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Datasheet for the decision
of 18 April 2012

Case Number: T 2084/08 - 3.5.06

Application Number: 03711488.1

Publication Number: 1488373

IPC: G06K 15/02, G06F 13/00

Language of the proceedings: EN

Title of invention:
Method and apparatus for uploading content from a device to a
remote network location

Applicant:
Senshin Capital, LLC

Headword:
Uploading content/SHENSHIN

Relevant legal provisions (EPC 1973):
EPC Art. 54, 56

Keyword:
"Novelty - no (main, first and fourth auxiliary requests)"
"Inventive step - no (second and third auxiliary requests)"

Decisions cited:
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Catchword:
–

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C7349.D

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Case Number: T 2084/08 - 3.5.06

D E C I S I O N
of the Technical Board of Appeal 3.5.06
of 18 April 2012

Appellant:	Senshin Capital, LLC
(Applicant)	2711 Centerville Road
	Suite 400
	Wilmington, DE 19808 (US)

Representative:	Small, Gary James
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Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted 9 June 2008 refusing European patent application No. 03711488.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman:	D. H. Rees
Members:	M. Müller
	C. Heath

C7349.D

Summary of Facts and Submissions

I.   The appeal lies against the decision of the examining
        division, with written reasons dated 9 June 2008, to
        refuse the European patent application 03711488.1 for
        lack of inventive step over D1: WO 02/08926 A1.

II.   An appeal was filed on 19 August 2008 and the appeal
        fee was paid on the same day. A statement of grounds of
        appeal was filed on 13 October 2008. It was requested
        that the decision be set aside and that a patent be
        granted based on one of five sets of claims filed with
        the statement of grounds of appeal, respectively
        corresponding to the main and 1st to 4th auxiliary re-
        quests and comprising claims 1-34, 1-34, 1-31, 1-31 and
        1-38, in combination with, as the board understands the
        appellant's request, the description and the drawings
        as published.

III.   With summons to oral proceedings, the board gave its
        preliminary opinion according to which the independent
        claims of all requests were deficient under Article 84
        and Rule 29 (4) EPC 1973 and also lacked novelty or in-
        ventive step over D1, Articles 54 (1,2) and 56 EPC 1973.

IV.   The independent claims 1, 16 and 29 according to the
        main request read as follows:

        "1. A computer-implemented method comprising steps of:

        (A)   at a content server (118), receiving a content
              upload message (14) over a communications network
              (116) to a content server (118) in response to
              input provided by a user (102) of the content

upload device (106), the content upload message
(114) including content (104);

(B1)   at the content server (118), receiving the content
       upload message (114);

(B2)   identifying a particular queue associated with the
       user (102) from among a plurality of queues
       associated with a plurality of users;

(B3)   storing the content (104) at the content server
       (118) in the particular queue associated with the
       user (102); and

(C)   at the content server (118), automatically
       forwarding the content (104) to at least one
       content destination (128).

16. A system comprising a content upload device (116)
and a content server (118), the content upload device
(106) comprising:

-      means for receiving input from a user (102); and
-      means for transmitting a content upload message
       (114) over a communications network (116) to a
       content server (118) in response to the input, the
       content upload message (114) including content
       (104);

and the content server (118) comprising:

-      means for receiving the content upload message
       (114);
-      means for identifying a particular queue
       associated with the user from among a plurality of
       queues associated with a plurality of users;

- means for storing the content (104) at the content
  server (118) in the particular queue associated
  with the user (102); and
- means for automatically forwarding the content
  (104) to at least one content destination (128).

29. A content server comprising:

- means for receiving a content upload message (114)
  from a content upload device (106) over a
  communications network (116), the content upload
  message (114) including content (104);
- means for identifying a user (102) of the content
  upload device (106) based on an identifier of the
  content upload device (106) contained within the
  content upload message (114);
- means for identifying a particular queue
  associated with the user from among a plurality of
  queues associated with a plurality of users;
- means for storing the content at the content
  server (118) in the particular queue associated
  with the user; and
- means (130) for automatically forwarding the con-
  tent to at least one content destination (128)."

Independent claims 1, 16 and 29 according to the
1st auxiliary request are identical to those of the
main request except that they specify at their end that
the content destination is

"... remote from the content server (118)."

Claim 1 according to the *2nd auxiliary request* is identical to claim 1 according to the main request up to step (B3) and continues as follows:

"...

(B4) identifying a type of the content (104);

(B5) selecting at least one content destination (128) based on the type of content (104); and

(C)   at the content server (118), automatically forwarding the content (104) to the at least one content destination (128)."

Independent claims 15 and 27 are similarly amended over claims 16 and 29 of the main request.

Claim 1 according to the *3rd auxiliary request* differs from claim 1 according to the 2nd auxiliary request by the specification in step (B5) that the content destination is "remote from the content server (118)". Claims 15 and 27 are likewise amended.

Claim 1 according to the 4th auxiliary request differs from claim 1 according to the main request in step (A) which now reads as follows:

"...

(A)   at a content upload device (106), transmitting a content upload message (114) over a communications network (116) to a content server (118) in response to input provided by a user (102) of the content upload device (106), the content upload message (114) including content (104); ..."

Independent claims 20 and 33 are identical to claims 16 and 29 of the main request.

V.   The appellant did not file any amendments or arguments in response to the summons but withdrew its request for oral proceedings and announced that it would not be represented at the oral proceedings.

VI.   Oral proceedings took place as scheduled on 18 April 2012 and, as notified, in the absence of the appellant. At the end of the oral proceedings, the chairman announced the decision of the board.

Reasons for the Decision

1.   The duly summoned appellant did not attend the oral proceedings. In accordance with Article 15 (3) RPBA, the board for its decision relied only on the appellant's written submissions. The board was in a position to decide at the conclusion of the oral proceedings, since the case was ready for decision (Article 15 (5,6) RPBA), and the voluntary absence of the appellant was not a reason for delaying the decision (Article 15 (3) RPBA).

2.   The reasons for this decision are based on the preliminary opinion communicated to the appellant with the summons to oral proceedings.

The Invention

3.   The application generally relates to the upload of digital content in a network and more specifically to a service which should make it as simple as possible for an

end user to trigger such an upload operation. As a pre-
ferred application the description presents the upload
of photographs from a digital camera to an online photo
album service so that only a single action is required
by the user at the camera.

Article 84 EPC 1973 and claim construction

4.   With the summons to oral proceedings the board raised
      several objections under Article 84 EPC 1973. Most of
      them are of minor importance and could have easily been
      remedied by mere editorial amendments. One of them how-
      ever is of a substantive nature with an impact on the
      scope of the claims and on the assessment of novelty and
      inventive step. In view of the board's overall decision
      it suffices to discuss this issue.

5.   The independent claims all refer to *queues* associated
      with the users (*e.g.* claim 1, steps B2, B3).

5.1   The independent claims further specify that the content
      is forwarded to its destination (*e.g.* claim 1, step C)
      without specifying or unambiguously implying that the
      forwarded content is taken *from* the queues.

5.2   The term "queue" would be understood by the skilled per-
      son according to its conventional meaning in the art as
      a data structure with a strict first-in first-out (FIFO)
      policy. The description however does not disclose the
      FIFO policy as obligatory for what is called a "queue":
      It is disclosed that the term "queue" is "also referred
      to as a content outbox" (p. 7 , lines 16-19), that con-
      tent can be transmitted from a content outbox in any or-
      der, not necessarily following the order of reception

(p. 25, lines 28-31), and that content may or may not be deleted from a content outbox when transmitted (cf. sentence bridging p. 25-26).

5.3   Arguably the tension between the meaning of the term "queue" according to its conventional use in the art and the disclosure of the present application constitutes a deficiency under Article 84 EPC 1973. However, the board will leave this question open and interpret the term "queue" in light of the description and thus more broadly than its conventional meaning in the art to mean some storage space which has an unspecified input/output policy and which does not necessarily act as a temporary storage from which content is forwarded.

Articles 54 (1,2) and 56 EPC 1973

Main Request

6.   D1 discloses method and system for uploading content from web-enabled cameras (fig. 1, no. 14; *i.e.* content upload devices) over the Internet to a photo-sharing service (fig. 1, no 16; *i.e.* a content server) in response to user input at the camera (see *e.g.* fig. 5). When one or more images are received at the photo sharing service, they are stored in a user account (fig. 1, no. 40, 46; p. 11, lines 16-20) and in a camera-specific photo-sharing site (fig. 1, no. 22; p. 6, lines 6-10; p. 7, lines 19-23; p. 12, lines 21-25) or sent to another - possibly remote - content destination such as a printer or an email address (p. 12, lines 11-15).

7.   D1 neither discloses that the user accounts act as "temporary storage" from which content is automatically

forwarded to the photo-sharing sites, nor that the user accounts are organised as FIFO queues. However, as argued above (points 5.1 and 5.2) neither does claim 1 of the main request.

7.1   Therefore, the user accounts according to D1 cannot be distinguished from the claimed "queues" according the board's interpretation (see point 5.3). The board thus concludes that claim 1 according to the main request lacks novelty over D1, Article 54 (1,2) EPC 1973, and so do, by the same token, claims 16 and 29.

1st Auxiliary Request

8.   Since D1 discloses remote content destinations (p. 12, lines 14-15), the analysis of the main request carries over directly to the independent claims of the first auxiliary request, which thus also lack novelty.

2nd Auxiliary Request

9.   The independent claims of the second auxiliary request are distinguished from D1 in that the type of content is identified and used to select the content destination (cf. *e.g.* steps B4 and B5 of claim 1) and are thus new over D1 in the sense of Article 54 (1,2) EPC 1973.

9.1   It is conventional practice to use filename extensions to indicate the type of content of a given file (such as "doc", "jpg", "avi"; cf. description, p. 28, lines 9-11). It is also common knowledge that content of different types may have to be treated differently and that the filename extensions can be automatically inspected to decide how the file should be processed.

9.2   More specifically in the photography context of D1, the
       board considers it well-known that compressed images
       (*e.g.* of type "jpg") and uncompressed images (of type
       "raw") may have to be treated differently. Hence the
       board considers it obvious to store different types of
       images in different places on the photo-sharing sites,
       for instance so as to give its users convenient access
       to files of the same type.

9.3   The board further notes that there are manufacturer spe-
       cific raw image formats (*e.g.* "mrw" and "nef" by Minolta
       and Nikon, resp.). In the board's judgment it would thus
       be an obvious desirable to send a photo to the appropri-
       ate manufacturer's photo-sharing web-site (see D1,
       page 7, line 19 ff.) and an obvious solution to exploit
       the filename extensions to choose the right destination.

9.4   The board concludes that the new features do not estab-
       lish an inventive step over D1, Article 56 EPC 1973.

3rd Auxiliary Request

10.   Since D1 discloses remote content destinations (p. 12,
       lines 14-15), the assessment of the 2nd auxiliary re-
       quest (esp as regards point 9.3) carries over to the in-
       dependent claims of the third auxiliary request which
       thus also lacks an inventive step over D1.

4th Auxiliary Request

11.   The assessment of the independent claims of the main
       request applies directly to claims 20 and 33 of the 4th
       auxiliary request which are identical to those of the
       main request, but also to claim 1 which differs from

claim 1 of the main request only by clarifying that cer-
tain method steps are performed by the content upload
device as is however known from D1 (see point 6). The
independent claims of the 4th auxiliary request thus
lack novelty over D1, too, Article 54 (1,2) EPC 1973.

Summary

12.   With the summons to oral proceedings, the board offered
       additional considerations for the case that the claims
       would have been amended in a way so as to establish a
       more limited interpretation. Since the appellant has
       chosen not to amend the claims in reply to the summons,
       nor to address the board's preliminary opinion in sub-
       stance, these considerations need not be reproduced here.

13.   As there is no allowable request, the appeal must be
       dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

B. Atienza Vivancos   D. H. Rees

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