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**Datasheet for the decision  
of 15 June 2023**

**Case Number:** T 1550/18 - 3.5.06

**Application Number:** 06815263.6

**Publication Number:** 1927065

**IPC:** G06F21/00, G06F21/02

**Language of the proceedings:** EN

**Title of invention:**

METHOD FOR COMPUTING PLATFORM DATA PROTECTION

**Applicant:**

Intel Corporation

**Headword:**

Denying port write requests/INTEL

**Relevant legal provisions:**

EPC 1973 Art. 84, 113(1)  
EPC R. 103(1) (a)  
RPBA 2020 Art. 11

**Keyword:**

Right to be heard - violation (yes)  
Remittal to the department of first instance - fundamental  
deficiency in first instance proceedings (yes)

**Decisions cited:**

R 0010/18

**Catchword:**



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Case Number: T 1550/18 - 3.5.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.06**  
**of 15 June 2023**

**Appellant:** Intel Corporation  
(Applicant) 2200 Mission College Boulevard  
Santa Clara, CA 95054 (US)

**Representative:** Maiwald GmbH  
Elisenhof  
Elisenstraße 3  
80335 München (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 6 February 2018  
refusing European patent application No.  
06815263.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. Müller  
**Members:** G. Zucka  
B. Müller

## **Summary of Facts and Submissions**

- I. The appeal is against the decision by the examining division, dispatched with reasons on 6 February 2018, to refuse European patent application 06815263.6, on the basis that the subject-matter of claim 1 of the main request and auxiliary request 1 was not new, Article 54 EPC 1973, and the subject-matter of claim 1 of auxiliary request 2 was not inventive, Article 56 EPC 1973. The following document was cited in the appealed decision:
- D3: "Write protect error writing drive c:", 28 February 2002 (2002-02-28), XP055184669, Retrieved from the Internet: 17-12-2008: URL:<http://discussions.virtualdr.com/showthread.php?106117-Writeprotect-error-writing-drive-c> [retrieved on 2015-04-21].
- II. The following document was cited by the applicant (filed with letter of 18 December 2017):
- D7: "6VX7-4X Socket 370 Processor Motherboard - USER'S MANUAL", 25 July 2000.
- III. A notice of appeal was received on 5 April 2018, the appeal fee being paid on the same date. A statement of grounds of appeal was received on 6 June 2018.
- IV. The appellant requests that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 18 of the main request or claims 1 to 16 of one of both auxiliary requests that were the subject of the refusal, all re-filed with the grounds of appeal.

V. The appellant further requests reimbursement of the appeal fee under Rule 103(1)(a) EPC.

VI. Independent claim 1 of the main request reads as follows:

"A method of deterring output of data from a computing platform comprising:

launching a driver (206,210) to filter write requests to selected output ports (136:146, 302) of the computing platform;

receiving a write request to a selected output port; and

denying the write request when the selected output port specified in the write request is identified as being in a read-only mode, or allowing the write request when the selected output port specified in the write request is not identified as being in read-only mode."

VII. Independent claims 8 and 13 relate to respectively a system and "an article comprising a machine accessible medium containing instructions", having features corresponding to the method features of claim 1.

VIII. The wording of the claims of the auxiliary requests is not relevant to the present decision.

## **Reasons for the Decision**

### 1. *The invention*

The application relates to computing platforms, such as personal computers, comprising means to output data

from the platform, which data may be sensitive (see description, page 1, lines 10 to 17).

The application aims to prevent a person operating the computing platform from outputting data from the platform (*ibid.*, lines 18 to 20). It achieves this by denying write requests to a selected output port when the port is identified as being in a read-only mode (claim 1, last paragraph).

2. *Clarity of claim 1 of the main request; Article 84 EPC 1973*

The claimed method being one of "denying" certain write requests is inappropriately characterised by the term "detering". The board however considers that this has no influence on the clarity of the claimed method as a whole, which is defined by the method steps that follow.

3. *Right to be heard; Article 113(1) EPC 1973*

- 3.1 In its response received on 18 December 2017, the applicant had argued (see par. 12 to 15) that D3 did not represent an enabling disclosure, as it was highly ambiguous in its technical teaching and hardly rose above the level of ill-informed speculation (par. 15).
- 3.2 The appealed decision however does not address or even mention said argument put forward by the applicant.
- 3.3 The board agrees that D3 does not contain any information which could be accepted as disclosing the method of claim 1 of the main request.

3.4 In D3, a lay person states (post #1) that his computer will not boot from his standard boot drive, and that his Windows 98SE installation CD does not allow writing to the C: drive, even after switching his C: and D: drive. The error which he gets when trying to copy a file from any drive to any drive, floppy or hard disk, is "Write protect error writing to drive ? - Abort, Retry, Fail?". The system's motherboard is a Gigabyte GA-6VX7-4X.

An attempt to restore the Master Boot Record (MBR) also results in a "Write protect error" (post #3).

One person indicates that a turned on virus protection in the BIOS can prevent writing the MBR (post #4).

After resetting the CMOS, the original poster's system works again (post #5)

3.5 It is evident to the board that D3 only discloses that, in some cases, on a computer with the indicated motherboard, floppy and hard disk drives can effectively become "write protected", and that this situation could possibly be reversed by resetting the CMOS.

D3 further contains an indication that an activated virus protection in the BIOS might prevent writing the Master Boot Record. D3 contains however no disclosure of such a virus protection mechanism.

3.6 Although D3 might be accepted as disclosing that an operation involving a write request to a particular ("selected") port has failed for unclear reasons under undefined circumstances, it does not disclose any dedicated method. It certainly does not disclose a method for denying or allowing write requests, let

alone write requests to an output port on the basis of identifying the output port to be in a read-only mode. D3 also does not specifically disclose any output port.

- 3.7 According to the board, a statement from a user that he gets an error "Write protect error writing drive c:" does not imply that the error message was produced by any particular method, let alone a "method of deterring output" (see reasons for the appealed decision, point 11.1, second paragraph).
- 3.8 D3 does not disclose a BIOS, let alone a BIOS which could be equated with a driver filtering write requests to selected output ports of a computing platform (*ibid.*, third paragraph). D3 merely contains a statement from a participant in the discussion that the virus protection setting in the BIOS on the original poster's computer can prevent writing a Master Boot Record (MBR). The virus protection scheme itself is however not disclosed, and in any case an MBR is a specific part of a bootable disk, not the connector to which the disk is attached.
- 3.9 The board further holds that one cannot equate a statement from a user that he attempted to install Windows with a disclosure of a driver receiving a write request to a selected output port (*ibid.*, fourth paragraph).
- 3.10 Equally, a statement from the user that he receives a write protection error (which the appealed decision speculates is due to virus protection being enabled in the BIOS) does not disclose a method having been carried out, let alone one denying a write request when a selected output port specified in the write request



is identified as being in a read-only mode (*ibid.*, fifth paragraph).

- 3.11 Finally, a statement from a user that resetting the CMOS re-established the pre-existing situation only discloses that resetting the CMOS could make non-writable drives writable again. It does not disclose allowing a write request when a selected output port specified in the write request is not identified as being in a read-only mode (*ibid.*, sixth paragraph).
- 3.12 The board therefore considers that (1) D3 does not disclose the subject-matter of claim 1 of the main request and (2) the appealed decision has not addressed the applicant's reasoning in this respect.
- 3.13 In analogy to catchword 2 of R 10/18, this board considers that a department of first instance is presumed to have taken into account a party's submissions that it did not address in the reasons for its decision, meaning that it, first, took note of them and, second, considered them, i.e. assessed whether they were relevant and, if so, whether they were correct. An exception may apply if there are indications to the contrary, e.g. if a department of first instance does not address in the reasons for its decision submissions by a party that, on an objective basis, are decisive for the outcome of the case.

In the present case, as the above analysis has shown, arguments from the applicant were disregarded that, on an objective basis, were decisive for the outcome of the present case. Thereby, Article 113(1) EPC 1973 was infringed.

- 3.14 The board further sees no reason, starting from the arguments put forward in the appealed decision and considering all documents cited thus far, to judge that the present main claim is not allowable.
- 3.15 In particular, the board points out that the Gigabyte GA-6VX7-4X motherboard mentioned by the original poster in D3 uses an AMI BIOS (see D7, page 5), which does contain a "virus protection" setting. However, firstly this "virus protection" does not prevent writing to the *connector* of a hard disk drive, but only displays a warning (which can be ignored) that a program attempts to write the boot sector or partition table of a hard disk drive (see D7, top of page 50).
- 3.16 Even such motherboard or such BIOS is therefore relatively distant from the subject-matter of claim 1 of the main request.

A "firewall" with egress or outbound filtering would seem to be closer to the claimed subject-matter. No document describing a firewall was however cited during the search or examination procedure. Furthermore, an inventive step reasoning based on such a document would require a different kind of reasoning than was used in the appealed decision, with no certainty that lack of inventive step could be proven even starting from such document.

- 3.17 The board therefore holds that not only was the applicant's right to be heard infringed (Article 113(1) EPC 1973) but also would the first instance decision likely have been different if the applicant's right to be heard had been respected. There was thus a causal

relationship between the infringement of the right to be heard and the decision handed down in the case.

The infringement consequently is considered to constitute a substantial procedural violation justifying the reimbursement of the appeal fee (Rule 103(1)(a) EPC) and a fundamental deficiency requiring, in the absence of special reasons for doing otherwise, an immediate remittal of the case to the department of first instance without a decision on the merits (Article 11 RPBA 2020).

## Order

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

1. The appealed decision is set aside.
2. The appeal fee shall be reimbursed.
3. The case is remitted to the examining division for further prosecution.

The Registrar:

The Chairman:



L. Stridde

Martin Müller

Decision electronically authenticated