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Datasheet for the decision of 8 December 2016

Case Number: T 1799/11 - 3.5.06

Application Number: 00110654.1

Publication Number: 1028376

IPC: G06F9/46

Language of the proceedings: EN

Title of invention:
Data transfer with expanded clipboard formats

Patent Proprietor:
MICROSOFT CORPORATION

Opponent:
Hössle Patentanwälte Partnerschaft

Headword:
Clipboard formats III/MICROSOFT

Relevant legal provisions:
EPC 1973 Art. 33(2)(d), 100(b), 100(a), 56
Arrangements for Deposit Accounts (ADA)(Supplement to OJ EPO 10/2007), points 6.4, 6.5
EPC Art. 99(1)

Keyword:
Admissibility of opposition - (yes)
Sufficiency of disclosure - (yes)
Inventive step - (no)

Decisions cited:
T 0152/85, G 0001/86, T 0425/03

Catchword:
See point 2 regarding the impact of the Arrangements for Deposit Accounts (ADA), in the version published in the Supplement to OJ EPO 10/2007, on the admissibility of the opposition.

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Case Number: T 1799/11 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 8 December 2016

Appellant: (Patent Proprietor)	MICROSOFT CORPORATION One Microsoft Way Redmond, WA 98052-6399 (US)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Respondent: (Opponent)	Hössle Patentanwälte Partnerschaft Patentanwälte Bolzstrasse 3 70173 Stuttgart (DE)
Representative:	Glawe, Delfs, Moll Partnerschaft mbB von Patent- und Rechtsanwälten Postfach 13 03 91 20103 Hamburg (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 1 June 2011 revoking European patent No. 1028376 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	W. Sekretaruk
Members:	A. Teale
	M. Müller

Summary of Facts and Submissions

I. This is the second appeal regarding this case, the first (see decision T 0425/03, referred to below as the "first T-decision"), having been against the decision by the examining division to refuse European patent application No. 00110654.1. This application was a divisional application of European patent application No. 95119547.8, referred to below as the "parent application", which led to European patent No. EP-B-717354, the "parent patent". The present appeal is against the decision by the opposition division (referred to below as "the decision"), dispatched with reasons on 1 June 2011, to revoke European patent No. EP-B-1028376 on the basis of Article 100(b) EPC (sufficiency of disclosure).

II. This case is one of six related cases concerning oppositions against patents arising from the parent application and five divisional applications from it, as follows (the numbering of the divisionals being the same as that used in the first T-decision, cited above).

Parent: T 1789/11
Divisional 1: T 1800/11
Divisional 2: T 1799/11
Divisional 3: T 1797/11
Divisional 4: T 1798/11
Divisional 5: T 1796/11.

III. The opposition was on the grounds foreseen in Article 100(a) (novelty and inventive step) and 100(b) EPC 1973 (sufficiency of disclosure). At the end of the oral proceedings before the opposition division the

proprietor withdrew auxiliary requests 1 to 19, received on 2 November 2010.

IV. In the first T-decision another board found that the invention was sufficiently disclosed and that the claimed subject-matter was novel and inventive in view of the Windows 3.1 operating system acknowledged in the description, regarded as forming the closest prior art; see reasons, points 5, 7 and 8.

V. A notice of appeal was received from the patent proprietor on 10 August 2011, requesting that the decision be set aside, that the opposition be rejected, that auxiliarily the patent be maintained on the basis of the auxiliary claim sets as previously filed and, as an auxiliary measure, oral proceedings. The appeal fee was paid on the same day.

VI. A statement of grounds of appeal was received from the appellant proprietor on 11 October 2011 in which the appellant challenged the findings in the appealed decision that the opposition was admissible and that the invention was not sufficiently disclosed, Articles 100(b) and 83 EPC.

VII. In an annex to a summons to oral proceedings the board set out its preliminary view that the appellant, as his main request, was defending the patent as granted. The opposition was admissible, the invention was sufficiently disclosed, Article 100(b) EPC 1973, and it was questionable whether the claimed subject-matter involved an inventive step, Article 56 EPC 1973.

VIII. In a response received on 15 November 2016 the appellant stated that it would not attend the oral

proceedings but did not comment on the question of inventive step.

IX. No submissions have been received from the respondent opponent, in particular regarding the admissibility of the opposition, sufficiency of disclosure and inventive step.

X. Oral proceedings were held on 8 December 2016. Neither party attended. While the appellant had announced in advance that he would not attend, no advance notice was received from the respondent. At the end of the oral proceedings the board announced its decision.

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

Description (all requests):
pages 2 to 5 as granted.

Claims:
Main request: claims 1 to 5 as granted.
Auxiliary requests 1 to 19: claims received on 2 November 2010.

Drawings:
pages 8 to 13 as granted.

XII. Granted claim 1 in the parent case reads as follows:

"A method in a computer system (10) having a clipboard for performing data transfer of data in a clipboard format, said method comprising the steps of:

providing several clipboard formats including a text clipboard format, a file contents clipboard format and a file group descriptor clipboard format,

selecting data that is not a file for a data transfer operation, using the file contents clipboard format to hold said data by

converting said selected data into converted data of said file contents clipboard format and storing the converted data as a data object,

using the file group descriptor clipboard format to hold a file descriptor holding descriptive information about the data that is to be encapsulated into a file during the data transfer operation,

completing the data transfer by providing a handle to said data object, using said handle to paste said data of said data object to a data sink, using said descriptive information to enable the computer system to create a file at the data sink and encapsulating the data object into said file."

XIII. Granted claim 1 in the present case (divisional case 2) reads as follows:

"A method in a computer system (10) having a clipboard for performing data transfer of data in a clipboard format, said method comprising the steps of:

providing several clipboard formats including a text clipboard format a file contents clipboard format, a file group descriptor clipboard format, and a file list clipboard format, for storing a value for accessing a file list structure that describes a list of files involved is [*sic*] a data transfer operation, selecting data that is not a file for a data transfer operation,

using the file contents clipboard format to hold said data by converting said selected data into converted data of said file contents clipboard format and storing the converted data as a data object, using the file group descriptor clipboard format to hold a file descriptor holding descriptive information about the data that is to be encapsulated into a file during the data transfer operation,

completing the data transfer by providing a handle to said data object, using said handle to paste said data of said data object to a data sink, using said descriptive information to enable the computer system to create a file at the data sink and encapsulating the data object into said file."

The granted claims also comprise an independent claim to a computer-readable medium referring to the method according to claim 1.

Reasons for the Decision

1. The admissibility of the appeal

In view of the facts set out at points I, V and VI above, the board finds that the appeal satisfies the admissibility criteria under the EPC and is thus admissible.

2. The admissibility of the opposition

2.1 The appellant has questioned the admissibility of the opposition. Hence the board has considered this issue, since, if the opposition were inadmissible, then the

appeal would already be allowable for this reason alone.

2.2 For the reasons set out below, the board finds that the opposition fees for all six notices of opposition were paid on 23 May 2008, the last day of the opposition period, Article 99(1) EPC, extended under Rule 134(1) EPC, and that all six oppositions are therefore admissible.

2.3 According to Article 99(1) EPC, within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the EPO of opposition to that patent. Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid.

2.4 It has not been contested that the mention of grant of the European patent was published on 22 August 2007. Hence the nine-month opposition period under Article 99(1) EPC ended on Thursday 22 May 2008. This was a public holiday (Corpus Christi) in Munich, so that the EPO's filing office in Munich was closed; see OJ EPO 10/2007, page 502. Consequently time limits ending on this day were, following Rule 134(1) EPC, extended until the first day thereafter on which all the filing offices were open for receipt of documents and on which ordinary mail was delivered, namely Friday 23 May 2008. It is now uncontested that a "combined letter" containing arguments and requests relating to all six cases and six notices of opposition, each on a separate EPO form 2300.1 (Notice of opposition to a European patent), including that relating to the present case, were received by the EPO in time on 23 May 2008. Each notice of opposition form bears a "Opponent's Reference" of the form "8501 50x E-EP", where x=1 for

the parent case and 2 to 6 for each of the divisional cases, respectively. For each "Notice of opposition" form the letter also contained a corresponding "Payment of fees and expenses" form (EPO form 1010), also known as a "debit order", bearing the same reference number as "Payer's Reference". Copies of these forms were provided by the opponent at the oral proceedings before the opposition division and are annexed to the minutes. They have also been filed as annex "BOA2" to the statement of grounds of appeal. The combined letter listed all six cases by publication number, starting with that deriving from the parent application (EP 0 717 354), and stated, regarding fee payment, that "The opposition fee of 670 EUR is to be debited from deposit account no. 28000945 (cf. attached EPO form 1010)." In the "combined letter" the opponent requested that the opposition division examine all six oppositions simultaneously in the same procedure, the opposition division subsequently denying this request. The details of the payment of the opposition fees in all six cases have been challenged by the appellant.

2.5 In a submission received on 29 October 2010, the proprietor stated that online file inspection revealed that in all five divisional cases the opponent had made a payment of € 201 on 30 May 2008, this being 30 % of the opposition fee, meaning that the opposition fee for the five divisional cases had not been paid prior to expiry of the opposition period. It appeared that the opponent was relying on the Arrangements for Deposit Accounts (ADA) (Supplement to OJ EPO 10/2007, points 6.4 and 6.5), in particular the case in which a deposit account contained insufficient funds to cover the total fee payments indicated for an application, which seemed to only apply to applicants. The proprietor also argued that T 0152/85 (OJ EPO OJ 1987, 191) stated that

failure to pay an opposition fee within the required period could not be rectified after its expiry. The proprietor requested *inter alia* that all six oppositions be rejected as inadmissible due to late payment of the opposition fee and that a copy of all six originally filed debit orders, or the sole debit order if there was only one, be made available to the proprietor.

2.6 On 22 November 2010 a communication was issued on behalf of the opposition division stating that the letter from the opponent containing the six notices of opposition had also contained six debit orders, one for each opposition, which had now been made open to online file inspection. Debit orders were not usually scanned into the electronic dossier and were therefore not usually open to public file inspection. Instead, they were usually sent directly to the Treasury and Accounts Department of the EPO. The opponent's account had only contained sufficient funds for one opposition fee. These funds had been used to pay the opposition fee for the first mentioned opposition, namely that against the parent application. Hence the opposition fee for the parent application had been paid in due time. Regarding the oppositions against the patents stemming from the five divisional applications, the EPO had requested the opponent to replenish his deposit account and pay an administrative fee of 30 % (€ 201) for each opposition fee by 30 June 2008, which the opponent had done. Hence the opposition fee for the five divisional cases had also been paid in due time. Arrangements under ADA were available to any interested natural or legal person and thus also applied to opponents. The mention in point 6.3 ADA of a debit order referring to an application did not exclude opponents; this information was merely required to identify the case to which the debit order

related. The replenishment of an EPO deposit account was a matter between the deposit account holder and the EPO. Only the end result, namely whether or not a fee was deemed to have been paid in due time, was relevant for the other parties.

2.7 On 25 November 2010 a further letter was received from the proprietor stating that, under Article 8 RFees in the version applicable in 2008, a time limit for payment shall in principle be deemed to have been observed only if the full amount of the fee has been paid in due time. An amount lacking had to be paid within the time remaining before the end of the period. The proprietor also questioned whether the arrangements under points 6.4 to 6.6 ADA for replenishing deposit accounts were based on Article 7(2) RFees, under which the President of the EPO shall lay down the date on which payments of fees by other methods allowed by him/her under Article 5(2) RFees shall be considered to be made. The proprietor argued that Article 7(2) RFees related only to the payment methods set out in Article 7(1) RFees, namely payments and transfers into bank or giro accounts and cheques. Hence there was no basis in the EPC for payment of an opposition fee after expiry of the nine-month opposition period. The proprietor also argued that a request for re-establishment of rights under Article 122 EPC, involving payment of a fee after the relevant time had lapsed, was only available to applicants and proprietors and not to opponents. Hence the proprietor still questioned the admissibility of at least five of the six oppositions.

2.8 The parent case

2.8.1 According to the reasons for the appealed decision (see points 23 to 27), under item 6.3 ADA the opposition

against the parent application was deemed to have been filed in due time, since the opposition fee had been paid in due time. The opponent's deposit account had contained sufficient funds to cover the payment of the opposition fee on 23 May 2008, the last day of the opposition period, Article 99 and Rule 134(1) EPC. The copy of the debit order filed by the opponent, which was open to public file inspection, the electronic version being considered to be the original, Rule 147(3) EPC, carried the "Payer's reference" "8501 501 E-EP" which appeared as "Opponent's reference" in the notice of opposition; see page 1.

2.8.2 With the statement of grounds of appeal the appellant filed as annex "BOA1" copies of the debit order forms obtained by public file inspection. These confirm what is contained in the relevant electronic dossiers. The appellant has pointed out that, on the form relating to the parent case, box 3, relating to the patent application/patent No., and the box at line 17, relating to the code for the opposition fee, are both empty. Handwritten additions ("95 119 547.9" and "010", respectively) near to the empty boxes appear to have been made by the EPO. At the oral proceedings before the opposition division the opponent submitted his own copies of the debit orders, now submitted by the appellant proprietor as annex "BOA2" to the statement of grounds of appeal. These copies of the debit orders differ from those on the electronic file in giving a patent number in Box 3 and "010" in the box in line 17. The appellant has also repeated the arguments made before the first instance (summarized above) that ADA only applies to applications, that T 0152/85 excluded payment of the opposition fee after expiry of the opposition period, that applicants and opponents were treated differently under Article 122 EPC, that ADA

contravened Article 99(1) EPC, 2nd sentence, EPC, and that ADA contravened Article 8(1) RFees. The appellant has also questioned whether ADA is based on Article 7(2) RFees and whether Article 7(2) RFees contravenes Article 99(1), 2nd sentence, EPC.

2.8.3 The board finds that, even though there are differences between the versions of the debit orders for each of the six cases provided by the opponent and those open to public file inspection in the electronic dossiers, in each case both versions contain sufficient information to identify the case (via the Payer's reference) and fee (due to the insertion of the amount of "670" in lines 17 and 22, corresponding to the opposition fee, Article 2(10) RFees, Supplement to OJ EPO 3/2008). Moreover both versions give the number of the opponent's deposit account. Hence, whichever version one takes, the debit orders were clear and unambiguous, as required by point 6.3, first sentence, ADA. Hence the board does not accept the appellant's argument that further investigations regarding the debit orders are necessary before the board can decide on the admissibility of the six oppositions.

2.8.4 Regarding the appellant's argument that ADA, in the form published in the Supplement to OJ EPO 10/2007, only applied to applications and not to patents, the board agrees with the opposition division that, according to point 1, ADA, the arrangements were available to "any interested natural or legal person" and thus applied not only to applicants and proprietors but *inter alia* also to opponents. The mention in point 6.3 ADA of a debit order referring to an application did not exclude opponents, this information being required to identify the case to which a debit order

related. An application number accompanies a case throughout proceedings before the EPO.

2.8.5 The appellant has provided no evidence, and the board is also unaware of any, that the Treasury and Accounts Department of the EPO erred in its finding that the opponent's deposit account had sufficient funds on 23 August 2008 to cover one opposition fee; see the finding by the EPO dated 30 May 2008 that the opposition fee was paid on 23 May 2008. As the opposition division put it, the replenishment of an EPO deposit account is a matter between the deposit account holder and the EPO. In the board's view, this also applies to the balance of the deposit account at any particular time. The board is also satisfied that the Treasury and Accounts Department of the EPO followed well known established practice in using the limited funds in the opponent's deposit account to pay the opposition fee for the first case mentioned in the "combined letter", namely the parent case. Hence the board finds that the opposition fee for the parent case was paid in due time before expiry of the opposition period.

2.8.6 The appellant has questioned the legal basis for ADA, in the form published in the Supplement to OJ EPO 10/2007, and, in particular, argued that it contravened Article 99(1), 2nd sentence, EPC regarding payment of the opposition fee within the opposition period. Article 99(1), 2nd sentence, EPC states that "Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid". Article 99 EPC, like many other Articles of the EPC, prescribes the payment of a fee but does not specify the modalities of the fee payment itself. This makes good sense, as otherwise a diplomatic conference would be required to amend the

EPC every time the EPO wanted to change its arrangements for accepting payments. Hence Article 33(2)(d) EPC 1973 states that the Administrative Council shall be competent, in conformity with the EPC, to adopt or amend the Rules relating to Fees (RFees) which, as set out in Article 51(4) EPC, determine in particular the amounts of the fees and the ways in which they are to be paid. Following a decision of the Administrative Council (see OJ EPO 2007, 533), the Arrangements for Deposit Accounts (ADA), (published in the Supplement to OJ EPO 10/2007) were established within the framework provided by Article 5(2) RFees, which authorizes the President of the EPO to allow methods of paying fees other than payments or transfers into bank accounts held by the EPO. Under Article 7(2) RFees, the President shall lay down the date on which such payments shall be considered to have been made. This provided the basis for point 6.3, 3rd sentence, ADA, that, provided that sufficient funds were in a deposit account, a fee was considered paid on the date of receipt of a debit order. In the present case that debit order was received on 23 August 2008, the last day of the opposition period, Article 99(1) EPC, extended under Rule 134(1) EPC. Put simply, by maintaining a deposit account with the EPO under ADA, the opponent had credit with the EPO. As soon as the opponent, using a debit order, gave his permission for that credit to be used to pay the opposition fee for the parent case, the fee payment prescribed by Article 99(1) EPC occurred.

2.9 The five divisional cases

2.9.1 The question of whether or not the notices of opposition for the divisional cases were deemed filed within the opposition period, Article 99 EPC, depends

on the validity of points 6.4 to 6.6 ADA, in the form published in the Supplement to OJ EPO 10/2007, since the opponent complied with these regulations in replenishing his deposit account and paying the 30 % administrative fees in due time. Of particular relevance is the limitation under Article 33(2)(d) EPC 1973 of the powers of the Administrative Council to only amend the Rules relating to Fees "in conformity with this Convention", including Article 99(1) EPC, second sentence, which states that notice of opposition "shall not be deemed to have been filed until the opposition fee has been paid". Point 6.5, first sentence, ADA stated that "If, within a period of one month of receipt of the communication under point 6.4, the amount is sufficiently replenished to enable the total payments indicated for the application to be debited and, within the same period, an administrative fee under point 6.6 is paid, **then the date on which the debit order was received is considered to be the date on which payment was made.**" (Emphasis by the board.) Put simply, point 6.5, first sentence, ADA and, in particular, the highlighted passage stated that the EPO accepted the debit order as a form of payment. Hence the board takes the view that the Administrative Council did act within its powers under Article 33(2)(d) EPC 1973 in allowing fee payments to be made in this way. A debit order had to be received by the EPO within the opposition period for the opposition fee under Article 99(1) EPC to be considered paid. The ADA arrangements did not provide an opportunity for the opponent to somehow avoid paying the fee under Article 99(1) EPC within the opposition period. Moreover the EPO was not favouring the opponent over the proprietor in this situation by somehow giving the opponent "free credit". On the contrary, the opponent had to pay a further administrative fee of 30% of the fee in

question, but not less than € 50 or more than € 305, from the deposit account; see point 6.6 ADA.

2.9.2 According to the appellant, T 0152/85 (OJ EPO OJ 1987, 191) stated that failure to pay an opposition fee within the required period could not be rectified after its expiry. This decision concerned the question of whether or not the absence of any mention of payment of the opposition fee under ADA in a notice of opposition could be corrected under Rule 88, first sentence, EPC 1973, which states that *inter alia* mistakes in any document filed with the EPO may be corrected on request; see points II and IV in T 0152/85. The board notes that the circumstances in the present case differ from those in T 0152/85, since in the present case the opponent made no request for correction and a debit order arrived at the EPO within the opposition period.

2.9.3 The appellant has also argued that, in the event of a deadline for paying a fee being missed, only an applicant can request further processing under Article 121 EPC and only an applicant or a proprietor can request re-establishment of rights under Article 122 EPC. The board is not convinced that these arguments prove that an opponent cannot take advantage of ADA and also points out that, following G 0001/86 (OJ EPO OJ 1987, 447), also an opponent can request re-establishment into the time limit for filing the statement of grounds of appeal. Moreover no request under either Article 121 or 122 EPC has been made in the present case.

2.9.4 The appellant has also argued that, under Article 8 RFees in the version applicable in 2008, a time limit for payment shall in principle be deemed to have been observed only if the full amount of the fee has been

paid in due time. An amount lacking had to be paid within the time remaining before the end of the period. The board is not convinced that these facts prove that an opponent cannot take advantage of ADA. Article 8 RFees applies to the case in which the EPO receives a payment in due time which is less than the specified fee, in other words there is a "shortfall". This is not the same as the present case, dealt with in point 6.4 ADA, where a deposit account does not contain sufficient funds to cover a fee. In fact, the payments made by the opponent under points 6.5 and 6.6 ADA into his deposit account were sufficient to cover both the five opposition fees and the five administrative fees.

2.9.5 Hence the opposition fees for the notices of opposition in the five divisional cases were paid in due time and the oppositions are therefore admissible.

3. Summary of the invention

3.1 The invention relates to transferring data within a data processing system, for instance the Microsoft Windows 3.1 operating system, in which the "clipboard" is used to transfer data between applications. According to the description, the clipboard can be seen as a "common area for storing data handles (i.e., unique identifiers for data objects) to which applications can exchange formatted data"; see paragraph [0002], lines 13 to 14, of the published patent. Windows 3.1 provides a fixed number of clipboard formats, for instance the CF_TEXT clipboard format for transferring arrays of text characters. Users can transfer data between applications in two ways, both of which use the clipboard formats. The first method, referred to as "conventional clipboard", is to use the clipboard commands "cut", "copy" and

"paste". The copy command, for instance, copies a handle to a data object holding a selected portion of data in a clipboard format to the clipboard; see paragraph [0003], lines 18 to 20. The second method is referred to as "drag-and-drop" and is based on the Microsoft OLE ("Object Linking and Embedding") 2.01 protocol. This mechanism uses clipboard formats, but, unlike the "conventional clipboard" method, transfers data directly from source to destination, bypassing the "system store used for cut and copy operation"; see paragraph [0004]. When the mouse button is released to perform the "drop" part of a drag-and-drop operation, the window in which the mouse cursor currently points receives a "WM_DROPFILES" message containing the handle (hDrop) to a data structure describing the file or files that have been dropped. The handle is used by the destination object as a parameter in function calls to retrieve information from the clipboard formats in the data structure identified by hDrop; see paragraphs [0020] and [0026]. Thus far, the details of the invention are all acknowledged in the patent as being known from the prior art Windows 3.1 operating system; see paragraphs [0001-0005], [0020] and [0026].

3.2 The invention addresses the problem that the number of clipboard formats provided by Windows 3.1 is too small, and those that are available are too limited. The invention overcomes these limitations by providing expanded clipboard formats including a "file contents clipboard format" (CF_FILECONTENTS) for holding data that is not a file. Figure 3 illustrates the use of this clipboard format to, for instance, drag an embedding out of a mail message and drop it on a location to create a file; see paragraph [0023], lines 15 to 16. First the data to be transferred is selected (step 37). The data is then converted into the

CF_FILECONTENTS clipboard format and stored (step 38). The data transfer operation is then completed (step 39), and the data in said clipboard format is then encapsulated into a file (step 40).

3.3 The invention also provides the "file group descriptor clipboard format" (CF_FILEGROUPDESCRIPTOR) for holding a number of file descriptors, each holding descriptive information about a file or about data that is to be incorporated into a file during a transfer operation see paragraph [0008], lines 33 to 35, and paragraphs [0027-0028]. As granted claim 1 refers to a single "file", the board understands the "number of file descriptors" referred to above to mean "one or more".

3.4 Figure 4 illustrates the combined use of the CF_FILECONTENTS and CF_FILEGROUPDESCRIPTOR clipboard formats in a data transfer operation, granted claim 1 of the parent patent being based on this combined use. The data to be encapsulated into the file(s) is first converted and stored in the CF_FILECONTENTS clipboard format (step 41). This is similar to steps 30 and 32 in figure 3. Returning to figure 4, a file group descriptor for the data is then stored in the CF_FILEGROUPDESCRIPTOR clipboard format (step 42). The data is then transferred and encapsulated into a group of files (step 43). As granted claim 1 refers to a single "file", the board understands the "group of files" created in step 43 to mean "one or more files".

3.5 The board understands figures 3 and 4 to mean that the file created in the last step (see figure 3; step 40, figure 4; step 43) can then be read by the target application, assuming that the application understands the format of the file.

3.6 The board can find no basis in the description for the statement in the first T-decision (see point 5.3, lines 11 to 17) that, according to the invention, the data format is changed during the transfer operation, "whereas in conventional clipboard formats the data either has to be accepted in the form offered or cannot be used by the receiving application program". The present board takes the view that also according to the invention the target application has no control over the file data format produced by the invention and must "take it or leave it". While the skilled person would understand the encapsulation of the stored data object and the structural/formatting information in the CF_FILEGROUPDESCRIPTOR clipboard format into a file to involve the addition of meta data, for instance a header, the present board does not understand encapsulation into a file to involve a metamorphosis of the data format itself into a second data format.

4. The board's construction of granted claim 1

4.1 Given the broad formulation of claim 1 and the objections raised in the appealed decision as to whether the invention could be carried out by the skilled person over the full breadth of the claim, Article 100(b) EPC 1973, the board first construes the claim to determine its full breadth.

4.2 The term "file contents clipboard format" is understood as a name for a format. The name itself does not imply any features of the format. It is a label, such as "format 2", as opposed to "text clipboard format 1" and "file group descriptor clipboard format 3". Regarding the expression "selecting" data, according to the description, "selecting" can be an operation preceding the "drag-and-drop" operation, including the selection

of an e-mail attachment; see paragraph [0022], lines 15 to 16. Turning to what is meant by selecting "data", the data being selected is undefined and is thus whatever is selected in the selection operation, for instance an e-mail attachment. The board understands the term "data" more narrowly than stated in the appealed decision and finds that "data" in this context means "the data that has been selected", whereas the decision took it to mean "any data whatsoever", including types of data which are not mentioned in the patent. As to the expression "data **which is not a file**" (emphasis by the board), the description provides little basis for interpretation. Since data which is a file can be transferred to the sink and stored there without recourse to clipboard formats, the board understands "data which is not a file" in the context of the patent to mean all other data. Turning to the expression "a format **to hold said data**" (emphasis by the board), since the nature of the data is unspecified it cannot limit the format defined by this functional definition. Regarding the expression "**converting** said selected data into converted data of said file contents clipboard format" (emphasis added by the board), the board takes the view, in contrast to the position taken in the appealed decision (see point 36), that claim 1 does not require that conversion be into any particular, perhaps highly complex, format. Instead, the conversion is functionally defined as simply being that required to convert the data into a format able to hold it. Regarding the term "**descriptive information** about the data" (emphasis by the board), the patent gives a detailed example of such information in paragraph [0027]. The claim only states that the descriptive information is used to create the file at the sink. Effectively, "descriptive information" only means "meta data" and could, for instance, relate to

the structure or size of the selected data. Claim 1 is not restricted to a particular use of the data at the sink, for instance by a target application.

4.3 Based on this interpretation, the common features of granted claim 1 of all six cases set out a "format 1" which is able to "hold" unspecified "data" and another "format 3" able to hold meta data, an operation of selecting some data, "converting" it into "format 1" and storing it as a data object, holding meta data in "format 3", transferring data to a data sink using a handle to the data object and using the descriptive information to encapsulate said data object into a file at the sink.

5. Sufficiency of disclosure, Article 100(b) EPC 1973

5.1 According to Article 100(b) EPC 1973, opposition may be filed on the grounds that the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Since the decision to grant the patent is dated 27 July 2007 and EPC 2000 came into force on 13 December 2007, Articles 101 and 99 EPC apply to the present patent.

5.2 A comparison of granted claim 1 in all six cases

5.2.1 Granted claim 1 of all six cases sets out at least the following features: a method in a computer system (10) having a clipboard for performing data transfer of data in a clipboard format, said method comprising the steps of: providing several clipboard formats including a text clipboard format, a file contents clipboard format and a file group descriptor clipboard format, selecting data that is not a file for a data transfer operation,

using the file contents clipboard format to hold said data by converting said selected data into converted data of said file contents clipboard format and storing the converted data as a data object, holding a file descriptor comprising descriptive information about the data that is to be encapsulated into a file during the data transfer operation, completing the data transfer by providing a handle to said data object, using said handle to paste said data of said data object to a data sink, using said descriptive information to enable the computer system to create a file at the data sink and encapsulating the data object into said file.

5.2.2 These common features comprise three clipboard formats: a text clipboard format, a file contents clipboard format and a file group descriptor clipboard format. The patent acknowledges the text clipboard format as being prior art.

5.2.3 The appealed decision does not provide reasons why the features in granted claim 1 according to the six cases going beyond these common features are insufficiently disclosed, Article 100(b) EPC 1973.

5.3 The finding on sufficiency in the first T-decision

According to the reasons for the decision, the application disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Article 83 EPC 1973; see points 5 to 5.4. The decision states *inter alia* that the application seeks to increase the number of data formats usable to transfer data from a source to a destination via the clipboard of a data processing system or via a drag-and-drop operation using clipboard formats as part of an object linking and embedding

(OLE) protocol. The solution consisted in providing expanded clipboard formats. A specific embodiment was a file contents clipboard format, described by way of its function, i.e. its ability to transfer non-file data in such a manner that the non-file data could be encapsulated into a file at the data sink with the help of descriptive information provided by the file group descriptor clipboard format. An exemplary property of the file contents clipboard format was disclosed in functional terms: "for holding the contents of a file". Although that format was not described in detail, the the skilled person would have been able to implement the desired function of the format on the basis of common knowledge and the file group descriptor format documented in the application.

5.4 The finding on sufficiency in the appealed decision

According to the reasons for the decision, the patent did not sufficiently disclose the file contents clipboard format and the steps for converting the selected data into said file contents clipboard format, Article 100(b) EPC 1973; see reasons, points 33 to 41. Thus the patent did not describe at least one way of carrying out the invention of claim 1. There was also no restriction on the complexity of the data to be transferred and thus no restriction on the complexity of the conversion operation over the whole range of the claim. Hence the conversion operation covered cases which would require inventive skill, such as converting data from a CAD application for use in an object-oriented data base.

5.5 The grounds of appeal

According to the appellant, the "file contents clipboard format" and the "file group descriptor clipboard format" are both completely defined in claim 1 itself. Claim 1 sets out the "file contents clipboard format" being usable to hold the selected data, and the skilled person would be able to implement this over the whole range claimed. Regarding the complexity of the conversion operation, the appellant pointed out that the example used in the decision of transferring data from a CAD application to an object-oriented data base application is not mentioned in the patent.

5.6 The board's assessment of sufficiency of disclosure

5.6.1 The board disagrees with the finding in the appealed decision that the skilled person would be unable to implement, using common technical knowledge, the file contents clipboard format and the steps for converting the selected data into that clipboard format. As explained above, the board construes claim 1 more generally than was set out in the appealed decision. In particular, it finds that claim 1 sets out functional definitions of the file contents clipboard format and the conversion of selected data into that format. The file contents clipboard format and file group descriptor clipboard format are not limited by the data format required by any particular target application, for instance the object-oriented data base referred to in the appealed decision. According to the functional definitions, the file contents clipboard format merely has to be suitable for holding the selected data and the conversion step merely involves converting the selected data into that format. These steps do not pose a specific problem which the skilled person would be

unable to solve without undue burden across the full breadth of the claim.

5.6.2 Granted claim 1 differs from that of the parent case in also setting out the following features: "a file list clipboard format, for storing a value for accessing a file list structure that describes a list of files involved is [*sic*] a data transfer operation". The appealed decision does not provide reasons why these features are insufficiently disclosed, Article 100(b) EPC 1973, nor is the board aware of any.

5.6.3 Hence the board agrees with the finding on sufficiency in the first T-decision (see points 5 to 5.4) and concludes that the patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Article 100(b) EPC 1973.

6. Inventive step, Articles 100(a) and 56 EPC 1973

6.1 The grounds of opposition

Although the appealed decision is based on sufficiency of disclosure, Article 100(b) EPC 1973, the opposition was also based on the grounds foreseen in Article 100(a) EPC 1973, in particular inventive step, Article 56 EPC 1973. Consequently, the board's assessment is not restricted to the ground of opposition under Article 100(b) EPC 1973.

6.2 The closest prior art

6.2.1 The board agrees with the position taken in the first T-decision that the Windows 3.1 operating system,

acknowledged as prior art and discussed in the description (see above), forms the closest prior art.

6.2.2 In the light of the above analysis of Windows 3.1, the skilled person would understand the use of the CF_TEXT clipboard format to disclose the following features set out in claim 1 of the parent case: a method in a computer system having a clipboard for performing data transfer of data in a clipboard format, said method comprising the steps of providing a text clipboard format, selecting data that is not a file for a data transfer operation, converting said selected data into converted data of said clipboard format and storing the converted data as a data object and carrying out a data transfer operation by providing a handle to said data object.

6.3 The board's assessment of inventive step

6.3.1 In view of the above analysis, the board finds that the subject-matter of claim 1 of the main request differs from the closest prior art in the following features:

a. during the transfer operation encapsulating the data object into a file created at the data sink, whereby

b. the selected data is held in the data object in a file contents clipboard format, and descriptive data on the selected data, held in a file group descriptor clipboard format, is also included in said encapsulation and

c. a file list clipboard format, for storing a value for accessing a file list structure that describes a list of files involved is (understood

by the board to mean "in") a data transfer operation.

6.3.2 These differences are largely the same as those identified in the first T-decision (see point 7.1, paragraph bridging pages 15 and 16), although the present board sees no need to repeat the "non-file data" feature, in itself known from the closest prior art, as an aspect of the difference features.

6.3.3 The board takes the view that features "a", "b" and "c" solve the objective technical problem of allowing data to be transferred to a greater variety of data sinks than in the prior art, in itself an obvious problem at the priority date.

6.3.4 Difference feature "a" contributes to the solution of the objective technical problem in setting out the use of a file, and the skilled person would have been aware at the priority data of the many applications accepting input data from files and would have added feature "a" as an obvious measure to extend the known data transfer approach to these applications.

6.3.5 Difference feature "b" does not go beyond a usual implementation by the skilled person of feature "a" by separating data content and descriptive (i.e. meta) data including structural/formatting information.

6.3.6 Difference feature "c" was set out in original claim 15 of the parent application, but the role of the file list clipboard format in a data transfer is not discussed in the description. The board understands these features to relate to files created at the data sink to address the problem set out above, namely allowing data to be transferred to a greater variety of

data sinks. There is no indication in the patent that these features go beyond usual matters of implementation, nor has the appellant made any submissions to this effect.

6.3.7 Consequently the board finds that the subject-matter of claim 1 lacks an inventive step, Articles 100(a) and 56 EPC 1973, in view of the Windows 3.1 operating system and the common general knowledge of the skilled person.

7. The auxiliary requests

7.1 Under Article 12(4) RPBA the board has the power to hold inadmissible requests which could have been presented in the first instance proceedings.

7.2 In the present case the claims according to auxiliary requests 1 to 19 are the same as those presented, but withdrawn at the end of the oral proceedings before the opposition division, meaning that these requests were not decided on in the appealed decision. In the annex to the summons to oral proceedings the board informed the parties that it might be necessary to discuss the admittance of these requests, Article 12(4) RPBA. The appellant did not comment on this point in its response received on 15 November 2016 and did not attend the oral proceedings before the board.

7.3 Since the appellant has not provided any reasons as to why these requests should be admitted into these proceedings, e.g. how the amendments to the claims overcome the inventive step objection raised against claim 1 of the main request in the board's communication, the board exercises its power under Article 12(4) RPBA not to admit them.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

B. Atienza Vivancos W. Sekretaruk

Decision electronically authenticated