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**Datasheet for the decision
of 28 January 2022**

Case Number: T 1083/18 - 3.5.05

Application Number: 12155328.3

Publication Number: 2492823

IPC: G06F13/42

Language of the proceedings: EN

Title of invention:

Communication control apparatus, communication control program, communication control method, and information processing system

Applicant:

Nintendo Co., Ltd.

Headword:

Transmitting several data packets to different destinations within a single broadcast or multicast frame

Relevant legal provisions:

EPC Art. 56
RPBA 2020 Art. 11

Keyword:

Remittal - (yes)



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Case Number: T 1083/18 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 28 January 2022

Appellant: Nintendo Co., Ltd.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 28 November
2017 refusing European patent application No.
12155328.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: P. Tabery
E. Mille

Summary of Facts and Submissions

- I. The appeal is directed against the examining division's decision to refuse the European patent application.
- II. The examining division decided that the application did not meet the requirements of Article 54 EPC (all requests) and Article 84 EPC (auxiliary requests 3 and 4).
- III. The documents referred to by the examining division included:

D1 US7403542 B1, 22 July 2008

D2 EP0336598 A2, 11 October 1989

- IV. In its statement setting out the grounds of appeal, the appellant (applicant) requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a main request or an auxiliary request, copies of both requests having been submitted with the statement setting out the grounds of appeal. In case the main request was considered not allowable, oral proceedings were requested.
- V. The board issued a summons to oral proceedings. On 10 November 2021, it provided its preliminary opinion on the case (Article 15(1) RPBA 2020).

The board disagreed with the findings of the examining division and considered that the subject-matter of claim 1 of the **main request** was neither anticipated nor rendered obvious by document **D1**. The same applied to claim 1 of the **auxiliary request**.

However, since the examining division had not assessed novelty and inventive step in view of document **D2**, the

board held that special reasons existed for remitting the case to the department of first instance (Article 11 RPBA 2020), and was minded to remit the case to the examining division.

- VI. In a reply dated 14 December 2021, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request submitted with the statement setting out the grounds of appeal. If this request was not granted, the appellant requested that the case be remitted to the department of first instance. If neither of these requests was granted, the appellant requested that a patent be granted on the basis of the claims of the auxiliary request submitted with the statement setting out the grounds of appeal, and also requested oral proceedings.

Furthermore, the appellant provided arguments as to why the case should not be remitted to the department of first instance.

- VII. In a letter dated 23 December 2021, the board informed the appellant why it still intended to remit the case to the department of first instance.
- VIII. In a letter dated 28 December 2021, the appellant suggested cancelling the oral proceedings, provided that the board did indeed remit the case back to the department of first instance.
- IX. On 10 January 2022, the oral proceedings were cancelled.
- X. **Claim 1** of the **main request** includes the following features (as labelled by the appellant):
- a. A communication control program executed by a computer (31) of an information processing apparatus (10) having communication functionality, the

communication control program causing the computer to function as:

b. transmission data generation means (31, S56) for generating transmission data which includes a plurality of pieces of data, each having different destined information processing apparatus destinations;

and

c. transmission means (31, S56) for transmitting in one frame, the transmission data which includes the plurality of pieces of data, each piece of data capable of having a different destined information processing apparatus destination address information, in either one of a broadcast fashion and a multicast fashion to other information processing apparatuses.

XI. **Claim 14** of the **main request** includes the following features (as labelled by the appellant):

14a. A communication control apparatus comprising:

14b. transmission data generation means (31, S56) for generating transmission data which includes a plurality of pieces of data having different destined information processing apparatus destinations;

and

14c. transmission means (31, S56) for transmitting in one frame, the transmission data which includes the plurality of pieces of data, each piece of data capable of having a different destined information processing apparatus destination address information, in either one of a broadcast fashion and a multicast fashion to other information processing apparatuses.

XII. **Claim 15** of the **main request** includes the following features (as labelled by the appellant):

15a. A communication control method comprising:

15b. a transmission data generation step (S56) of generating transmission data which includes a plurality of pieces of data having different destined information processing apparatus destinations;

and

15c. a transmission step (S56) of transmitting in one frame, the transmission data which includes the plurality of pieces of data, each piece of data capable of having a different destined information processing apparatus destination address information, in either one of a broadcast fashion and a multicast fashion to other information processing apparatuses.

Reasons for the Decision

1. The present application concerns efficiently transmitting several data packets addressed to different destinations by conveying them within a single broadcast or multicast frame.

2. *Main request*

2.1 *Admissibility (Article 12(4) RPBA 2007)*

The appellant submitted that the amendments contained in the main request are intended to prevent what it considers an incorrect interpretation of the claims.

Since it appears that the amendments have been filed in reaction to the decision of the examining division, the board decides to admit the main request into the proceedings.

2.2 *Original disclosure (Article 123(2) EPC)*

2.2.1 With the appeal, the appellant amended the claims as follows (markup by the board underlines the differences versus claim 1 of the second auxiliary request considered in the impugned decision, which was filed as "New Auxiliary Request I A" during the oral proceedings before the examining division)

Claim 1

a. A communication control program executed by a computer (31) of an information processing apparatus (10) having communication functionality, the communication control program causing the computer to function as:

b. transmission data generation means (31, S56) for generating transmission data which includes a plurality of pieces of data, each having different destined information processing apparatus destinations;

and

c. transmission means (31, S56) for transmitting in one frame, the transmission data which includes the plurality of pieces of data, each piece of data capable of having a different destined information processing apparatus destination address information, in either one of a broadcast fashion and a multicast fashion to other information processing apparatuses.

Claim 14

14a. A communication control apparatus comprising:

14b. transmission data generation means (31, S56) for generating transmission data which includes a plurality of pieces of data having different destined information processing apparatus destinations;

and

14c. transmission means (31, S56) for transmitting in one frame, the transmission data which includes the plurality of pieces of data, each piece of data capable of having a different destined information processing apparatus destination address information, in either one of a broadcast fashion and a multicast fashion to other information processing apparatuses.

Claim 15

15a. A communication control method comprising:

15b. a transmission data generation step (S56) of generating transmission data which includes a plurality of pieces of data having different destined information processing apparatus destinations;

and

15c. a transmission step (S56) of transmitting in one frame, the transmission data which includes the plurality of pieces of data, each piece of data capable of having a different destined information processing apparatus destination address information, in either one of a broadcast fashion and a multicast fashion to other information processing apparatuses.

2.2.2 To support the amendments, the appellant pointed to the original claims 9 and 16, which define data destined for another apparatus.

2.2.3 The board holds that in particular the original claim 16 unambiguously discloses transmission to other information processing apparatuses. Therefore the board concludes that the amendments meet the requirements of Article 123(2) EPC.

2.3 *Clarity (Article 84 EPC)*

The board notes that claim 14 in feature 14c of the "*communication control apparatus*" makes reference to "*other information processing apparatuses*". This is the

only reference in claim 14 to "*other information processing apparatuses*". Data is usually transmitted for its information to be processed by another apparatus. Hence specifying that the data is transmitted to one or more "*information processing apparatuses*" does not raise doubts about the properties of the transmitted data.

The same considerations apply to claim 1.

In view of the above, the claims meet the requirements of Article 84 EPC.

2.4 *Novelty (Article 54(1) EPC)*

2.4.1 In the impugned decision, the examining division held that claim 1 was not limited to any kind of specific "*transmission means*", therefore the host of document **D1** also fell within such a definition.

The appellant argued in the statement of grounds of appeal that the present claim 1 was limited to transmitting "*to other information processing apparatuses*", whereas the "*Input/Output Control Block*" (IOCB) was not transmitted by the host.

The board is not convinced by the appellant's argument, since the "*other information processing apparatuses*" mentioned in the present claim 1 could also comprise the "*network processors*" mentioned in col. 18, lines 54-67 of document **D1**.

2.4.2 Furthermore, in the impugned decision, the examining division considered that the IOCB disclosed in document **D1** was a packet containing a plurality of destination addresses and data for those destination addresses, and the IOCB was then transmitted to those destinations.

The appellant countered that the cited passages of document **D1** had been taken out of context. On the contrary, document **D1** disclosed that the IOCB was a

request in one of the request queues (see col. 18, lines 47-67) for access by the processor. The IOCB comprised a command (MAC command, IP command, TCP command) and indicated the processor for which the respective command was intended. As depicted in Figure 3A-1, an IOCB comprised either pointers to data buffers (lower part of the figure) or a pointer to an address list containing such pointers. As a consequence, the IOCB was processed sequentially by the TCP/IP/MAC processors. Eventually, fully-formed datagrams were produced and passed to the Outbound FIFO Block. Finally, the outbound frames were burst to the Ethernet Network (see col. 11, lines 53-60 of **D1**).

The board concurs with the appellant that document **D1** fails to disclose the amended feature "b." in so far as it concerns *"transmission data [including] a plurality of pieces of data, each having different destined information processing apparatus destinations"*. As a consequence, the board considers that feature "c." is also not disclosed in so far as it relates to transmitting the transmission data defined in feature "b.". Notably, the board considers that the IOCB and the pointers contained therein are read by a single destination processor, which in turn transmits the data referred to therein to a single network destination ("remote port", see col. 17, line 58 - col. 18, line 3).

2.4.3 In addition, in the impugned decision, it was held that the transmission by *"broadcast or multicast"* was anticipated by the *"broadcasted to all processors"*, which according to the decision was disclosed in col. 18, lines 54-67 of document **D1**.

This was also contested by the appellant.

The board notes that the cited passage of document **D1** (col. 18, lines 54-67) explicitly mentions that "*[each] network processor interrogates the bus to see if it is the intended destination for the request*". However, subsequently there is only one "*destination processor*". Since broadcast and multicast are both known as having several intended recipients, the board holds that the cited passage of document **D1** discloses neither a broadcast nor a multicast.

- 2.4.4 Consequently, the board concurs with the appellant that document **D1** fails to fully disclose features "*b.*" and "*c.*" of claim 1. The subject-matter of claim 1 is thus novel over what is known from document **D1**.

The same considerations apply *mutatis mutandis* to the other independent claims 14 and 15 having corresponding features.

2.5 *Inventive step (Article 56 EPC)*

- 2.5.1 In an *obiter dictum*, the examining division held that "*a specific network processor sending the frame via a specific network would not be inventive in view of D1, because it would merely define the same technique executed by a different processor in a different network*".

The appellant submitted that the technical effect of the distinguishing features was to avoid separate transmission of individual data, thereby providing efficient transmission with reduced energy consumption. It would not have been obvious to use the principles implemented for internal transmission of the request of an IOCB disclosed in document **D1** for transmission to another apparatus.

The board concurs with the appellant that the distinguishing features yield the technical effect of more efficient transmission with reduced energy

consumption. The objective technical problem may thus be formulated as how to modify the system known from document **D1** to increase the efficiency of transmission and reduce energy consumption. Document **D1** is concerned with processing network packets in storage controllers (see col. 3, lines 9-12). Starting from document **D1**, the skilled person might be encouraged to increase efficiency within the storage controller, but finds no motivation to consider the above problem relating to transmission. As a consequence, document **D1** also fails to point towards distinguishing features "b." and "c.". Contrary to what the examining division considered, the board holds that document **D1** fails to disclose the same techniques (transmission to several destinations) in a different context (network transmission). Hence the examining division's reasoning is not persuasive.

- 2.5.2 Consequently, the board is of the opinion that the subject-matter of claim 1 is not rendered obvious by what is known from document **D1**.

Similar considerations apply *mutatis mutandis* to the further independent claims 14 and 15 having corresponding features.

- 2.6 In view of the above, the board holds that the grounds for refusing the main request provided in the impugned decision are not convincing.

3. Consequently, the decision under appeal must be set aside.

4. *Remittal (Article 11 RPBA 2020)*

Under Article 11 RPBA 2020, the board may remit the case to the department whose decision was appealed if there are special reasons for doing so.

The board notes that the examining division decided on novelty and inventive step only in view of document **D1**. Thus novelty and inventive step have not been assessed in view of document **D2**, which was cited as a relevant document in the European Search Report.

Under these circumstances, the board does not consider it appropriate to decide on the issues of novelty and inventive step having regard to **D2** without a decision of the examining division. Thus the board holds that special reasons exist for remitting the case to the department of first instance.

In its letter dated 14 December 2021, the appellant argued that the case should not be remitted. Firstly, the case had been pending at the EPO since 2012 and all the issues could be decided without undue burden. Secondly, document **D2** was not *prima facie* relevant, as it had been published 15 years prior to document **D1** and no objections based on document **D2** had been raised during search and examination. Moreover, significant limitations were introduced into the claims during the examination proceedings such that document **D2** was teaching away from what was claimed at present.

The board notes that the relevance of a document, e.g. document **D2**, is not necessarily linked to its age. Furthermore, that the examining division did not address document **D2** in addition to document **D1** in its decision to refuse is not considered as an implicit acknowledgement that the former is not relevant. Finally, the board weighs up the duration of the proceedings against the possibilities for the applicant to react in the discussion of document **D2**. It comes to the conclusion that it would be rather unfair to deprive the appellant of its right to have its case examined by two instances.

5. Partial reimbursement of the appeal fee

The board holds that the appeal fee is to be reimbursed at 25% based on Rule 103(4) (c) EPC.

The appellant requested oral proceedings in the statement setting out the grounds of appeal. The communication of the board in preparation for oral proceedings was notified on 10 November 2021 and deemed to have been received on 20 November 2021 in accordance with Rule 126(2) EPC. The request for oral proceedings was withdrawn by letter of 14 December 2021, i.e. within one month of the notification of the communication of the board, conditionally if the main request was granted or the case was remitted to the examining division. The case is remitted. No oral proceedings took place. The requirements of Rule 103(4) (c) EPC are thus met.

Order

For these reasons it is decided that:

1. The impugned decision is set aside.
2. The case is remitted to the department of first instance for further prosecution.
3. The appeal fee is reimbursed at 25%.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated