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D E C I S I O N
of 26 February 1997

Case Number: T 0057/95 - 3.5.1

Application Number: 87118410.7

Publication Number: 0272561

IPC: G06F 9/46

Language of the proceedings: EN

Title of invention:

Apparatus for distributing data processing a plurality of loci
of control

Applicant:

WANG LABORATORIES INC.

Opponent:

-

Headword:

Data package/WANG

Relevant legal provisions:

EPC Art. 54(2), 111(1)

Keyword:

"Novelty (yes) after amendment"
"Remittal"

Decisions cited:

-

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0057/95 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 26 February 1997

Appellant: WANG LABORATORIES INC.
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Representative: Behrens, Dieter, Dr.-Ing.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 3 August 1994
refusing European patent application
No. 87 118 410.7 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. K. J. van den Berg
Members: R. Randes
G. Davies

Summary of Facts and Submissions

- I. The appellants contest the decision of the Examining Division dated 3 August 1994, refusing European patent application No. 87 118 410.7, published under No. 272 561.

The reason for the refusal was that the subject-matter of claim 1 of the set of claims 1 to 5 filed on 18 November 1993 lacked novelty and that the additional subject-matter of the claims 2 to 5 did not overcome objections as to novelty (claim 3) or inventive step (claims 2, 4, 5) having regard to the prior art document D1: EP-A-0 178 235.

- II. The notice of appeal was filed on 29 September 1994 and the prescribed appeal fee was paid on the same day. A statement setting out the grounds of appeal was filed on 29 November 1994, together with a new set of claims 1 to 5.

- III. In a communication, dated 26 July 1996, the rapporteur criticized the wording of the newly-amended claim, in particular, with respect to the requirements of support of the claims by the original application documents. However, it was stated that, if said deficiencies were to be overcome and novelty established in a further amended claim 1, the Board might be minded to remit the case to the first instance for further prosecution. With a letter filed on 29 November 1996 the appellants filed the following amended Claim 1:

"An apparatus for distributing the processing of data across loci in a digital processing system having a plurality of loci of control and a message system for communicating between loci, comprising:

a package (104) containing a processing descriptor (105) which specifies a series of processing stages for performing an activity or operation, including specifying the locus in which each stage is to be performed; and

interpreter means (111) in each locus specified in the processing descriptor for responding to the arrival of the package in the locus via the message system by performing the processing stage in that locus and providing the package to another locus via the message system as specified in the processing descriptor (105).

characterized in that:

the package (104) contains the data (103) to be processed; the processing descriptor (105) is associated with the data and specifies the loci in which the data is to be processed and how the data is to be processed in the loci, the processing descriptor holding instructions for processing the data, for each specified locus, the instructions including a sequence of steps to be executed by the locus to perform desired processing by the locus;

the interpreter means (111) in each locus specified in the processing descriptor (105) processes the data in the locus by executing that portion of the processing descriptor (105) specified for the locus, said executing by performing the sequence of steps directly from the instructions of the processing descriptor (105) and including for each step invocation of a program (223) or a task (216) which the interpreter means (111)

communicates to via the message system, the interpreter means being able to communicate to and process data through interactive programs and tasks via the message system;

at least one of the loci includes status recording means (113) for receiving status messages and recording them for examination; and

in each locus, status of the processing of data by that locus being reported by the interpreter means sending, via the message system, a status message to the loci with the status recording means (113).

- IV. The appellants request that the Examining Division's decision be set aside and a patent granted on the basis of claim 1, filed on 29 November 1996, and claims 2 to 5 filed on 29 November 1994, which latter claims are identical to the refused ones. The basis of the description remains as it was at the refusal, i.e. it consists of pages 1 to 8 and 10 to 46 as originally filed and, in addition thereto, page 9 and insert page 5 filed on 18 November 1993; moreover, also the drawing sheets 1 to 10 of the application remain as originally filed. In the alternative, oral proceedings are requested. However, would the Board be minded to remit the case to the first instance for further prosecution, no oral proceedings are requested.

Reasons for the Decision

1. The appeal is admissible.
2. *Novelty*
 - 2.1 The Board notes that the prior art portion of claim 1, in relation to the refused claim 1, has been amended so that in the second paragraph it has been made clear that the activity to be performed includes a series of processing stages, whereby the descriptor of a package specifies the locus in which each stage is to be

performed. The third paragraph of the precharacterizing portion of claim 1 has been clarified in the sense that it points out that interpreter means of a locus specified by the descriptor performs the processing stage in that locus.

Moreover, the first part of the first paragraph of the characterizing portion of claim 1 ("the package contains data.....the processing descriptor specifies..... how the data is to be processed in the loci") has in substance been transferred from the prior art portion of refused claim 1 to the characterizing portion of the new claim. The second part of that paragraph is new ("the processing descriptor.....to perform desired processing by the locus"). Also the whole second paragraph of the characterizing portion of the claim is new and was not present in the refused claim. The two last paragraphs, paragraphs three and four, of claim 1, however, are identical to the two paragraphs of the characterizing portion of refused claim 1.

- 2.2 It appears to the Board that, by introducing the new parts of claim 1, the appellants have had the intention to express more clearly how the data has to be processed in each locus. The appellants have in their argumentation before the Board referred to parts of the original description which at least at first sight appear to support the new features introduced into the amended claim.

It has been made clear in the characterizing part that the descriptor holds instructions including a sequence of steps to be executed by the locus selected to perform the processing at that locus. Moreover, it is explained in more detail how the terms "sequence" and "step" have to be understood. Thus, the (apparently a plurality of) steps of the instructions are in

principal fetched ("directly") from the descriptor; moreover, the apparatus is capable of including "for each step invocation of a program or a task which the interpreter means communicates to"; moreover, the interpreter means is able to process the data through interactive programs and tasks.

In the opinion of the Board, these features concerning the processing of the data cannot be read onto the teaching of D1. It appears that the general part of D1 (pages 4 to 6) could very well be understood in the sense hinted at by the appellant to the effect that each actor according to D1 (Figure 1) has only one function, which it automatically carries out when it receives the message. Each actor has in its memory a series of instructions for performing the activity step of said actor (page 5, lines 17 to 19); the processing is started by the message (page 5, lines 30 to 32) and the instructions may apparently be automatically performed; the message is divided into three parts, which only define the emitting gate of an actor, the receiving gate of an actor and the text of the message (page 6, lines 19 to 23), which "text" is not identified in D1, but which apparently holds the starting command.

The teaching of D1 concerning the active messages ("Les messages actifs", page 8) is according to the opinion of the Board still more unclear and also cannot be used as a basis for a novelty objection against the said processing features of the amended claim. The active message of D1, apparently, contains a series of instructions and, moreover, can be modified during the performing of the different activity steps at different actors. However, it is not disclosed at which actors and in which way the instructions are used. Thus, the

teaching of D1 does not disclose how the processing is performed in detail and any suggestions, derived from that teaching, pointing towards the said processing features of claim 1 would, apparently, belong to an inventive step assessment.

- 2.3 The Examining Division has arrived at the conclusion that the last two paragraphs of the characterizing portion of claim 1 are implicitly disclosed by the teaching of D1, although it appears that the teaching of D1 does not directly mention that the actors include status recording means; instead, it appears that it is only disclosed that the status is registered in the message itself.

However, since the Board has come to the conclusion that the processing features of the two first paragraphs of the characterizing portion are new, there is no need to assess whether the features of the last two paragraphs are novel or not. The subject-matter of claim 1 is in any case novel (Article 54(2) EPC).

Therefore, it also appears that the Board has no reason to examine the proposal of the appellants to amend the third and fourth paragraphs of the characterizing part of claim 1 (cf. letter filed on 29 November 1996), which amendments were intended to remove clearly the novelty objections against the features of said paragraphs, but which amended paragraphs have not been introduced into the amended claim 1 as filed.

3. In these circumstances, where the subject-matter of claim 1 has changed considerably and novelty has been established, it is appropriate, in order to safeguard the appellants' right to have its case considered by two-instances, to remit the case to the Examining

Division for further prosecution of the application, i.e. in particular, for the examination with regard to the requirements of Articles 123(2), 52(2), (3) and of inventive step (Article 111(1) EPC).

4. Since the case is remitted to the first instance, there is no need for oral proceedings (see the appellants' statement under point IV, above).

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 on the basis of the application documents indicated at point IV, above.

The Registrar:

The Chairman:

M. Kiehl

P. K. J. van den Berg

