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**Datasheet for the decision
of 22 March 2018**

Case Number: T 2245/12 - 3.5.06

Application Number: 06821102.8

Publication Number: 1938237

IPC: G06F21/00

Language of the proceedings: EN

Title of invention:
IMPROVED DRM SYSTEM

Applicant:
Koninklijke Philips N.V.

Headword:
DRM based on domain membership/PHILIPS

Relevant legal provisions:
EPC R. 111(2)
EPC 1973 R. 67
RPBA Art. 11

Keyword:
Appealed decision - reasoned (no)
Substantial procedural violation - (yes)
Reimbursement of appeal fee - (yes)

Decisions cited:

T 0034/90, G 0009/91

Catchword:



Beschwerdekammern
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Chambres de recours

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Case Number: T 2245/12 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 22 March 2018

Appellant: Koninklijke Philips N.V.
(Applicant) High Tech Campus 5
5656 AE Eindhoven (NL)

Representative: de Haan, Poul Erik
Philips International B.V.
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High Tech Campus 5
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 11 June 2012
refusing European patent application No.
06821102.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal is against the decision by the examining division, dispatched with reasons on 11 June 2012, to refuse European patent application 06821102.8, on the basis that the subject-matter of claim 1 of all requests was not inventive, Article 56 EPC 1973. The following documents were cited in the decision:
- D1 = WO 2005/055022 A
D2 = WO 2005/010879 A
- II. A notice of appeal was received on 3 August 2012, the appeal fee being paid on the same day. A statement of grounds of appeal was received on 11 October 2012.
- III. The appellant requested that the decision under appeal be set aside and a patent granted on the basis of claims 1 to 10 of the main request or claims 1 to 8 of one of auxiliary requests 1 or 2, all filed with the grounds of appeal, or, as auxiliary request 3, on the basis of only claim 1 of said auxiliary request 2, these four requests being the same as those that were the object of the refusal.
- IV. For all requests the further documents on file are:
- Description pages 1 to 42 as published;
- Drawing sheets 1 to 11 as published.
- V. The appellant further requested a reimbursement of the appeal fee and made a conditional request for oral proceedings.

VI. Independent claim 1 of the main request reads as follows:

"A method of digital rights management, in which access to a piece of content is granted in accordance with a license owned by a license owner to a client who is a member of a domain, conditional upon a step of successfully verifying

that a membership relation exists between the client and the domain as reflected in a first state variable maintained both by the client and by a controller of the domain, the presence of a valid first state variable being required to successfully verify that the membership relationship exists,

and that an association relation exists between the license owner and the domain as reflected in a second state variable maintained both by the controller of the domain and by a license owner controller associated with the license owner, the presence of a valid second state variable being required to successfully verify that the association relationship exists, the method comprising

revoking the membership relation by executing an online protocol between the controller of the domain and the client after which both remove the first state variable, and

revoking the association relation by executing an online protocol between the license owner controller and the controller of the domain after which the controller of the domain removes the second state variable and after which the state administration relating to the domain is propagated to the client so that the second state variable is removed by the client."

Reasons for the Decision

1. *The admissibility of the appeal*

The appeal is admissible.

2. *No reasoned decision; Rule 111(2) EPC*

2.1 According to Rule 111(2) EPC, the decisions of the European Patent Office open to appeal shall be reasoned. The function of appeal proceedings is to give a judicial decision upon the correctness of a separate earlier decision taken by a first instance department (see *inter alia* T 34/90 (OJ EPO 1992, 454), headnote I, and G 9/91 (OJ EPO 1993, 408), reasons 18, for the *inter partes* case). A reasoned decision issued by the first instance department meeting the requirements of Rule 111(2) EPC is accordingly a prerequisite for the examination of the appeal.

2.2 Section 11 of the grounds for the appealed decision *prima facie* provides arguments why the subject-matter of claim 1 of the main request is not inventive, as required by Article 56 EPC. The board can however detect no logical chain in the reasoning.

2.3 Section 11.2 lists the differences between the subject-matter of claim 1 and the disclosure of D1:

"before granting access additionally verifying that an association relation exists between the license owner and the domain as reflected in a second state variable maintained both by the controller of the domain and by a license owner controller associated with the license

owner, the presence of a valid second state variable being required to successfully verify that the association relationship exists, and revoking the association relation by executing an online protocol between the license owner controller and the controller of the domain after which the controller of the domain removes the second state variable and after which the state administration relating to the domain is propagated to the client so that the second state variable is removed by the client."

- 2.4 Section 11.3 states that these differences have the technical effect that when a user leaves a home-domain, the device is not able to use the user-licenses anymore. Section 11.4 then concludes that the problem to be solved is how to prevent a user from losing rights he or she paid for. Such would however be a problem *caused* by the listed differences, rather than one *solved* by it, as would be required in the context of the "problem and solution" approach, which should in principle be used for the assessment of inventive step at the European Patent Office.
- 2.5 In section 11.5, the grounds for the appealed decision introduce document D2. The reasoning is apparently that the skilled person would consider this document because it "has already in the title an indication that a person should be included in the architecture" (section 11.5 first sentence) and because "D1 and D2 are also both Philips patent applications". There is however no explanation why a skilled person would look for prior art where a person is included in the architecture, nor why the fact that the applicant is the same for both D1 and D2 is relevant.

2.6 It can also not be argued (and in fact it was not) that the statements made in section 11 of the appealed decision require no proof for lack of having been challenged. Indeed, several of those statements correspond to statements that were already made in the Written Opinion of the international Searching Authority (see Item V) and were subsequently challenged by the applicant; see for instance the reasoning in support of novelty and inventive step in the appellant's response dated 5 August 2009.

2.7 The arguments in section 11 of the reasons for the appealed decision therefore, contrary to appearances, constitute no reasoning as far as concerns the refusal of the appellant's main request for lack of inventive step. The board points out that an inventive step analysis should in principle apply the "problem and solution approach", which is the standard approach at the European Patent Office. However, neither this approach nor any other verifiable approach was used in the reasons for the appealed decision.

The reasoning in sections 12 to 14 of the appealed decision only deals with arguments that were made by the applicant. The board cannot identify any additional arguments in those sections that could be used to build a complete case against the presence of an inventive step.

The board concludes that the reasoning in the appealed decision is of such a nature that the decision is *de facto* unreasoned.

2.8 The requirements of Rule 111(2) EPC have consequently not been satisfied. This constitutes a fundamental deficiency within the meaning of Article 11 RPBA and,

accordingly, the board considers it appropriate to remit the case to the department of first instance, since in the present case no special reasons are apparent for doing otherwise.

- 2.9 The appeal is allowed insofar as the decision under appeal is set aside. Since the decision of the first instance clearly contravened Rule 111(2) EPC, and the appellant had to appeal in order to obtain a fully reasoned decision, it is equitable to reimburse the appeal fee pursuant to Rule 67 EPC 1973.

Order

For these reasons it is decided that:

1. The appealed decision is set aside.
2. The case is remitted to the first instance for further prosecution.
3. The appeal fee is reimbursed.

The Registrar:

The Chairman:



B. Atienza Vivancos

W. Sekretaruk

Decision electronically authenticated