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**Datasheet for the decision
of 2 October 2012**

Case Number: T 1969/07 - 3.5.01

Application Number: 98203995.0

Publication Number: 921479

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:

Device for managing data

Applicant:

The Descartes Systems Group Inc.

Headword:

Managing entity data/DESCARTES SYSTEMS GROUP

Relevant legal provisions:

EPC Art. 54, 113(1)

Keyword:

Novelty - making data relating to an entity in a linked list
valid for subordinate entities (no - disclosed in D1)
Right to be heard - violation by way of refusal after one
communication introducing new document (no)

Decisions cited:

T 0201/98, T 1002/03, T 1557/07, R 0019/10

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1969/07 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 2 October 2012

Appellant: The Descartes Systems Group Inc.
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Representative: Jilderda, Anne Ayolt
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 24 May 2007
refusing European patent application
No. 98203995.0 pursuant to Article 97(1) EPC
1973.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division dated 24 May 2007 to refuse the European patent application No. 98203995.0. It concerns a flexible data structure for dynamically storing related pieces of information such as data representing logistics steps.
- II. The examining division considered that US-A-5 608 907 (D1) could be considered as a system for managing data relating to entities, in that case different parts of a complex data processing system such as routers or modems. Claim 1 was said to differ by the feature that the status message associated with an entity was also valid for subordinate entities. This was said to be obvious in view of the concept of inheritance in object-oriented (OO) models (where a subclass inherits the properties and methods of its superclass). Thus claim 1 of the sole request did not involve an inventive step (Article 56 EPC 1973)
- III. In the statement of grounds of appeal, dated 1 October 2007, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims filed therein. This request was essentially the same as the refused request. As auxiliary requests, the appellant requested that the Board remitted the case to the examining division for further prosecution and requested oral proceedings. Finally, the appellant requested refund of the appeal fee.
- IV. On 16 July 2012 the Board summoned the appellant to oral proceedings to be held on 2 October 2012. In the communication accompanying the summons the Board

summarised the issues to be discussed at the oral proceedings and questioned whether the claimed system was at all distinguished from that of D1. Even if it were it did not seem to be inventive.

- V. In a reply, dated 1 October 2012, i.e. one day before the oral proceedings, the appellant requested postponement. The reason given was that the representative had not been able to contact the client in the short period between the summons and the oral proceedings.
- VI. At the oral proceedings, which was held in the appellant's absence, the Board considered the above mentioned requests. At the end of the oral proceedings, the Chairman announced the Board's decision.
- VII. Claim 1 of the main request reads as follows:
- "System for managing data relating to physical entities, comprising processing means which, supplied with a suitable program code, are capable of receiving information relating to one or more entities in the form of status messages and of storing said information, characterized in that the information is stored in a dynamic data structure which for each entity provides space for a unique identification and for a first collection of references to subordinate entities and a second collection of references to superior entities such that information relating to an entity is likewise valid for each subordinate entity associated with the relevant entity by means of its first collection."

Reasons for the Decision

1. The Board cannot see any prejudicial error in the examining division's decision in the present case that warrants setting it aside.

2. According to claim 1, the invention is a "system for managing data relating to physical entities". In the embodiment as shown in Figure 1D for example, these entities relate to the logistical process involved from ordering to delivery of a television set or video recorder. The entities include the VCR II, TV set III, barcoded pallet IX, airway bill or air freight consignment note VI and even the flight IV. Each entity is defined as having:
 - a unique ID (for entity VI this is the consignment number "074-32176546")
 - references to subordinate entities, essentially in a "has a" hierarchical relationship (for the freight consignment note entity VI this is the pallet IX with ID "56767BD585658" carrying the consignment VII with ID "577586", containing the ordered VCR and TV)
 - references to superior entities (for entity VI this is the flight IV with ID "KL838DFW/08dec", which is the flight on which the consignment was shipped)
 - possible information in the form of a status message (for entity VI one such message is "e3", reporting that the freight is delivered according to plan on 15 August at JFK airport [20]).

3. The appellant explains that the crux of the invention is the "status propagation", by which the information about entities is only stored with one entity and "propagates" to, or is "applicable" to, subordinate entities [17]. Thus in the embodiment, the table on the

bottom of page 5 of the application as published shows that entity VI stores message e3 (shown in the "direct data" column for that entity) and that e3 is also "applicable" to entities II, III, VII and IX (shown in the "applicable data" column for those entities). In other words, pallet IX, consignment VII and thus VCR II and TV III were also delivered according to plan at JFK airport. This is claimed by means of the feature "such that information relating to an entity is likewise valid for each subordinate entity".

4. However, in the Board's view, this functional feature only defines in general terms how the information is related to other information and stored. It does not define the desired "propagation" function, which is a process step relating to how the data is evaluated. Moreover, the term "valid" is so general that it covers the apparently unwanted situation that the information is also stored in each subordinate entity.

5. The appellant argues that D1 is concerned with managing data *stored on* entities, but not data *relating to* them as claimed. However, in the Board's view, this is merely a verbal dispute because D1 states, for example at column 7, lines 25 to 30, that each entity is an instance of a class. This implies that the data stored in the instance is information about, i.e. relating to, the entity. The "management specification" shown in Figure 3 of D1 represents the above-mentioned instance of the class for each entity and contains this data (e.g. the entity's attributes 54 - see column 17, line 66 to column 18, line 2). As effectively stated by the division, each entity also has a name 41 to identify it (see column 16, lines 57/58), references to subordinate entities 57 (see column 17, lines 61/62) and references to superior entities 50 (column 17,

- lines 31 to 33). Also, contrary to the appellant's view, D1 discloses at column 17, lines 46 to 48 that the hierarchical structure formed is "dynamic".
6. The appellant's main point is that it is not obvious to consider "status propagation" from the concept of inheritance in object oriented programming. This is said to be because the subordinate entity (sub-class) only inherits the properties, but not the values of the properties, from the superior entity (main class). The Board does not consider that it is necessary to go into whether classes may contain such static values since the Board considers that in D1, the data values of an entity are in fact inherited by the subordinate entities by virtue of the links to the entities just as in the invention. Thus, the Board judges that any status information (e.g any of the entity values) concerning the superior (global) entities would be "valid", at least in the sense of "available", for each subordinate entity. Thus, in the Board's view, the claimed system is not actually distinguished from that of D1 so that claim 1 is not novel (Article 54 EPC).
 7. Moreover, the Board considers that in general for such a hierarchy the decision to make data of superior entities "valid" for subordinate entities would be a matter of normal design depending on the circumstances, e.g. whether the data is relevant to and/or required by that entity. The choice would be between repeating the data or using the available hierarchy, which are obvious possibilities. The Board therefore judges that this feature cannot involve an inventive step anyway.
 8. The alleged procedural violation is based on three premises. Firstly, that D1 is not relevant to the invention. Secondly, that the applicant only had one

chance to comment on D1, unlike the situation for the application as a whole prescribed by Rule 51(1) and Article 96(2) EPC 1973. Thirdly, the examiner did not warn the applicant that the application might be refused. However, the Board considers that it is clear from the above that D1 is highly relevant. The right to be heard, as stipulated in Article 113(1) EPC, requires that a decision may only be based on grounds and evidence on which the applicant has had an opportunity to comment. In the Board's view, neither Article 113 EPC, nor any other provisions require that the applicant is given this opportunity more than once for a given situation. In the present case, the reasons on which the refusal was based had been communicated to the applicant in the communication of 19 August 2004. Moreover, the period of four months (which might have been extended) to reply the examining division's communication appears to have been enough to produce an adequate response. Finally, according to the jurisprudence of the boards of appeal, an examining division may refuse an application after a single communication if it does not consider that there is a prospect of a positive result (see Guidelines for Examination 2012, C-IV, 3 - which had been C-VI, 4.3 in the previous editions - and T 201/98), without warning (T 1002/03). It might be added that the communication did in fact contain such a warning, namely on its first (preprinted) page (EPO Form 2001, 2nd sentence).

9. The Board does note that the division's counter-arguments at point 4 of the decision do not mention explicitly the applicant's argument about the difference between inheritance of properties and inheritance of values (see point 6, above). However, the division did deal with the part of the argument concerning whether the skilled person would consider

the field of object-oriented modelling at all and also the rest of the appellant's arguments. In the Board's view, this shows that they had considered the arguments and that the omission of the point about the inheritance shows that they considered that in object-oriented programming the concept of inheriting static values was so well known, or obvious that it did not need further explanation. According to the jurisprudence of the boards of appeal, the examining division does not have to address each of the party's arguments (see e.g. T 1557/07, point 2.6 or R 19/10, point 6.2 - both unpublished). Accordingly, the Board judges that although the examining division should ideally have provided an explicit counter-argument to this point, it is not such a serious error that would warrant remittal to the first instance.

10. Since the appeal is not allowable, the appeal fee cannot be refunded (Rule 67 EPC 1973).

11. Finally, the Board could not allow the appellant's request for postponement of the oral proceedings. Not being able to contact the client is not one of the substantive reasons justifying a postponement as mentioned in the Notice of VP3 concerning oral proceedings (OJ EPO 2007, Special edition No. 3, 115) Moreover, the Board considers that it should be possible to establish contact with a client in a period of two and a half months in today's world of modern communication. At least due diligence would require this.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

S. Wibergh

Decision electronically authenticated