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Datasheet for the decision of 12 November 2008

Case Number: T 0956/06 - 3.5.01

Application Number: 98123958.5

Publication Number: 0924630

IPC: G06F 17/60, H04L 29/06

Language of the proceedings: EN

Title of invention:
Resource retrieval over a data network

Applicant:
More Magic Holdings Inc.

Opponent:
-

Headword:
Resource retrieval/MORE MAGIC HOLDINGS

Relevant legal provisions:
EPC Art. 52(1) - (3)

Relevant legal provisions (EPC 1973):
EPC Art. 54(1),(2), 56
EPC R. 29(1)

Keyword:
"Technical character (yes)"
"Novelty (yes)"
"Inventive step - all requests (no)"

Decisions cited:
T 0258/03

Catchword:
-

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Case Number: T 0956/06 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 12 November 2008

Appellant: More Magic Holdings Inc.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 20 January 2006 refusing European application No. 98123958.5 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: S. Steinbrener
Members: W. Chandler
P. Schmitz

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division to refuse the application on the grounds that the claimed subject-matter did not have technical character and was thus not an invention according to Article 52(1)-(3) EPC 1973. The examining division also considered that the claimed subject-matter was not new (Article 54 EPC 1973) over the following document:

D1: BERNERS-LEE T. et al.: 'Hypertext Transfer Protocol -- HTTP/1.0', Network Working Group RFC 1945, May 1996, pages 1 to 60.

The examining division also stated that the optional commercial interpretation of the data defined in the application did not contribute to an inventive step (Article 56 EPC 1973). The two-part form of the claims with respect to D1 was also said to be required under Rule 29(1) EPC 1973.

II. In the statement setting out the grounds of appeal, the appellant contested the finding of lack of technical character and lack of novelty, and filed a main and auxiliary request. In his view, the invention as claimed involved an inventive step. The appellant also made an auxiliary request for oral proceedings.

III. In the communication accompanying the summons to oral proceedings, the Board summarised the issues to be discussed and agreed that the finding of lack of technical character was not justified. The Board tended to agree with the appellant about the novelty of the

claimed subject-matter, but expressed doubts about the inventive step over the documents:

D6: RESNICK P. et al.: 'PICS: Internet Access Controls Without Censorship', Communications of the ACM, vol. 39, no. 10, October 1996, pages 87-93, cited but not discussed in the examining division's first communication, and

D7: SALAMONSEN W.B. et al.: 'PICS-Aware Proxy System Versus Proxy Server Filters', Proceedings of INET'97, Kuala Lumpur, 24-27 June 1997, retrievable under http://ftp.isoc.org/inet97/proceedings/A7/A7_3.HTM), found by the Board in the course of the preparation of background information for this case.

IV. In the response, the appellant did not reply to the Board's observations, but stated that he would not attend the oral proceedings.

V. At the oral proceedings, which took place in the appellant's absence, the Board considered the appellant's written requests, namely that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 10 of a main request or an auxiliary request, both filed with the grounds of appeal. At the end of the oral proceedings the Chairman announced the decision.

VI. Claim 1 of the main request reads as follows:

"A method of downloading resources to a client (1) from a content server (3) over a data network, the method being characterized by the steps of:

receiving a resource request message from the client (1) at a proxy (2) located in a communications path between the client (1) and the content server (3);

storing the resource request at the proxy (2);

sending, in response to receiving and storing the resource request, a header request message from the proxy (2) to the content server (3) requesting the content server (3) to transmit a header, associated with the requested resource, to the proxy (2);

receiving the header at the proxy (2) and determining whether or not the header contains billing and/or access restrictions;

in the event that the header does contain billing and/or access restrictions, requesting identification information from the client by the proxy (2); and

provided the identification information is received from the client (1) at the proxy (2), delivering the resource request message from the proxy (2) to the content server (3) thereby causing the resource to be downloaded from the content server (3) to the client (1)."

Claim 1 of the auxiliary request differs only in that the characterising portion of the claim starts at the third step of the method.

VII. The appellant argued essentially as follows:

The subject-matter of claims 1, 9 and 10 was an invention according to Article 52(2) EPC because the

claims contained technical features such as a content server, data network and a proxy server.

The examining division constructed its own version of the invention at point 2.3 of the decision and then used D1 as a catalogue to find the features of this construction. However, the construction did not correspond to the invention as claimed. As a result, the examining division failed to show that D1 disclosed all the features of claim 1 in combination. In particular, D1 did not disclose a proxy server that sent a HEAD request in response to receiving a GET request, or that requested identification information from the client.

The appellant did not comment on the observations in the Board's communication involving D6 and D7.

Reasons for the Decision

1. The appeal complies with the requirements referred to in Rule 65 EPC 1973 and is therefore admissible.

2. The application relates to billing and access restriction for resources retrieved over the internet. In the standard client-server arrangement with a proxy (see Figure 1 of the application), when the client 1 requests a resource it sends a GET message with the address of the resource to the proxy server 2 (e.g. paragraph [0021] and Figure 3:31). The proxy server 2 passes the GET message to the WWW (World Wide Web) server 3 to retrieve the data (e.g. Figure 3:40/41). However, it is possible to ask the server only for

header information describing the resource using the HEAD message 32.

3. The idea of the invention is to add an additional field to the existing header structure to contain billing or access restriction information for the requested resource. The proxy server intercepts the header information and decides how to charge the client for the resource (see paragraphs [0017] to [0019]). The charging may include an authentication dialogue 35-39 with an internet service broker (ISB) and the client (paragraphs [0022]/[0023]). After sorting out the billing, the proxy sends the GET message 40 to the server to retrieve the whole of the requested information.

4. The examining division was of the opinion that the claimed subject-matter did not have technical character and was thus not an invention according to Article 52(1)-(3) EPC. However, the Board agrees with the appellant that this is not justified in the light of established jurisprudence of the boards of appeal, in particular T 258/03 - Auction method/HITACHI (OJ EPO 2004, 575), because technical means like a content server, data network and a proxy server are involved.

5. The examining division also appeared to consider that the subject-matter of all claims was not new over D1. However, the examining division's summary of this subject-matter at point 2.3 of the decision is too general to amount to an analysis of any of the claims in particular. Thus the Board also agrees with the appellant that the analysis does not demonstrate that D1 discloses all the features of claim 1, let alone in

the claimed combination. In particular, although it could be understood that the proxy server mentioned in section 5.1.2 of D1 could forward the request message using the HEAD command mentioned in section 8.2 and could request identification information from the client (perhaps using the authorisation request-header field mentioned in section 10.2), these steps and their order are neither explicitly nor implicitly disclosed in D1.

6. That D1 only discloses various isolated features of claim 1 follows from the fact that it is only a specification of the Hypertext Transfer Protocol (HTTP) and not a description of a working system. It also follows that D1 is not specifically concerned with the problem of the application, namely control of access to WWW resources. Thus, the Board considers that it is not the best starting point for the discussion of inventive step either. In the Board's view, a better starting point, which does relate to controlling access to resources, is the "Platform for Internet Content Selection" (PICS) system disclosed in D6 and D7.

7. The PICS system allows selection software interposed between the client and online documents stored on a content server (see D6, Figure 2) to check labels associated with the documents to determine whether to permit access to the requested material (see D6, page 88, right column, first full paragraph). The labels may be embedded in the document header (see D6, page 91, left column, last paragraph to right column, third last paragraph and Figure C). Furthermore, the document D7 discloses the same features of this PICS system (section 3, citing D6 as reference 7) with the

selection software running on a proxy server (see e.g. section 3, first paragraph, last sentence), thus coming closest to the claimed invention.

8. The subject-matter of claim 1 therefore differs from D7 in that:

i) the proxy server requests the header using a header request message (third step) [instead of the requesting the whole page - D7, section 3, second paragraph, line 6];
ii) the proxy server requests identification information from the client (fifth step) [instead of storing access criteria in advance in the proxy - D7, section 3, second paragraph, third last sentence];
iii) the proxy server sends the source request message to the content server after receiving the identification information from the client (sixth step) [instead of forwarding the already retrieved document - D7, section 3, second paragraph, last sentence].

9. Given that D7 discloses equivalents to all the distinguishing features (in square brackets, above), these features can be considered to solve the problem of providing an alternative implementation of the PICS-aware proxy server.

10. However, if the access information is in the header, it would in the Board's view be obvious to consider checking this information before downloading the whole page according to difference i) in order to reduce network load. The header (HEAD) request message is designed for exactly this purpose (see D1, section 8.2). It then follows that the whole of the URL would have to

be retrieved *after* the authentication step according to difference iii). Finally, requesting the identification information after the resource request according to difference ii) is in the Board's view an obvious alternative to storing the access criteria in advance in the proxy, as described in D7, not giving rise to any surprising effect and posing no implementation difficulties.

11. Accordingly, the Board judges that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC 1973).

12. The amendment in claim 1 of the auxiliary request concern the purely formal matter of the two-part form, which whilst in the Board's view would be necessary, does not add anything to the substance of the claim.

13. There being no further requests, it follows that the appeal must be dismissed.

14. Finally, the Board notes that it cannot see any patentable subject-matter in the dependent claims. In particular, apart from apparently being generally known, features of a billing system using an authentication server do not in the Board's view add technical character and thus do not contribute to inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek S. Steinbrener