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**Datasheet for the decision
of 20 September 2012**

Case Number: T 1747/08 - 3.5.05

Application Number: 05019441.4

Publication Number: 1694001

IPC: H04L12/56

Language of the proceedings: EN

Title of invention:

Adaptive queue method and system for realtime packet transfer

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Adaptive real-time queuing system/SAMSUNG

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 15(3)

Keyword:

Added subject-matter - (yes)

Oral proceedings - non-attendance of party

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1747/08 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 20 September 2012

Appellant: Samsung Electronics Co., Ltd.
(Applicant) 129, Samsung-ro
Yeongtong-gu
Suwon-si, Gyeonggi-do, 443-742 (REPUBLIQUE DE
COREE)

Representative: Grünecker, Kinkeldey,
Stockmair & Schwanhäusser
Leopoldstrasse 4
80802 München (ALLEMAGNE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 17 March 2008
refusing European patent application No.
05019441.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair: A. Ritzka
Members: K. Bengi-Akyuerek
D. Prietzel-Funk

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, posted on 17 March 2008, refusing European patent application No. 05019441.4 on the ground of lack of inventive step (Article 56 EPC 1973), having regard to the disclosure of

D1: WO-A-01/47186,

with respect to a main request, a first auxiliary request, and a second auxiliary request.

II. Notice of appeal was received on 27 May 2008. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 28 July 2008. The appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of new claims according to a main request (claims 1 to 17) or a first auxiliary request (claims 1 to 15) or a second auxiliary request (claims 1 to 12) submitted with the statement setting out the grounds of appeal. In addition, oral proceedings were requested as an auxiliary measure.

III. A summons to oral proceedings scheduled for 20 September 2012 was issued on 19 April 2012. In an annex to this summons pursuant to Article 15(1) RPBA, the board expressed its preliminary opinion on the appeal. In particular, objections were raised under Articles 123(2) EPC, 84 EPC 1973, and 52(1) EPC in combination with 56 EPC 1973, mainly having regard to D1.

IV. With a letter dated 20 July 2012, the appellant informed the board that no further submissions and/or

amendments would be filed in response to the board's communication under Article 15(1) RPBA and that nobody would attend the scheduled oral proceedings.

V. Oral proceedings were held as scheduled on 20 September 2012 in the absence of the appellant. After due deliberation on the basis of the written submissions, the decision of the board was announced at the end of the oral proceedings.

VI. Independent claim 1 of the main request reads as follows:

"An adaptive queuing system for a real time packet transmission comprising:

at least one enqueue unit (200) including a classifier adapted to classify classes of packet using a filter, a default priority queue (210), and a dequeue unit (212), wherein said system further comprises:

a class-addition call unit (400) adapted to perform a class-addition system call to a kernel requesting the generation of a new dynamic class to be added for classifying packets to be transmitted and to transfer a parameter assigned to said dynamic class for its definition;

a class-addition unit (402) adapted to generate said new dynamic class and a corresponding dynamic priority queue according to the parameter in response to the class-addition system call;

a filter-addition system call unit (404) adapted to perform a filter-addition system call to said kernel requesting the definition of a filter to be added and

to transfer a parameter that indicates filtering information, and

a filter-addition unit (406) adapted to generate a new dynamic filter for determining and classifying the packets corresponding to the new dynamic class according to the parameter in response to the filter-addition system call,

wherein the system is adapted to perform a real-time data transmission without rebooting the system when a real time service is required with respect to specific traffic to dynamically generate priority queues using a kernel system call and to perform a packet filtering for the required service."

The further independent claim 8 of the main request is directed towards a corresponding method.

Independent claim 1 of the first auxiliary request comprises all the features of claim 1 of the main request and further adds the following feature:

"a class-deletion system call unit (408) adapted to perform a class-deletion system call to the kernel and to transfer a parameter that designates the dynamic class to be deleted, and

a class deletion unit (410) adapted to delete the designated dynamic class and the corresponding dynamic priority queue in response to the class-deletion system call".

The further independent claim 7 of the first auxiliary request is directed towards a corresponding method.

Independent claim 1 of the second auxiliary request comprises all the features of claim 1 of the first auxiliary request and further adds the following feature:

"a filter-deletion system call unit (412) adapted to perform a filter-deletion call to the kernel and to transfer a parameter that designates the filter to be deleted, and

a filter-deletion unit (414) adapted to delete the designated filter in response to the filter-deletion system call".

The further independent claim 6 of the second auxiliary request is directed towards a corresponding method.

Reasons for the Decision

1. Admissibility of the appeal

The notice of appeal and the statement setting out the grounds of appeal were submitted validly and in due time. The appeal fee was also paid in due time. Consequently, the appeal is admissible.

2. Non-attendance at oral proceedings

The appellant decided not to attend the scheduled oral proceedings. Pursuant to Article 15(3) RPBA, the board is not obliged to delay any step in the appeal 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.

In the present case, the appellant did not submit any comments on the objections raised in the board's communication under Article 15(1) RPBA. The board reconsidered and maintained these objections, and was in a position to take a decision at the end of the oral proceedings in exercise of its discretion according to Article 15(3) RPBA.

3. Main Request

The claim set of this request differs from the claim set of the main request underlying the appealed decision in that claim 1 as amended further comprises that

(a) the system is adapted to perform a real-time data transmission without rebooting the system when a real-time service is required with respect to specific traffic to dynamically generate priority queues using a kernel system call and to perform a packet filtering for the required service (emphasis added),

while claim 8 as amended recites the above feature in terms of a corresponding method step.

3.1 Article 123(2) EPC

In the board's judgment, claims 1 and 8 of this request do not comply with the provision of Article 123(2) EPC for the following reasons:

- 3.1.1 The added feature (a) contradicts the teaching of the original application, according to which real-time transmissions without system reboot can be secured by (rather than to) dynamically generating priority queues using a kernel system call and performing a packet

filtering for the required service (cf. page 11, lines 10-13 of the application as filed).

In other words, executing real-time transmissions without a system reboot is not enabled *in order to* generate priority queues and perform packet filtering but *through* the latter according to the original teaching. Hence, the cause and the effect are found to be inadmissibly interchanged in this added feature, thereby violating Article 123(2) EPC.

3.1.2 In view of the above, independent claims 1 and 8 contain subject-matter which extends beyond the content of the application as filed.

3.2 In conclusion, this request is not allowable under Article 123(2) EPC.

4. First Auxiliary Request

Claim 1 of this request also comprises feature (a), while independent claim 7 recites feature (a) in terms of a corresponding method step.

4.1 Article 123(2) EPC

The observations concerning the main request set out in point 3.1.1 above apply *mutatis mutandis* to independent claims 1 and 7 of this request.

Hence, the board concludes that claims 1 and 7 also contain subject-matter which extends beyond the content of the application as filed.

4.2 Consequently, this request is not allowable under Article 123(2) EPC either.

5. Second Auxiliary Request

Claim 1 of this request also comprises feature (a), while independent claim 6 recites feature (a) in terms of a corresponding method step.

5.1 Article 123(2) EPC

The observations concerning the main request set out in point 3.1.1 above apply *mutatis mutandis* to independent claims 1 and 6 of this request.

Hence, the board concludes that claims 1 and 6 also contain subject-matter which extends beyond the content of the application as filed.

5.2 In conclusion, this request is not allowable under Article 123(2) EPC either.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated