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**Datasheet for the decision
of 28 July 2011**

Case Number: T 0710/07 - 3.5.06

Application Number: 02773533.1

Publication Number: 1438646

IPC: G06F 1/00

Language of the proceedings: EN

Title of invention:

Method and apparatus for managing a peer-to-peer collaboration system

Patentee:

Microsoft Corporation

Headword:

Peer-to-peer collaboration/MICROSOFT

Relevant legal provisions:

EPC Art. 123(2), 84, 54(1)(2), 56

Keyword:

"Added subject-matter - no"
"Clarity - yes"
"Novelty - yes"
"Inventive step - yes"

Decisions cited:

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Catchword:

-



Case Number: T 0710/07 - 3.5.06

D E C I S I O N
of the Technical Board of Appeal 3.5.06
of 28 July 2011

Appellant: Microsoft Corporation
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Representative: Grünecker, Kinkeldey
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 30 November 2006
refusing European patent application
No. 02773533.1 pursuant to Article 97(1)
EPC 1973.

Composition of the Board:

Chairman: D. H. Rees
Members: G. Zucka
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. The appeal is against the decision by the examining division dispatched on 30 November 2006 to refuse European patent application 02 773 533.1 on the basis that the main request contained subject-matter which extended beyond the content of the application as filed, and the subject-matter of claim 1 of the first auxiliary request was not novel, Article 54(1) and (2) EPC, in view of the following document:

D1: US 6 223 177 B1

A second auxiliary request was not admitted under Rule 86(3) EPC 1973.

II. A notice of appeal was received on 25 January 2007, the appeal fee being paid on the same day. A statement of the grounds of the appeal was received on 2 April 2007.

III. The appellant requested that the decision be set aside. The requests upon which the appealed decision had been based were maintained. The appellant further requested oral proceedings as an auxiliary measure.

IV. The Board issued a communication, setting out its preliminary opinion on the appeal, mainly that the main request did not satisfy the requirements of Article 84 EPC but did satisfy the requirements of Article 123(2), 54(1) and (2), and 56 EPC.

V. On 6 May 2011, the appellant submitted new application documents in response to the issues that had been

raised in the Board's communication. The previous requests were implicitly withdrawn.

VI. The independent claims of the sole request read as follows:

Claim 1

A method for managing a peer-to-peer collaboration system in which each user has at least one identity and users are directly connected to each other in a shared space by client software (112) operating in devices that each maintain a copy of the shared space through receipt of deltas distributed from one user to another over a network and wherein each user can communicate with a management server (106) using the client software, the method comprising:

- (a) sending a request from the management server (106) to the user to become a managed entity;
- (b) downloading from the management server to the client software (112) a definition file containing a definition of the managed entity; and
- (c) associating information in the definition file with user identity or device information in the client software in order to create a managed entity, whereby the management server may interact with the managed entity within the peer-to-peer collaboration system.

Claim 14

Apparatus for managing a peer-to-peer collaboration system in which users having at least one identity are directly connected to each other in a shared space by client software (112) operating in devices that each

contain a copy of the shared space through receipt of deltas distributed from one user to another over a network and comprising a management server (106) with which the users can communicate using the client software (112), the apparatus being further characterized by:

- (a) means for sending a request from the management server (106) to the user to become a managed entity;
- (b) means for downloading from the management server (106) to the client software (112) a definition file containing a definition of the managed entity; and
- (c) means in the client software (112) for associating the definition information with the user identity or device information in the client software (112) in order to create a managed entity, whereby the management server (106) may interact with the managed entity within the peer-to-peer collaboration system.

Claim 27

A computer program product for managing a peer-to-peer collaboration system in which each user has at least one identity and users are directly connected to each other in a shared space by client software (112) operating in devices that each maintain a copy of the shared space through receipt of deltas distributed from one user to another over a network, and wherein each user can communicate with a management server (106) using the client software, the computer program product comprising a computer usable medium having computer readable program code thereon, including:

- (a) program code for sending a request from the management server (106) to the user to become a managed entity;

(b) program code for downloading from the management server to the client software (112) a definition file containing a definition of the managed entity; and
(c) program code for associating information in the definition file with user identity or device information in the client software (112) in order to create a managed entity, whereby the management server may interact with the managed entity within the peer-to-peer collaboration system.

VII. The appellant's request is that the decision under appeal be set aside and a patent granted on the basis of the following text:

- claims 1-39 received on 6 May 2011
- description: pages 1-4, 4A, 5-15 received on 6 May 2011
- drawings: sheets 1/4-4/4 received on 6 May 2011

Reasons for the decision

1. *The admissibility of the appeal*

In view of the facts set out at points I and II above, the appeal is admissible, since it complies with the EPC formal admissibility requirements.

2. *Added subject-matter, Article 123(2) EPC*

In the appealed decision it is argued that, although the feature which has been added to the independent

claims 1, 14 and 27, viz. "[in devices] that each maintain a copy of the shared space through receipt of deltas distributed from one user to another over the network", is present in the original description as an isolated feature, there is no direct and unambiguous support for combining this feature with the original independent claims. According to the decision, it is nothing more than a feature of the background prior art described by the applicant.

However, when reading the introductory part of the description, there can be no doubt that the application intends to improve a system including the added feature. Alternative systems which do not include this feature are not mentioned in the background section. It is clear from paragraphs [05] *sqg.* that what is intended is to improve on the system described in paragraphs [02]-[04]. Further, it would be clear to a person skilled in the art that there would be no reason to remove or change this feature when implementing the new features disclosed in the application. Therefore, a skilled person reading the original application documents would necessarily picture a system including said feature. Consequently, the combination of features in the new independent claims is directly and unambiguously deducible from the application as filed, and Article 123(2) has not been infringed by the addition of this feature to the original claim 1.

The examining division was apparently satisfied that any other amendments introduced did not go beyond the content of the application as originally filed. (No objection under this Article was raised against the first auxiliary request, which was identical to the

main request except for the feature objected to having been deleted.) The Board concurs. With respect to the further amendments introduced in response to the Board's communication, two (page 8, lines 10 and 11, and page 8, line 34 to page 9, line 2) have the effect of deleting "embodiments" which lay outside the present claims, and the others are merely formal corrections.

The Board concludes that Article 123(2) EPC is satisfied.

3. *Clarity, Article 84 EPC*

In its communication, the Board had expressed its preliminary opinion that the main request did not satisfy the requirements of Article 84 EPC, as the description contained a passage which seemed to imply that the scope of protection of the independent claims is broader than what is actually being claimed, and claim 14 contained a number of grammatical mistakes.

The appellant subsequently removed the passage in question from the description and corrected the grammatical mistakes in the claims. As a result, the Board now considers that the requirements of Article 84 EPC have been satisfied in these respects.

The term "peer-to-peer" was not objected to as being unclear in the appealed decision. The Board also considers it to be clear. Even if there are different kinds of peer-to-peer systems, there is a general understanding of what all those systems have in common. This is reflected in the definition given in the Shorter Oxford English Dictionary, fifth edition

(2002), ISBN 0-19-860575-7, viz. "denoting computer networks in which each computer can act as a server for the others, allowing shared access to files and peripherals without the need for a central server". The existence of a management server in the claims of the application does not contradict this definition, as this server is not integral to the peer-to-peer-system. The purpose of the management server is to allow the tracking of system usage and to allow the users to obtain license rights and policy restriction. The peer-to-peer system would, however, still function even in the absence of this server.

The Board agrees with the statement in the appealed decision, in connection with the second auxiliary request (point 13.2), that the managed entity can not be, at the same time, a managed user and a managed device, given that both are treated differently in the dependent method, apparatus and computer program product claims. The term "managed entity" itself, however, was, apparently, not considered unclear by the first instance. The Board is also of the opinion that the technical limitation imposed by this term is clear in the context of the claims, where the "managed entity" is defined in a "definition file". Although concrete examples are given on pages 6-8 of the description, the exact content of that file is not relevant for the question of clarity; it is considered sufficient that such a file exists and that it contains the necessary information to define the managed entity for the purpose of its interaction with the management server.

The Board also considers that the expression "shared space" would be clear to the skilled person in the claimed context of a "collaboration system".

In sum, the Board considers that the claimed subject-matter is clear.

4. *Novelty, Article 54(1)(2) EPC*

According to the appealed decision, D1 discloses a method for managing a peer-to-peer collaboration system, given that, in D1, there is a web server and a primary and a secondary user client. There is, however, no apparent reason why the existence, in D1, of a web server and a primary and a secondary user client should imply that the system in D1 is peer-to-peer, as defined in 3. above. Rather, all interactions between the users are mediated by the server. The Board, therefore, considers that the subject-matter of the independent claims is novel.

5. *Inventive step, Article 56 EPC*

The system in D1 can not be called "peer-to-peer" (see 4.) nor would the skilled person have any reason to adapt the system of D1 to become a peer-to-peer system, since the central teaching of D1 is that by accessing a server, interactions between users can be carried out in a normal browser (D1, column 3, lines 21 to 49). Hence, this document is not a good starting point for an inventive step assessment. Instead, the closest prior art is given by peer-to-peer collaboration systems in general.

The subject-matter of the independent claims distinguishes itself from such a system mainly in that the management server sends a request to the user to become a managed entity and a definition file containing a definition of the managed entity is downloaded from the management server to the client software, whereby the management server may interact with the managed entity within the peer-to-peer collaboration system.

The implication of interaction with a management server is that the user can, thereby, obtain license rights and policy restrictions, which will enable or restrict functionality in the client software, and it allows the management server to track system usage, e.g. the usage of collaborative software (see paragraphs [33] and [34] of the application), all without the need for the management server to access data within the shared spaces and without the need for a continuous collaboration of the user with a central location.

Such a way of proceeding is not disclosed or rendered obvious by any document that was cited in the search report. The conclusion, therefore, is that the subject-matter of the independent claims is inventive.

6. *Conclusion*

For the reasons indicated under 2.-5., the independent claims of the sole request are allowable. No objections to the further text of the appellant's request are apparent to the Board. The Board concludes that the request as a whole is allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for grant of a patent on the basis of the following documents:
 - claims 1-39 received on 6 May 2011
 - description: pages 1-4, 4A, 5-15 received on 6 May 2011
 - drawings: sheets 1/4-4/4 received on 6 May 2011

The Registrar:

The Chairman:

B. Atienza Vivancos

D. H. Rees