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**Datasheet for the decision  
of 7 June 2017**

**Case Number:** T 1265/14 - 3.5.06

**Application Number:** 08761345.1

**Publication Number:** 2165283

**IPC:** G06F21/00

**Language of the proceedings:** EN

**Title of invention:**

METHOD AND DEVICE FOR EXCHANGING DIGITAL CONTENT LICENCES

**Applicant:**

Thomson Licensing

**Headword:**

Licence exchange/THOMSON

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - (no)

**Decisions cited:**

T 1742/12, T 2068/14

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1265/14 - 3.5.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.06**  
**of 7 June 2017**

**Appellant:** Thomson Licensing  
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**Representative:** Huchet, Anne  
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 4 March 2014 refusing European patent application No. 08761345.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

I. The appeal lies against the decision of the examining division, with reasons dispatched on 4 March 2014, to refuse European patent application No. 08 761 345.1 for lack of inventive step over document

D7: WO 2005/093989 A1.

Other documents were also cited but not relied upon in the reasons, in particular:

D6: WO 2006/054988 A2.

II. Notice of appeal was filed on 29 April 2014, the appeal fee being paid on the same day. A statement of grounds of appeal was received on 22 May 2014. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of claims 1-15 as filed on 11 October 2012 and re-filed with the grounds of appeal, the other application documents on file being description pages 1-8 and drawing sheet 1 as published. It also requests that the appeal fee be reimbursed under Rule 103 EPC.

III. In an annex to a summons to oral proceedings, the board informed the appellant of its preliminary opinion that the claimed invention lacked inventive step. Some clarity objections were also raised.

IV. With letter dated 20 February 2017, the appellant requested that the oral proceedings be held as a video conference. With a communication from its registrar dated 24 February 2017, the board rejected this request.

V. With a letter dated 5 May 2017, the appellant filed amended claims 1-14 and gave arguments why these claims should be considered by the board and why they were clear and established inventive step over the prior art.

VI. Independent claims 1 and 9 read as follows:

"1. A method of exchanging a first license (L1) needed to access a first item of digital content (S1) against a second license (L2) needed to access a second item of digital content (S2) in a Digital Rights Management system, the method comprising, at a first device (10) storing the first license, the steps of:

- rendering (204) the first license (L1) unusable to the first device (10) so that the first license (L1) cannot be used by the first device (10) to access the first item of digital content (S1);

- sending (210) the first license (L1') to the second device (20);

- receiving (216) the second license (L2) from a second device (20);

- after reception of the second license, verifying that the first license has been rendered unusable to the first device (10); and

- if the first license (L1) has been rendered unusable to the first device (10):

- erasing (224) the first license (L1); and

- making (226) the second license (L2) usable by the first device (10).

9. A first device for exchanging a first license (L1) needed to access a first item of digital content (S1) against a second license (L2) needed to access a second item of digital content (S2) in a Digital Rights Management system, the first device comprising:

- a memory (11) adapted to store a plurality of licenses;
- an interface (13) adapted to:
  - receive the second license (L2) from a second device (20); and
  - send the first license (L1') to the second device (20); and
- a processor (12) adapted to:
  - render the first license (L1) unusable to the first device (10) so that the first license (L1) cannot be used by the first device (10) to access the first item of digital content (S1);
  - after reception of the second license, verify that the first license has been rendered unusable to the first device (10); and
  - in case of positive verification:
    - erase (224) the first license (L1) from the memory (11); and
    - make the second license (L2) usable by the first device (10)."

VII. With a further letter dated 19 May 2017, the appellant indicated that it would not be attending the oral proceedings and requested a decision on the basis of the written submissions.

VIII. On 7 June 2017, the oral proceedings were held in the absence of the appellant. At their end, the chairman announced the board's decision.

## **Reasons for the Decision**

### *Oral proceedings as a video conference*

1. The appellant requested that the oral proceedings be held as a video conference. It did not, however,

provide any specific reason for its request. With its communication of 24 February 2017, the board pointed out that, under these circumstances, it could not grant the request, for the same reasons as those given in its earlier decision T 2068/14 (see reasons 1.2.5, last three sentences). The appellant did not provide further arguments on this point.

*Oral proceedings in a party's absence*

2. The appellant was duly summoned but chose not to attend the oral proceedings. According to Article 15(3) RPBA the board is not obliged to delay any step in the 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 following reasons are based on the board's preliminary opinion as set out in the annex of the summons to oral proceedings, taking into account the appellant's response of 5 May 2017.

*The invention*

3. The application relates to a digital rights management (DRM) system and considers the situation that two users may want to exchange licences, and with them the right to use two pieces of digital content. For instance, if A and B hold licences to play songs a and b, respectively, they may want to exchange their licences so that A can play song b and B can play song a. The invention is meant to solve the problem of enabling a fair exchange of that kind without requiring a third party (see page 1, paragraph 4, to page 2, paragraph 2).

- 3.1 A message exchange between A and B is depicted in figure 1. From the perspective of A, a licence is sent (L1) and another one is received (L2; see figure 1, Export/Receive). It is then determined whether it is "OK to import" the received licence, by establishing for instance that at least one licence is locally marked as "exported" (figure 1, item 222, page 7, paragraph 2). If this is the case, the exported licence is erased and replaced by the received one (figure 1, items 224 and 226). Thereafter the song corresponding to the old licence is sent, and the one corresponding to the new one is received (items 240 and 248). At B, the same algorithm is carried out.
- 3.2 Independent claims 1 and 9 specify steps meant to characterise this algorithm (and the means supporting them), but they relate to only one side of the exchange protocol.

*The prior art*

4. D6 discloses a DRM system that allows peer-to-peer transfer of licences between users. It is disclosed that the sender will have his local licence "revoked", "marked as expired" or temporarily "disabled" and the recipient will have a new, identical licence generated (see paragraphs 86 to 89, 107). D6 also discloses the use of an escrow service or other third party if the licence transfer requires a payment (paragraph 91).
5. D7 also discloses a system for transferring digital licences between users (see abstract). If a user has been requested to transfer certain rights and is willing to do so, he/she will disable his/her rights by setting a corresponding "first status indication to indicate that it is no longer entitled to exercise the



rights" and then have the rights transferred. The requesting user will in turn, when receiving the rights, set a "second status indication to indicate that it is henceforth entitled to exercise the rights".

*Article 11 RPBA*

6. The appellant states that the "application was not handled as stipulated in the Guidelines (in particular concerning the business problem)" and, for this reason, requests reimbursement of the appeal fee (see the grounds of appeal, page 6, paragraph 2).
- 6.1 The board understands the appellant's argument as follows: the examining division was wrong to consider D7 as the "closest prior art". D6 being a "closer prior art document than D7", *inter alia* because D6 (and not D7) solved the "business problem" identified by the examining division, namely "how to pay for a licence with another licence", the problem-solution approach required the examining division to start the inventive step assessment from D6 (see grounds of appeal, page 2, lines 1-8, and page 3, penultimate paragraph). By choosing D7 instead, the examining division had not applied the problem-solution approach properly.
- 6.2 The board disagrees with the appellant that the choice of D7 instead of D6 as the starting point for assessing inventive step was a fundamental deficiency in the first-instance proceedings, Article 11 RPBA; rather, it considers that this choice did not need any particular justification (see T 1742/12, reasons 6.6, 8 and 9). The fact that D6 solves the cited business problem does not alter this finding.

6.3 Therefore, the board decided not to remit the case to the examining division under Article 11 RPBA without assessing of its merits.

*Clarity, Article 84 EPC, and claim construction*

7. Claims 1 and 9 refer to "licence[s]" which are "needed to access [...] item[s] of digital content" for "item[s] of digital content in a Digital Rights Management system". For the purpose of this decision, the board interprets this as meaning that the DRM system as a whole grants a device access to an item of digital content if and only if that device can produce a suitable licence. The board however notes that the claims are not concerned with an actual access request, the authentication of a licence or the acts of granting or denying access. This leaves open, for instance, whether the first device is involved in performing the access control.

8. Claims 1 and 9 specify that an existing licence may be "rendered unusable" and "ma[de] usable" for individual devices but do not explain what this means.

8.1 In the board's view, the skilled person would understand that a licence may, irrespective of its content, be activated or deactivated (rendering it "usable" or "unusable", respectively) by setting or clearing a flag in a suitable place. However, such a flag has no meaning or effect unless it is read and respected. The board notes that the claims do not specify suitable steps or means and is not convinced by the appellant's argument that they are "implicit" in the claim language (see the grounds of appeal, page 3, comments on "Section 8").

- 8.2 The board also notes that the claims leave open whether the first device is free to activate, deactivate or reactivate a licence. In particular, it is unspecified whether the first device could "make usable" a licence after it has made it unusable or, if not, how this rule would be enforced. Moreover: if a licence rendered unusable *could* be rendered usable again, it would be unclear how, if at all, the duplication of licences is avoided. If, however, a licence *could not* be made usable again, the separation of making unusable and erasing does not "help ensure" that a licence is not lost, contrary to the appellant's assertion (see the appellant's letter of 5 May 2017, page 7, paragraph 1, and point 14 below).
9. For the purposes of this decision, the board leaves these issues open, as the claims are clear enough to allow an inventive-step assessment.
10. Claim 1 specifies a step of rendering a first licence unusable and, separately, a number of steps taking place *after* receiving the second licence and *on the condition that* the first licence has been rendered unusable. The same applies to the steps carried out by the processor in claim 9.
- 10.1 The skilled person would understand that this is only reasonable if the two steps could take place in any order. Otherwise, checking whether the first licence had been made unusable would be entirely redundant.
- 10.2 The board also notes that claim 9 contains no provision that would guarantee that the second licence is received only after the first licence has been rendered unusable. Although figure 1 depicts a situation in which both licences are sent ("exported") before either

of them is received, the claims do not specify any synchronisation steps or means suitable to guarantee this. In the board's judgement, therefore, the skilled person would understand that the new ("second") licence might be received before the old ("first") licence was rendered unusable and/or sent. The mentioned condition is thus needed to guarantee that the first device does not end up having two usable licences.

- 10.3 In summary, the board takes the view that the skilled person would interpret the claims as leaving open the order of the claimed steps, except, of course, for the conditionally executed ones.

*Effects of the claimed invention*

11. The appellant, asserting that the invention achieves some sort of fairness and security, appears to assume that both devices run the same algorithm. However, claims 1 and 9 are limited to one side of the licence exchange. Thus, fairness as a symmetric concept cannot be guaranteed.
- 11.1 The appellant argues against that view by pointing out that the first device has not much to gain because it must give up the first licence before being able to use the second one (see letter of 5 May 2017, page 5, comments re "Section 11").
- 11.2 Nothing in the claims however obliges the *second device* to give up its second licence before making usable the first licence received from the first device. Likewise, the claims imply no guarantee that the first device will actually receive a second licence in exchange for its first licence rendered unusable and sent to the second device. Hence, the invention as claimed does not

exclude the possibility that the second device ends up having both licences and/or that the first device ends up having none.

*Inventive step*

12. Although the board considers both D6 and D7 to be suitable starting points for assessing inventive step, it prefers an assessment starting from any known DRM system in which clients need local licences in order to use associated digital content. The board takes it that such systems are known, for instance from D7, but also as acknowledged by the description itself (see page 2, paragraph 3). The appellant did not challenge the board on this point.
- 12.1 The board takes the view that in such systems the desire for two users (A and B) to exchange content would naturally arise (see also the description, page 1, paragraph 4, and page 2, paragraph 3). The board further considers that the DRM context would immediately imply the exchange of licences (a and b). It is an economic requirement that the exchange should be carried out in a fair manner, in that both parties to the exchange must receive a licence for the one they give away, and the licences must not be duplicated, i.e. a transferred licence must no longer be used by the sender.
- 12.2 The appellant argues (see grounds of appeal, page 4, paragraph 3) that the skilled person would inevitably solve this problem by involving a third party such as an escrow service. The board disagrees. The description itself states that the skilled person would appreciate the advantage of not involving a third party (page 2,

paragraph 2) and D6 refers to "peer-to-peer licence transfer" next to the idea of "two people agree[ing] to exchange rights" (see paragraph 107). Moreover, the board notes that it is *a priori* simpler to exchange goods directly and without a third party.

12.3 The board therefore considers that the skilled person would not need to exercise inventive skill to consider a peer-to-peer implementation of a licence exchange.

12.4 In any peer-to-peer protocol for the exchange of digital objects, whatever they are, A must carry out the following steps:

A sends a to B  
A receives b from B

Since digital objects do not automatically disappear when sent, the fairness requirement also implies the need for the following step:

A makes a unusable

13. Claims 1 and 9 specify the following actions on the part of A:

1. A makes a unusable
2. A sends a to B
3. A receives b from B
4. If b has been received and  
if a has been made unusable then
  - 4a. A erases a
  - 4b. A makes b usable

13.1 Over the above-mentioned steps (point 12.4), this adds steps 4, 4a and 4b, i.e. that

(i) a is erased only after b has been received and after a has been made unusable, and

(ii) b is made usable only after b has been received and after a has been made unusable.

14. Re (i) Erasing an unusable licence has the effect of freeing the memory space filled by an unusable licence. This is, as the decision has correctly found, an obvious matter of memory management (see reasons 12.5). If the operations of making unusable and erasing are distinguished, it is evident that the former must precede the latter. One effect of providing two operations, namely making a licence unusable and erasing it, rather than a single one, namely erasing a licence and *ipso facto* making it unusable, is that licence management and memory management are separated from each other. The board considers this to be an obvious issue of modular programming technique. The appellant argues that erasing a only after b has been received helps ensure that a is not "lost" if b is not received (see letter of 5 May 2017, page 7, paragraph 1). The board does not agree, because the claims do not refer to the situation that b is not received, let alone specify what happens if this situation arises. The board therefore considers that carrying out the memory management as late as possible is merely one obvious option.

15. Re (ii) Whether licence b is directly "usable" by A or needs modification to be usable by A depends on unspecified details of the DRM system in place. A typical and well-known type of licences binds authorized users to the users' rights. In a DRM system based on such licences, it is evident that transferred rights must be re-bound to the new user, i.e. that b be

made usable for A. It is self-evident that b can only be manipulated after it has been received. That b is made usable for A only after a has been made unusable makes sure that A never holds more than one "usable" licence. This is, in the board's judgement, not a technical effect but an economic one, and thus according to the established jurisprudence of the boards of appeal cannot contribute to inventive step.

- 15.1 In summary, the board concludes that the claimed algorithm is an obvious implementation of an exchange of licences, and that claims 1 and 9 therefore lack inventive step over a generic DRM system in view of common knowledge in the art.

*Reimbursement of the appeal fee*

16. The board considers that the choice of D7 rather than D6 as "closest prior art" was not a substantial procedural violation, for the reason given above (see point 4.2) and because this choice, even if wrong, could only constitute an error in substance. For this reason, and because the appeal is not allowed, reimbursement of the appeal fee is impossible, Rule 103(1)a) EPC.



**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



B. Atienza Vivancos

W. Sekretaruk

Decision electronically authenticated