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Datasheet for the decision of 11 May 2012

Case Number: T 1669/08 - 3.5.05

Application Number: 03767367.0

Publication Number: 1576780

IPC: H04L 29/06

Language of the proceedings: EN

Title of invention:
System and method of creating and communicating with component based wireless applications

Applicant:
RESEARCH IN MOTION LIMITED

Headword:
Component based wireless applications/RESEARCH IN MOTION

Relevant legal provisions:
EPC Art. 123(2)
RPBA Art. 15(3)

Relevant legal provisions (EPC 1973):
EPC Art. 56, 84

Keyword:
"Direct and unambiguous disclosure - main and auxiliary requests (no)"
"Clarity - main and auxiliary requests (no)"
"Inventive step - main and auxiliary requests (no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 1669/08 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 11 May 2012

Appellant: (Applicant)
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Decision under appeal:
Decision of the Examining Division of the European Patent Office posted 10 April 2008 refusing European patent application No. 03767367.0 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. Ritzka
Members: M. Höhn
G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division, dispatched on 10 April 2008, refusing European patent application No. 03767367.0 on the grounds of lack of inventive step having regard to the disclosure of prior-art document:

D1: VUORIMAA P ET AL: "A Java Based XML Browser for Consumer Devices", SYMPOSIUM ON APPLIED COMPUTING. PROCEEDINGS OF THE 2002 ACM SYMPOSIUM APPLIED COMPUTING, 11 March 2002 - 14 March 2002, pages 1094-1099, MADRID, ES, ISBN: 1-58113-445-2.

II. The notice of appeal was received on 10 June 2008. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 19 August 2008. The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of the set of claims on which the decision under appeal was based or on the basis of a set of claims filed as auxiliary request with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis.

III. A summons to oral proceedings scheduled for 11 May 2012 was issued on 14 February 2012. In an annex accompanying the summons the board confirmed the objection under Article 56 EPC 1973 that the subject-matter of independent claim 1 did not appear to involve an inventive step in the light of the disclosure of D1 combined with the common general knowledge of the skilled person. The board gave its reasons for the

objections and explained why the appellant's arguments were not convincing.

IV. By letter dated 11 April 2012 the appellant filed three sets of claims according to an amended main request, an amended first auxiliary request and a second auxiliary request together with arguments in favour of the patentability of those requests.

V. Independent claim 1 according to the main request reads as follows:

"1. A method of provisioning an executable version of a wireless component application program (302) on a mobile communication device (100), the method comprising the steps of:
receiving the wireless component application program (302) over a network (102, 104) from a server (110), the wireless component application program comprising a set of data, message, presentation and workflow components (400, 402, 404, 406),
the data, message and presentation components (400, 402, 404) comprising metadata descriptors expressed in a structured definition language, and
the workflow component (406) expressed in a scripting language;
loading the metadata descriptors defining the set of data, message, and presentation components (400, 402, 404) and the scripted instructions defining the workflow component in an application container (300) of the device (100), the application container (300) for hosting a client runtime environment for the wireless component application program (302); and

generating the executable version of the wireless component application program (302) from the metadata descriptors and the scripted instructions, the executable version of the wireless component application program for subsequent execution in the application container (300) of the device (100) as the provisioned component application program (302)."

VI. Independent claim 1 according to the first auxiliary request reads as follows:

"1. A method of provisioning an executable version of a wireless component application program (302) on a mobile communication device (100), the method comprising:
Receiving a plurality of components representing the wireless component application program (302) over a network (102, 104) from a server (110), the plurality of components comprising data, message, presentation and workflow components (400, 402, 404, 406),
the data, message and presentation components (400, 402, 404) comprising metadata descriptors expressed in a structured definition language, and
the workflow component (406) comprising a set of instructions expressed in a scripting language, the scripting language being ECMA Script;
loading the metadata descriptors defining the set of data, message, and presentation components (400, 402, 404) and the scripted instructions defining the workflow component in an application container (300) of the device (100), the application container (300) for hosting a client runtime environment for the wireless component application program (302); and

generating the executable version of the wireless component application program (302) from the plurality of components, the executable version of the wireless component application program for subsequent execution in the application container (300) of the device (100) as the provisioned component application program (302)."

Independent claim 1 according to the second auxiliary request reads as follows:

"1. A method of provisioning an executable version of a wireless component application program (302) on a mobile communication device (100), the method comprising the steps of:
receiving the wireless component application program (302) over a network (102, 104) from a server (110), the wireless component application program comprising a set of data, message, presentation and workflow components (400, 402, 404, 406),
the data components (400) for defining data entities for use by the wireless component application program;
the message components (402) for defining messages for communicating with external systems,
the presentation components (404) for defining a plurality of screens,
the workflow (406) components for coordinating operation of the data, message, and presentation components,
the data, message and presentation components (400, 402, 404) comprising metadata descriptors expressed in a structured definition language, and
the workflow component (406) expressed in a scripting language;

loading the metadata descriptors defining the set of data, message, and presentation components (400, 402, 404) and the scripted instructions defining the workflow component in an application container (300) of the device (100), the application container (300) for hosting a client runtime environment for the wireless component application program (302); and
generating the executable version of the wireless component application program (302) from the metadata descriptors and the scripted instructions, the executable version of the wireless component application program for subsequent execution in the application container (300) of the device (100) as the provisioned component application program (302)."

VII. By letter dated 9 May 2012 the appellant's representative informed the board that he did not intend to attend the oral proceedings.

VIII. The appellant requested in writing that the appealed decision be set aside and that a patent be granted on the basis of one of the three sets of claims submitted with the letter dated 11 April 2012 as main request and first and second auxiliary requests.

IX. Oral proceedings were held on 11 May 2012 in the absence of the appellant. After due deliberation on the basis of the written submissions, the board announced its decision.

Reasons for the Decision

1. Admissibility

The appeal complies with Articles 106 to 108 EPC (see Facts and Submissions, point II above). It is therefore admissible.

2. Non-attendance at oral proceedings

By letter dated 9 May 2012 the appellant's representative informed the board that he did not intend to attend the oral proceedings. The board considered it expedient to maintain the date set for oral proceedings. Nobody attended on behalf of the appellant.

Article 15(3) RPBA stipulates that the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Hence, the board was in a position to announce a decision at the end of the oral proceedings.

Main Request

3. Amendments - Article 123(2) EPC

The step of generating the executable version in the last feature of claim 1 has been amended by adding "of the wireless component application program" so that it reads

"generating the executable version **of the wireless component application program (302)** from the metadata descriptors and the scripted instructions, **the executable version of the wireless component application program** for subsequent execution in the application container (300) of the device (100) as the provisioned component application program (302)" (emphasis added).

Hence, it is claimed that it is generated an executable version of the whole wireless component application program (WCAP), i.e. including all components.

The appellant did not provide a basis for this amendment.

3.1 In the boards judgement, the description of the application as filed provides a direct and unambiguous disclosure only for the feature that the workflow component can be compiled into native code and executed (see page 13, last paragraph). While the description discloses in a general manner (see page 12, lines 2 to 4)

"The application container 300 loads the components (e.g., 400,402,404,406) of the application program 302 and can create native code which is executed by the processor 208 in the device infrastructure 204.",

the disclosure how this is exactly achieved clearly shows that it is only the workflow component that is brought into an executable format (see page 13, lines 17 to 19 or page 22, lines 5 to 8 and 16 to 18). No

such disclosure is found for the other components, i.e. data, presentation and message components. In particular on page 23, lines 11 to 15 it is explicitly stated that

"The components are then executed in an application container 300 by the component framework 206, which executes the workflow components 406 and interprets the presentation components 402, data components 400 and message components 404...".

3.2 Thus, only the workflow components are executed whereas the other types of components are merely interpreted. The application as filed does not provide any direct and unambiguous disclosure that there is anything executable to be generated for the data, message or presentation components which are merely interpreted.

The requirements of Article 123(2) EPC are therefore not fulfilled.

4. Clarity - Article 84 EPC 1973

Caused by the amendment made to claim 1 a lack of clarity has been introduced into the last feature, because the expression

"the executable version of the wireless component application program **for** subsequent execution in the application container (300) of the device (100) as the provisioned component application program (302)" (emphasis added)

does not clearly specify how this expression is logically linked to the preceding text specifying the step of generating and what exactly the executable version is "for". It is considered to be ambiguous whether there is missing a verb like "being" or whether it was intended to specify that the executable version is to be stored for future execution. The reader is left in doubt as to what exactly is the intended purpose of the executable version and as to whether the generated executable version is used only once or several times. The wording of claim 1 therefore does not clearly reflect the features on which the appellant's arguments and interpretation of claim 1 are based (see e.g. the appellant's argument submitted with the letter dated 11 April 2012, page 2, paragraph 5), in particular not that the executable version is stored in an application container.

The requirements of Article 84 EPC 1973 are therefore not fulfilled.

In the communication annexed to the summons to oral proceedings, the appellant was advised that any amendments to its case would have to be examined for compliance with the requirements of the EPC, including *inter alia* Articles 84 and 123(2) EPC. By not attending the proceedings the appellant effectively chose not to avail of the opportunity to present comments orally before the board but instead to rely on its written case (cf. Article 15(3) RPBA; see also point 2 above).

5. Inventive step - Article 56 EPC 1973

Even when assuming that the subject-matter of claim 1 was clear by broadly interpreting the last feature (see point 4 above) and fulfilled the requirements of Article 123(2) EPC, because the term "executable" was interpreted to also cover a data, message and presentation component to be "interpreted" by an interpreter like the JAVA Runtime Environment JRE (explicitly mentioned in the description on page 11, lines 2 and 3), the subject-matter of claim 1 does not involve an inventive step in the light of the disclosure of D1.

5.1 The board agrees with the examining division's analysis of D1 with regard to claim 1 in section 1 on page 4 and page 5, first paragraph of the decision under appeal.

In the decision under appeal, the examining division argued that D1 disclosed all the features of claim 1 except for that the wireless component application program of the invention was considered as a single entity, whereas according to D1 the "wireless application program [sic] comprises at least an XML document and an attached XSL stylesheet, the different components being distributed between both documents". The examining division further argued that a combination of XML document and XSL stylesheet into a single entity was a straightforward implementation option without any unexpected technical effect. The examining division furthermore addressed two arguments of the appellant. The appellant's argument that the combination of XML document and XSL stylesheet could not be considered as a "wireless application component",

was dealt with by providing a reasoning in the minutes of the oral proceedings by a reference to ECMA Script in D1 (see page 1095, right-hand column, third paragraph). The other argument, that the term "browser" in D1 implied a static behaviour, was dealt with by arguing that according to D1 the "browser" was for implementing interactivity, the scripts in a particular XML/XSL document being run either when documents are loaded or in response to user or timer events, just like the application (with reference to page 13, lines 16 to 22 of the application).

5.2 In the statement setting out the grounds of appeal, the appellant essentially argued that the skilled person would not consider the teaching of D1, because the application was retrieved document-by-document from the server therefore still being dependent on network connectivity. In contrast, according to the invention all components of the application were accessible by the user regardless of the availability of the network, because the whole program was loaded as a packet in advance. According to D1, parts of the application were only loaded when needed at a later stage.

However, claim 1 does not specify a feature reflecting such a difference over the teaching of D1. The first step of claim 1, i.e. "receiving the wireless component application program (302) over a network (102, 104) from a server (110)" also encompasses the possibility that the program is received in parts.

5.3 The appellant further argued that a combination of XML and XSL documents in D1 did not constitute an application as specified in claim 1, but were rather

only a portion of information to be displayed to the user by a browser application.

However, it is not specified in claim 1 what exactly has to be understood by "wireless component application program" (WCAP) so that this expression can be interpreted broadly within the meaning of the terms in the art.

5.4 In the first instance proceedings, the examining division argued that XML/XSL documents could be considered as a "wireless application component" according to claim 1, because D1 disclosed that the XSL sheet contains ECMA Script which was executed by the device (see D1, page 1095, right-hand column, third paragraph). D1 discloses that the application is a component-based application which comprises an XML part and an attached XSL part (in contrast to the appellant's argument submitted with the letter dated 11 April 2012, page 2, third and fourth paragraphs). The examining division correctly argued that the application disclosed ECMA Script as an example for workflow components (see page 13, lines 16 to 22) and, hence, D1 making reference to ECMA Script in combination with a browser application could be considered to disclose a WCAP with a workflow component as well (in contrast to the appellant's argument submitted with the letter dated 11 April 2012, page 2, line 1 onwards). Reference is made to the detailed reasoning in point 3 of the communication dated 6 March 2008, which, in principle, the board agrees upon. In particular, it is correct that the ECMA Scripts are run "when the document is loaded or in response to user or timer events". This is comparable to what is disclosed

in the application with regard to wireless component application workflow components (see page 13, lines 16-22, page 15, second paragraph, page 22, first paragraph as well as original and present claim 17).

5.5 D1 discloses that the XSL stylesheet is "attached" to the XML Document (see D1, page 1096, section 3.1). Even if, for the sake of argument, the term "attached" was interpreted only as "associated" as argued by the appellant (see letter dated 11 April 2012, page 3, penultimate paragraph), claim 1 does not explicitly specify that the WCAP is received over the network as an entity. The wording of claim 1 encompasses the possibility that the WCAP is received in parts. Only when completely received it forms the structure defined in claim 1.

Therefore, in the board's judgement, the alleged difference, that the WCAP of claim 1 has to be considered as a single entity, actually exists. The advantages of the invention referred to by the appellant (see e.g. statement setting out the grounds of appeal, pages 2 and 3, both last paragraph) are therefore not necessarily achieved by the subject-matter of claim 1, at least not in the whole range claimed. There does not exist ex-post-facto reasoning, as argued by the appellant, for a non-existing distinguishing feature.

5.6 Taking the expression "executable version" to also cover a component being "interpreted" by an interpreter (see point 5 above), as it is disclosed in an embodiment using the JAVA runtime environment and Bytecode (see page 11, line 3 or page 22, paragraph 2

of the application), the board notes that D1 also discloses the use of an interpreter for executing the ECMA Script (see D1, page 1095, right-hand column "ECMAScript interpreter"). As claim 1 does not explicitly specify that the WCAP is received over the network as an entity and that D1 discloses a WCPA in the form of ECMA Scripts run in a browser application, XML and ECMA Scripts being mentioned as an embodiment in the application, the subject-matter of claim 1 of the main request does not involve an inventive step having regard to the disclosure of D1. The differences between the claimed solution and the teaching of D1 are merely minor aspects in the implementation of the method caused by the types of structured definition language and scripting language, which the skilled person starting from the teaching of D1 would apply according to the needs of the design without departing from the principle of the claimed invention and without the need of inventive skills.

First auxiliary request

6. Requirements of Articles 84 EPC 1973 and 123(2) EPC

Since claim 1 of this request is specified by the same features objected to under points 3 and 4 above, the same objections apply to claim 1 of this request which lacks clarity and a direct and unambiguous disclosure for the corresponding amendment.

The requirements of Articles 84 EPC 1973 and 123(2) EPC are therefore not fulfilled by claim 1 of this request.

7. Inventive step - Article 56 EPC 1973

Claim 1 of this request explicitly specifies that the WCAP consists of a plurality of components and that the scripting language is ECMA Script.

As argued in section 5 above, D1 explicitly discloses the use of ECMA Script (see D1, page 1095, right-hand column "ECMAScript interpreter") and that the application consists of at least two components, since D1 discloses that the XSL stylesheet is "attached" to the XML Document (see D1, page 1096, section 3.1). The subject-matter of claim 1 of this request is therefore still considered to lack an inventive step with regard to the disclosure of D1 for the same reasons as given in section 5 above.

Second auxiliary request

8. Requirements of Articles 84 EPC 1973 and 123(2) EPC

Since claim 1 of this request is specified by the same features objected to under points 3 and 4 above, the same objections apply to claim 1 of this request which lacks clarity and a direct and unambiguous disclosure for the corresponding amendment.

Claim 1 of this request, in comparison to claim 1 of the main request, further specifies the purpose of the data, message, presentation and workflow components. However, these purposes are merely what has already to be understood by the terms of each component anyway and, hence, are considered to be redundant information without a technically limiting effect of the added

features therefore introducing a lack of clarity and conciseness under Article 84 EPC 1973 (see corresponding objection raised in the annex to the summons for oral proceedings, point 9). The appellant did not address this objection in the letter dated 11 April 2012. The objection under Article 84 EPC 1973 is therefore maintained.

The requirements of Articles 84 EPC 1973 and 123(2) EPC are therefore not fulfilled by claim 1 of this request.

9. Inventive step - Article 56 EPC 1973

Since there is no limiting effect caused by the additional features of claim 1 of this request in comparison to the main request, claim 1 of this request has to be considered in the same way as in the main request. The subject-matter of claim 1 of this request is therefore considered to lack an inventive step with regard to the disclosure of D1 for the same reasons as given in section 5 above.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz A. Ritzka