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Datasheet for the decision of 22 June 2018

Case Number: T 0022/14 - 3.5.03

Application Number: 02759376.3

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IPC: H04B15/00, G06F1/00

Language of the proceedings: EN

Title of invention:
Test enabled application execution

Applicant:
QUALCOMM INCORPORATED

Headword:
Test enabled application execution/QUALCOMM

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
Novelty - (no)
Inventive step - (no)

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Beschwerdekammern

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Case Number: T 0022/14 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 22 June 2018

Appellant: (Applicant)	QUALCOMM INCORPORATED 5775 Morehouse Drive San Diego, CA 92121 (US)
Representative:	Tomkins & Co 5 Dartmouth Road Dublin 6 (IE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 8 July 2013 refusing European patent application No. 02759376.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	F. van der Voort
Members:	A. Madenach
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 02759376.3, published as WO 03/017053 A2, on the grounds that claim 1 of each of a main request, a first auxiliary request and a second auxiliary request contained subject-matter which extended beyond the application as originally filed (Article 123(2) EPC) and that the subject-matter of claim 1 of a third auxiliary request did not involve an inventive step (Articles 52(1) and 56 EPC) having regard to

D1: EP 1 016 960 A1

and the common general knowledge of a person skilled in the art.

II. In its statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims of a main request, a first auxiliary request or a second auxiliary request, the main request and the first auxiliary request being the same as the corresponding requests before the examining division and the second auxiliary request being the same as the third auxiliary request before the examining division. As an auxiliary measure, oral proceedings were requested.

III. In a communication pursuant to Article 15(1) RPBA accompanying a summons to oral proceedings, the board gave its preliminary opinion, inter alia, that the subject-matter of independent claim 19 of the main request did not appear to be new (Articles 52(1) and 54 EPC) or at least did not appear to involve an inventive step having regard to the disclosure of D1 (Articles

52(1) and 56 EPC). Further, the appellant was informed that the same reasons applied to the first auxiliary request, claim 11 of which is identical to claim 19 of the main request, and to independent claim 12 of the second auxiliary request.

IV. No substantive reply to the board's communication was received. With a letter dated 21 June 2018, the appellant informed the board that its representative would not be attending the scheduled oral proceedings.

V. Oral proceedings took place on 22 June 2018 in the absence of the appellant. The board duly considered the appellant's requests submitted in writing (see point II above). At the end of the oral proceedings, after due deliberation, the chairman announced the board's decision.

VI. Claim 19 of the main request and claim 11 of the first auxiliary request read as follows:

"A method for managing application independent permissions, comprising:
storing profile information (905) related to a wireless device;
receiving a request by an entity for a test permission for the wireless device, the test permission being associated with the wireless device but not a specific application;
assigning the test permission for the wireless device; and
transmitting (915) the test permission to the wireless device."

Claim 12 of the second auxiliary request reads as follows:

"A method for managing permissions for designating wireless devices as test wireless devices authorised to test applications independent of whether they have been certified to be run on a network, the method comprising:
storing profile information related to a wireless device;
receiving a request by an entity for a permission for the wireless device;
assigning the permission for the wireless device; and
transmitting (915) the permission to the wireless device."

Reasons for the Decision

1. *Main request, claim 19, and first auxiliary request, claim 11: novelty and inventive step (Articles 52(1), 54 and 56 EPC)*

1.1 Regarding claim 19 of the main request, the board notes that the term "test permission" has no well-defined meaning in the art. The board considers that a permission to execute an application may be considered as a "test permission", since only by executing it, the application can ultimately be tested.

1.2 D1, which is considered to represent the closest prior art, discloses an information processing device, e.g. a game device 1 (Fig. 1 and paragraph [0069]), which includes an information recording medium which may be a wireless communication medium (column 3, lines 27 to 30, and paragraphs [0019] and [0020]), the device thus constituting a "wireless device" using the terminology

of claim 1. Game software, which is understood as an "application" in the terminology of claim 1, is stored on the information recording medium and may be inserted into the game device (paragraph [0068] and the summary). According to D1, license information, which may be understood as being part of a "test permission" in the language of claim 1, is written into a back-up memory 4 from a host terminal 6 of a licenser (column 12, line 55, to column 13, line 2). This license information is determined by the identity of the game device and the identity of the application (column 12, lines 17 to 28) and is therefore associated with the wireless device.

Further, according to D1, identification information of the game device, which is understood to correspond to "profile information ... related to the wireless device", is stored (column 10, lines 18 to 22). The user of the game device requests a license from a licenser (column 12, lines 21 to 24), which the user eventually receives (column 12, lines 32 to 34). Hence, using the terminology of claim 19, a request by an entity (the user) is received for a test permission for the wireless device. Since this permission is based on the identification information of the game device, it is associated with the game device. Further, the permission is assigned to and transmitted to the game device (column 12, lines 41 to 51).

1.3 The board understands the term "application **independent** permissions" in claim 19 to be further defined as a "test permission being associated with the wireless device **but not** a specific application" (emphasis by the board). Considering the term "test permission" as a generic term which may comprise several licenses, which, according to D1, are each determined by the

identity of the game device and the identity of the respective game software, a test permission is associated with the wireless device, since there is only one, namely the game device, but not with a specific application. In D1, there can be several game software items and the permission, which as a generic term comprises several licenses which are individually associated with an application, is itself not associated with a specific application but with several applications.

1.4 In view of the above, the board concludes that the subject-matter of claim 19 of the main request and, for the same reasons, claim 11 of the first auxiliary request is not novel having regard to the disclosure of D1 (Article 52(1) and 54 EPC).

1.5 For the sake of argument, if it were accepted, as argued by the appellant, that the lack of association between the wireless device and the application is to be understood in the sense that the permission lacks an association with specific applications, the claimed subject-matter would have been obvious to a person skilled in the art when starting out from D1 for the following reasons.

The problem to be solved by this feature could be seen in reducing the amount of license information. This problem of potentially large amounts of license information is already mentioned in D1 (column 12, lines 50 to 55). A solution by bundling license information for a given application, whereby it remains specific for a wireless device but is no longer specific for an application, would then be straight-forward and, hence, obvious to the skilled person using common general knowledge.

The subject-matter of claim 19 of the main request and of claim 11 of the first auxiliary request would therefore not involve an inventive step having regard to the disclosure of D1 and taking into account the common general knowledge of a person skilled in the art (Articles 52(1) and 56 EPC).

1.6 For the above reasons, the main request and the first auxiliary request are not allowable.

2. Second auxiliary request, claim 12: novelty and inventive step (Articles 52(1), 54 and 56 EPC)

2.1 The board notes that, analogous to the term "test permission" (see point 1.1 above), the term "test wireless device" is not well-defined in the art and is in fact considered as applicable to any wireless device. Likewise, testing an application is considered to include running the application, since this ultimately allows its testing.

2.2 The subject-matter of independent claim 12 of the second auxiliary request differs from that of claim 19 of the main request essentially in that the term "application independent permissions" has been replaced by "permissions for designating wireless devices as test wireless devices authorised to test applications independent of whether they have been certified to be run on a network", in that the feature that the test permission is not associated with a specific application has been cancelled, and in that the term "test permission" has been replaced by "permission".

With respect to the first amendment, the board notes that the game device of D1 has an optional network

connection (paragraph [0020]). Hence, the game device, which has been licensed to execute a given game software and, hence, is authorised to test the game software, is authorised to do so independently of whether the game software has been certified to be run on a network.

The further amendments result in a broader scope of the claimed subject-matter as compared to claim 19 of the main request. Hence, the reasons given in point 1 apply mutatis mutandis in this respect.

2.3 The appellant's arguments essentially give importance to the distinction between general wireless devices, which are only allowed to execute certified applications, and test wireless devices, which are allowed to execute any application. This distinction is, however, not reflected in the wording of claim 12, which encompasses that a wireless device which is authorised and, hence, licensed to execute and therefore test applications independently of whether the applications have been certified to be run on a network, as in D1, is a test wireless device.

2.4 In view of the above and the reasons given in point 1, the board concludes that the subject-matter of claim 12 of the second auxiliary request is not novel having regard to the disclosure of D1 (Article 52(1) and 54 EPC) and would at least not involve an inventive step having regard to the disclosure of D1 and taking into account the common general knowledge of the person skilled in the art (Articles 52(1) and 56 EPC).

3. Since none of the requests is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Rauh F. van der Voort

Decision electronically authenticated