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**Datasheet for the decision
of 18 December 2015**

Case Number: T 1722/11 - 3.5.03

Application Number: 08156763.8

Publication Number: 1995933

IPC: H04L29/06, G06Q30/00,
G06F21/00, H04N7/167

Language of the proceedings: EN

Title of invention:

Method and system for message delivery management in broadcast networks

Applicant:

Apple Inc.

Headword:

Delivery of content/APPLE

Relevant legal provisions:

EPC Art. 84, 123(2)

Keyword:

Claims - clarity (no)

Claim for a computer program defined by reference to a claimed method - unclear

Catchword:

See reasons, point 3



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Chambres de recours**

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Case Number: T 1722/11 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 18 December 2015

Appellant: Apple Inc.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 4 January 2011
refusing European patent application No.
08156763.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman F. van der Voort
Members: B. Noll
S. Fernández de Córdoba

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 08156763.8. The refusal was based on the ground that claims 1, 16 and 32 of a main request and an auxiliary request had been amended in such a way that they contained subject-matter which extended beyond the content of the application as filed (Article 123(2) EPC).
- II. With the statement of grounds of appeal, the appellant filed a revised set of claims 1 to 32.
- III. In a communication accompanying a summons to oral proceedings, the board raised, *inter alia*, a clarity objection against claim 32 (Article 84 EPC) and an objection of added subject-matter against claim 1 (Article 123(2) EPC). As regards claim 31, which was directed to a computer program, the board indicated (point 2.6 of the communication) that it would be necessary to discuss at the oral proceedings whether the claimed program was clearly defined solely by referring to method claims 16 to 30 and, thus, whether it met the clarity requirement of Article 84 EPC. Further, at point 6 of the communication, the board drew the appellant's attention to the fact that, if amended claims were filed, it would be necessary at the oral proceedings to discuss *inter alia* their compliance with Article 123(2) EPC.
- IV. With a letter dated 21 November 2015, the appellant filed sets of claims of a first auxiliary request and a second auxiliary request. Arguments in support were given only in respect of these auxiliary requests.

V. In a further letter dated 16 December 2015, the appellant informed the board that it would not be attending the oral proceedings.

VI. Oral proceedings were held on 18 December 2015 in the absence of the appellant.

The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 32 as filed with the statement of grounds of appeal (main request) or, in the alternative, on the basis of claims 1 to 31 of a first auxiliary request or claims 1 to 19 of a second auxiliary request, both auxiliary requests as filed with the letter dated 21 November 2015.

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

VII. Claim 16 of the main request reads as follows:

"A method for managing access to content for use on multi-media devices (6) capable of using such content and communicating, the method comprising:

providing the content to users' devices via a communications network (4), said provision of content requiring usage of network resources;

receiving requests from users to use the content on their devices (6);

analyzing data relating to the users and the requested content to determine whether delivery of the content to a given user via the communications network (4) can be offset by a preallocated amount of resource usage; and

responsive to a determination that said delivery of the content can be offset against the preallocated amount of resource usage:

determining parameters for delivery of at least one message to the given user's device and presentation of the at least one message at the given user's device (6); and

delivering the at least one message to the given user's device (6) in accordance with the parameters for delivery of the at least one message to the given user,

wherein the parameters for presentation of the at least one message at the given user's device (6) cause the device to present said message during and/or after use of the content,

wherein said at least one message is delivered separately to said content, and

wherein the parameters for delivery of at least one message to the user's device (6) include a schedule of times for delivery of the at least one message relative to use of the content by the user's device (6)."

Claim 31 of the main request reads as follows:

"A computer program resident on computer-readable media and comprising a set of instructions arranged to cause a computer, or a suite of computers, to perform the method of any one of claim 16 to claim 30."

Claim 32 of the main request reads as follows:

"A mobile terminal (6) capable of using content, comprising:

means for receiving content requiring a digital rights management (DRM) key to enable use thereof;

means for transmitting a request for a DRM key when use of the content is desired;

means for receiving a DRM key to enable use of the content;

means for receiving at least one message and a schedule for presentation of the at least one message, wherein said at least one message is received separately to said content and said message is transmitted to said mobile terminal (6) in accordance with a parameter for delivery for the at least one message to the mobile terminal (6), said parameter for delivery including a schedule of times for delivery of the at least one message relative to use of said content on the mobile terminal; and

means for presenting the at least one message and the content to the user in accordance with the presentation schedule,

wherein the presentation schedule includes presentation parameters, which, in use, cause the mobile terminal to present said message during use of the content and/or after use of the content."

VIII. Claim 1 of the first auxiliary request reads as follows:

"A system for managing distribution of content to at

least one portable multi-media device (6) which is capable of accessing the content and communicating, the system comprising:

an account management system (10) arranged to manage requests for content from the at least one device (6) and to manage communications to and from the at least one device (6); and

a processing system communicatively coupled to said account management system (10) and arranged to analyze requests for content relative to information about a user of each of the at least one device in order to determine whether rules set by a content provider are satisfied, wherein the rules dictate conditions upon which the content provider will sponsor a usage charge for the content and the user receives an advertisement from the content provider,

responsive to a determination that the rules set by the content provider are satisfied, the processing system is arranged to determine parameters for delivery of at least one message comprising the advertisement to that user's device and presentation of the at least one message at the user's device (6),

wherein the at least one device (6) is instructed by said processing system to present the at least one message during use, or after use of the content in accordance with said presentation parameters, and

wherein the parameters for delivery of the at least one message to the user's device (6) include a schedule of times for delivery of the at least one message relative to use of the content by the user's device."

IX. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that the last three paragraphs have been replaced by the following two paragraphs:

"responsive to a determination that the rules set by the content provider are satisfied creating a message for delivery to the device (6), wherein the message includes an interactive link and wherein the content requires a digital rights management (DRM) key to enable use of the content,

wherein the processing system is further configured to determine that the user selected the interactive link included in the message and wherein the account management system is arranged to transmit the DRM key to the at least one device (6) upon determination that the user selected the interactive link, wherein the DRM key enables the user's device to use the content."

Reasons for the Decision

1. *Procedural matters*

1.1 The appellant, which was duly summoned, had informed the board that it would not be attending the oral proceedings and was indeed absent. The oral proceedings were thus held in its absence (Rule 115(2) EPC, Article 15(3) RPBA).

1.2 In deciding not to attend the oral proceedings, the appellant chose not to make use of the opportunity to comment on any of the objections raised or issues mentioned in the board's communication (see point III above), but instead chose to rely on the arguments set out in the statement of grounds of appeal and in the

letter dated 21 November 2015. Under these circumstances and for the reasons set out below, the board was in a position to give a decision which complied with Article 113(1) EPC.

2. *Claim 32 of the main request - clarity (Article 84 EPC)*

2.1 Claim 32 of the main request (see point VII above) seeks protection for a mobile terminal capable of using content.

2.2 In the fifth paragraph, the claim includes the following feature:

"said message is transmitted to said mobile terminal (6) in accordance with a parameter for delivery for the at least one message to the mobile terminal (6), said parameter for delivery including a schedule of times for delivery of the at least one message relative to use of said content on the mobile terminal".

This feature relates to certain capabilities of a transmitter for transmitting the message to the mobile terminal, namely that it should be able to do so "in accordance with a parameter for delivery", this parameter being further specified in the claim. It is however not apparent to what extent this feature concerning the transmitter implies constructional features of the claimed mobile terminal.

Claim 32 therefore lacks clarity and, hence, does not meet the requirements of Article 84 EPC.

3. *Claim 31 of the main request - clarity (Article 84 EPC)*

3.1 Claim 31 of the main request (see point VII above) relates to a computer program resident on computer-readable media, in which the program is defined by reference to any one of method claims 16 to 30.

3.2 With reference to claim 16 (see point VII above), the board notes that the execution of the first step, i.e. "providing the content to users' devices via a communications network (4), said provision of content requiring usage of network resources", requires a coordinated interaction between various resources in the communications network, in particular between a content transmitter, a transmission channel, and a content receiver, in which each of these resources is at different, mutually remote locations. It is therefore unclear how this step can be executed solely by a (single) computer program, when run on a computer, and, hence, it is unclear to what extent this step defines the claimed computer program.

The same applies to the last feature of claim 16, i.e. "wherein the parameters for delivery of at least one message to the user's device (6) include a schedule of times for delivery of the at least one message relative to use of the content by the user's device (6)", since this feature merely further specifies the parameters for delivery, without making it clear to what extent this specification of parameters defines or limits the claimed computer program.

Claim 31 therefore lacks clarity (Article 84 EPC).

4. For the above reasons, the main request is not allowable.

5. *Claim 1 of the first auxiliary request - added subject-matter (Article 123(2) EPC)*
- 5.1 Claim 1 of the first auxiliary request (see point VIII above) contains subject-matter which extends beyond the content of the application as filed for the following reasons:
- 5.2 In the third paragraph, the processing system is defined as being "arranged to analyze requests for content relative to information about a user of each of the at least one device in order to determine whether rules set by a content provider are satisfied". However, the application as filed does not disclose an involvement of the processing system in this analysis. Although the processing system, i.e. the processing unit 26 (cf. the description, paragraph [0027], reference being made to the application as published, i.e. EP 1 995 933 A1), operatively couples the content management system 20 to the account management system 10, it is not the processing system itself which analyses requests for content, since the analysis in order to determine whether or not sponsorship of a particular content satisfies the rules set by a content provider is performed by a "computer program in the account management system 10 and/or content management system 20" (cf. paragraph [0029]).
- 5.3 In the letter dated 21 November 2015 the appellant referred to page 9, lines 4 to 10, and claim 10 of the application as filed as the basis for the amendment.
- 5.4 However, the passage at page 9 (i.e. paragraph [0029] of the application as published) clearly states that "A computer program in the account management system 10

and/or control management system 20 could perform this analysis" (underlining added by the board). Further, claim 10 as originally filed states that the processing system is "arranged to determine if a user satisfies rules set by the content providers and when a user satisfies the rules set by a content provider, offsetting the resource usage required to deliver the content to that user". This analysis by the processing system is, however, restricted to whether a user satisfies the rules. The wording in present claim 1 is however more general and can be understood to mean that the content is also analysed as to whether it satisfies given rules. Therefore, none of the passages referred to by the appellant provides a clear and unambiguous basis for the amendment in question.

5.5 Claim 1 therefore does not comply with Article 123(2) EPC.

5.6 Consequently, the first auxiliary request is not allowable.

6. *Claim 1 of the second auxiliary request - added subject-matter (Article 123(2) EPC)*

6.1 Claim 1 of the second auxiliary request is identical to claim 1 of the first auxiliary request as regards the feature specifying the processing system. Therefore, for the reasons set out at point 5 above, claim 1 of the second auxiliary request includes subject-matter which extends beyond the content of the application as filed and, hence, does not comply with Article 123(2) EPC.

6.2 The second auxiliary request is, therefore, not allowable either.

7. Since none of the requests is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Magliano

F. van der Voort

Decision electronically authenticated