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**Datasheet for the decision
of 7 March 2017**

Case Number: T 2423/10 - 3.5.01

Application Number: 08163670.6

Publication Number: 2034434

IPC: G06Q30/00, H04L29/08

Language of the proceedings: EN

Title of invention:

Digital asset delivery to different devices

Applicant:

APPLE INC.

Headword:

One Delivery / APPLE

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - queuing and removal after delivery of a digital asset (no - not technical)



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Case Number: T 2423/10 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 7 March 2017

Appellant: APPLE INC.
(Applicant) 1 Infinite Loop
Cupertino, CA 95014 (US)

Representative: Gillard, Matthew Paul
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 15 July 2010
refusing European patent application No.
08163670.6 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman W. Chandler
Members: P. Scriven
P. Schmitz

Summary of Facts and Submissions

- I. This is an appeal against the Examining Division's decision to refuse European patent application 08163670 for lack of inventive step in consideration of document D1 (WO 2004/061608). That decision was taken on the basis of a main request, submitted during oral proceedings before the Examining Division, and of an auxiliary request submitted earlier.
- II. In its statement setting out the grounds of appeal, the appellant requested that the Examining Division's decision be set aside and that a patent be granted on the basis of the main request underlying the appealed decision. The appellant also requested oral proceedings, if the Board were not minded to order the grant of a patent.
- III. The Board issued a summons to oral proceedings and set out its provisional view of the case in an accompanying communication.
- IV. The appellant withdrew its request for oral proceedings, and requested that the Board reach a decision on the basis of the submissions made thus far.
- V. Claim 1 according to the single substantive request reads as follows.

A method for delivering an acquired digital asset from an online digital asset store (102) to an electronic device (106,108,110) via a network (104), said method comprising:

receiving at the online digital asset store (102) from an acquisition device (106), a user selection of a digital asset available from the online digital asset store (102);

providing at the online digital asset store (102) usage rights to the digital asset available from the online digital asset store (102);

determining by the online digital asset store (102) whether the digital asset is to be delivered to the acquisition device (106);

arranging for delivery of the digital asset to the acquisition device (106) when it is determined that the digital asset is to be delivered to the acquisition device (106);

determining by the online digital asset store (102) whether the digital asset is to be delivered to a plurality of potential destination devices (108,110) other than the acquisition device (106); and

arranging for delivery of the digital asset to one of the plurality of potential destination devices (108,110) when it is determined that the digital asset is to be delivered to the plurality of potential destination devices (108,110);

wherein said arranging for delivery of the digital asset to one of the plurality of potential destination devices (108,110)

comprises queuing the digital asset for delivery to the plurality of potential destination devices (108, 110) and, once the digital asset has been delivered to one of said plurality, ceasing to queue the digital asset for delivery to the remainder of said plurality.

VI. The appellant's case, as set out in the statement setting out the grounds of appeal, was that D1 sought to enhance the presentation of content by making use of nearby devices. For example, the text and graphics components might be delivered to one device and the audio content to another device. D1 described the use of a map of which components of requested content would be presented on which devices. If D1 were open to the interpretation that the same content could be presented on two devices, it would make no sense to remove content from the queue when it had only been delivered to one.

D1 did not disclose the removal of an asset from the queue, once the asset had been delivered to some device. The Examining Division had not shown anything that would incite the skilled person to adapt D1 so as to remove items from the queue.

This difference reduced the amount of data traffic, because delivery was limited to one receiving device. This meant that operation of the computer system was not impeded or inhibited at busy times.

Reasons for the Decision

Background

1. The invention concerns the delivery of a "digital asset". The application is not rich in examples of such assets, but paragraph 0049 of the published application suggests that music, music videos, and accompanying texts are included. For the purposes of this exposition, the asset can be taken to be a song.
2. A user might acquire usage rights to a song using his mobile phone. Although he has the right, he does not yet have the song. It must first be delivered to his phone in the form, say, of an mp3 file.
3. The user, however, might not want to have the mp3 file on his phone. He might want it on his laptop. The invention caters for this. It creates a queue of items for delivery. It delivers the items. When an item has been delivered to some device, it is removed from the queue.

Inventive step

4. The technical starting point is a computer network with a number of devices able to receive a "digital asset" (that is, some digital data). A "digital asset store" is nothing other than a computer system that manages access to a "digital asset". The difference lies in placing assets in a delivery queue, and in removing them when a delivery takes place.

5. The invention can be seen as an automation of a non-technical method. A customer requests delivery to his home address, or one of a selection of alternative addresses. The delivery service keeps a list of deliveries to be made. Once an item has been delivered to one of the addresses, it is removed from the list.
6. The invention is limited to delivering a "digital asset" and the delivery addresses are addresses of devices. The "digital asset" might be an mp3 file or an e-book that the user has bought; the range of possibilities is very large. Similarly, the range of devices suitable for receiving the "digital asset" is broad, but there are commercial reasons for limiting delivery to one device. The seller might, for example, want to charge the customer a fee for each device to which the "digital asset" is sent.
7. The differences of placing assets in a delivery queue, and in removing them when a delivery takes place are therefore non-technical and form part of the requirements that would be given to the skilled person. Since there are no further technical differences, the problem to be solved amounts to implementing those technical changes that inevitably follow from the non-technical requirement.
8. The analysis of inventive step on the basis of the implementation of a non-technical method was put to the appellant in the communication sent with the summons to oral proceedings. The appellant has not responded to it. The appellant's previous arguments were in respect of D1, and for the most part, related to its specific disclosure. However, the arguments about the reduction in data traffic and about the skilled person's motivation are such as could be made in respect of the

starting point set out above, and the Board considers that they require some comment.

9. The appellant asserts a reduction in data traffic. The application comprises no information on how data flows through the network, what measure of traffic is used, or the amount of traffic in any prior art system. Thus, the appellant's assertion seems to be based only on the idea that limiting to one delivery means traffic is reduced. In the Board's view, if the aim was to reduce traffic in this sense, then it would have been obvious to limit deliveries to the minimum that was consistent with actually making a delivery. That minimum is one, and that is the invention.
10. The appellant correctly states that the skilled person must be motivated to make the changes needed to create the invention, if inventive step is to be denied. In many cases, motivation may come in the form of some hint in the prior art or in the desire to solve a particular problem. In the present case, it comes in the form of a desire to implement a given non-technical method.
11. The Board, therefore, finds that the invention defined by claim 1 does not involve an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated