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**Datasheet for the decision
of 19 September 2014**

Case Number: T 1074/10 - 3.5.06

Application Number: 06122071.1

Publication Number: 1775671

IPC: G06F21/00

Language of the proceedings: EN

Title of invention:

Method and system for providing DRM license

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Providing a DRM license/SAMSUNG

Relevant legal provisions:

EPC 1973 R. 68(1), 86(3)
EPC Art. 106
EPC 1973 Art. 106
RPBA Art. 15(3)

Keyword:

Clarity - all requests (no)

Discretionary decision not to admit a request -

lack of convergence not an inadequate criterion

Discretionary decision not to admit a request is part of the overall decision and must, as such, be reasoned

Decisions cited:

G 0007/93, T 1969/08

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 1074/10 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 19 September 2014

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

Representative: Grootsholten, Johannes A.M.
Arnold & Siedsma
Bezuidenhoutseweg 57
2594 AC The Hague (NL)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 January 2010
refusing European patent application No.
06122071.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman D. Rees
Members: Martin Müller
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. The appeal lies against the decision of the examining division, with written reasons dated 5 January 2010, to refuse the European patent application no. 06122071.1. The decision found that the main request lacked clarity, Article 84 EPC 1973, and, according to an *obiter dictum*, an inventive step, Article 56 EPC 1973, and that the first and third auxiliary requests lacked an inventive step, too. The second auxiliary request was not admitted under Rule 137(3) EPC for lack of convergence vis-à-vis the first auxiliary request.

II. An appeal against this decision was filed on 5 March 2010, the appeal fee being paid on the same day. A statement of grounds of appeal was received on 4 May 2010. The appellant requested that the decision be set aside and that a patent be granted based on slightly amended claims according to a main request and three auxiliary requests filed with the grounds of appeal. The board understands the present application documents to be as follows:

claims, no.

1-15 main request,

1-13 first auxiliary request,

1-14 second auxiliary request, or

1-12 third auxiliary request, all filed with the grounds of appeal

description pages

1-5, 7-20 as originally filed

6 received with letter of 11 October 2007

drawing sheets

1/7-7/7 as originally filed

The appellant also explained that it "contemplated to add the subject matter of original claim 5 ... to either of the first and second auxiliary requests" but clarified that such a further auxiliary request was "for now merely announced to ensure it is in the appeal proceedings" (see grounds of appeal, p. 12, 1st para.).

III. Claim 1 of the main request reads as follows:

"A system for providing a digital rights management system (DRM) license, the system comprising:

 a sink system (700) which requests a license for content; and

 a source system (500),
characterized in that

 the source system (500) generates and provides a first license including binding information related to the requested license, in accordance with the request; and

 a rights mediator (600) which generates a second license on the basis of the first license, and transmits the generated second license to the sink system (700);

 wherein the sink system (700) provides the requested license for the content on the basis of the second license."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in the characterizing portion which now reads as follows:

"... the source system (500) generates and provides a plurality of first licenses including in relation with the requested license binding information comprising path information that indicates relationships among a plurality of principals to which the requested license is provided, in accordance with the request; and

a rights mediator (600) which generates a single second license on the basis of the plurality of first licenses, and transmit [sic] the generated second license to the sink system (700); and

the sink system (700) provides the license for the content to the principals on the basis of the second license."

Claim 1 of the second auxiliary request is identical with claim 1 of the main request in which the last paragraph has been replaced by the following text:

"... wherein the sink system (700) is arranged to provide the requested license for the content on the basis of the second license, and

wherein the source system (500) comprises a web service server which manages a plurality of content and a plurality of DRM licenses for the respective content, and generates the first license."

Claim 1 of the third auxiliary request is identical with claim 1 of the first auxiliary request with the addition of the following text to its end:

"..., wherein when the rights mediator (600) receives the plurality of first licenses from a plurality of source systems, the rights mediator (600) generates the second license by combining the first licenses received from the respective source systems, and the second license includes information indicating relations among the respective source systems."

Each request also contains an independent method claim corresponding to its respective independent system claim 1.

Claims 3 and 5 of the main request read as follows:

"3. The system of claim 1 or 2, wherein the binding information comprises path information that indicates relationships among a plurality of principals to which the requested license is provided.

5. The system of any preceding claim, wherein the sink system (700) generates a topology for giving content playback rights on the basis of the second license and provides the requested license by principals comprising the sink system (700) on the basis of the generated topology."

Claim 3 of the main request corresponds to claim 3 of the second auxiliary request, whereas in the first and third auxiliary requests the language of claim 3 has been incorporated into that of claim 1. Claim 5 of the main request corresponds to the claim 5 of the second auxiliary request and claim 4 of the first and third auxiliary requests all of which use the same language. All requests also contain respective system claims comprising features corresponding to those of the above two dependent claims.

IV. With a summons to oral proceedings the board informed the appellant of its preliminary opinion. The board raised clarity objections against claims of all requests, Article 84 EPC 1973, and expressed its doubts as regards Article 83 EPC 1973. The board further raised the question of whether the claimed invention solved a technical problem and which one: it stated that the invention appeared to be concerned mainly with the limits of which rights the content issuer could express in a license but that matters of expressiveness were not technical ones, apart from its doubts whether the

claimed or described features were sufficient to achieve the desired expressiveness. On the same token, the board did not agree with the appellant's arguments as to which technical problem the claimed invention solved. The board raised further objections under Article 56 EPC 1973 against all requests and an objection under Article 123(2) EPC against the first and third auxiliary requests. Moreover, the board was not convinced by the appellant's arguments as to why the examining division had erred when exercising its discretion not to admit the second auxiliary request.

- V. In response to the summons, the appellant filed neither comments nor amendments but, with letter dated 7 August 2014, indicated that it would not be attending oral proceedings and requested "a decision on the basis of the present file".
- VI. The oral proceedings took place as scheduled on 19 September 2014, at the end of which the chairman announced the board's decision.

Reasons for the Decision

The appellant's absence from oral proceedings

- 1. According to Article 15(3) RPBA 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. Therefore, and further in accordance with Article 15(3) RPBA, the board treats the appellant as relying only on its written case. The following reasons are based on those communicated to the appellant in the annex to the summons to oral proceedings.

Non-admission of the second auxiliary request

2. During the oral proceedings, the examining division exercised its discretion under Rule 137(3) EPC - equivalent to Rule 86(3) EPC 1973 - and decided not to admit the second auxiliary request for lack of convergence with the previous, *i.e.* the first auxiliary request.
 - 2.1 This is reported in the minutes of the oral proceedings (points 37-40) and the section entitled "Submissions" of the decision under appeal (point 9). In the section entitled "Reasons for the Decision", however, the second auxiliary request is not mentioned at all.
 - 2.2 The discretionary decision of an instance not to admit amendments to a European patent application adversely affects the applicant (or proprietor) in that the amendment may not form the basis of decision in its favour. Therefore, in view of Article 107 EPC 1973, it is a decision which is open to appeal pursuant to Article 106 EPC and which is to be reasoned according to Rule 68(2) EPC 1973. The non-admission of a request is thus not a simple fact but a decision the reasons for which form part of the reasons of the overall decision. In order to avoid any doubt about this, the non-admission of a request is to be addressed in the written decision as part of the reasons. In the present case, the non-admission of the second auxiliary request should have been reasoned in the section entitled "Reasons" rather than merely in the section "Submissions".
 - 2.3 This notwithstanding, the board notes that the section "Submissions" explains that the second auxiliary request was not admitted "because it did not converge towards patentable subject-matter, as it was going into a

different direction than the previous request" (*loc. cit.*). Thus although this explanation is not part of the reasons of the decision under appeal the board is nevertheless able to determine from the decision as a whole why the examining division exercised its discretion in the way it did. Obviously, this was also the case for the appellant who did not argue that this reasoning might be insufficient and thus not conform with Rule 68(2) EPC 1973.

3. The appellant argued that the examining division wrongly exercised their discretion when not admitting the then second auxiliary request for lack of convergence because this criterion does not have a basis in the EPC. Instead, the admissibility of any request should be judged by *prima facie* considerations based on compliance with requirements of the convention (see grounds of appeal, p. 9, penult. para.).
 - 3.1 The board notes that Rule 86(3) EPC 1973 - and, equivalently, Rule 137(3) EPC - leaves open entirely how the examining division should exercise its discretion and, in particular, neither defines a convergence criterion nor a criterion based on *prima facie* compliance with the requirements of the EPC.
 - 3.2 According to G 7/93, reasons 2.5, "[w]hen deciding whether or not to allow a request for amendment at that stage of the pre-grant procedure, in the exercise of its discretion under Rule 86(3) EPC, in the Enlarged Board's judgment an Examining Division is required to consider all relevant factors which arise in a case. In particular, it must consider both the applicant's interest in obtaining a patent which is legally valid in all of the designated States, and the EPO's interest in bringing the examination procedure to a close by the

issue of a decision to grant the patent, and must balance these interests against one another." The convergence criterion has been accepted by the boards of appeal in many cases and has also been applied by the boards themselves (see e.g. T 1969/08, reasons 3.4).

3.3 The present board is of the opinion that the "divergence" of a request from earlier requests in the sense that it changes substantially the issues at stake may be contrary to the EPO's interest in bringing the procedure to a close. Therefore, the board agrees with the cited jurisprudence and considers that divergence of a request is one factor amongst others which a deciding instance may consider when exercising its discretion under Rule 86(3) EPC 1973. The decision of the examining division not to admit a request is therefore not wrong merely because this criterion was used, as the board understands the appellant to argue. As it stands, hence, the appellant's argument fails.

3.4 Further according to G 7/93 (reasons 2.6), "it is not the function of a Board of Appeal to review all the facts of the case as if it were in the place of the first instance department, in order to decide whether or not it would have exercised the discretion in the same way as the first instance department". Rather, "a Board of Appeal should only overrule the way in which a first instance department has exercised its discretion if it comes to the conclusion either that the first instance department in its decision has not exercised its discretion in accordance with the right principles ... or that it has exercised its discretion in an unreasonable way, and has thus exceeded the proper limits of its discretion."

- 3.5 In the summons to oral proceedings, the board invited the appellant to argue why, if it so considered, the second auxiliary request should have been admitted by the examining division - or should be admitted by the board - even if "convergence" was considered to be a possible criterion for exercising the discretion under Rule 86(3) EPC. The appellant did not provide any such reasons. Thus, the appellant has not established that it was objectionable how the examining division exercised its discretion and the board has no reason to overturn this decision.
- 3.6 Therefore, the board does not admit the second auxiliary request into the proceedings.

The invention

4. The application relates to a digital rights management (DRM) system according to which a license for some content requested by a "sink system" is generated and "provided" by a "source system". At the sink system, there may be multiple users ("use subjects") and multiple devices such as players ("use objects") which are, collectively referred to as "principals" (p. 11, 1st para.).
- 4.1 The "license", alternatively also referred to as a "rights token" (see original application, p. 11, last para.) is "bound" to the devices or users which are allowed to use the content. "Binding" is explained to be what "limits the playback (or access) of digital content to a specified device or user through ... encryption", especially by using an encryption key available to the relevant users or devices (see p. 3, last para., and p. 4, 2nd para.).

- 4.2 It is said to be known to provide keys for sets of users or players (p. 4, 2nd para.) but that under this known "binding structure" certain required use limitations cannot be "satisfied" (see p. 5, line 4). Specifically, it is considered deficient that this prior art "considers only the subject using the license ... or the object" [emphasis by the board]. By way of example, it is explained that the known method cannot express that a group of users may have access to some content but that individual users within this group may be further limited to use that content only on certain players (see p. 4, line 21 - p. 6, line 3). It is also disclosed that the prior art techniques are disadvantageous in requiring the DRM on the content issuer side and the player side to be the same (p. 6, 2nd para.).
- 4.3 The invention, meant to overcome these limitations (see p. 6, 5th and 6th paras.), proposes the use of a "rights mediator" which receives a "first license" from the source system, generates a "second license" from it and passes that one on to the sink system (see e.g. p. 7, 6, line 31 - p. 7, line 18; p. 11, 3rd para.). The rights mediator may alternatively receive "a plurality of first licenses" (or "sub-rights tokens") and combine them into the second license (p. 14, lines 7-16). In combining the sub-rights tokens, the rights mediator may make use of set operations (such as set difference, intersection and union; see p. 14, lines 16-31).
- 4.4 Moreover, the application discloses that the licenses or rights tokens, in order to express the relevant binding information, may contain contain "path information among a plurality of principals, not by a single principal" (see p. 14, lines 1-5).

- 4.5 The application further refers to a "topology that indicates the relations among the principals?" (see p. 12, last para.). This topology can be "determined by edges connecting ... principals", where an "edge" between principals A and B represents the fact that "principal A can" (*i.e.* is allowed to) "play content in the principal B". The board takes it that the typical such edge would connect a user and a player (B) on which the user (A) is allowed to play the content. It is disclosed that the client can generate such a topology and "determine whether to access the license bound by principals that comprise the sink system ... through the topology", and that the "topology" is "for giving the content playback rights on the basis of the main rights token" (see p. 15, lines 5-7 and 17-19, and p. 17, lines 25-28).

Clarity, Article 84 EPC 1973

5. The claims specify licenses to include "binding information". The description defines binding information only in terms of what it achieves (p. 3, last para.) rather than how and leaves undefined form and structure of the "binding information" itself, except for a reference to "paths" and "topologies". These terms are also used in the claims. The board considers that the form, structure and function of "paths" and "topology" is unclear, Article 84 EPC 1973.
- 5.1 Claims 3 and 13 of the main request use the phrase "path information that indicates relationships among a plurality of principals to which the requested license is provided". This language leaves undefined what "relationships" are referred to and why or how they are represented as "paths". For instance, the license for some content to be used only by a specific user at a specific device may be consider to express a "relationship" but

it remains unclear why this would establish a "path" - rather than, say, merely an ordered *pair* or a mere *edge*.

5.2 Claims 5 and 15 of the main request specify the sink system to "generat[e] a topology for giving content playback rights on the basis of the second licenses" and to "provid[e] the requested license ... on the basis of the generated topology". This language is unclear already because it leaves open what the "topology" is composed of. The description more clearly refers to a "topology of principals" (p. 13, lines 3-5), and suggests that the term "topology" is meant to be some sort of graph in which the nodes represent principals, *i.e.* users and players, and the edges represent use permissions (p. 13, lines 5-9). Even if the unclear term "topology" is interpreted in view of the description, however, the phrase "topology for giving ... rights" is unclear as it leaves open in what way the topology aids the client in "giving rights": in particular, it is not clear whether the topology is "for giving rights" merely because it declares the binding information to be enforced by the client, or whether it is meant to imply, say, a specific data structure chosen to simplify the client's task. Moreover, it is unclear whether the "topology" is merely a way of referring to the totality of permissions in terms of "edges" between principals or whether it goes beyond that or in what way. If the totality of edges happen to form a "topology" in an abstract sense, it becomes further unclear what is meant by the claimed features that the topology is generated and used to provide a license.

5.3 In summary, the terms "paths" and "topology" do not achieve clarity as to the question whether - and, if so, how - "binding information" goes beyond an abstract declaration of rights independent of how it is used to achieve its purpose.

- 5.4 As a consequence, the board considers claims 3, 5, 13 and 15 of the main request unclear, Article 84 EPC 1973. This objection applies to the other requests as well, namely to claims 1, 4, 8 and 13 in the first auxiliary request, claims 1, 4, 7 and 12 of the third auxiliary request, and, in fact, also to claims 3, 5, 12 and 14 of the second auxiliary request. It is noted that it also applies to the two auxiliary requests which the appellant "contemplated" to file at a later point and which would have been based on claim 5 of the main request.
6. In view of this objection, the further objections which the board raised in the annex to its summons are irrelevant for the present decision - even though the board, due to the appellant's silence, had no occasion to reconsider those objections either. It is merely noted, as an aside, that the lack of clarity of the claimed invention has an impact on the question what technical contribution, if any, can be attributed to the use of "binding information", "paths" and "topologies" in the context of the invention and therefore whether and to what a extent they might contribute to an inventive step, Article 56 EPC 1973.
7. In summary, the board comes to the conclusion that none of the pending requests is allowable at least for lack of clarity, Article 84 EPC 1973 and that, therefore, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



B. Atienza Vivancos

D. Rees

Decision electronically authenticated