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**Datasheet for the decision
of 25 June 2010**

Case Number: T 0658/08 - 3.5.03

Application Number: 01959540.4

Publication Number: 1310081

IPC: H04M 3/533

Language of the proceedings: EN

Title of invention:

Network interface unit having an embedded services processor

Applicant:

UNISYS CORPORATION

Opponent:

-

Headword:

Network interface unit/UNISYS

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Added subject-matter (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0658/08 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 25 June 2010

Appellant: UNISYS CORPORATION
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Representative: Modiano, Micaela Nadia
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 29 October 2007
refusing European application No. 01959540.4
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
R. Menapace

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 01959540.4 (publication number EP 1310081), which was originally filed as international application PCT/US01/24548 (publication number WO 02/15543 A).
- II. The refusal was based on the ground that the subject-matter of, *inter alia*, claim 1 as pending before the examining division did not involve an inventive step (Articles 52(1) and 56 EPC) having regard to the disclosure of:
- D1: US 5 689 550 A.
- III. With the statement of grounds of appeal the appellant submitted claims of a main request and three auxiliary requests. It was requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, alternatively, any one of the auxiliary requests. Arguments in support were also submitted. Oral proceedings were conditionally requested.
- IV. In a communication accompanying a summons to oral proceedings, the board raised, without prejudice to its final decision, objections under Articles 84 and 123(2) EPC and Article 52(1) EPC in combination with Article 56 EPC in respect of, *inter alia*, claim 1 of each of the requests on file.

- V. In reply to the summons, the appellant submitted claims of an amended main request and three amended auxiliary requests together with arguments in support.
- VI. In a further letter the appellant informed the board that it would not attend the scheduled oral proceedings. The request for oral proceedings was nevertheless explicitly maintained.
- VII. Oral proceedings were held on 25 June 2010 in the absence of the appellant.

From the written submissions the board understood that the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, failing that, on the basis of the claims of either the first, the second, or the third auxiliary request, all as filed in reply to the summons to oral proceedings.

At the end of the oral proceedings, after deliberation, the board's decision was announced.

- VIII. Claim 1 of the main request reads as follows:

"A messaging system (200) comprising:

at least one host computer (210), said host computer (210) comprising a messaging platform (235) upon which messaging applications are executed and a message store for storing messages received by said messaging platform (235);

at least one network interface unit NIU (215) having a first interface, a second interface, and an internal bus (270) operatively coupled to the first and second

interfaces, wherein the first interface comprises a connection to the messaging platform (235) on the host computer (210) for communicating between said NIU (215) and said messaging platform (235), the second interface comprises a connection to a telephone network (280) for receiving calls from said telephone network; and

at least one embedded services processor ESP (250) located within the NIU (215), the ESP (250) operatively coupled to said internal bus (270) supporting communications with said first and second interfaces of said NIU (215), said ESP (250) comprising a processor, a memory, and an operating system executing on said processor for executing messaging software applications, and said ESP (250) further comprising a network interface that supports an IP protocol for communicating between said ESP (250) and a network (260) external to said messaging system, the network (260) connecting to a remote external server computer ESC (265), wherein the remote ESC (265) provides multi-media processing for the messaging platform."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the last part of the third paragraph is amended to read as follows (amendments underlined by the board):

"the second interface comprises a connection via T1/E1 lines to a telephone network (280) for receiving calls from telephone-based subscribers via said telephone network".

Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that the first part of the third paragraph is amended to read as

follows (amendments underlined by the board):

"at least one network interface unit NIU (215) having a first interface, a second interface, and an internal bus (270), the internal bus (270) operatively coupled to a first interface board implementing the first interface and a second interface board implementing the second interfaces [sic]".

and in that, in the fourth paragraph, between "NIU (215)," and "the ESP (250)" the following wording is inserted:

"the ESP (250) comprising a single board computer,".

Claim 1 of the third auxiliary request differs from claim 1 of the first auxiliary request in that the following wording is added at the end of the claim:

", and wherein the ESP is configured to determine if ESP processing is required and, if so, to determine if said ESP processing is intended to either process data for the host computer or to communicate data to the external network (260); wherein processing data for the host computer includes receiving data from the external network (260), processing data, invoking bus managing, and communicating data to the host computer; and wherein communicating data to the external network (260) includes invoking bus messaging, receiving data from the host computer, processing data, and communicating data to the external network (260)".

Reasons for the Decision

1. *Procedural matters*

1.1 The appellant informed the board that it would not attend the oral proceedings and, indeed, was absent. It did however explicitly maintain its request for oral proceedings. The oral proceedings were therefore held in the absence of the appellant (Rule 115(2) EPC, Article 15(3) RPBA).

1.2 In the communication accompanying the summons, objections under Articles 84 and 123(2) EPC and Article 52(1) in combination with Article 56 EPC were raised in respect of, *inter alia*, claim 1 of each of the main and three auxiliary requests as filed with the statement of grounds of appeal. The appellant was informed that these objections would be discussed at the oral proceedings. Consequently, it could reasonably have expected the board to consider at the oral proceedings these objections not only in respect of these requests but also in respect of the amended main and auxiliary requests as filed in reply to the board's communication. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment at the oral proceedings on any of these objections but, instead, chose to rely on the arguments as set out in the written submissions, which the board duly considered below.

1.3 In view of the above and for the reasons set out below, the board was in a position to give at the oral proceedings a decision which complied with the requirements of Article 113(1) EPC.

2. *Article 123(2) EPC*

2.1 Claim 1 as originally filed includes the feature that the operating system of the embedded services processor (ESP) of the network interface unit (NIU) is "for executing software applications that are otherwise incapable of executing within said NIU". Claim 1 of each one of the requests as filed with the statement of grounds of appeal did not include this feature.

2.2 Neither does present claim 1 of the main request and of each one of the auxiliary requests include the above feature. Instead, the feature is replaced by the feature that the operating system is "for executing messaging software applications".

2.3 In order to comply with the requirement of Article 123(2) EPC it is thus necessary that from the application as filed it can directly and unambiguously be derived, firstly, that the operating system is suitable for executing messaging software applications and, secondly, that either the operating system need not be suitable for executing software applications which are otherwise incapable of executing within the prior art network interface units or the prior art NIUs are incapable of executing messaging software applications. For the reasons set out below, none of these conditions are met.

2.4 The board notes that the term "messaging software applications" does not appear in the application as filed at all. Hence, it is at least not explicitly disclosed that the operating system of the ESP of the NIU is for executing messaging software applications. Further, the

board notes that, in connection with software applications that are otherwise incapable of executing within the NIU, the description consistently discloses that the operating system of the ESP of the NIU provides a general purpose computing capability within the NIU for executing software applications that are otherwise incapable of executing within the NIU, see page 5, lines 24 to 28, page 6, lines 7 to 10, page 7, lines 17 to 20, page 8, lines 7 to 10, page 9, lines 11 to 14, and page 11, lines 25 to 29. Present claim 1 does not however require that the operating system provides a general purpose computing capability, which might otherwise have implied that the operating system is suitable for executing messaging software applications.

In any case, a statement that the operating system need not be suitable for executing software applications which are otherwise incapable of executing with the prior art interface units can not be found. Nor did the appellant argue otherwise.

Nor can it directly and unambiguously be derived from the application as filed that the prior art NIUs are incapable of executing messaging software applications. More specifically, the application discloses, see page 4, line 20, and page 5, lines 1 to 3 and 21 to 23, that the Telephone Services Platform (TSP), which is mentioned as an example of a prior art NIU, "is limited to running particular proprietary hardware and software", in which the TSP includes a Host Interface Processor (HIP) and a Cache Manager (CM) module which "is used to provide a high speed buffering of commonly used voice messages". The expression "running" in this context implies that the TSP is capable of executing the particular proprietary

hardware and software. Further, the buffering of voice messages can be considered as an example of a messaging software application in the context of the present application, it being noted that neither claim 1 nor the description give this term a specific meaning.

2.5 For the above reasons, a basis for the above-mentioned amendment to claim 1 could not be found in the application as filed. Nor did the appellant refer to any passage in the description, any drawing, or any claim in the application as filed as providing a basis for the amendment.

2.6 The board therefore concludes that claim 1 of the main request and of each one of the first to third auxiliary requests does not comply with the requirement of Article 123(2) EPC.

3. In view of the above, it has not proved necessary to consider any of the further objections set out in the communication accompanying the summons to oral proceedings, in particular those concerning lack of clarity, Article 84 EPC, and lack of inventive step, Articles 52(1) and 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland