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Datasheet for the decision of 25 February 2014

Case Number: T 1572/12 - 3.5.05

Application Number: 08151932.4

Publication Number: 1970801

IPC: G06F3/12

Language of the proceedings: EN

Title of invention:
Computer-connectable portable memory device

Applicant:
Océ-Technologies B.V.

Headword:
Portable memory device/OCÉ

Relevant legal provisions:
EPC Art. 54, 123(2)
RPBA Art. 15(3)

Keyword:
Novelty - main and second auxiliary requests (no)
Added subject-matter - first/third auxiliary requests (yes)
Right to be heard - withdrawal of request for oral proceedings

Decisions cited:

Catchword:

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Case Number: T 1572/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 25 February 2014

Appellant: (Applicant)	Océ-Technologies B.V. St. Urbanusweg 43 5914 CA Venlo (NL)
Representative:	Vanoppen, Ronny R.J. Océ-Technologies B.V. Corporate Patents Postbus 101 5900 MA Venlo (NL)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 6 February 2012 refusing European patent application No. 08151932.4 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 6 February 2012, to refuse European patent application No. 08151932.4 on the ground of lack of novelty (Article 54 EPC), having regard to the disclosure of

D1: US-A-2005/190399.

II. Notice of appeal was received on 10 April 2012. The appeal fee was paid on the same day. With the statement setting out the grounds of appeal, received on 18 June 2012, the appellant filed amended claims according to a main request and auxiliary requests I to III. It requested that the decision of the examining division be set aside and that a patent be granted on the basis of the main request or any of the auxiliary requests. In addition, oral proceedings were requested as an auxiliary measure.

III. A summons to oral proceedings scheduled for 25 February 2014 was issued on 6 December 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 *inter alia* under Article 54 EPC, in view of D1, and under Article 123(2) EPC.

IV. With a letter of reply dated 27 January 2014, the appellant filed an amended main request and an amended auxiliary request I, and stated that it maintained auxiliary requests II and III on file.

V. By letter of 20 February 2014, the appellant informed the board that it would not be attending the scheduled oral proceedings and that it was withdrawing its

request for oral proceedings. It also submitted further counter-arguments in response to the board's communication under Article 15(1) RPBA, referring to an enclosed Wikipedia article on "USB devices" and to an enclosed Microsoft Developer Network document on the "AutoRun-Enabled Application" functionality.

VI. Oral proceedings were held as scheduled on 25 February 2014 in the absence of the appellant. The board established from the file that the appellant's final request was that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or of auxiliary request I, both submitted with the letter dated 27 January 2014, or on the basis of the claims of auxiliary requests II or III, both submitted with the statement setting out the grounds of appeal.

After due deliberation on the basis of the pending requests and the written submissions, the decision of the board was announced at the end of the oral proceedings.

VII. Claim 1 of the pending **main request** reads as follows:

"Computer-connectable portable memory device (12; 14) that is specifically adapted for storing digital data files for the purpose of transferring the files to other equipment and/or displaying the files and has program code (38) permanently residing therein and causing the device to identify itself when connected to a multi-purpose computer (10), characterised in that said program code (38) causes the device to identify itself as a printer that is adapted to be driven by a printer driver that may permanently be installed on the multi-purpose computer (10)."

Claim 1 of **auxiliary request I** comprises all the features of claim 1 of the main request, with the additional phrase "wherein the memory device (12;14) identifying itself as a printer does not depend on a printer driver".

Claim 1 of **auxiliary request II** is identical to claim 1 of the main request while claim 1 of **auxiliary request III** is identical to claim 1 of auxiliary request I.

Reasons for the Decision

1. The appeal is admissible.

2. MAIN REQUEST

This request, apart from the deletion of two reference signs in claim 1 and the addition of dependent claim 11, corresponds to the set of claims underlying the appealed decision.

2.1 Article 52(1) EPC: Novelty and inventive step

In the board's judgment, claim 1 of this request does not meet the requirements of Article 52(1) EPC in conjunction with Article 54 EPC, for the following reasons:

2.1.1 The board concurs with the finding of the decision under appeal that D1 takes away the novelty of the subject-matter of claim 1, since it discloses all the limiting features of claim 1:

Computer-connectable portable memory device ("USB memory 10") that

a) is specifically adapted for storing digital data files for the purpose of transferring the files to other equipment (see e.g. Fig. 1);

b) has program code ("Installer 106") permanently residing therein ("ROM area 11") and causing the device, when connected to a multi-purpose computer ("user PC 200"), to identify itself as a printer that is adapted to be driven by a printer driver (see paragraphs [0057] and [0076]);

c) wherein the printer driver ("general purpose printer driver 107") may permanently be installed on the multi-purpose computer (see e.g. Fig. 2).

2.1.2 The appellant did not contest that features a) and c) of claim 1 are disclosed in D1. As to feature b), however, the appellant argued in its statement setting out the grounds of appeal and its reply letter dated 20 February 2014 that D1 disclosed merely that the USB memory identified itself as a USB mass storage device to the user PC in order to be able to use the auto-run functionality rather than as a printer device, since only the printer driver stored therein rendered the user PC aware of the fact that a printer was connected.

The board cannot follow this line of argument for basically two reasons. Firstly, D1 in fact teaches that the USB memory, when connected to the user PC, is automatically recognised as a "USB device" and not as a USB mass storage device, as asserted by the appellant (see D1, paragraph [0057]: "... When the user PC 200 detects that the USB memory 10 is connected to the USB port 201 ... the USB memory 10 is automatically recognized as a USB device ..."), and that thereupon an automatic installation of the corresponding printer

driver is performed via the auto-run function executed at the user PC (see D1, paragraph [0076]: "When the user PC 200 detects that the USB memory 10 is connected ... it executes the auto run program that is recorded in the USB memory 10 ... When this auto run program is executed, an installer that contains the general purpose printer driver 107 ... is transferred from the USB memory 10 to the user PC 200 ..."). The board considers that it follows from the above that the user PC must know whether the USB memory qualifies as a "printer device" in order to determine whether or not the automatic installation of a printer driver via the auto-run function should be executed. In other words, the USB memory has to inherently identify itself as a "printer" to the user PC, otherwise it would be pointless to install the respective "printer driver" at the user PC.

Secondly, D1 states several times that the USB memory provides the respective "printing terminal ID 111" to be subsequently used by the user PC for the actual printing process (see e.g. paragraph [0056], penultimate sentence: "... the setting information 109 has the model number 110 and the printing terminal ID 111 recorded" in conjunction with Fig. 1 and paragraph [0065], last sentence: "... the printing application 205 ... references the setting information 109 and includes the printing terminal ID ... in the header of the EMF file"). This implies that the USB memory of D1 provides to the user PC, apart from its model number, an identification item which allows the user PC to use the memory as a printer. Therefore, the board considers that - in the absence of a more specific and solid definition of what is meant by the phrase "to identify itself as a printer" - the USB identification scheme according to D1 falls within the

broad scope of feature b).

2.1.3 In view of the above, all the limiting features of claim 1 are considered to be disclosed in D1 and the subject-matter of claim 1 of this request thus lacks novelty.

2.2 In conclusion, this request is not allowable under Article 54 EPC.

3. AUXILIARY REQUEST I

This request differs from the main request in that claim 1 as amended further specifies that

d) the memory device identifying itself as a printer does not depend on a printer driver.

That amendment was allegedly made to clarify further that it is the memory device itself that identifies itself as a printer rather than the printer driver (cf. statement setting out the grounds of appeal, page 5, first paragraph).

3.1 Article 123(2) EPC

3.1.1 As the basis for feature d), the appellant provided Fig. 3 in conjunction with page 9, lines 16-19 (" ... the memory stick is plugged into the USB socket 18 of the laptop 10, and the log-on data in the ROM assure that the laptop will recognise the memory stick as a specific type of printer ...") and page 9, line 32 to page 10, line 3 ("... it is checked ... whether a printer driver for the specific type of printer, as which the memory stick 12 has identified itself, has been installed already on the hard disk of the laptop 10 ... the memory stick 12 is selected as

default printer") of the original application (cf. statement setting out the grounds of appeal) and argued that feature d) implied that the identification process was independent of a printer driver (cf. appellant's reply letter dated 20 February 2014).

3.1.2 The board holds, however, that neither from the above basis nor from the whole disclosure of the application as filed can it be directly and unambiguously derived that the identification process is necessarily independent of a printer driver as purportedly required by feature d).

3.2 In conclusion, this request is not allowable under Article 123(2) EPC.

4. AUXILIARY REQUESTS II and III

These two requests differ from the main request or auxiliary request I only in that dependent claim 11 has been removed. Consequently, they are also not allowable under Article 54 EPC or Article 123(2) EPC respectively.

5. *Non-attendance at oral proceedings*

In the present case, the appellant decided not to attend the scheduled oral proceedings before the board and withdrew its request for them (cf. point V above). Pursuant to Article 15(3) RPBA, the board is not obliged to delay any step in the appeal proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

The board reconsidered and maintained the objections raised in its communication under Article 15(1) RPBA to the pending requests, taking into account the appellant's submissions made with its reply letter of 20 February 2014, and was in a position to take a decision at the end of the oral proceedings in the exercise of its discretion pursuant to Article 15(3) RPBA.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz A. Ritzka

Decision electronically authenticated