

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 15 November 2021**

Case Number: T 0573/18 - 3.5.05

Application Number: 11876838.1

Publication Number: 2787445

IPC: G06F12/00, G06F3/06

Language of the proceedings: EN

Title of invention:

INFORMATION PROCESSING DEVICE AND PROGRAM

Applicant:

Media Logic Corp.

Headword:

Substantial procedural violation/MEDIALOGIC

Relevant legal provisions:

EPC R. 103(1)(a), 112(1)
EPC Art. 113(2)

Keyword:

Reimbursement of appeal fee - appealed decision sufficiently
reasoned (no) - equitable by reason of a substantial
procedural violation - substantial procedural violation (yes)
- violation of the right to be heard (yes)



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0573/18 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 15 November 2021

Appellant: Media Logic Corp.
(Applicant) O-C
Toyama Industrial Advancement Center, 5
Officepark
Takaoka-shi
Toyama 939-1119 (JP)

Representative: Staeger & Sperling
Partnerschaftsgesellschaft mbB
Sonnenstraße 19
80331 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 30 October 2017
refusing European patent application No.
11876838.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: E. Konak
F. Blumer

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse the application. The examining division decided that the main request and auxiliary requests 1 to 4 did not meet the requirements of Article 54(1) and (2) EPC. The main request and auxiliary requests 1 to 3 were also found not to meet the requirements of Article 84 EPC.
- II. With its statement setting out the grounds of appeal, the appellant filed a new main request and new auxiliary requests 1 to 3. It requested that the decision be set aside and that a patent be granted on the basis of one of the requests and, alternatively, oral proceedings.
- III. In its preliminary opinion issued in preparation for the oral proceedings, the board identified fundamental deficiencies in the examination proceedings. It informed the appellant of its intention to remit the case to the examining division and to order reimbursement of the appeal fee in full.
- IV. In response, the appellant withdrew its request for oral proceedings. The scheduled oral proceedings were therefore cancelled.
- V. Claim 1 of the main request reads as follows:

"An information processing apparatus (1) comprising:
a reception unit (54) configured to receive an
operation of a user and

a control unit (52) configured to read data from a storage device (2, 53) and to control writing of data into the storage device (2, 53); characterized in that the reception unit (54) receives a first operation for selecting target data and specifying a move source of the target data or a copy source of the target data before the reception unit (54) receives a second operation for specifying a move destination of the target data or a copy destination of the target data, and the control unit (52) performs a write process of reading the target data and writing the target data into a predetermined area of the storage device (2, 53), when or after the reception unit (54) receives the first operation and before the reception unit (54) receives the second operation, wherein the control unit (52) is adapted to perform within a same volume of the storage device (2, 53) a move process of moving the target data that has been written in the write process from the predetermined area to the move destination of the target data or to the copy destination of the target data without executing a new file write process only by rewriting a management region of a file system, when the reception unit (54) receives the second operation, and the second operation is a move start operation for moving the target data from the move source to the move destination or a copy start operation for copying the target data from the copy source to the copy destination."

The wording of the claims of lower-ranking requests is not relevant to the present decision.

Reasons for the Decision

1. The main request filed with the statement setting out the grounds of appeal is based on auxiliary request 4, on which the contested decision is based.

Although the appellant did not attend the oral proceedings before the examining division, it filed, with its letter of 1 September 2017, the then auxiliary request 4. It also thereby filed arguments regarding why claim 1 of that new request was new and inventive over the newly introduced scripts that the examining division considered to be "common general knowledge, an example of which is illustrated by document XP055388332".

The contested decision does not address these arguments with regard to novelty and/or inventive step anywhere. This is a violation of the appellant's right to be heard (Article 113(1) EPC).

2. Furthermore, Rule 111(2) EPC requires that decisions which are open to appeal be reasoned. According to the established case law of the Boards of Appeal, in order to fulfil the requirements of Rule 111(2) EPC, a decision should contain arguments justifying its finding in a logical sequence. This is to enable the appellant, and in case of an appeal the board of appeal, to examine whether the decision could be considered to be justified or not (see Case Law of the Boards of Appeal of the EPO, Ninth edition, July 2019, III.K.3.4).

In the case at hand, since claim 1 of the then auxiliary request 4 was refused for lack of novelty,

the reasoning should have involved a clear identification of the prior art and an analysis of the features of claim 1.

Regarding the prior art, the examining division refers firstly to "common general knowledge", then to "an example of [it] illustrated by document XP055388322" and, finally, to "following operations performed in a command line environment [...]:

```
cp folder 1/target_data folder2/target_data.tmp
mv folder2/target_data.tmp folder3/target_data".
```

The examining division adds that this combination of commands was part of the common general knowledge "to prevent a user 'to mess' [sic] with the destination file until it was completely copied".

However, since document XP055388322 does not contain these commands anywhere, its relevance to the issue at hand is by no means self-evident. The examining division does not explain its relevance either. It can thus only be speculated that the prior art is the use of these two commands under certain circumstances, i.e. "to prevent a user 'to mess' [sic] with the destination file until it was completely copied". The examining division considers this to have been common general knowledge at the date of priority.

Regarding the feature analysis, the examining division starts analysing claim 1 of the then auxiliary request 4 somewhere in the middle of claim 1. Although claim 1 is for an apparatus, the examining division ignores the apparatus features and analyses the underlying method in a slightly reworded manner. Then the examining division redefines the aforementioned prior art in the middle of the feature analysis to "*when folder2 and folder3 are in the same*

volume". It can once again only be speculated that the aforementioned prior art was not sufficient for some of the features of claim 1.

Most notably, the feature analysis does not give any reasoning at all for the last feature of claim 1, i.e. *"the second operation is a file move start operation or a file copy start operation from a move source or a copy source to the move destination or the copy destination"*. Since this is precisely the distinguishing feature alleged by the appellant in its letter of reply of 1 September 2017 (see page 3, last paragraph), the reader is left to wonder not only why the appellant's arguments were not found to be convincing, but also why this feature is not considered to be new with regard to the prior art.

Therefore, an objective reader is left with guesswork to identify a logical sequence in the examining division's novelty objection. Such reasoning does not meet the requirements of Rule 111(2) EPC.

3. The violation of the appellant's right to be heard and the deficient reasoning in the contested decision constitute substantial procedural violations. They require immediate remittal of the case to the examining division unless special reasons present themselves for doing otherwise (see Case Law of the Boards of Appeal of the European Patent Office, Ninth Edition, July 2019, V.A.7.7.2 a) and b)).
4. Since the fundamental deficiencies apparent in examination proceedings amount to substantial procedural violations, reimbursement in full of the appeal fee is equitable (Rule 103(1) (a) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution.
3. The appeal fee is to be reimbursed in full.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated