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**Datasheet for the decision
of 9 November 2015**

Case Number: T 0893/13 - 3.5.06

Application Number: 07120091.9

Publication Number: null

IPC: G06F9/44

Language of the proceedings: EN

Title of invention:

Multi-language interfaces switch system and method therefore

Applicant:

Sercomm Corporation

Headword:

Multi-language interface/SERCOMM

Relevant legal provisions:

EPC R. 103
EPC 1973 Art. 84, 109(1), 113(1)
RFees Art. 13(2)

Keyword:

Reimbursement of appeal fee - competence of board of appeal
(yes) - T21/02 and T242/05 not followed
Substantial procedural violation (no)
Reimbursement of appeal fee (no)
Claims - clarity (no)

Decisions cited:

G 0003/03, J 0032/95, T 0021/02, T 0242/05

Catchword:

See points 3-7



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Case Number: T 0893/13 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 9 November 2015

Appellant:
(Applicant) Sercomm Corporation
8F, No. 3-1
Yuanqu St.
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Representative: Von Kreisler Selting Werner - Partnerschaft
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 14 November
2012 refusing European patent application No.
07120091.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Sekretaruk
Members: M. Müller
S. Krischer

Summary of Facts and Submissions

- I. The appeal lies against the decision of the examining division, with reasons dispatched with letter of 14 November 2012, to refuse the European patent application No. 07 120 091.9.
- II. Earlier in the proceedings, on 3 November 2011, the examining division had already decided to refuse the application but then, in response to an appeal, had rectified its decision under Article 109(1) EPC and continued examination.
- III. The earlier decision was primarily based on a lack of clarity, Article 84 EPC, but also raised objections under Articles 123(2) and 56 EPC. In its appeal against this decision, henceforth referred to as the first appeal, the appellant claimed that its right to be heard had been infringed because its submissions regarding lack of clarity and lack of inventive step had not been taken into account by the examining division and because it had not had an opportunity to comment on the objection under Article 123(2) EPC.
- IV. Reimbursement of the first appeal fee was not requested in the first appeal and was not ordered by the examining division of its own motion. After rectification, however, the appellant requested that the examining division order the reimbursement of the first appeal fee.
- V. The decision under appeal is based on the finding that the application did not comply with Articles 83 and 84 EPC. The decision also refers to the document

D1: Colin E, "Creating Multilingual Websites", online document dated 4 November 2004, retrieved from <http://www.jugglingdb.com/compendium/geek/multilingualwebsites.html> on 20 December 2007

and, in a section entitled "Further Remarks", suggests that the claimed invention "appears" to lack an inventive step over D1. Moreover, the examining division explains (see page 3, 4th paragraph) that it does not consider a substantial procedural violation to have occurred during examination leading to the first appeal and "is therefore unable to reimburse the appeal fee under Rule 103(2) EPC".

- VI. Notice of appeal was filed on 18 January 2013, the appeal fee being paid on the same day. A statement of grounds of appeal was received on 25 March 2013. The appellant requested that the decision under appeal be set aside and that a patent be granted based on the documents attached to the grounds of appeal, in particular claims 1-14. It also requested that the fee for the *previous, i.e. first appeal* be reimbursed.
- VII. With a summons to oral proceedings, the board informed the appellant of its preliminary opinion that the claimed invention lacked clarity, Article 84 EPC 1973, sufficiency of disclosure, Article 83 EPC 1973, and inventive step, Article 56 EPC 1973. The board also referred the appellant to the jurisprudence of the boards of appeal, according to which the board was not competent to deal with the request for reimbursement of the first appeal fee.
- VIII. In response to the summons, with letter dated 25 August 2015, the appellant withdrew its request for oral proceedings. The oral proceedings were then cancelled.

IX. Claim 1 reads as follows:

"A multi-language interfaces switch system (2),
comprising:

- a storage unit (11, 21), comprising an executable code, which contains a JavaScript program code and is provided with a variable code (1111, 2111), whereby the variable code is provided to substitute text data in the executable code, and multiple language packs (112, 212, 213, 214) in which the text data is stored;
- a processing unit (12, 22), electrically connected to the storage unit (11, 21) for processing the executable code (111, 211); and
- a language switch unit (13, 23), connected to the storage unit (11, 21) and the processing unit (12, 22) respectively for generating and sending an instruction signal to the processing unit (12, 22), the processing unit replacing the variable code with one of those language packs (212, 213, 214) according to the instruction signal;
- wherein the text data is stored in a JavaScript associated document file of the language packs (112, 212, 213, 214),
- wherein the JavaScript program code is operated, wherein a tool converts the JavaScript associated document file into a HTML document file and a readout and procedural output according to an access route of the JavaScript associated document file is performed, wherein text data of the HTML document file corresponds to multiple messages generated by the JavaScript program code displayed in multiple pop-up message boxes for a translator to check whether the messages are correct while performing translation."

The request also contains an independent method claim 8 which largely corresponds to claim 1.

Reasons for the Decision

Reimbursement of the first appeal fee

1. Following a decision of the Administrative Council of 13 December 2013, an amended version of Rule 103 EPC entered into force on 1 April 2014. According to Article 2(2) of that decision, the new rule also applies to appeals pending at the date of entry into force, hence also to the present one.

2. The relevant parts of Rule 103 EPC as presently in force read as follows:

"(1) The appeal fee shall be reimbursed in full

(a) in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation, [...]

(3) The department whose decision is impugned shall order the reimbursement if it revises its decision and considers reimbursement equitable by reason of a substantial procedural violation. In all other cases, matters of reimbursement shall be decided by the Board of Appeal."

Competence of the board

3. Firstly, it has to be decided whether the board is competent to decide on the appellant's request to have the first appeal fee reimbursed even though the request was

filed only after the examining division rectified its decision in response to the first appeal.

- 3.1 According to Rule 103(2) EPC, the examining division orders reimbursement if it concludes that it is equitable by reason of a substantial procedural violation. Since Rule 103 EPC does not require there to be a request for reimbursement, the examining division has to assess of its own motion whether reimbursement of the appeal fee is equitable under the circumstances (see also G 3/03, OJ EPO 2005, 34, reasons 3, 2nd sentence). The board has no reason to doubt that the examining division fulfilled this obligation, as it also expressly declared in the decision under appeal (page 3, 4th paragraph).
- 3.2 In J 32/95 (OJ EPO 1999, 713) it was decided that the department whose decision has been impugned does not have the power to refuse a requested reimbursement of the appeal fee but that such power lies with the board of appeal (see the headnotes). This decision was confirmed by G 3/03 (OJ EPO 2005, 34, see headnote 1). New Rule 103 EPC was expressly meant to codify J 32/95 (see OJ EPO Special Edition No. 1, 2003, 184).
- 3.3 Although under Rule 103 EPC the examining division has the power to order reimbursement of appeal fee, it does not have the power to decide that the appeal fee is not reimbursed (see also G 3/03, reasons 2). Rule 103 EPC expressly provides that "all other matters of reimbursement shall be decided by the Board of Appeal".
- 3.4 Therefore, according to Rule 103 EPC the board is competent to decide on reimbursement of the appeal fee

whenever the examining division revises its decision and does not order reimbursement itself.

4. In T 21/02 it was decided that "Where a request for reimbursement of the appeal fee [...] was submitted only after the contested decision had been rectified [...], failing a decision of the department of first instance, no legal basis exists for the Board of Appeal to decide on that request" (see headnote). It was reasoned that, if an appeal "had been fully dealt with (by way of interlocutory revision) and was, thus, no longer pending, when the request for reimbursement was submitted, [...] the request was submitted in the absence of a pending appeal and could not, hence, constitute an ancillary issue to be dealt with in appeal proceedings" (see reasons 5). It was further argued that, when a request for reimbursement was filed only after rectification, the procedural situation was the same as if "the Board of Appeal had decided upon it and remitted the case to the department of first instance for further prosecution" (see still reasons 5; see also T 242/05, headnote).
5. The board disagrees with this finding.
 - 5.1 In particular, the board disagrees that non-reimbursement of the appeal fee by the examining division in the case of interlocutory revision of its decision must be equated with the situation in which the board of appeal has refused a corresponding request.
 - 5.2 G 3/03 states (reasons 3, 4th sentence) that "In the absence of a request for reimbursement of the appeal fee, the decision of the department of the first instance granting interlocutory revision pursuant to Article 109(1) EPC will make no mention of the issue of

reimbursement of the appeal fee, and the appellant will not be adversely affected by the decision."

5.3 Apparently, the appellant is not adversely affected by the granting of interlocutory revision itself. Thus the board takes the main point of that statement in G 3/03 to be that an appellant who did not request reimbursement of the appeal fee is not adversely affected by the fact that the examining division did not order reimbursement.

5.4 Since the examining division is not competent to decide that the appeal fee is not reimbursed, an interlocutory revision without an order for reimbursement cannot be construed as a decision not to reimburse.

5.5 Rather, the board considers that the request for reimbursement of the appeal fee can be validly filed even after the examining division has granted interlocutory revision, since Rule 103 EPC entrusts the board with the decision on "all other matters of reimbursement" based on only the two conditions mentioned: That the decision was rectified and the appeal fee was not reimbursed by the examining division.

6. Therefore, the board considers itself competent to deal with the appellant's request for reimbursement of the first appeal fee.

Termination of financial obligations

7. According to Article 13(2) RFees, rights against the Organisation for the refunding by the European Patent Office of fees are extinguished after four years from the end of the calendar year in which the right arose. The appellant's potential right to have its appeal fee

reimbursed arose from the decision of the examining division to grant interlocutory revision. This decision bears the date 26 March 2012, so the Office's potential obligation to reimburse the fee is not extinguished until the end of 2016.

The alleged procedural violation

8. The appellant argues in its present grounds of appeal that the examining division, in coming to its first decision, violated the appellant's right to be heard for two reasons.
9. Firstly the appellant notes that the examining division, in its communication of 20 December 2010, had argued that claim 1 as received on 5 November 2009 was unclear due to the feature that "a tool is further applied to convert the JavaScript program code into a HTML document file" (see in that communication, section entitled "Clarity and Support", pages 2-3; especially the first paragraph on page 2). The examining division had further made reference to the original disclosure on page 5, lines 8-10, which specifies that "a tool is applied to convert this JavaScript document file into a HTML document file" (*loc. cit.*).
- 9.1 The appellant therefore had to assume, as the board understands the argument it, that the examining division's objection was a lack of support due to the different language used in the claim and in the description on page 5 (see grounds of appeal, page 11, lines 6-10) and amended the pertinent phrase accordingly so as to refer to "a tool to convert a JavaScript file into a HTML document file".

- 9.2 In its subsequent refusal decision, the examining division used the same wording as in the previous communication. The appellant argued that, even though the same wording was used, this was "a new factual reasoning", and that it therefore seemed that the examining division had not taken into account the appellant's submission dated 21 June 2011 (see grounds of appeal, page 11, 2nd paragraph).

10. Secondly, the appellant points out that the examining division granted interlocutory revision although no new claims had been filed with the appeal, arguing later that "arguments given by the applicant for clarity [had been] possibly of nature of overcoming the ground of refusal", and claims that this already shows that there was a violation of the right to be heard (see grounds of appeal, paragraph bridging pages 11 and 12). It is further argued that the examining division acted against the principle of procedural economy in that the second refusal is at least in part based on the same reason as the first decision to refuse the application," namely "the question, how the tool can convert a JavaScript file into a HTML file" (see grounds of appeal, page 12, 2nd paragraph).

11. Regarding the first alleged procedural violation, the board takes the following view.
 - 11.1 In the communication dated 20 December 2010, the examining division objected under Article 84 EPC that the functionality of the claimed "tool" lacked support and was unclear in a number of respects (see page 2, "Clarity and Support"). Although reciting the specific terms in which this tool was claimed, the examining division also expressed the opinion that the tool was

unclear even in view of the passage of the original description which, according to the appellant (see its letter dated 4 November 2009, page 2, 5th paragraph), disclosed the claimed tool.

11.2 With its response dated 21 June 2011, the appellant filed an amended claim 1 in which the tool was now claimed in terms more literally corresponding to the original disclosure of the application. In the board's view, the appellant could therefore assume that it had overcome the examining division's concern regarding support by the description. Ostensibly, the examining division shared this view: its first decision recites the amended wording of claim 1 and does not maintain the objection that the claim lacked support (see page 2, section now entitled only "Clarity"). The examining division also did not maintain an objection relating to the term "message.js", apparently in response to the appellant's response (see the communication of 20 December 2010, point b), and the appellant's response, page 3, 5th paragraph.

11.3 The examining division however maintained its genuine clarity objection as regards the way in which the tool was to convert the JavaScript file into an HTML file (cf. first decision, page 2, question a) towards the bottom) and its reasons for this objection ("First" to "Fourth" on page 3 of the first decision). Contrary to the appellant's argument, this does not amount to new factual reasoning even though the claims were amended. Moreover, the board cannot find in the relevant passage of the appellant's submission dated 21 June 2011 (point 3, beginning on page 3) any statement that would respond to the examining division in this respect. The board therefore considers it justifiable that the examining division maintained its clarity objection. It is

- immaterial for this finding whether the board agrees in substance with all objections raised by the examining division.
- 11.4 In summary, the board finds that the file does not support the appellant's allegation that the decision under appeal was based on grounds on which the appellant did not have an opportunity to comment, or that the examining division did not take into account the appellant's submissions, Article 113(1) EPC 1973.
12. Regarding the second alleged procedural violation, the board takes the following view.
- 12.1 Article 109(1) EPC 1973 provides that the examining division rectifies its decision if it considers the appeal to be well-founded. It must therefore normally be assumed that the examining division, when rectifying its decision, considers the appeal to be well-founded.
- 12.2 The appellant argues that a substantial procedural violation is evident from the fact that the examining division maintained at least some objections from the first decision in its summons to oral proceedings issued after rectification. The board understands the appellant to imply that the examining division should not have rectified its decision because it did not actually consider the appeal to be well-founded.
- 12.3 The board notes that the examining division is not required to provide written reasons to explain its decision to rectify. The board can hence only speculate about the decision-making of the examining division.
- 12.4 That said, the board deems it plausible that the examining division considered that the reasons given in its

decision were no longer sufficient in view of the appellant's grounds of appeal and therefore decided to rectify its decision. It appears also from the file that the examining division later changed its mind with respect to at least some of its original objections.

- 12.5 The board considers that this sequence of events may have been unfortunate for the appellant but is of the opinion that it may not under all circumstances be avoided. That the course of action taken by the examining division may not be the procedurally most efficient one does not mean that a substantial procedural violation occurred. Furthermore, the finding that an appeal is well-founded where it later turns out not to be may be a substantive error but is not in itself a procedural violation. The board cannot exclude the possibility that under certain circumstances an abusive rectification of a decision may have to be considered a procedural violation. Since, however, the board has no reason to assume that the examining division rectified its decision abusively, it need not go into the potential consequences of this that.

13. In summary, the board concludes that no substantial procedural error occurred in the examining proceedings leading to the first appeal or the examining division's decision to rectify and that, therefore, the request for reimbursement of the first appeal fee must be rejected.

The invention

14. The application addresses the need to provide web pages in multiple (natural) languages such as English, French

and German and is concerned with the problem of providing a suitable way of switching between languages.

- 14.1 It is discussed that known solutions are undesirable as they either require too much memory or cause complicated coding processes and excessively high data load (see page 1, 3rd paragraph - page 2, 1st paragraph). The invention is meant to improve known solutions in these regards.

- 14.2 The invention proposes to replace the text fragments in the HTML code defining a given web page by JavaScript fragments which represent a corresponding text fragment as the value of a JavaScript variable (say, `va_access`). Such a fragment is disclosed in the application on page 4, lines 27-30. Furthermore, in a separate JavaScript file, the variables are assigned the corresponding text fragment. There are different "language packs", each presumably comprising the text assignments for all relevant variables in a given language (see page 4, last sentence). In the board's understanding, this file is referred to as a "JavaScript associated document file" (page 4, line 33); later in the same sentence it is referred to as "the document file". The definition and the use of the JavaScript variables in, respectively, the JavaScript file and the HTML file, are referred to as "variable codes".

- 14.3 It is further disclosed that for displaying text data "no modification other than the access route is required". The board takes this to mean that the HTML file need not change when the language changes, but that it must only be specified which language pack the JavaScript variables in the HTML file refer to (page 5, lines 4-8).

- 14.4 The description also mentions that "multiple check keys" are generated "for the translator to check whether [the] messages are correct" (page 5, lines 15-18, and page 6, lines 10-12) - i.e., in the board's understanding, correctly translated.

Clarity and terminological questions

15. The board has no reason to drop the objections raised in the annex to its summons to oral proceedings, because the appellant has chosen not to respond to the summons. This applies in particular to the clarity objections which are summarised below, based on the objections raised in the annex to the summons to oral proceedings.
16. The board agrees with the decision under appeal that some of the language used in the independent claims is vague and unclear.
- 16.1 Firstly, the claims use imprecise language in a number of places. For example: The term "variable code" used in claim 1, although literally meaning "code which may vary", must apparently be construed to mean "code relating to variables". Although claim 1 (lines 11-13) literally specifies that the "variable code" is replaced with "one of those language packs", it is evident that this cannot mean that the "variable code" is replaced by an entire "language pack"; rather, individual bits of the "variable code" should be replaced with individual text fragments from the language packs.
- 16.2 Secondly, the board considers the term "JavaScript associated document file" to be unclear. Even if it is understood to mean a document file written in Java-

Script, the claims do not specify what it is "associated with".

16.3 Thirdly, the board agrees with the decision under appeal that the term "access route of the document file" is unclear. Even if the term is taken, as the appellant suggests (see grounds of appeal, page 5, 2nd and 3rd paragraphs), to have no special meaning but to refer merely to the way in which the "JavaScript associated document file is accessed by the JavaScript program code", it remains unclear what the statement that "a readout and procedural output according to an access route" is performed means.

16.4 Fourthly, the board considers unclear the phrase "for a translator to check whether the messages are correct while performing translation", which qualifies the "multiple messages generated by the JavaScript program code" and "displayed in multiple pop-up message boxes": it is unclear whether the phrase is a non-limiting statement of intended purpose and alleged advantage, or whether it is meant to limit the claim and, if so, what limitation is meant to be implied. And the phrase is unclear in itself in that it does not define what specifically the translator is to check and how the "pop-up message boxes" might support the translator in his or her task. The board notes that clarity of this feature is of particular importance because it is central to the appellant's argument in favour of inventive step.

16.4.1 In order to produce a new "language pack" it would seem that the translator would have to provide translated versions of the individual text fragments. The translated text fragments would be stored in a newly created "JavaScript associated document file". Although this

file has to define the "variables" used in the "variable code" of the "JavaScript program code" and thus would have to contain some bits of JavaScript code (for instance as the appellant suggests on page 6, last paragraph, of the grounds of appeal), the text fragments would be clearly apparent from that "JavaScript" file even for readers without any knowledge of JavaScript. It would therefore seem to the board that the JavaScript file itself conveniently enables the translator "to check whether the messages are correct". The board considers unclear how the message boxes might further contribute to this effect.

16.4.2 The board also notes that the pop-up boxes according to the claimed invention produce the text fragments out of context, i.e. independent of the actual run-time situations in which they might be produced by the program in question (see application, page 5, lines 12-18). Hence, the translator could not assess whether the translations are correct in the specific circumstances but only that they are correct in principle.

16.4.3 The board also notes that claim 1 does not specify how the "message boxes" are generated and how they are arranged relative to one another in an assumed (but not claimed) user interface. For example, it is not clear whether all message boxes are displayed on one screen, or only some of them and which ones. Specifically, the arrangement depicted and discussed in the grounds of appeal (see page 4, figure) appears to have no basis in the application as originally filed.

17. In summary, the board comes to the conclusion that claim 1 lacks clarity, Article 84 EPC 1973.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the first appeal fee is refused.

The Registrar:

The Chairman:



B. Atienza Vivancos

W. Sekretaruk

Decision electronically authenticated