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**Datasheet for the decision
of 8 May 2019**

Case Number: T 2556/17 - 3.5.05

Application Number: 05738665.8

Publication Number: 1738282

IPC: H04L12/24

Language of the proceedings: EN

Title of invention:

MAINTAINING DATA INTEGRITY IN A DISTRIBUTED ENVIRONMENT

Applicant:

Infoblox Inc.

Headword:

Data consistency among network applications/INFOBOX

Relevant legal provisions:

EPC Art. 84, 123(2), 111(2)

EPC R. 103(1)(a)

Keyword:

Claims - clarity - main request (yes)

Amendments - added subject-matter (no)

Reimbursement of appeal fee - (no)

Appeal decision - remittal to the department of first instance
(yes)

Decisions cited:

T 1237/07, T 1824/15

Catchword:



Beschwerdekammern
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Case Number: T 2556/17 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 8 May 2019

Appellant: Infoblox Inc.
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Representative: Freeman, Jacqueline Carol
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 14 July 2017
refusing European patent application No.
05738665.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: P. Cretaine
F. Blumer

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division, posted on 14 July 2017, refusing European patent application No. 05738665.8. The sole request was refused because of the presence of added subject-matter in independent claims 1 and 21 (Article 123(2) EPC).

- II. The notice of appeal was received on 31 August 2017 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 14 November 2017. The appellant requested that the decision be set aside and that a patent be granted based on a main request or, the first or second auxiliary request. All requests were submitted with the statement setting out the grounds of appeal. Oral proceedings were requested in the event that none of the three requests were allowed. The appellant also submitted arguments for a reimbursement of the appeal fee.

- III. A summons to oral proceedings was issued on 23 October 2018. In a communication pursuant to Article 15(1) RPBA annexed to the summons, the board gave its preliminary opinion that the three requests on file did not meet the requirements of Article 123(2) EPC and that the main and first auxiliary requests did not meet the requirements of Article 84 EPC. The board also suggested how the main request could be amended to overcome these objections. The board further explained why it considered it not appropriate to deal with the issue of novelty/inventive step and that, provided the appellant submitted an amended main request which overcame the objections under Articles 84 and 123(2) EPC, it intended to cancel

the oral proceedings and remit the case to the examining division for further prosecution. The board also stated why a reimbursement of the appeal fee should not be ordered.

IV. With a letter of response dated 5 December 2018, the appellant filed a main request, amended in the manner suggested by the board. The appellant acknowledged that the issue of novelty/inventive step should be remitted for initial consideration by the examining division.

V. Since the appellant's prerequisites for holding oral proceedings (see point II above) were no longer met, the board announced by notification dated 14 December 2018 that the oral proceedings were cancelled.

VI. Claim 1 according to the main request reads as follows:

"A method of executing a request (610) from one of a plurality of network applications, including:

(i) storing, using an integrity enforcer, a set of data records for the plurality of network applications (504, 512) in a backing store (274) having the set of data records accessible by a plurality of network applications through different protocols, wherein the backing store (274) is a common memory that is accessible to a first network application using a first protocol and a second network application using a second protocol, the plurality of network applications including a Domain Name System (DNS) server, and wherein the plurality of network applications interact with the backing store (274) through the integrity enforcer;

(ii) receiving, using the integrity enforcer, a request (704) from one network application;

(iii) identifying, using the integrity enforcer, a context of the request (708), wherein the identifying of the context includes identifying the one network application that sent the request;

(iv) interpreting, using the integrity enforcer, the request (712); and

(v) executing, using the integrity enforcer, the request, wherein executing the request includes accessing a data record in the backing store (274), modifying the data record in the backing store (274), or deleting the data record in the backing store, wherein in response to a determination that the execution of the request includes the deleting of the data record in the backing store:

in response to a determination that the request is interpreted as a DNS server request and the DNS server request is a request to delete an A record:

determining whether the A record to be deleted is mapped from a Host record;

in response to a determination that the A record to be deleted is mapped from the Host record:

creating a PTR record relating to the A record;

deleting the Host record after the creating of the PTR record;

and notifying a network application of the deletion of the Host record and the creation of the PTR record; and

in response to a determination that the A record to be deleted is not mapped from the Host record:

deleting the A record; and

notifying the network application of the deletion of the A record."

The main request comprises a further independent claim directed to a corresponding system (claim 21).

Due to the outcome of the appeal, there is no need to give details of the claims of the first and second auxiliary requests.

Reasons for the Decision

1. Admissibility of the appeal

The appeal complies with Articles 106 to 108 EPC (see point II above) and is therefore admissible.

2. Main request

2.1 Article 123(2) EPC

The board is satisfied that all the objections under Article 123(2) EPC raised by the examining division (see Reasons 2.1 to 2.4) and by the board (see the communication pursuant to Article 15(1) RPBA, point 3.1) have been overcome by the amendments to claim 1.

Claim 1 now specifies that steps (i) to (v) are performed using an integrity enforcer, rather than a domain name system (DNS) server, which was the only option supported by the application documents as originally filed (see page 5, lines 1 to 5; from page 8, line 21, to page 9, line 7; original claim 22). Furthermore, claim 1 now specifies that the two notifying steps in step (v) are to notify a network application, rather than another DNS server, of the deletion of the Host record or the A record, which was the only option supported by the application documents as originally filed (see page 10, lines 20 to 21; page 11, lines 8 to 9 and lines 19 to 20; Figure 8B, step 862).

Therefore the main request meets the requirements of Article 123(2) EPC.

2.2 Article 84 EPC

Claim 21 has been amended to define a system for executing a request in order to bring it into conformity with claim 1 to which it refers.

Thus, the main request meets the requirements of Article 84 EPC.

3. Request for reimbursement of the appeal fee

According to Rule 103(1)(a) EPC, the appeal fee shall be reimbursed in full where the board of appeal deems the appeal to be allowable and if a substantial procedural violation occurred during the first-instance proceedings.

The appellant argued in substance that the lack of "a detailed reasoning regarding Articles 54 and 56 EPC" in the decision represented a procedural violation, and that, taking into account the procedural delays, the appeal fee should be reimbursed.

According to the case law of the boards of appeal, an applicant not represented at an oral proceedings has to expect that a decision could be made based on its last submissions filed after the summons to oral proceedings has been issued. The applicant has to expect that a decision can be made based solely on an objection under Article 123(2) EPC (see for instance T1237/07). For these reasons, the lack of reasoning in respect of novelty/inventive step issues does not represent a

substantial procedural violation in the present case. Furthermore, in accordance with the case law (see e.g. T1824/15), delays between communications of the examining division are not considered a procedural violation. Thus, no substantial procedural violation occurred during the proceedings before the examining division. As a consequence, a reimbursement of the appeal fee according to Rule 103(1)(a) EPC is not ordered.

4. Remittal to the department of first instance

The decision under appeal was based solely on the grounds of Article 123(2) EPC. The issue of inventive step had been addressed by the examining division, in communications and the annex to the summons to oral proceedings, based on the disclosure of a first prior art document D1. However, the appellant filed amended claims before the oral proceedings. This led the examining division to draw the attention of the appellant to the relevance of a second prior art document D2 in respect of the new features added by the amended claims (see the result of the consultation by telephone held on 8 June 2017). A detailed reasoning with respect to inventive step based on the disclosure of D2 was, however, not provided by the examining division, as also acknowledged by the appellant in the statement setting out the grounds of appeal (see the last paragraph of page 3).

For these reasons and as already indicated to the appellant in the communication pursuant to Article 15(1) RPBA, the board considers it not appropriate to deal with the issue of novelty/inventive step. The board thus decides to remit the case to the

examining division for further prosecution (Article 111 EPC), in particular on the issue of inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.
3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated