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**Datasheet for the decision  
of 21 October 2019**

**Case Number:** T 1259/12 - 3.5.01

**Application Number:** 03722758.4

**Publication Number:** 1500014

**IPC:** G06F17/60, G06F17/30

**Language of the proceedings:** EN

**Title of invention:**  
PROJECT MANAGEMENT SYSTEM

**Applicant:**  
Oracle International Corporation

**Headword:**  
Version control/ORACLE

**Relevant legal provisions:**  
EPC Art. 56, 111(1), 112(1)(a), 113(1)

**Keyword:**  
Inventive step - actively presenting the user with a choice  
(no - obvious) - removing "group awareness" (no - obvious)  
Appeal proceedings - new document cited by the Board  
Remittal to the department of first instance (no)  
Referral to the Enlarged Board of Appeal (no)

**Decisions cited:**

G 0010/93



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Case Number: T 1259/12 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 21 October 2019**

**Appellant:** Oracle International Corporation  
(Applicant) M/S 50P7  
500 Oracle Parkway  
Redwood Shores, CA 94065 (US)

**Representative:** Gill Jennings & Every LLP  
The Broadgate Tower  
20 Primrose Street  
London EC2A 2ES (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 2 February 2012  
refusing European patent application No.  
03722758.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** W. Chandler  
**Members:** A. Wahrenberg  
C. Schmidt

## **Summary of Facts and Submissions**

- I. This is an appeal by the applicant (appellant) against the decision of the examining division dated 2 February 2012 to refuse the European patent application No. 03722758.4.
- II. The examining division issued a decision according to the state of the file referring to a communication dated 4 November 2011. In that communication, the examining division objected that the subject-matter of claim 1 did not involve an inventive step (Article 56 EPC) over D1 (US 5737536 A).
- III. In the statement of grounds of appeal, the appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of the claims according to the enclosed main request, or one of the enclosed first to third auxiliary requests. The claims of the main request corresponded to the claims rejected by the examining division.
- IV. In the communication accompanying the summons to oral proceedings, the Board could not see any clear, technical effect of the claimed invention over conventionally known version control systems at the priority date. Thus, it was the Board's preliminary view that the claimed subject-matter lacked an inventive step (Article 56 EPC).

The Board also cited the following documents:

D2: Berliner B.: "CVS II: Parallelizing Software Development", Proceedings of the USENIX Conference 1990; and

D3: Magnusson B et al.: "Fine-Grained Revision Control for Collaborative Software Development", Proceedings of the 1st ACM SIGSOFT Symposium on Foundations of Software Engineering, 1993.

D3 was considered to be particularly relevant.

- V. With a letter dated 29 January 2019, the appellant filed an amended second auxiliary request. The previous second auxiliary request was maintained as the third auxiliary request, and the previous third auxiliary request was withdrawn. The appellant also made a fourth auxiliary request that the case be remitted to the examining division for full consideration of the claims of the new second auxiliary request in the light of document D3.
- VI. With a letter dated 4 March 2019, the appellant filed auxiliary requests 1(A) to 3(A). The previous first to third auxiliary requests were renumbered as auxiliary requests 1(B) to 3(B).
- VII. Oral proceedings took place on 7 March 2019. The Board admitted auxiliary requests 1(A) to 3(A), and, following that, the appellant withdrew auxiliary requests 1(B) to 3(B). The appellant's final requests were thus that the decision under appeal be set aside and that a patent be granted on the basis of the main request filed with the statement of grounds of appeal, or one of auxiliary requests 1(A) to 3(A) filed with letter dated 4 March 2019. As a fourth auxiliary request, the appellant requested that the application be remitted to the examining division. Finally, the appellant requested that the following question be referred to the Enlarged Board of Appeal under Article

112(1) (a) EPC:

*"In the case of appeal proceedings from a decision of the examining division to reject an application, can the appeal board reject a claim under Article 54 or 56 EPC based on a document cited for the first time in the summons to oral proceedings before the appeal board?"*

The oral proceedings did not conclude with a decision. The Chairman announced that the decision would be issued in writing.

VIII. Claim 1 of the main request reads:

"A project management system comprising a database for storing objects relating to a project together with data defining interdependencies of the objects; and a control system responsive to entities connected to it to provide access to selected objects stored on the database and to store on the database updated versions of selected objects received from the entities characterised in that the control system is adapted to produce copies of an object that has been accessed by a first entity and all objects that are interdependent on that object if that object or an object that is interdependent on that object is modified by a second entity between the object being accessed by the first entity and an updated version being received by the database."

IX. The first auxiliary request (auxiliary request 1(A)) adds to claim 1 of the main request "in the database" after "to produce copies", "of the object" after "an updated version", and "from the first entity" after "being received by the database".

X. The second auxiliary request (auxiliary request 2(A)) further adds the following at the end of claim 1:

"; and to present the first entity with an option upon uploading the updated version to the database to accept changes to the object or interdependent object made by the second entity and wherein the copies of the object and its interdependent objects are produced upon the first entity declining to accept the changes by the second entity".

XI. Claim 1 of the third auxiliary request (auxiliary request 3(A)) is identical to claim 1 of the second auxiliary request.

XII. The appellant's arguments can be summarised as follows:

The aim of D3 was to provide a system that allowed changes made by separate users to be merged into a final, single edition. The system attempted to resolve conflicts between individual edits where they arose, and otherwise applied all changes when revisions were merged. D3 thus assumed that the users intended to ultimately produce a single output and did not give any regard to instances in which different entities might wish to produce separate alternative copies of an object.

In claim 1, diverging edits could be produced when one entity attempted to over-write the existing version of the object as it was being edited by another. The effect of presenting the first entity with the option of accepting the changes was to prevent the creation of unnecessary copies while allowing the maintenance of separate versions where necessary.

The objective technical problem solved could therefore be regarded as to efficiently enable the maintenance of different versions of an object.

Given that D3 was concerned with producing a single final revision and at no point involved replicating the entire data structure, it gave the skilled person no motivation to consider presenting an entity using the system with the option of accepting changes or creating copies in response to changes made by the second entity.

The request that the case be remitted to the examining division was admissible since D3 had not been cited until the appeal stage and as such it would be appropriate for the application to be considered by the examining division in the light of this document.

Taking a decision on the basis of D3 would violate the appellant's right to be heard (Article 113(1) EPC). Since D3 was introduced by the Board with the summons to oral proceedings, the appellant had had no opportunity to discuss it before the examining division.

## **Reasons for the Decision**

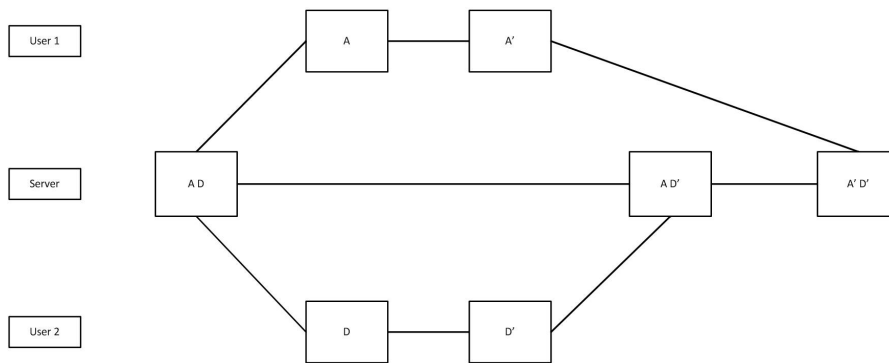
### 1. *Background*

1.1 The invention concerns a project management system, which allows a plurality of users to access and modify objects stored on a central database. If those objects are interdependent, which is often the case in software development projects, modification made to one object

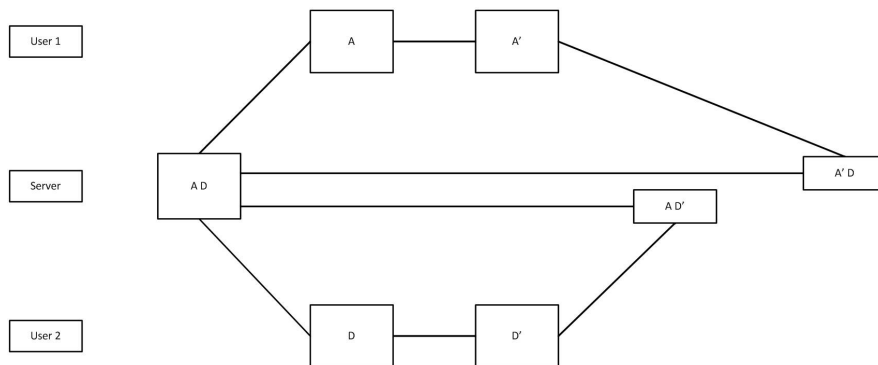


may affect other, dependent objects.

- 1.2 Figure 3 of the application shows an example of interdependent objects A to F. Objects B and C are dependent on A; objects D and E are dependent on B; object E is also dependent on C, and object F is dependent on both A and C.
  - 1.3 A problem arises if a plurality of users concurrently access the same object or different objects that are interdependent. This may lead to a confusion or conflict with respect to modifications to those objects. For example, if a first user is editing object A locally, and, in the meantime, a second user modifies object D, which is dependent on A, the question arises as to which version of D is the correct one.
2. *Second auxiliary request, claim 1*
- 2.1 The invention in claim 1 of the second auxiliary request solves the problem in the following way. When the first user uploads the modified version of A to the database, he is given two options. The first option is to accept the changes made to D by the second user. The second option is to decline to accept the changes and instead make copies of the objects that are interdependent on A, including the unmodified version of D.
  - 2.2 The Board visualises the claimed invention using a diagram showing the development of objects A and D on the server and on the first and second users' workstations. The first option in claim 1 produces:



The second option may be shown as:



This option leads to two alternative versions being created on the server when the first user declines to accept the changes made by the second user.

### 3. *Inventive step*

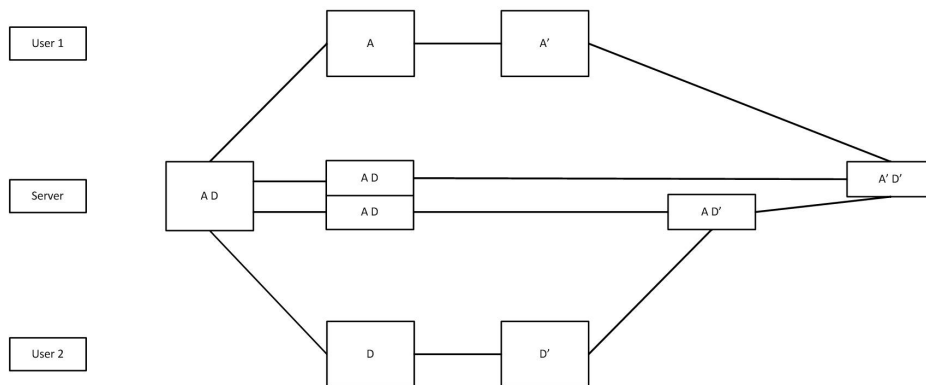
3.1 D3 discloses a project management system allowing concurrent access to interdependent objects (a computer program comprising a set of classes) stored in a central database. The interdependent objects are treated, as a whole, as one revision.

D3 deals with the confusion/conflict with respect to

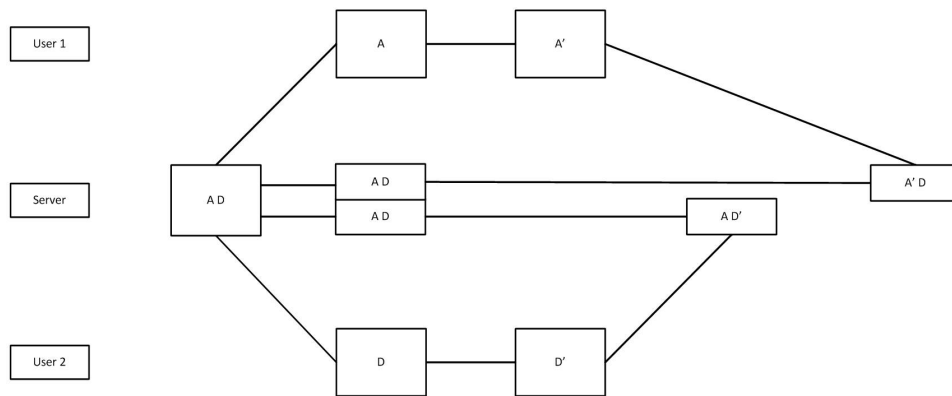
concurrent edits in the following way:

If a second user checks out a revision that is in use by a first user, an alternative is created in the database (page 36, right-hand column, first paragraph; Figure 2). Each user edits his own alternative revision, and changes made to the objects are propagated to the server as they are made. This allows all users to see what is happening to the objects. The alternatives are merged at check-in according to some rules, the default rule being to incorporate all changes. The merged result will be suggested to the user by the system, but the user is free to make any changes that he wants, both at the level of structure (the user may delete objects, for example) and at the level of content (the code).

3.2 Using the same schematic as in paragraph 2.2 above, the following revisions are possible using the system in D3:



or



3.3 In D3, the two alternatives are created at check-out, and merged at check-in. The merged version may or may not include all the changes.

Thus, during simultaneous editing, there are two parallel alternatives, and after check-in, there is a merged version that represents the latest revision. However, both alternatives remain part of the revision history. A user can check out an old revision, including an alternative that has subsequently been merged with another revision (see paragraphs 2.3 and 3.3).

3.4 Thus, the Board considers that D3 discloses both options in claim 1.

The appellant argued that the claimed system reduced the amount of data that had to be stored on the server. The Board is not convinced, because, in both the invention and in D3, all versions are kept in the database (see page 6, lines 6 to 10, of the published application, and D3 paragraphs 2.3 and 3.3).

3.5 Thus, in the Board's view, the invention in claim 1 differs from D3 in that the first user is actively presented with the choice of merging or creating an

alternative. Another difference is that in D3, the alternatives are created when an object is checked out, whereas in claim 1, they are created when the object is checked back into the server.

3.6 Putting the question aside whether choosing a policy for version control is technical, the Board considers that it would have been obvious to actively present the user with a choice between options that are already available.

Furthermore, the point in time that the alternatives are created follows from when they are needed. In D3, the "group awareness" feature, which allows users to see what other users are doing locally requires that the alternatives are available on the server as soon as the object is checked out. The invention does not provide group awareness. No conflict arises until the first user uploads the modified object to the database. The skilled person would consider doing away with the group awareness in D3, and when doing so, it is clear that the alternatives are not needed until the first user uploads the modified object to the database. Thus, the skilled person would create the alternatives (make copies) when the first user checks the object into the server.

Therefore, the skilled person would arrive at the invention without inventive effort.

3.7 For these reasons, the Board considers that the subject-matter of claim 1 of the second auxiliary request lacks an inventive step (Article 56 EPC).

4. *Main request and first and third auxiliary requests*

4.1 Claim 1 of the main and first auxiliary requests covers the subject-matter of claim 1 of the second auxiliary request. Claim 1 of the third auxiliary request is identical to claim 1 of the second auxiliary request. The main request and the first and third auxiliary requests are therefore equally unallowable for lack of inventive step (Article 56 EPC).

5. *The fourth auxiliary request, i.e. the request for remittal to the examining division*

5.1 As a fourth auxiliary request, the appellant requested that the case be remitted to the examining division for full consideration of the claims of the second auxiliary request. The appellant argued that this request was justified since D3 had been cited for the first time in the Board's communication, and, as such, it would be appropriate for the application to be considered by the examining division in the light of this document.

5.2 The ranking of the fourth auxiliary request is somewhat odd. The Board can only decide on a request if the higher-ranking requests are rejected. As it makes no sense to remit the case to the examining division for deciding on the allowability of a request that has already been rejected by the Board, the Board understands the appellant's request to be that the Board refrains from deciding on the second auxiliary request, and instead remits the case to the examining division for further consideration.

- 5.3 In deciding on the appeal, the Board may either exercise any power within the competence of the examining division or remit the case to the division for further prosecution (Article 111(1) EPC). The choice between those two options is a matter for the Board's discretion.
- 5.4 In the present case, there are essentially two factors to be weighed in the exercise of discretion. One is procedural efficiency, including the overall length of the procedure before the EPO; the other is the appellant's interest in having the case considered in full by two instances.
- 5.5 The Board finds that the need for procedural efficiency and certainty for third parties outweighs the appellant's interest in having the case considered by two instances. The application was filed in 2003. It has thus been pending at the EPO for more than sixteen years. That is 80% of the twenty-year patent term. A remittal to the examining division would further lengthen the procedure, which would be undesirable.
- 5.6 Furthermore, there is no absolute right to have an issued decision decided at two instances (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, chapter V.A, section 7.2.1). While the purpose of *ex parte* appeal proceedings is primarily to review whether the decision of the first instance was correct, the Board may decide on issues that have not been dealt with by the first instance (see G 10/93, reasons, points 3 and 4).
- 5.7 The Board introduced D3 in the communication accompanying the summons to oral proceedings. The appellant had an opportunity to comment on the Board's

objections before the oral proceedings, and the issues were thoroughly discussed at the oral proceedings. Therefore, the Board does not see any obstacles to deciding the case based on D3. The appellant's right to be heard according to Article 113(1) EPC has been respected.

5.8 For these reasons, the Board rejects the appellant's request that the case be remitted to the examining division.

6. *The request for a referral to the Enlarged Board of Appeal*

6.1 The appellant requested that the following question be referred to the Enlarged Board:

*"In the case of appeal proceedings from a decision of the examining division to reject an application, can the appeal board reject a claim under Article 54 or 56 EPC based on a document cited for the first time in the summons to oral proceedings before the appeal board?"*

6.2 The appellant did not submit any arguments why a referral is necessary for the uniform application of the law. In particular, the appellant has not pointed to a case where it was held that a Board of Appeal could *not* decide the case based on a document that had been cited for the first time in appeal proceedings. This Board is not aware of any such decision. Conversely, it is the established case law following from G 10/93 (*supra*) that, in *ex parte* appeal proceedings, the Board is restricted neither to examination of the grounds for the contested decision, nor to the facts and evidence on which the decision is



based.

The question furthermore lacks fundamental importance after the Enlarged Board clarified the extent of the duties and powers of a Board of Appeal in *ex parte* proceedings (see G 10/93, reasons, point 2). Since that time, the question of whether or not a decision may be based on grounds and evidence introduced during appeal proceedings depends on the circumstances of the individual case.

6.3 Thus, for these reasons, the Board rejects the appellant's request to refer a question to the Enlarged Board of Appeal.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated