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**Datasheet for the decision
of 4 November 2013**

Case Number: T 0641/10 - 3.5.05

Application Number: 04795420.1

Publication Number: 1678894

IPC: H04L12/56

Language of the proceedings: EN

Title of invention:
Redundant routing capabilities for a network node cluster

Applicant:
IP INFUSION, INC.

Headword:
Fault-redundant routers/IP INFUSION

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Added subject-matter - (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0641/10 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 4 November 2013

Appellant: IP INFUSION, INC.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 November 2009
refusing European patent application
No. 04795420.1 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 2 November 2009, to refuse European patent application No. 04795420.1 on the ground of lack of inventive step (Article 56 EPC) with respect to a claim set, filed on 18 September 2009, having regard to the disclosures of

D1: US-A-2003/0056138;

D2: R. Srihari et al.: "Graceful Restart Mechanism for BGP", IETF draft, pp. 1-10, July 2003;

D3: US-A-2003/0140167.

Moreover, a further filed main request and first and second auxiliary requests were not admitted into the first-instance proceedings under Rule 116(1) EPC since they were found to be late-filed and did not change the subject of the proceedings, whereas a third auxiliary request was not admitted into the first-instance proceedings under Rule 116(1) EPC since there was no legal basis for a request for granting a patent "based on any of the requests 1 to 3 with any further modification seemed necessary by the examining division".

II. Notice of appeal was received on 28 December 2009. The appeal fee was paid on the same day. With the statement setting out the grounds of appeal, received on 2 March 2010, the appellant filed new claims (claims 1 to 8) according to a sole request. It requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the sole request. In addition, oral proceedings were requested as an auxiliary measure.

- III. A summons to oral proceedings scheduled for 13 November 2013 was issued on 28 June 2013. In an annex to this summons, the board gave its preliminary opinion on the appeal pursuant to Article 15(1) RPBA. In particular, objections were raised under Articles 123(2) and 56 EPC, mainly having regard to D1 and D2.
- IV. By letter of reply dated 10 October 2013, the appellant informed the board that it would not be attending the scheduled oral proceedings and that it withdrew its request for oral proceedings. Furthermore, the appellant did not submit any comments on the substance of the board's communication under Article 15(1) RPBA.
- V. With a communication dated 25 October 2013 and faxed in advance on 22 October 2013, the appellant was informed that the oral proceedings appointed for 13 November 2013 had been cancelled.
- VI. Claim 1 of the sole request reads as follows:

"Method for routing network traffic flowing to and from a cluster (300) of network enabled devices (302a-d) comprising at least a first network enabled device (302b) having a first routing component (312) and a second network enabled device (302a) having a second routing component (306) and a network manager (318), the network manager (318) external to and communicably coupled to the first routing component (312) and the second routing component (306), each of the network enabled devices (302a-d) in the cluster (300) configured to communicate with network devices external to the cluster (300) through a single network address, each of the network enabled devices (302a-d) in the cluster (300) configured to operate in parallel and independently of each other, the method comprising

receiving one or more incoming messages indicating the single network address as a destination address;

routing the one or more incoming messages to a particular network enabled device (302a-d) in the cluster (300);

at a configuration manager module (316) of the first routing component (312), storing configuration information relayed from a configuration manager module (310) of the second routing component (306);

at a dynamic routing module (314) of the first routing component (312), in response to a command from the network manager (318), storing routing information received from the second routing component (306) via a cluster internal communication mechanism;

making the dynamic routing module (314) execute according to the configuration information stored in the configuration manager module (316) upon an unplanned failure of the second dynamic routing module (308) of the second routing component (306); and

transmitting at particular times a graceful/hitless restart event, the graceful/hitless restart event signaling network enabled devices outside of the cluster (300) to continue forwarding packets to the cluster (300), wherein one of the particular times is responsive to an unplanned failure of the second dynamic routing module (308) of the second routing component (306)."

The further independent claim 5 of the sole request is directed to a corresponding apparatus.

Reasons for the Decision

1. Admissibility of the appeal

The appeal complies with the provisions of Articles 106 to 108 EPC (cf. point II above) and is therefore admissible.

2. SOLE REQUEST

This request differs from the refused claim set as filed on 18 September 2009 *inter alia* in that independent claims 1 and 5 as amended further specify that

A) each of the network enabled devices in the cluster are configured to operate in parallel and independently of each other.

2.1 Article 123(2) EPC

In the board's judgment, claims 1 and 5 do not comply with the provision of Article 123(2) EPC, for the following reasons:

- 2.1.1 Feature A) of claims 1 and 5 is not directly and unambiguously derivable from the original disclosure, since the application as filed solely teaches that "many services or applications operate within a clustering environment, such that multiple independent devices operate in parallel" (cf. paragraph [0003], first sentence) rather than indicating by explicit statement or unambiguous implication that the network enabled devices in the cluster further *operate independently of each other* as claimed. The latter would, moreover, be at odds with the overall principle of the present invention, according to which the

standby routing component within the cluster *must* be dependent on the active routing component in order to perform the desired fail-over operation between the two units.

- 2.1.2 Claims 1 and 5 further comprise the feature that
- B) a graceful/hitless restart event is transmitted signalling network enabled devices outside of the cluster to continue forwarding packets to the cluster in response to an unplanned failure of the second dynamic routing module of the second routing component.

However, the board considers that feature B) is not originally disclosed either, because the application as filed clearly teaches that, in the event of an unplanned failure of the active routing component within the cluster under consideration, the standby routing component may send a graceful/hitless restart message (rather than event) to inform the neighbour routers outside the cluster that they do not need to re-calculate and re-broadcast the corresponding routing information to rebuild the various routing tables used in the network topology (cf. paragraphs [0026] and [0060], emphasis added) rather than merely informing that they may continue to forward packets to the cluster.

- 2.1.3 In view of the above, features A) and B) lead to an inadmissible extension of the original subject-matter and thus claims 1 and 5 contain subject-matter which extends beyond the content of the application as filed.
- 2.1.4 In the present case, the appellant did not submit any comments in response to the aforementioned objections under Article 123(2) EPC raised in the board's

communication under Article 15(1) RPBA. Moreover, since the appellant withdrew its request for oral proceedings (cf. point IV above), the board does not see any reason to hold oral proceedings to decide the present appeal.

2.2 In conclusion, the sole request is not allowable under Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated