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Datasheet for the decision of 27 September 2019

Case Number: T 1029/16 - 3.5.07

Application Number: 03778956.7

Publication Number: 1589435

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:
Information processing device, information processing method, and computer program

Applicant:
Sony Corporation

Headword:
Content metadata processing/SONY

Relevant legal provisions:
EPC Art. 56, 84, 113(1), 123(2)
EPC R. 103(1)(a), 111(2)
RPBA Art. 12(4), 13(1), 13(3)

Keyword:

Inventive step - main, first and second auxiliary requests (no)
Amendments - added subject-matter - third auxiliary request (no)
Claims - clarity - third auxiliary request (yes)
Substantial procedural violation - appealed decision sufficiently reasoned (no)
Reimbursement of appeal fee - (yes)
Remittal to department of first instance - (yes)

Decisions cited:

T 0234/86, T 0169/96, T 1105/96, T 0763/04, T 1123/04, T 0852/07, T 1557/07, T 0353/11, T 2366/11, T 1961/13, T 0679/14

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Case Number: T 1029/16 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 27 September 2019

Appellant: (Applicant)	Sony Corporation 1-7-1 Konan Minato-ku Tokyo 108-0075 (JP)
Representative:	D Young & Co LLP 120 Holborn London EC1N 2DY (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 16 November 2015 refusing European patent application No. 03778956.7 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman	R. Moufang
Members:	P. San-Bento Furtado
	M. Jaedicke

Summary of Facts and Submissions

I. The appeal lies from the decision of the Examining Division to refuse European patent application No. 03778956.7, which was filed as international application PCT/JP2003/016085 and published as WO 2004/068354. The application claims priority date of 29 January 2003.

Upon entry into the European phase, the applicant submitted translations of the documents of the international application as originally filed (referred to as the original application in the following) and of the amended claims. Subsequently, with a letter of 3 August 2005, the appellant replaced the claims with a new set of claims to serve as the basis for the supplementary European search report.

II. The application was refused at the end of the oral proceedings on 13 October 2015 on the grounds that the main request and the first auxiliary request did not fulfil the requirements of Articles 84 and 56 EPC. A second auxiliary request submitted at the oral proceedings was not admitted into the proceedings.

In its written reasons for the decision, the Examining Division considered that the subject-matter of the independent claims of the main and first auxiliary requests lacked clarity and inventive step. The facts and submissions mention that the second auxiliary request was not admitted into the proceedings under Rule 137(3) EPC.

The following documents were cited in the contested decision:
D1: US 2003/0004951 A1, published on 2 January 2003;
D2: US 2002/0184223 A1, published on 5 December 2002;

D3: M. H. Jacinto et al.: "Constraint Specification Languages: comparing XCSL, Schematron and XML-Schemas", Proceedings of XML Europe, Barcelona, 2002;

D4: K. Debique et al.: "ContentDirectory:1 Service Template Version 1.01 - For UPnP™ Version 1.0", www.upnp.org/standardizeddcps/documents/ContentDirectory1.0.pdf, 25 June 2002.

In its inventive-step reasoning, the Examining Division took into account the disclosure of document D1, the common general knowledge of the skilled person and notoriously known hierarchical content storage. It considered that some aspects of the claimed invention did not have any technical effect and that similar systems were known in the art, as was disclosed in document D4.

III. With its statement setting out the grounds of appeal, the appellant re-submitted the claims of the main and first auxiliary requests considered in the contested decision and filed amended claims of a second auxiliary request based on the request that was not admitted into the first-instance proceedings.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request or, in the alternative, the first or second auxiliary request. It also requested reimbursement of the appeal fee in the event that the Board considered that a substantial procedural violation had occurred.

The appellant argued that the applicant's right to be heard seemed not to have been met, resulting in a substantial procedural violation. It argued, *inter*

alia, that in the written decision, the reasoning with regard to the main request consisted of passages copied from the communication accompanying the summons to oral proceedings and points 1.2.3, 1.2.4 and 1.3 which merely paraphrased what had been said in that communication. It was not clear that the applicant's arguments had been truly considered by the Examining Division. The written decision had very little in common with what had actually been discussed at the oral proceedings, and appeared to be at least partly (if not entirely) based on issues that were not discussed at the oral proceedings.

IV. In a communication accompanying the summons to oral proceedings, the Board expressed its preliminary view that the applicant's right to be heard had not been fully observed by the Examining Division, contrary to the requirements of Article 113(1) EPC, and that the decision under appeal did not seem to be sufficiently reasoned, in infringement of Rule 111(2) EPC. Those deficiencies amounted to a substantial procedural violation. However, there were special reasons within the meaning of Article 11 RPBA for not remitting the case without dealing with the substantive issues first. That seemed to be in accordance with the appellant's request that a patent be granted on the basis of one of the requests filed with the statement of grounds of appeal.

The Board expressed the preliminary opinion that claim 1 of the main request did not fulfil the requirements of Articles 56, 84 and 123(2) EPC. The subject-matter of claim 1 did not seem to be inventive over document D4 or the prior art acknowledged in the application. Some features of the claim did not make a technical contribution as they related to data

modelling as such. Similar objections seemed to apply to the first auxiliary request. With regard to the second auxiliary request, the Board expressed the opinion that its submission seemed to build a fresh case based on subject-matter which could not have been searched. The Board was inclined not to admit it into the proceedings. The subject-matter of claim 1 of the second auxiliary request did not seem to be inventive over the prior art acknowledged in the application.

V. With a letter dated 23 August 2019, the appellant resubmitted the main and first auxiliary requests, and filed an amended second auxiliary request and a third auxiliary request. It further argued its case.

VI. In a second communication, the Board drew the appellant's attention to some inconsistencies in its submissions and asked for clarification. In a letter of reply, the appellant explained that the claims of the third auxiliary request had been filed in error, and filed a set of claims to replace them.

VII. Oral proceedings were held on 27 September 2019, during which the appellant replaced the third auxiliary request with a new third auxiliary request. At the end of these proceedings, the chairman pronounced the Board's decision.

VIII. As its final requests, the appellant requested that
- the contested decision be set aside,
- a patent be granted on the basis of the main request or, in the alternative, the first or second auxiliary request, all three requests filed with the letter dated 23 August 2019, or the new third auxiliary request filed in the oral proceedings before the Board, and

- the appeal fee be reimbursed.

IX. Claim 1 of the main request reads as follows:

"An information processing apparatus (101) for transmitting content data (S15) in response to a content transmission request from a client, characterized by comprising:

a data transmitting and receiving unit (501) for executing data transmission and reception processing with the client via a network;

a content storage unit (503) for storing content;

a control unit (201) for managing content stored in the content storage unit;

a metadata storage unit (504) for storing metadata;

a property information acquisition unit (505) for extracting property information, said property information being a component of the metadata, from the metadata storage unit; and

a transmission data generation unit (506) for generating data to be transmitted to the client, based on the property information acquired by the property information acquisition unit;

wherein each item of content is defined as an object, and a folder storing a plurality of contents is defined as an object;

a class is defined as information indicating category classification of the object, a plurality of the classes having a hierarchical structure;

the class is set to indicate the category classification to each of the objects; and

a plurality of objects is managed by using a content directory having a hierarchical structure,

the metadata storage unit being configured to store, with respect to each of the objects:

a plurality of property information including identification information of the object;

class information indicating the category classification of the object; and

information relating to the hierarchical structure of the content directory,

the property information acquisition unit being configured to extract the property information of an object included in a designated class in response to a property information acquisition request with class designation from the client received by the data transmitting and receiving unit;

the transmission data generation unit being configured to generate transmission data including:

the property information extracted by the property information acquisition unit; and

information of an allowable value settable as data of the extracted property information, and

the data transmitting and receiving unit being configured to transmit the transmission data generated by the transmission data generation unit to the client."

X. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that:

- the following text was added after "a metadata storage unit (504) for storing metadata": "as attribute information including a range of allowed values associated with the stored content, the metadata including increment information indicating an allowed increment value within the range of allowed values, the range having a maximum value and a minimum value;" and
- the text "information of an allowable value settable as data of the extracted property information" was replaced with:

"the range of allowed values settable as data of the extracted property information, and the increment information and".

XI. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that "identification information" was replaced with "an object identifier".

XII. Claim 1 of the (new) third auxiliary request differs from claim 1 of the main request in that

- after "a property information acquisition unit ... from the metadata storage unit," the following text was added:
  "wherein the property information includes record quality levels corresponding to available bit rates of content";
- "identification information" was replaced with "an object identifier"; and
- at the end of the claim, the text after "the transmission data generation unit being configured to generate transmission data including:" was replaced with the following:
  "the property information extracted by the property information acquisition unit, including the record quality levels, so that the client is able to identify a data quality of the corresponding content for itself; and
  the data transmitting and receiving unit being configured to transmit the transmission data generated by the transmission data generation unit to the client, and subsequently receive a request for the content having the data quality from the client."

XIII. The appellant's arguments, where relevant to this decision, are addressed in detail below.

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

The invention

2. The invention of the present application concerns the transmission of content metadata from a content providing server to a client in order to support metadata update operations and content acquisition and reproduction at the client (see e.g. page 1, lines 6 to 19, of the original application). The content may be, for instance, music or image data (page 2, line 32, to page 3, line 11).

2.1 Content is managed by a hierarchically structured content directory in the server. An object is a data unit processed by the server, e.g. a content item or a folder. Objects are classified into classes, e.g. audio, video and photograph. What properties the metadata should have is defined for each of the classes (page 26, line 2, to page 27, line 3).

2.2 A client may transmit a "property information acquisition request" to the server. In response to the request, the server uses XML (eXtended Markup Language) to generate content property information (e.g. titles and artist names) and "data editing information", and transmits the data to the client. Data editing information may be provided for each piece of property information included in the metadata. It establishes which data update operations are allowed on the property information, for instance that rewrite, addition and deletion of the property information is

enabled, or which input data format or values are allowed, e.g. in the form of a numeric range or a format type (page 28, lines 17 to 29; Figure 4; page 29, line 16, to page 31, line 3; Figure 5; page 31, line 4, to page 35, line 10). The client displays a content list in which the user can identify which editing operations are enabled and which data input is allowed. The user can then update the property data in accordance with the data editing information (page 28, line 30, to page 29, line 10; Figure 7; page 35, line 23, to page 36, line 28). The updated property information is transmitted by the client to the server to be stored in the server's storage unit (Figure 4; page 37, lines 4 to 14).

2.3 In a further embodiment described on page 40, line 9, and following pages, the received property information regarding "compressed data mode" (e.g. ATRAC3, MPEG2, MPEG4) and "record quality level" is used by the client in order to support "reproduction processing". Using that property information, the client identifies the "optimal data mode in which the data can be reproduced" with high quality in its own device in accordance with its coding and decoding processing unit "codec". The determined content data mode (e.g. record quality level=3 and codec=MPEG4) is transmitted to the server and used by the server to select "resource content" data to be transmitted to the client (page 43, line 4, to page 45, line 12, Figure 12).

Main request

3. *Inventive step - claim 1*

3.1 Document D4 discloses the Content Directory Service (CDS), which is a service template compliant with the

UPnP (Universal Plug and Play) Device Architecture (page 5, section 1). The UPnP protocol is also used in embodiments of the present invention (see e.g. the present application, page 1, line 32, to page 4, line 1).

The CDS provides a service to allow a client, e.g. a user interface (UI) device in a home network, to browse the objects stored on a media server, select a specific content object, and cause it to be "played" on the client device (e.g. an audio player for music objects or a TV for video content). The purpose of the CDS is to provide a uniform mechanism for UI devices to browse the content on the server and to obtain detailed information about individual content objects (see D4, page 5, section 1.1, first two paragraphs).

The CDS also provides a lookup/storage service that allows clients to locate (and possibly store) individual objects (e.g. songs, movies, pictures, etc) that the (server) device is capable of providing. For example, this service can be used to enumerate a list of songs stored on an MP3 player. Nearly any type of content can be enumerated. For those devices that contain multiple types of content (e.g. MP3, MPEG2, JPEG, etc), a single instance of the CDS can be used to enumerate all objects, regardless of their type (page 5, section 1.1, last paragraph).

A CDS apparatus/system such as the media server described in document D4 therefore corresponds to an information processing apparatus for transmitting content data in response to a content transmission request from a client, the information processing apparatus comprising a data transmitting and receiving

unit, a content storage unit and a control unit as described in claim 1 of the main request.

In the CDS, content items are defined as objects, each object's characteristics being represented by properties. Objects belong to classes in a class hierarchy. An object's properties include the object's identifier and class as "base properties" (pages 8 to 10, section 2.4). A container corresponds to a plurality of objects representing the physical organisation of the objects or a logical collection (pages 6 and 7, Table 1). The containers disclosed in document D4 are hence used to implement a "folder storing a plurality of contents [...] defined as an object" as specified in claim 1 (see also pages 88 and 89, sections 7.10 to 7.12). As explained on page 36, section 2.8.2, the CDS uses a "physical directory structure on a PC like file system". Document D4 therefore discloses a hierarchical content and storage model based on objects, classes, properties, folders and directories as specified in claim 1.

It also follows from the above that a CDS system according to the disclosure of D4 includes the features of claim 1 describing a metadata storage unit to store metadata with regard to the objects, the metadata including information regarding object identification, class and the hierarchical structure of the content directory.

A CDS system supports several "actions", including *Browse*, *Search* and *UpdateObject* (pages 20 and 21, section 2.7, Table 9). The *Browse* action lets the caller incrementally browse the "native" hierarchy of the content directory objects exposed by the CDS. It

accepts as arguments an *ObjectID* and a *BrowseFlag*. The *ObjectID* refers to the object currently being browsed (which may be a container object, for example). An *ObjectID* of zero corresponds to the root object of the content directory. The *BrowseFlag* specifies a browse option. If it is set to *BrowseMetadata*, the properties of the object specified by *ObjectID* are returned in the result (page 16, section 2.5.6, page 22, section 2.7.4, to page 23, section 2.7.4.2).

Therefore, the CDS system described in document D4 also includes a property information acquisition unit configured to extract property information of an object in response to a request from the client and a transmission data generation unit configured to transmit the extracted property information to the client.

3.2 Therefore, the subject-matter of claim 1 of the main request differs from the CDS apparatus of document D4 in that the transmission data also includes

(i) "information of an allowable value settable as data of the extracted property information".

3.3 At the oral proceedings, the appellant did not contest that feature (i) was the only feature distinguishing the claimed subject-matter from the apparatus of D4. It argued that, given that the client was able to determine locally which values were allowable for a particular field, the number of requests to update information that the server received could be substantially reduced; in addition to this, the number of transmissions by the server to indicate to a client that the requested update was not allowable was also reduced. This could result in a significant reduction

in network traffic, reducing the burden on a server substantially.

At the oral proceedings, the appellant argued that the EPC did not require the problem to be stated as such in the original application, but the passage of the description on page 4, lines 15 to 19, was discussed. This passage describes the trial-and-error type of user interaction in existing UPnP systems, which occurs when the user enters data into a data field. The appellant argued that compared to that prior art, the invention reduced the number of requests sent to the server because the validation was performed at the client, and it reduced the average time between starting editing and committing the changes.

3.4 Since the claim does not define how information (i) is further used, it is questionable whether the feature can be considered to have a technical effect other than providing information to the client.

Nevertheless, the Board agrees that if the claim is interpreted in the light of the description as implying that information (i) is used to support data input validation at the client, feature (i) avoids the communication with the server during user interaction (as explained in the passage of page 4 discussed above), in most cases reducing the time the user has to wait for validation of entered data. In that case, feature (i) solves the problem of reducing the user-feedback latency during data input by the user.

3.5 In the appellant's letter of reply to the Board's preliminary opinion, it argued that there would be no motivation for the skilled person to consider modifying the arrangement of D4 in which a server-side validation

was performed. This was particularly true because document D4 did not disclose the modification of property information, only of tag values. Such a modification would require a redesign of the system including a modification of the entire transmission/ reception process. At the oral proceedings, the appellant argued that nothing prompted the skilled person to change the solution of document D4. The solutions of documents D1 and D4 were different. In document D1 the data was stored and checked at the client.

The Board notes, however, that at the priority date of the present application it was well known that data validation in client-server systems could be done at the client, the server, or both the client and the server (see document D1, paragraphs [0002] to [0005]). The skilled person was familiar with the advantages and disadvantages of those well-known alternatives. Faced with the problem of reducing the user-feedback latency during data input, the skilled person would therefore consider modifying the apparatus of document D4 to perform the validation at the client. In the Board's opinion, such a modification would be within the ordinary skills of the person skilled in the art, independently of which data is to be updated.

Since the Board does not use the specific solutions of document D1 in its inventive-step assessment, and only cites the background section of D1 to support its assertion that client-side validation was commonly known, it is irrelevant whether the solution of document D1 stores the data at the client or not.

3.6 Therefore, the subject-matter of claim 1, even if interpreted in the way suggested by the appellant, does

not involve an inventive step (Articles 52(1) and 56 EPC).

First and second auxiliary requests

4. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that it specifies that:
(a) the metadata is stored as attribute information including a range of allowed values associated with the stored content, the metadata including increment information indicating an allowed increment value within the range of allowed values, the range having a maximum value and a minimum value; and
(b) the generated transmission data includes "the range of allowed values settable as data of the extracted property information, and the increment information".

5. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that "identification information" was replaced with "an object identifier".

6. *Inventive step - claim 1*

6.1 In the statement of grounds of appeal, the appellant argued that the features (a) and (b) solved the problem of "how to provide clients with a means to obtain an appropriate format of content from a server". In its reply and at the oral proceedings, the appellant argued that D4 related to the update of tags, rather than properties, and that none of the values that could be updated in D4 could be represented in the way described in feature (a).

However, features (a) and (b) do not limit the property information and the range of allowed values to any technical parameters of the content format, such as the compressed data mode or quality levels corresponding to bit rates. The property information of claim 1 of the first auxiliary request covers non-technical information such as recording year. Therefore, the property information and the fact that the valid values of the property are within a range which can be represented by a minimum value, a maximum value and an increment as defined in claim 1 of the first auxiliary request cannot be considered technical aspects of the claimed invention which can contribute to an inventive step.

Features (a) and (b) directly correspond to the non-technical requirement of supporting validation of a discrete range property which can be characterised by an increment and minimum and maximum values. That requirement is part of the framework of the technical problem to be solved. For reasons analogous to those given above for the main request, it would be obvious for the skilled person to modify the apparatus of document D4 to perform validation at the client of data entered for such a discrete range property in order to avoid user-feedback latency. The skilled person would thereby arrive at an apparatus according to claim 1 of the first auxiliary request.

6.2 The amended feature "an object identifier" of claim 1 of the second auxiliary request is obvious and known from document D4 (see e.g. page 28, paragraph 2.7.8).

6.3 Therefore, the subject-matter of claim 1 of each of the first and second auxiliary requests is not inventive (Articles 52(1) and 56 EPC).

Third auxiliary request

7. Claim 1 of the third auxiliary request differs from that of the main request in that "identification information" was replaced with "an object identifier" and it specifies that

(c) the property information includes record quality levels corresponding to available bit rates of content;

(d) the transmission data includes the extracted property information including the record quality levels, so that the client is able to identify a data quality of the corresponding content for itself; and

(e) the data transmitting and receiving unit is configured to transmit the generated transmission data to the client, and to subsequently receive a request for the content having the data quality from the client.

8. *Admission into the proceedings*

8.1 According to the additional features of claim 1, the server transmits to the client information regarding the "record quality levels corresponding to available bit rates of content", and receives from the client a request for content having a specific data quality. Claim 1 of the then second auxiliary request which was not admitted by the Examining Division related to similar subject-matter in that it specified that the control unit generated content information including data quality of the content, and that the request for content received from the client included the optimal data quality.

8.2 When exercising its discretion in order to decide whether to admit a request submitted in the appeal proceedings, either with the grounds of appeal (Article 12(4) RPBA) or after that (Article 13(1) and (3) RPBA), the Board should take into account whether the request was admitted into the first-instance proceedings and, if it was not admitted, consider the reasons given by the Examining Division for not admitting that request.

In the present case, however, the decision under appeal is silent about the reasons for not admitting the then second auxiliary request. The only arguments that can be found in the file are those given by individual members of the Examining Division during the oral proceedings (see the minutes, page 3), but those are not part of the final decision of the Examining Division.

8.3 The third auxiliary request was based on the second auxiliary request submitted with the grounds of appeal. The amendments address the objections raised by the Board in its communication pursuant to Article 15(1) RPBA and at the oral proceedings.

The appellant argued that the subject-matter of the third auxiliary request related to the "capability-matching" aspects of the invention which were already covered by searched claim 4. Therefore, no lack of unity could be established, and the subject-matter of the third auxiliary request should be considered as having been searched.

Claim 4 of the set of claims which served as a basis for the European supplementary search report (see section I. above) specifies that if "the property

information extracted by the property information acquisition unit is codec information" then the generated transmission data includes "a plurality [of] pieces of information related to a data compression processing mode as information of the settable allowable value". Even though that claim does not specify that a request for content with a compression mode selected by the client is received (corresponding to feature (e), see point 7 above), the skilled reader understands from the claim that the compression mode/ codec information can be used in a content request according to the invention. In the description, compression modes, codec information and recording quality levels corresponding to bit rates are described essentially on page 40, line 13, to page 43, line 9. That passage discloses that the client can receive recording quality levels, codec information or coding modes of a content that it wants to reproduce, "so that the client can select an optimal data mode in the client device to request the transmission" (paragraph bridging pages 42 and 43). The Board is therefore of the opinion that the subject-matter of the third auxiliary request relates to the same embodiment as searched claim 4, does not diverge from the subject-matter dealt with during examination and does not create a fresh case.

8.4 Those circumstances support the admission of the request into the proceedings, but the Examining Division did not admit into the proceedings the request relating to similar subject-matter and the decision under appeal does not deal with inventive step of that request, not even on a prima facie basis. In order to decide on the questions of novelty and inventive step for the third auxiliary request, the Board would thus

have to consider those questions anew. Under these circumstances, and since the Board's primary role is to review the contested decision, the Board informed the appellant at the oral proceedings that it was inclined to admit the third auxiliary request and remit the case for further prosecution. The appellant agreed with such a remittal.

8.5 In the light of the foregoing, the Board, exercising its discretion under Article 13(1) RPBA, admits the request into the proceedings.

9. *Added subject-matter and clarity - claims 1 and 5*

9.1 The feature "identification information" was objected to for lack of clarity in the contested decision and for added subject-matter in the Board's preliminary opinion. Since the feature has been amended to "an object identifier", the objection of lack of clarity can no longer apply.

An object identifier is disclosed in the description as originally filed, on page 26, lines 22 to 30. Therefore, the objection of added subject-matter has been overcome.

9.2 Claim 1 of the third auxiliary request specifies an information processing apparatus comprising a data transmitting and receiving unit, a content storage unit, a metadata storage unit and a property information acquisition unit as disclosed in the original application, in claim 11 or on page 46, line 16, to page 47, line 28, with reference to Figure 13. The transmission data generation unit of claim 1 is a generalisation of the XML data generating unit of Figure 13. Basis for the generalisation can be

found for example in original claims 11 and 12, which are not restricted to XML data generation. The features of the claim defining each item of content as an object, and specifying a folder, a class, the category classification of an object, a content directory and its hierarchical structure, and property information, are based on page 26, line 1, to page 27, line 3. A "property information acquisition request with class designation" is described for example in original claim 12 and on page 39, lines 1 to 27.

The record quality levels corresponding to available bit rates are disclosed on page 41, lines 6 to 19, with reference to Figure 10. As described on page 40, line 24, to page 41, line 19, and on page 42, line 28, to page 43, line 9, the record quality levels can be extracted at the server as part of the property information and transmitted to the client. Based on that property information, the client may identify the optimal data mode or the record quality level it wants to reproduce and request from the server content having the required data quality.

Therefore, the subject-matter of claim 1 of the third auxiliary request can be directly and unambiguously derived from the original application (Article 123(2) EPC).

9.3 The expression "information of an allowable value settable as data of the extracted property information", which was considered unclear in the decision under appeal and in the Board's preliminary opinion, is no longer used in claim 1 of the third auxiliary request.

The Board does not maintain any of the other objections raised under Article 84 EPC in the decision under appeal.

9.4 Since independent claim 5 specifies a method including features corresponding to those of claim 1, the same reasoning applies to claim 5.

9.5 Therefore, the Board is satisfied that independent claims 1 and 5 of the third auxiliary request fulfil the requirements of Articles 84 and 123(2) EPC.

Procedural violation

10. In its statement of grounds of appeal, the appellant requested reimbursement of the appeal fee by reason of a substantial procedural violation since the applicant's right to be heard had not been observed. The written reasoning of the decision under appeal did not seem to deal with the arguments put forward by the applicant during the oral proceedings.

The appellant argued that according to well-established case law, as could be derived from decisions T 1123/04 of 25 August 2006 and T 852/07 of 25 January 2008, as well as the EPO Guidelines for Examination, the right to be heard was a right to not just present comments but also have those comments duly considered.

In the present case, the decision in respect of the main request seemed to be copied from the summons to oral proceedings dated 8 April 2015. The only three paragraphs concerning the main request which had not been directly copied appeared to be a paraphrased version of what had been said in the summons.

In its written submissions, the applicant had already replied to the arguments raised in the summons. It was hence not clear whether and how the applicant's reply had been considered by the Examining Division.

Hence, the Examining Division had failed to provide adequate reasoning in the decision, contrary to Rule 111 (2) EPC. This was also a substantial procedural violation, as noted by well-established case law including T 353/11 of 16 May 2012, and T 2366/11 of 26 March 2012.

Furthermore, it was clear that the decision had very little in common with what had actually been discussed at the oral proceedings. As was clear from page 1 of the minutes, all of the objections raised by the Examining Division related to determining the technical effect of particular features of the claims and the technical problem that the invention solved. In response to this, the applicant summarised the invention as defined by the claims as well as the objective technical problem solved by the invention. However, it was not clear from the decision how any aspect of this discussion had any correlation whatsoever with the decision, which appeared to have been at least partly (if not entirely) made based on issues that were not discussed at the oral proceedings.

The appellant gave examples of concrete arguments submitted in advance of the oral proceedings with its letter dated 20 July 2015 which allegedly had not been addressed by the Examining Division.

At the oral proceedings, the appellant also argued that the long prosecution time in the present case amounted to a procedural violation.

10.1 According to Rule 111(2) EPC, decisions of the EPO open to appeal must be reasoned. As explained in decision T 679/14 of 19 January 2017, reasons 14, the case law of the Boards of Appeal establishes criteria for substantiating the reasons for decisions (see also Guidelines for Examination, E-X, 1 to 2.11). The reasoning has to enable the appellants and the board of appeal to examine whether the decision was justified or not. A written decision should discuss in detail the facts, evidence and arguments which are essential to the decision, and has to contain the logical chain of reasoning which led to the relevant conclusion. It should be complete and self-contained (T 1123/04, reasons 3.3; T 353/11, reasons 2.3; T 2366/11, reasons 1; T 679/14, reasons 14.1,). If a decision relates to several requests, it must give reasons for the rejection of each one, whether it is unallowable or inadmissible (T 234/86, OJ EPO 1989, 79, reasons 5.10; T 169/96 of 30 July 1996, reasons 4; T 1105/96, OJ EPO 1998, 249, reasons 1).

Whereas the reasons of a decision may, in the interest of procedural economy, refer in appropriate cases to previous communications, it must be clear from the decision which considerations led the Division to its conclusions (T 234/86, reasons 5.10). The fact that preliminary opinions or arguments which may be applicable to these requests have been expressed in previous communications or in the minutes of oral proceedings cannot replace reasons in the decision itself.

Moreover, the right to be heard under Article 113(1) EPC encompasses the right of a party to have its comments considered in the written decision (T 763/04 of 22 June 2007, reasons 4.3 and 4.4;

T 852/07, reasons 2.2; T 1961/13 of 16 September 2014, reasons 4). Although a decision does not have to address each and every argument of a party in detail, it must comment on the crucial points of dispute in order to give the losing party a fair idea of why its submissions were not considered convincing (see decision T 1557/07 of 9 July 2008, reasons 2.6; T 1961/13, reasons 4.1).

10.2 In the present case, the written decision does not provide the Examining Division's reasons for not admitting the second auxiliary request into the proceedings. As explained above, the written decision must give reasons for the rejection of each one of the requests, including those not admitted into the proceedings, in order to enable a judicial review (see also Guidelines for Examination, E-X, 2.11). The minutes of the oral proceedings reproduce arguments given by members of the Examining Division for not admitting the second auxiliary request, but since the written decision does not endorse any of those arguments either by repeating them or by reference, they are not part of the final decision. Failing to justify in the written decision why a request was not admitted into the proceedings infringes Rule 111(2) EPC and amounts to a substantial procedural violation.

10.3 Regarding the main request, the written reasoning of the decision under appeal consists essentially of text copied from the communication accompanying the summons to oral proceedings and three paragraphs of new text, namely points 1.2.3, 1.2.4, and 1.3.5. In points 1.2.3 and 1.2.4 the Examining Division raises clarity objections against further claim expressions, and point 1.3.5 reads "A summary of the above, data is exchanged between systems but no further effect other than

exchange of data is achieved". Thus, none of these three points deals with the applicant's arguments submitted after the summons to oral proceedings.

Similarly, the reasoning for refusing the first auxiliary request does not address the applicant's arguments.

In sum, the written reasoning of the decision under appeal does not deal with any of the arguments that the applicant submitted at the oral proceedings and in its letter dated 20 July 2015 in reply to the summons.

The Examining Division does not have to address every argument of the applicant in detail, but it must comment on the crucial points of dispute.

10.3.1 In the present case, the Examining Division should have addressed the applicant's statements regarding the invention and its advantages reproduced in the minutes of the oral proceedings (page 1, seventh line from bottom to page 2, sixth line), according to which the invention had an impact on network usage. This argument is relevant for the question of whether the invention contributes to a technical effect and, consequently, for inventive step.

10.3.2 According to the minutes, at the oral proceedings before the Examining Division the applicant further argued that document D1 focused on the creation of data, that the system of D1 always sent the same web form and did not allow for choice of content, and that document D1 pointed away from the invention (see page 2, sixth full paragraph). These arguments were not addressed by the Examining Division.

10.4 In the light of the foregoing, the Board agrees with the appellant that its right to be heard was not observed by the Examining Division, contrary to the requirements of Article 113(1) EPC, and that the decision under appeal was not sufficiently reasoned, in infringement of Rule 111(2) EPC. Those deficiencies amount to a substantial procedural violation.

11. In view of the outcome of the present appeal given below, the Board does not have to decide whether, as argued by the appellant, the long duration of the proceedings before the Examining Division also constituted a substantial procedural violation.

Remittal and reimbursement of the appeal fee

12. The main request and the first and second auxiliary requests are not allowable.

With respect to the third auxiliary request, the independent claims fulfil the requirements of Articles 84 and 123(2) EPC. For the reasons given in point 8.4 above, the Board does not have a basis for assessing inventive step.

13. Under these circumstances, the Board finds it appropriate to remit the case to the department of first instance for further prosecution pursuant to Article 11 RPBA. Given the long duration of the proceedings thus far, the remitted case should be dealt with expeditiously.

14. According to the established case law, the infringement of the right to be heard and the failure to provide adequate reasoning in a decision are normally considered to be substantial procedural violations

justifying the reimbursement of the appeal fee (see Case Law of the Boards of Appeal, 9th edition 2019, V.A.9.5.8 and 9.5.9).

In the present case, the appellant had to appeal in order to assert its rights to be heard and to be informed of the full reasons for rejecting its requests. In view of the deficient reasoning of the decision under appeal, the Board was not in a position to take into account the grounds for not admitting the then second auxiliary request nor to assess inventive step with regard to the third auxiliary request.

Due to the need to remit the case as a consequence of the Examining Division's procedural violation, the appellant may need to pay a further appeal fee.

Therefore, the Board finds it appropriate to order the reimbursement of the appeal fee in accordance with Rule 103(1)(a) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution.

3. The appeal fee is to be reimbursed.

The Registrar: The Chairman:

S. Lichtenvort R. Moufang

Decision electronically authenticated