starting from D3. In this respect, the board agrees with the objections raised by the respondent in its notice of opposition on pages 6 to 8 under section C.

D3 discloses the Warwick framework for metadata with logically and physically distinct containers or packages of diverse sets of metadata, which can be selectively accessed by tools (page 2, second full paragraph with ensuing bullet points; page 4, last paragraph). Among given examples of metadata are "structural data", which define the logical components of data such as a table of contents and "terms and conditions" (page 3, first and last items in the bullet list). Metadata can also have its own terms and conditions in a recursive manner (page 4, fourth paragraph). Thus D3 discloses all features of claim 1 of the main request.

4. *Auxiliary requests 1 and 2*

D3 tools can "selectively access and manipulate individual [metadata] packages and ignore others [emphasis by the board]" (page 2, fourth item in the bullet list). D3 further "permits access to different metadata sets that are related to the same object to be separately controlled [emphasis by the board]" (next item in the bullet list). These passages disclose the additional feature of claim 1 of the first auxiliary request of "convert[ing] a generic user application into a specialised user application", as far as this feature can be understood (selecting a metadata package would change the behaviour of the application, as suggested by the appellant in the statement of grounds of appeal, page 7, first full paragraph), and the additional feature of claim 1 of the second auxiliary request of receiving two descriptive data structures and choosing one of them.

Hence the board judges that, in view of the disclosure of D3, the subject-matter of claim 1 of the auxiliary requests 1 and 2 does not involve an inventive step either, Article 56 EPC 1973.

5. *Auxiliary request 3*

In claim 1 of auxiliary request 3 the appellant deleted the feature of "[said second secure container comprising at least a descriptive data structure] including information at least in part describing or representing a format of said first secure container" from claim 1 of the granted patent. This amendment by deletion of a feature of the claims as granted extends the protection that the patent confers, contrary to the provision of Article 123(3) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

B. Atienza Vivancos W. Sekretaruk

Decision electronically authenticated