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**Datasheet for the decision
of 12 July 2017**

Case Number: T 1098/12 - 3.5.06

Application Number: 00660234.6

Publication Number: 1130495

IPC: G06F1/00

Language of the proceedings: EN

Title of invention:

Method and apparatus for downloading an application with a variable lifetime

Applicant:

Nokia Technologies Oy

Headword:

Computer program with limited lifetime/Nokia

Relevant legal provisions:

EPC 1973 Art. 94(1), 52(2)(c), 52(3), 56

Keyword:

Inventive step - (no)

Decisions cited:

Catchword:



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Case Number: T 1098/12 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 12 July 2017

Appellant: Nokia Technologies Oy
(Applicant) Karaportti 3
02610 Espoo (FI)

Representative: Papula Oy
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 1 December 2011
refusing European patent application No.
00660234.6 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman W. Sekretaruk
Members: G. Zucka
M. Müller

Summary of Facts and Submissions

I. The appeal is against the decision by the examining division, dispatched with reasons on 1 December 2011, to refuse European patent application 00660234.6, on the basis that the subject-matter of the independent claims of the main and auxiliary request was not inventive, Article 56 EPC 1973. The following documents were relied upon in the decision:

D4 = EP 0 809 221 A2

D6 = WO 98/04974 A1

D7 = WO 99/22325 A1

II. A notice of appeal was received on 1 February 2012, the appeal fee being paid on the same day. A statement of the grounds of appeal was received on 5 April 2012.

III. The appellant requested that the decision under appeal be set aside and a patent granted on the basis of the claims for the main or auxiliary request filed during the oral proceedings before the first instance. 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 opinion, following which the appeal should be dismissed.

V. On 12 June 2017, the appellant replied to the summons and provided additional arguments. No replacement application documents were filed.

- VI. The oral proceedings took place as scheduled on 12 July 2017, in the absence of the appellant as previously announced.
- VII. The appellant requests that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 20 of the main or the auxiliary request filed on 22 September 2011.

The further text on file is:

description pages

1 to 4 and 6 to 14 as originally filed,
5A and 5B received on 6 October 2007;

drawing sheets

1 to 4 as originally filed.

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

"A method comprising:

receiving user identity information from a mobile terminal comprising a user identity module storing user identity information;

receiving a choice of an application contained at an application database (242), the application database (242) containing at least one application having a selectable lifetime during which the application is executable;

receiving a selection of a selectable lifetime of the chosen application during which the application is to be executable;

configuring the chosen application to automatically delete or uninstall itself from the mobile terminal

(210) when the selected lifetime for the chosen application expires;

downloading the chosen application from the application database (242) to the mobile terminal; and storing an indicia of the selectable lifetime, the user identity information and the application selection in an application-license database (232)."

IX. Independent claim 1 of the auxiliary request differs from that of the main request in that the following text is inserted before "downloading the chosen application...":

"wherein customised settings [sic] are retained even after the application deletes itself if the application has been customised by the mobile terminal user".

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

Reasons for the Decision

1. *The admissibility of the appeal*

The appeal is admissible.

2. *The course of the first instance proceedings*

2.1 The appellant submits (fourth and fifth page of the grounds of appeal) that the behaviour of the examining division had clearly demonstrated that the division had already made up its mind about not granting a patent in spite of the available evidence. This is said to

explain the division's alleged *ex post facto* analysis of D4. In particular, the appellant points to the division continuously producing additional documents during the oral proceedings to support its argumentation against the presence of an inventive step.

- 2.2 According to the board, the appellant's point of view is not supported by the evidence on file. Instead, that evidence tends to show that the division realised, either after considering the applicant's amendments or arguments or simply on further reflection, that the documents and arguments which it had produced up to that moment did not, or not convincingly, demonstrate lack of an inventive step, although it was aware that other documents existed which would be more suitable.

According to the minutes of the oral proceedings dated 1 June 2011 (see middle of page 3), which were not challenged by the appellant, the first two additional documents (D5 and D6) were produced at the applicant's request and required an interruption of only 13 minutes. For the third additional document (D7), which was produced after the applicant had filed a new auxiliary request, an interruption of 27 minutes was required (*ibid.*, page 6, third and fourth paragraph). It is open to debate whether it would have been possible to introduce those three documents at an earlier time, but the board does not consider the late introduction of additional documents in itself to be either procedurally incorrect or to constitute an indication that the examining division was determined to refuse the application at all cost. Rather, it seems that the division acted as it believed it was required to do under Articles 94(1) EPC and 114(1) EPC 1973 (see

Guidelines for Examination at the EPO in the applicable version of April 2010, E-VI, 1.1).

3. *Exclusion from patentability (both requests);
Article 52(2) and Article 52(3) EPC 1973*

Regarding independent method claims 1 and 16 of both requests, the board holds that the presence of certain technical elements prevents the exclusion under Articles 52(2)(c) and 52(3) EPC 1973 that would apply to a method for doing business as such.

4. *Main request*

4.1 *Closest prior art*

The appealed decision starts its analysis of inventive step from D4 (see point II.2, first paragraph). The board is however of the opinion that the commonly known "mobile terminals" described by the appellant on pages 1 and 2 of the description provide a better starting point than D4. The board considers D4 to be relevant mainly in that it illustrates that it was already known before the priority date of the present application to limit the lifespan of installed software (as is also acknowledged in the application's description, page 3, lines 10 to 15).

4.2 *Inventive step; Article 56 EPC 1973*

4.2.1 From the wording of claim 1 of the main request, in connection with the statements made on pages 2 to 4 of the description, the board concludes that the main aim of the present invention is of a commercial nature, *i.e.* to provide a new model for the commercialisation of software on "mobile terminals". More specifically,

the problem to be solved by the method of claim 1 is to enable users to try out software *on a mobile terminal* for a limited time at a lower price (see in particular page 4, lines 12 to 14).

- 4.2.2 The board considers this to be a non-technical vending model. It should therefore be seen as part of the requirements specification provided to the skilled person who has the task of implementing the vending model by technical means.
- 4.2.3 According to the board, it is an obvious step, starting from the requirement that an application may only be used for a limited time, to render the application somehow unusable after the set time period. This can be done in various ways.

One possibility, which already existed before the priority date of the present application (see D4, column 10, lines 25 to 28) is the use of a "time bomb", which disables the software product at the end of a certain time period.

Another possibility, which is also illustrated in D4 (column 10, line 54 to column 11, line 28) is to keep track, typically by means of a database, of the products for which users presently hold a licence. In the context of D4, this information is used to allow a user to reload previously purchased software products which are no longer installed. It can however also be used to block the execution of software which is physically still present in memory but for which the user no longer holds a licence.

- 4.2.4 Given that the task of the skilled person is to time-limit the use of applications specifically on "mobile

terminals", *i.e.* on devices which are relatively small and consequently have limited memory, the board considers it straightforward for the skilled person to take this limitation into account. One obvious way to do this is to arrange for the memory occupied by an application to be released, preferably automatically, once the application is no longer usable, *i.e.* once its lifetime has expired.

- 4.2.5 It is thus considered obvious for the skilled person to maintain an application-licence database which specifies whether the lifetime for a given application has expired for a given user, and to configure the application, which at some time has been downloaded from an application database, to delete or uninstall itself automatically from the mobile terminal if its lifetime has expired.
- 4.2.6 In so doing, the skilled person would arrive in a straightforward manner at the method of claim 1.
- 4.2.7 The board therefore holds that the subject-matter of claim 1 of the main request is not inventive, Article 56 EPC 1973.
- 4.2.8 In its response to the summons (third full paragraph on the second page), the appellant submits that the problem to be solved is technical and is the same as the problem identified by the examining division, *viz.* how to achieve (more) efficient memory handling in a mobile terminal.
- 4.2.9 The board's conclusion would however remain the same, even if it were to accept this alternative problem to be solved. Indeed, it is firstly considered obvious that memory on mobile devices should be handled

efficiently, given the limited memory capacity on such devices. Secondly, the user of the device will, when the available memory becomes insufficient, try to release memory that is no longer needed. Since the memory is used by data and by applications, the user will delete/uninstall data and applications which are no longer needed. For applications this would for instance be the case when their lifetime has expired.

The board agrees with the practice generally adopted in the boards of appeal, according to which the automation *as such* of a manual process cannot be considered inventive. For the rest, a database which keeps track of all necessary information, such as the lifetime of application licences, would be a standard tool used by the programmer entrusted with the automation task. Hence, the subject-matter of claim 1 of the main request would be considered non-inventive, even if one started from the technical problem mentioned by the appellant.

5. *Auxiliary request*

5.1 Independent claim 1 of the auxiliary request differs from that of the main request in that any customised settings are retained after the application deletes itself.

5.2 The board agrees with the view expressed in points II.6.8 and II.6.9 of the appealed decision that it was already common before the priority date of the present application to maintain customised settings of an application after it has been uninstalled. The well-known result is that the settings do not need to be entered again if the application later is re-installed.

- 5.3 The board accepts the appellant's point of view (reply to the summons, penultimate page, last paragraph - last page, third paragraph), according to which the fact that in D7 the user data is not retained on the mobile device itself marks a clear difference with the method of claim 1.
- 5.4 The appellant has however not disputed the fact mentioned in point 8.2 of the summons that the commonly known "registry" which has existed in Microsoft Windows since version 3.1 (introduced in 1992) is routinely used to maintain customised settings of an application on the device where the application is installed, even after the application has been uninstalled. Instead, the appellant merely implies (reply to the summons, last page, third paragraph, first sentence) that none of the *cited* documents disclose such a way of proceeding.
- 5.5 The appellant has argued (grounds of appeal, penultimate page, fourth full paragraph) that the skilled person would not apply such knowledge in the context of D4. According to the board this may well be true but it is immaterial, since the board does not consider D4 but "mobile terminals" as commonly known to be the closest prior art.

In the context of commonly known mobile devices, it happens routinely that applications are uninstalled and later re-installed. The board firstly considers it obvious that a skilled person will want to balance the amount of memory required for applications or settings and the effort needed to recover deleted data. The board secondly considers it to be known that the memory space occupied by an application is typically much larger than that occupied by its user settings, while

the effort required to restore an application is typically much less than that to restore its user settings. In view of this, the board considers it obvious that the skilled person will apply known techniques which preserve user settings in view of a possible future re-installation of a deleted application.

5.6 The board therefore holds that this additional feature does not render the subject-matter of claim 1 of the auxiliary request inventive; Article 56 EPC 1973.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Moser

W. Sekretaruk

Decision electronically authenticated