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**Datasheet for the decision
of 13 January 2016**

Case Number: T 1624/10 - 3.5.06
Application Number: 03012830.0
Publication Number: 1376343
IPC: G06F9/445
Language of the proceedings: EN

Title of invention:

Mechanism for downloading software components from a remote source for use by a local software application

Applicant:

Microsoft Technology Licensing, LLC

Headword:

Downloading software components / MICROSOFT

Relevant legal provisions:

EPC 1973 Art. 84, 56

Keyword:

Inventive step - (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1624/10 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 13 January 2016

Appellant: Microsoft Technology Licensing, LLC
(Applicant) One Microsoft Way
Redmond, WA 98052 (US)

Representative: Grünecker Patent- und Rechtsanwälte
PartG mbB
Leopoldstraße 4
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 March 2010
refusing European patent application No.
03012830.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Sekretaruk
Members: G. Zucka
Martin Müller

Summary of Facts and Submissions

I. The appeal is against the decision by the examining division, with reasons dispatched on 05.03.2010, to refuse European patent application 03 012 830.0, on the basis that the independent claims of the main request and of first and second auxiliary requests were not clear, Article 84 EPC 1973. Three further auxiliary requests were considered inadmissible. The following document cited during the first instance procedure is referred to below:

D1 = US 5 995 756 A

II. A notice of appeal was received on 03.05.2010, the appeal fee being paid on the same day. A statement of the grounds of the appeal was received on 14.07.2010.

III. The appellant requested that the decision under appeal be set aside and a patent granted on the basis of the main request or one of the auxiliary requests filed with the grounds of appeal. The appellant made a conditional request for oral proceedings.

IV. The board issued a summons to oral proceedings. In an annex to the summons, the board set out its preliminary, negative opinion on the appeal.

V. On 11.12.2015, the appellant filed a new main request and new auxiliary requests 1-4.

VI. In the course of the oral proceedings, the appellant filed a new single request, replacing all previous requests.

VII. The appellant requests that the decision under appeal be set aside and a patent be granted on the basis of the independent claims 1 and 31 filed during the oral proceedings on 13.01.2016, with dependent claims and description to be adapted thereto.

VIII. The independent claim 1 reads as follows:

"A method of downloading software components from a remote source to a software application (100) for providing updates or additions to the functionality of the application (100) via which a document (110) is opened by a user for editing, the method comprising the steps of:

attaching an Extensible Markup Language XML schema to the document (110), wherein the XML schema defines permissible data content, permissible data types and permissible data structures for the document,

annotating particular portions of the document (110) with XML structure associated with the permissible data content, the permissible data types, and permissible data structures for the particular portions of the document (110) as defined by the schema,

associating with XML elements making up the XML structure a plurality of software components, in the following referred to as solution, needed to provide a functionality to the application,

identifying and assembling the solution at a location remote from the document (110),

enabling the application (100) to request the solution to obtain the functionality provided by the plurality

of software components upon initiation of editing the document (110) within an XML element associated with the solution, including

attaching a solution property (115) storing a solution ID to the document (110) for pointing to the solution, and

attaching a solution location (118) including a uniform resource locator URL for the solution to the document (110) for enabling the application (100) to locate the solution at the remote location (49),

downloading the plurality of software components from the location remote from the document to the application (100) for provision of the functionality."

The independent claim 31 reads as follows:

"A computer readable medium storing instructions that, when executed by a processor of a computer, cause the computer to download software components from a remote source to a software application (100) for providing updates functionality of the application (100) via which a document (110) is opened by a user for editing (100), by:

attaching an Extensible Markup Language XML schema to the document (110), wherein the XML schema defines permissible data content, permissible data types and permissible data structures for the document,

annotating particular portions of the document (110) with XML structure associated with the permissible data content, the permissible data types, and permissible

data structures for the particular portions of the document (110) as defined by the schema,

associating with XML elements making up the XML structure a plurality of software components, in the following referred to as solution, needed to provide a functionality to the application,

identifying and assembling the solution at a location remote from the document (110),

enabling the application (100) to request the solution to obtain the functionality provided by the plurality of software components upon initiation of editing the document (110) within an XML element associated with the solution, including

attaching a solution location (118) including a uniform resource locator URL for the solution to the document (110) for enabling the application (100) to locate the solution at the remote location (49), and

attaching a solution property (115) storing a solution ID to the document (110) for pointing to the solution, and

downloading the plurality of software components from the location remote from the document to the application (100) for provision of the functionality."

IX. At the end of the oral proceedings, the chairman announced the board's decision.

Reasons for the Decision

1. *The admissibility of the appeal*

In view of the facts set out at points I and II above, the appeal is admissible, since it complies with the EPC formal admissibility requirements.

2. *The procedure before the first instance*

In the summons to the oral proceedings, the board had raised the issue of a possible procedural violation with regard to requests that had been filed during the first instance procedure. However, given that the appellant has not maintained the requests concerned, it is not necessary for the board to decide on this issue. Indeed, it would in any case serve no purpose to remit the case on the basis of requests which the appellant does not maintain or re-instate. A special reason in the sense of Article 11 RPBA would therefore exist for not remitting the case. For the same reason a reimbursement of the appeal fee would not be equitable (Rule 103 EPC).

3. *Clarity; Article 84 EPC 1973*

A number of clarity issues had been raised by the board in its summons. The expressions concerned have been replaced and the board is satisfied that the present claims 1 and 31 fulfill the requirements of Article 84 EPC 1973.

4. *Closest prior art*

In the paragraph bridging pages 14 and 15 of the grounds for the appeal, the appellant states that the skilled person may not even consult D1 when looking for a solution to the problem mentioned in that paragraph. From this statement it is obvious that the appellant does not consider D1 to represent the closest prior art (CPA) but instead considers that the CPA is some method which is generally well known, although he does not describe it in any detail.

The board agrees that D1 does not form a suitable starting point for an inventive step discussion. Instead, the board holds that the closest prior art is given by the passage in the description as originally filed, page 2, lines 24-32, *i.e.* a method of downloading software components from a remote source (implied by the fact that installation packages are received) to a software application for providing updates or additions to the functionality of the application via which a document is opened by a user for editing.

5. *Inventive step; Article 56 EPC 1973*

- 5.1 The subject-matter of claim 1 differs from this CPA in that a plurality of software components needed to provide a functionality to the application and referred to as solution are associated with XML elements making up the XML structure of the document, the solution being identified and assembled at a location remote from the document and the application being enabled to request the solution upon initiation of editing the document within an XML element associated with the solution, by attaching a solution property storing a solution ID to the document for pointing to the solution and attaching a solution location including a

URL for the solution to the document for enabling the application to locate the solution at the remote location, the plurality of software components being downloaded from the location remote from the document to the application for provision of the functionality.

- 5.2 The advantage of this approach, which advantage the board considers to constitute a technical effect, is that computer memory is saved, given that a request for assembling components providing a certain functionality into a solution is only made on an "as needed" basis, *i.e.* upon initiation of editing the document within an XML element associated with the solution.
- 5.3 This approach is not disclosed or rendered obvious either by the above CPA or by D1, neither of which makes use of the fact that a document is being edited within an XML element associated with a solution.
- 5.4 The subject-matter of claim 1 is therefore considered inventive; Article 56 EPC 1973. A similar reasoning holds for the independent claim 31, the subject-matter of which is consequently also considered inventive.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a European patent on the basis of claims 1 and 31, dated 13.01.2016, with dependent claims and description adapted thereto.

The Registrar:

The Chairman:



A. Vottner

W. Sekretaruk

Decision electronically authenticated