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**Datasheet for the decision
of 26 September 2017**

Case Number: T 0535/15 - 3.5.06

Application Number: 10152200.1

Publication Number: 2219128

IPC: G06F21/00, H04N7/00

Language of the proceedings: EN

Title of invention:

Systems and methods for signaling content rights through
release windows life cycle

Applicant:

Comcast Cable Communications, LLC

Headword:

Release windows/COMCAST

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - all requests (no)

Decisions cited:

T 2068/14

Catchword:



Beschwerdekammern
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Case Number: T 0535/15 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 26 September 2017

Appellant: Comcast Cable Communications, LLC
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Representative: Jaeger, Michael David
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 31 October 2014
refusing European patent application No.
10152200.1 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman W. Sekretaruk
Members: M. Müller
A. Teale

Summary of Facts and Submissions

- I. The appeal lies against the decision of the examining division, with reasons dispatched on 31 October 2014, to refuse European patent application No. 10 152 200.1 for lack of inventive step over the document
- D2: WO 02/06931 A2.
- II. A notice of appeal was filed on 21 November 2014, the appeal fee being paid on the same day. A statement of grounds of appeal was received on 26 February 2015. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims according to a main request and one of two auxiliary requests, as filed with the grounds of appeal, in combination with the description and drawings as originally filed.
- III. In an annex to a summons to oral proceedings dated 28 March 2017 the board informed the appellant of its preliminary opinion that claim 1 of all requests lacked inventive step over D2. Two clarity issues were also raised.
- IV. In a letter dated 2 August 2017, the appellant requested that the oral proceedings be held by video conference. The registry responded on the board's behalf, in a letter dated 4 August 2017, that it could not allow the request at that point absent specific reasons. Reference was made to the board's earlier decision T 2068/14.
- V. With a letter dated 25 August 2017, the appellant filed amended claims 1-15 according to a main request or one of four auxiliary requests.

Claim 1 of the main request reads as follows:

"A computer-implemented method comprising:
determining first usage rights for content during a first content release window;
determining second usage rights for the content during a second content release window that occurs after the first content release window; and
marking, by a processor, the content, prior to the first content release window, with a single data structure that comprises the first usage rights and the second usage rights."

Claim 1 of auxiliary request 1 is identical to that of the main request, except that "determining" is replaced by "receiving".

Claim 1 of auxiliary request 2 differs from that of auxiliary request 1 in that the "marking" is specified to concern the "content file" rather than just the "content" and that the following phrase has been added at the end:

"... wherein the first usage rights control how the content is used by a playback device during the first content release window and the second usage rights control how the content is used by the playback device during the second content release window."

Claim 1 of auxiliary request 3 differs from that of auxiliary request 2 in that this last passage now reads as follows:

"... wherein one of the first usage rights and the second usage rights are applied by a playback device based on whether a current release window corresponds

to one of the first content release window and the second content release window."

Claim 1 of auxiliary request 4 differs from that of auxiliary request 3 in that this last passage now reads as follows:

"... determining, based on which of the first content release window and the second content release window corresponds to a current content release window, which of the first usage rights and the second usage rights are current usage rights; and
controlling playback of the content in accordance with the current usage rights."

All requests also contain two further independent claims 6 and 11, the wording of which corresponds to that of independent method claim 1.

Claims 6 and 11 of the main request and auxiliary requests 1 to 3 specify, respectively, a "computer-readable medium storing computer-executable instructions that, when executed, cause a computing device to perform a method" and an "apparatus, comprising: at least one processor; and memory storing computer-executable instructions that, when executed by the at least one processor, cause the apparatus to [...]". In contrast, claims 6 and 11 of auxiliary request 4 specify, respectively, "computer-readable media storing computer-executable instructions that, when executed, cause one or more computing devices to perform a method" and a "system, comprising one or more processors; and memory storing computer-executable instructions that, when executed by the one or more

processors, cause the system to [...]" (emphasis by the board).

- VI. With a further letter, dated 25 September 2017, the appellant informed the board that it would not be attending the oral proceedings.
- VII. Oral proceedings were held in the absence of the appellant on 26 September 2017. At their conclusion, the chairman announced the board's decision.

Reasons for the Decision

The invention and the prior art

- 1. The application relates to the automated control of usage of digital content in a digital rights management system. More specifically, the application is concerned with content which is released under different conditions of use during different periods of time, called "release windows". As a typical example, the application describes the release of a movie first in theaters (cinemas), then for download as video-on-demand and then on DVD (see paragraphs 1 and 2, and figure 1). The conditions of use may therefore specify on which "playback devices" the content can be used, but also whether copy or quality restrictions apply (see e.g. paragraphs 17 and 23).
- 2. The invention proposes that a single piece of content may be "marked" simultaneously with the rights applying in different release windows (see paragraph 21). A "rights encoder" may be used which produces a "single data structure" containing several rights. "Marking" is

disclosed as having a broad range of meanings. Marked content may "include" the usage rights, for instance in a header of the content file or in a watermark, but marking may also mean "associating a license with the content" (*loc. cit.*) or refer to "other security mechanisms".

3. D2 relates to a digital rights management system using a central digital rights database managed by what is called a "global rights manager unit" (see figure 3, nos. 312 and 340, and page 23). D2 also discloses that digital content (such as video, audio, or text; see page 57, line 1) may be "packaged" with a "local digital rights database" and a "personal rights manager module" (see figure 4, nos. 412 and 414, and page 25, last paragraph) or "wrapped" with a "digital rights database file" (see figure 18, no. 1825, and the paragraph bridging pages 56 and 57). When a computer user attempts to "manipulate" some content (e.g. view or listen to, i.e. playback; see page 23, line 8), it may have to be verified that the device is so authorized (page 57, paragraph 3). D2 further discloses that rights may be valid for limited periods of time (see page 23, lines 25-28) and may thus "expire". Accordingly, one user may no longer be able to "manipulate the particular copy of the digital content", while usage may remain possible at another computer device or by another end-user (page 28, paragraph 2).

Clarity and claim construction

4. Claim 1 of the main requests specifies that the digital rights are "determin[ed]" - as opposed to claims 6 and 11 which specify that the rights are "received". As the board understands the invention, in accordance with

the application, the usage rights are normally fixed by a person, for instance the content owner, rather than being generated or "determined" by the system. From the perspective of the DRM system, the rights will be "receiv[ed]" as user input. The board takes it that "determining" and "receiving" must be construed as being equivalent.

5. All independent claims refer to "content" being "marked" with a "data structure that comprises [...] usage rights". What it means, however, to "mark" content with that data structure is unclear. Paragraph 21 of the application discloses that "marking content may include inserting the usage rights into a header file, watermarking the content, associating a license with the content or any other security mechanism that may be used to control the use of content". The board takes the view that, on this basis, the skilled person would interpret the mentioned phrase broadly to mean that a data structure containing the relevant rights is accessible from the content but not necessarily stored in the same place as the content file.

Inventive step

6. The independent claims of the main request and auxiliary request 1 specify no more than that some "content" is "marked" with a "single data structure" comprising first and second usage rights.
 - 6.1 The board appreciates that usage rights, as claimed in the context of digital rights management systems, are meant to be automatically enforced by a "playback device" or other clients which prohibits access to content unless the associated rights authorise it.

However, no such playback device, let alone enforcement, is set out in the claim.

- 6.2 *Per se*, the usage rights merely reflect conditions in the contractual agreement between the content (and rights) provider and the end-user. For instance, a *priori* a playback device might simply ignore the usage rights or merely display them as "legal advice" to end-users so that they can, after expiry of the usage rights, stop using the content or effect a payment. In the board's view, however, no technical effect can be attributed to the usage rights based on an assumption of what a playback device or a user might do.
- 6.3 Otherwise, "marking" content with rights applying to that content makes the rights accessible from the content (see point 5 above). This effect does not, however, depend on the intended meaning of the usage rights, but it would occur for any kind of metadata with which content might be marked, for example the address of the author of a novel, the cast of a movie, or camera parameters with which a digital image was taken.
- 6.4 The board considers that the idea of "marking" content with metadata is obvious from common knowledge in the art. It might be desirable that metadata be available at the same time as the content, if only to satisfy the user's curiosity. Under these circumstances, the skilled person would, as a usual matter, store the content in association with the relevant metadata, thereby marking the former with the latter. Therefore, claim 1 of the main request and auxiliary request 1 lacks inventive step over common knowledge alone.

6.5 The board also notes that D2 discloses a digital rights management system in which content may be "marked" with digital rights (see figures 4 and 8; see esp. no. 1825), amongst which rights relating to specific time periods. The claimed invention differs from D2 in that content is marked simultaneously with different usage rights, namely "first" and "second" ones relating to first and second "release windows". As argued above, the fact that the marking concerns usage rights does not *per se* have any technical effect. Therefore claim 1 of the main request and auxiliary request 1 lacks inventive step over D2, too.

7. The independent claims of auxiliary request 2 specify that "the usage rights control how the content file is used by a playback device".

7.1 The board accepts that the indicative expression "is used by a playback device" might be taken to suggest that the playback device does something so as to exercise the mentioned "control" and enforce the rights. However, the board takes the view that claim 1 does not *imply* an actual enforcement step at the playback device.

7.2 Firstly, the word "control" does not, in the board's view, unambiguously imply any action. Usage rights may be said to "control" the use just like law may be said to "control" a business, even by merely applying to it.

7.3 Secondly, a broad interpretation of the word "control" is consistent with the application as a whole. For illustration, it is noted that apparatus claim 11, which contains the same amendment, apparently refers to the "usage rights encoder" depicted in figure 1 at the content provider's end and thus to a device separate

from the playback devices at the user's end. Likewise, claim 6 specifies "computer-readable instructions" to be carried out by "a" computing device, which, in view of the description and drawings, would have to be construed as "a single" computing device, namely the mentioned usage rights encoder.

- 7.4 The board thus considers that the only reasonable interpretation of the claims as a whole is that the "control how the content is used at the playback device" is a declaration of purpose rather than an actual step or means of control at the playback device.
- 7.5 The board concludes that the independent claims of the second auxiliary request also lack inventive step over D2 for the reasons given above.
8. The independent claims of auxiliary request 3 specify that "the usage rights are applied by a playback device". In principle, this wording raises the same question as that discussed above. Again, it is not, in the board's view, unambiguously clear that this wording implies any action at the playback device, and, if it did, this would raise a clarity problem with regard to claims 6 and 11 because, as already mentioned, the playback device is not a feature of the apparatus but a separate device.
9. The independent claims of auxiliary request 4 specify a step of "controlling playback of the content in accordance with the current usage rights". The fact that claims 6 and 11 now specifically provide for "one or more" computing devices or processors to carry out the claimed method might be taken to give some more weight to the possible interpretation that control is actually exercised by a playback device. However, none

of the claims specifies such a playback device. Claim 6 allows for "more [than one] computing device[s]" to carry out the method but does not exclude that only "one [...] computer device" does it, and the system of claim 11 is satisfied by a single multiprocessor computer carrying out the method. Hence, the above inventive step assessment also applies to auxiliary request 4.

10. Even assuming, however, that the independent claims implied a playback device which carried out some, if unspecified, enforcement step, this could not establish an inventive step.
- 10.1 D2 discloses (see again figures 4 and 8, esp. no. 1825, and paragraph bridging pages 56 and 57) that digital content is stored together with rights which "define the extent to which the digital content may be manipulated" (for instance viewed, see page 23, line 18) and that a "file protection system" in a computer device "prevents manipulation [...] unless authorization is granted". D2 thus discloses the general setup of a digital rights management system as presently claimed.
- 10.2 D2 also discloses that usage rights might authorize the manipulation of content for a limited period of time, i.e. a "release window". The board agrees with the appellant that D2 does not disclose a single piece of digital content being "marked" simultaneously with usage rights relating to more than one "release window", but it is disclosed that one piece of content may be associated with usage rights applying during different periods of time, at least for different users and, possibly, on different computers.

- 10.3 The board agrees with the examining division that the decision to associate a piece of content with different rights during different "release windows" is, *per se*, a "business decision". The appellant seems to agree (see grounds of appeal, page 6, paragraph 2). The board however agrees with the appellant that the manner in which or the point in time at which a piece of content is "marked" with the content may have technical effects, for instance that mentioned by the appellant (grounds of appeal, page 6, 4th paragraph from the bottom).
- 10.4 Notwithstanding such potential effects, however, the board considers that it is predominantly a matter of convenience for the content owner to mark a piece of content with all pre-determined usage rights at once while the content is still under his control. More specifically, as soon as the usage rights applying to different "release windows" are determined, it would seem to be obvious to "mark" the content with these rights *en bloc*, because it would relieve the content owner from having to manipulate the content files between the release windows.
- 10.5 What should happen at the playback device is entirely determined by the usage rights. If the usage rights are meant to be enforced by the playback device, it is obvious for the playback device to provide means to do so.
11. In response to the board's communication annexed to its summons, the appellant argued as follows (see its letter of 25 August 2017):
- 11.1 The invention solved the objective technical problem of "how to enforce different usage rights, which apply at

different times, for the same content" (see the letter, page 2, paragraph 6). The board disagrees, noting that, as explained above, the independent claims of none of the requests unambiguously implies that enforcement actually takes place.

11.2 The skilled person would not, starting from D2, "remov[e] the central database and, instead, mark the content itself with the first and second data usage rights" (see the letter, page 2, paragraph 7). However, as the board has explained above (point 5), the term "marking" does not exclude the use of a central database". Moreover, D2 itself discloses that the usage rights may be stored with the content (see esp. no. 1825 in figure 8) and hence that, in a broad sense, the content is "marked" with associated usage rights.

11.3 It would "require some level of inventive capacity to modify the playback device of the prior art to control the media content of the present invention" (see the letter, page 2, paragraph 8). The board disagrees, noting that the claims do not go beyond specifying the fact that the playback device enforces the usage rights as intended. The board considers that the desire to automatically enforce the usage rights is an implicit assumption in the field of digital rights management, and it is unable to see that the due adaptation of a prior art playback device would have been anything but straightforward.

11.4 The appellant's argument could thus not sway the board's preliminary opinion.

12. In summary, the board finds that marking a piece of content with usage rights for more than one release window "prior to the first content release window" and

enforcing the rights - in an unspecified manner - at the playback device lacks inventive step, Article 56 EPC, and that, hence, so do the independent claims of all requests on file.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



B. Atienza Vivancos

W. Sekretaruk

Decision electronically authenticated