Datasheet for the decision
of 18 April 2012

Case Number: T 2084/08 - 3.5.06
Application Number: 03711488.1
Publication Number: 1488373
IPC: G06K 15/02, G06F 13/00

Language of the proceedings: EN

Title of invention:
Method and apparatus for uploading content from a device to a remote network location

Applicant:
Senshin Capital, LLC

Headword:
Uploading content/SHENSHIN

Relevant legal provisions (EPC 1973):
EPC Art. 54, 56

Keyword:
"Novelty - no (main, first and fourth auxiliary requests)"
"Inventive step - no (second and third auxiliary requests)"

Decisions cited:
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Catchword:
-
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DECISION of the Technical Board of Appeal 3.5.06 of 18 April 2012

Appellant: Senshin Capital, LLC
(Applicant)
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Decision under appeal: Decision of the Examining Division of the European Patent Office posted 9 June 2008 refusing European patent application No. 03711488.1 pursuant to Article 97(2) EPC.

Composition of the Board:
Chairman: D. H. Rees
Members: M. Müller
C. Heath
Summary of Facts and Submissions

I. The appeal lies against the decision of the examining division, with written reasons dated 9 June 2008, to refuse the European patent application 03711488.1 for lack of inventive step over D1: WO 02/08926 A1.

II. An appeal was filed on 19 August 2008 and the appeal fee was paid on the same day. A statement of grounds of appeal was filed on 13 October 2008. It was requested that the decision be set aside and that a patent be granted based on one of five sets of claims filed with the statement of grounds of appeal, respectively corresponding to the main and 1st to 4th auxiliary requests and comprising claims 1-34, 1-34, 1-31, 1-31 and 1-38, in combination with, as the board understands the appellant's request, the description and the drawings as published.

III. With summons to oral proceedings, the board gave its preliminary opinion according to which the independent claims of all requests were deficient under Article 84 and Rule 29 (4) EPC 1973 and also lacked novelty or inventive step over D1, Articles 54 (1,2) and 56 EPC 1973.

IV. The independent claims 1, 16 and 29 according to the main request read as follows:

"1. A computer-implemented method comprising steps of:

(A) at a content server (118), receiving a content upload message (14) over a communications network (116) to a content server (118) in response to input provided by a user (102) of the content
upload device (106), the content upload message (114) including content (104);

(B1) at the content server (118), receiving the content upload message (114);

(B2) identifying a particular queue associated with the user (102) from among a plurality of queues associated with a plurality of users;

(B3) storing the content (104) at the content server (118) in the particular queue associated with the user (102); and

(C) at the content server (118), automatically forwarding the content (104) to at least one content destination (128).

16. A system comprising a content upload device (116) and a content server (118), the content upload device (106) comprising:

- means for receiving input from a user (102); and
- means for transmitting a content upload message (114) over a communications network (116) to a content server (118) in response to the input, the content upload message (114) including content (104);

and the content server (118) comprising:

- means for receiving the content upload message (114);
- means for identifying a particular queue associated with the user from among a plurality of queues associated with a plurality of users;
- means for storing the content (104) at the content server (118) in the particular queue associated with the user (102); and
- means for automatically forwarding the content (104) to at least one content destination (128).

29. A content server comprising:

- means for receiving a content upload message (114) from a content upload device (106) over a communications network (116), the content upload message (114) including content (104);
- means for identifying a user (102) of the content upload device (106) based on an identifier of the content upload device (106) contained within the content upload message (114);
- means for identifying a particular queue associated with the user from among a plurality of queues associated with a plurality of users;
- means for storing the content at the content server (118) in the particular queue associated with the user; and
- means (130) for automatically forwarding the content to at least one content destination (128)."

Independent claims 1, 16 and 29 according to the 1st auxiliary request are identical to those of the main request except that they specify at their end that the content destination is

"... remote from the content server (118)."
Claim 1 according to the 2nd auxiliary request is identical to claim 1 according to the main request up to step (B3) and continues as follows:

"...
(B4) identifying a type of the content (104);
(B5) selecting at least one content destination (128) based on the type of content (104); and
(C) at the content server (118), automatically forwarding the content (104) to the at least one content destination (128)."

Independent claims 15 and 27 are similarly amended over claims 16 and 29 of the main request.

Claim 1 according to the 3rd auxiliary request differs from claim 1 according to the 2nd auxiliary request by the specification in step (B5) that the content destination is "remote from the content server (118)". Claims 15 and 27 are likewise amended.

Claim 1 according to the 4th auxiliary request differs from claim 1 according to the main request in step (A) which now reads as follows:

"...
(A) at a content upload device (106), transmitting a content upload message (114) over a communications network (116) to a content server (118) in response to input provided by a user (102) of the content upload device (106), the content upload message (114) including content (104); ..."
Independent claims 20 and 33 are identical to claims 16 and 29 of the main request.

V. The appellant did not file any amendments or arguments in response to the summons but withdrew its request for oral proceedings and announced that it would not be represented at the oral proceedings.

VI. Oral proceedings took place as scheduled on 18 April 2012 and, as notified, in the absence of the appellant. At the end of the oral proceedings, the chairman announced the decision of the board.

Reasons for the Decision

1. The duly summoned appellant did not attend the oral proceedings. In accordance with Article 15 (3) RPBA, the board for its decision relied only on the appellant's written submissions. The board was in a position to decide at the conclusion of the oral proceedings, since the case was ready for decision (Article 15 (5,6) RPBA), and the voluntary absence of the appellant was not a reason for delaying the decision (Article 15 (3) RPBA).

2. The reasons for this decision are based on the preliminary opinion communicated to the appellant with the summons to oral proceedings.

The Invention

3. The application generally relates to the upload of digital content in a network and more specifically to a service which should make it as simple as possible for an
end user to trigger such an upload operation. As a preferred application the description presents the upload of photographs from a digital camera to an online photo album service so that only a single action is required by the user at the camera.

**Article 84 EPC 1973 and claim construction**

4. With the summons to oral proceedings the board raised several objections under Article 84 EPC 1973. Most of them are of minor importance and could have easily been remedied by mere editorial amendments. One of them however is of a substantive nature with an impact on the scope of the claims and on the assessment of novelty and inventive step. In view of the board's overall decision it suffices to discuss this issue.

5. The independent claims all refer to queues associated with the users (e.g. claim 1, steps B2, B3).

5.1 The independent claims further specify that the content is forwarded to its destination (e.g. claim 1, step C) without specifying or unambiguously implying that the forwarded content is taken from the queues.

5.2 The term "queue" would be understood by the skilled person according to its conventional meaning in the art as a data structure with a strict first-in first-out (FIFO) policy. The description however does not disclose the FIFO policy as obligatory for what is called a "queue": It is disclosed that the term "queue" is "also referred to as a content outbox" (p. 7, lines 16-19), that content can be transmitted from a content outbox in any order, not necessarily following the order of reception
(p. 25, lines 28-31), and that content may or may not be deleted from a content outbox when transmitted (cf. sentence bridging p. 25-26).

5.3 Arguably the tension between the meaning of the term "queue" according to its conventional use in the art and the disclosure of the present application constitutes a deficiency under Article 84 EPC 1973. However, the board will leave this question open and interpret the term "queue" in light of the description and thus more broadly than its conventional meaning in the art to mean some storage space which has an unspecified input/output policy and which does not necessarily act as a temporary storage from which content is forwarded.

Articles 54 (1,2) and 56 EPC 1973

Main Request

6. D1 discloses method and system for uploading content from web-enabled cameras (fig. 1, no. 14; i.e. content upload devices) over the Internet to a photo-sharing service (fig. 1, no 16; i.e. a content server) in response to user input at the camera (see e.g. fig. 5). When one or more images are received at the photo-sharing service, they are stored in a user account (fig. 1, no. 40, 46; p. 11, lines 16-20) and in a camera-specific photo-sharing site (fig. 1, no. 22; p. 6, lines 6-10; p. 7, lines 19-23; p. 12, lines 21-25) or sent to another - possibly remote - content destination such as a printer or an email address (p. 12, lines 11-15).

7. D1 neither discloses that the user accounts act as "temporary storage" from which content is automatically
forwarded to the photo-sharing sites, nor that the user accounts are organised as FIFO queues. However, as argued above (points 5.1 and 5.2) neither does claim 1 of the main request.

7.1 Therefore, the user accounts according to D1 cannot be distinguished from the claimed "queues" according the board's interpretation (see point 5.3). The board thus concludes that claim 1 according to the main request lacks novelty over D1, Article 54 (1,2) EPC 1973, and so do, by the same token, claims 16 and 29.

1st Auxiliary Request

8. Since D1 discloses remote content destinations (p. 12, lines 14-15), the analysis of the main request carries over directly to the independent claims of the first auxiliary request, which thus also lack novelty.

2nd Auxiliary Request

9. The independent claims of the second auxiliary request are distinguished from D1 in that the type of content is identified and used to select the content destination (cf. e.g. steps B4 and B5 of claim 1) and are thus new over D1 in the sense of Article 54 (1,2) EPC 1973.

9.1 It is conventional practice to use filename extensions to indicate the type of content of a given file (such as "doc", "jpg", "avi"; cf. description, p. 28, lines 9-11). It is also common knowledge that content of different types may have to be treated differently and that the filename extensions can be automatically inspected to decide how the file should be processed.
9.2 More specifically in the photography context of D1, the board considers it well-known that compressed images (e.g. of type "jpg") and uncompressed images (of type "raw") may have to be treated differently. Hence the board considers it obvious to store different types of images in different places on the photo-sharing sites, for instance so as to give its users convenient access to files of the same type.

9.3 The board further notes that there are manufacturer specific raw image formats (e.g. "mrw" and "nef" by Minolta and Nikon, resp.). In the board's judgment it would thus be an obvious desirable to send a photo to the appropriate manufacturer's photo-sharing web-site (see D1, page 7, line 19 ff.) and an obvious solution to exploit the filename extensions to choose the right destination.

9.4 The board concludes that the new features do not establish an inventive step over D1, Article 56 EPC 1973.

3rd Auxiliary Request

10. Since D1 discloses remote content destinations (p. 12, lines 14-15), the assessment of the 2nd auxiliary request (esp as regards point 9.3) carries over to the independent claims of the third auxiliary request which thus also lacks an inventive step over D1.

4th Auxiliary Request

11. The assessment of the independent claims of the main request applies directly to claims 20 and 33 of the 4th auxiliary request which are identical to those of the main request, but also to claim 1 which differs from
claim 1 of the main request only by clarifying that certain method steps are performed by the content upload device as is however known from D1 (see point 6). The independent claims of the 4th auxiliary request thus lack novelty over D1, too, Article 54 (1,2) EPC 1973.

Summary

12. With the summons to oral proceedings, the board offered additional considerations for the case that the claims would have been amended in a way so as to establish a more limited interpretation. Since the appellant has chosen not to amend the claims in reply to the summons, nor to address the board's preliminary opinion in substance, these considerations need not be reproduced here.

13. As there is no allowable request, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:  

The Chairman:

B. Atienza Vivancos  

D. H. Rees