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**Datasheet for the decision
of 9 November 2023**

Case Number: T 1946/19 - 3.5.06

Application Number: 15202096.2

Publication Number: 3029597

IPC: G06F21/62, G06F21/60,
G06F21/79, G06F1/16, G06F3/0362

Language of the proceedings: EN

Title of invention:
MEMORY LOCK SYSTEM

Applicant:
Clevx, LLC

Headword:
Memory lock/CLEVX

Relevant legal provisions:
EPC 1973 Art. 54(1), 87, 89
EPC Art. 54(3), 88(3)

Keyword:
Priority - invalid for claimed invention but valid for
relevant subject-matter of the prior art
Novelty - (no)

Decisions cited:

G 0002/98, T 0382/07

Catchword:



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Chambres de recours

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Case Number: T 1946/19 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 9 November 2023

Appellant: Clevx, LLC
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 12 February
2019 refusing European patent application No.
15202096.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Müller
Members: G. Zucka
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. The appeal is against the decision by the examining division, dispatched with reasons on 12 February 2019, to refuse European patent application 15202096.2, on the basis that the main request did not fulfil the requirements of Articles 54 and 56 EPC 1973, auxiliary request 1 did not fulfil the requirements of Article 56 EPC 1973, and auxiliary request 2 did not fulfil the requirements of Article 76(1) EPC 1973.

The following document cited during the first instance proceedings is referred to in the present decision:

D2: EP 1 982 262 A1.

- II. A notice of appeal was received on 5 April 2019, the appeal fee being paid on the same day. A statement of grounds of appeal was received on 7 June 2019.
- III. The appellant requested that the decision of the examining division to refuse the application be set aside and a patent be granted on the basis of claims 1 to 3 of the main request that was the object of the refusal, re-filed with the statement of grounds of appeal, or on the basis of claims 1 to 4 of the auxiliary request filed with the statement of grounds of appeal, which is an amended version of auxiliary request 2 that was the object of the refusal.

The appellant made a conditional request for oral proceedings.

IV. The board issued a summons to oral proceedings. In an annex to the summons, the board set out its preliminary opinion on the appeal.

V. On 24 August 2023, the appellant stated that it would not attend the oral proceedings and requested to render a decision based on the state of the file. No arguments or amendments were filed.

The oral proceedings were subsequently cancelled.

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

"A method of reconfiguring a combination of a memory lock system (200), the system comprising:

 a controller (212);

 a connector (204) connected to the controller (212) by a communication channel (218);

 a memory (216) connected to the controller (212) by another communication channel (214); and

 a manipulatable input device (206) connected to the controller (212);

the method comprising:

 powering up the memory lock system;

 a user unlocking the memory lock system using a first combination that was previously in the memory lock system (200) from the factory or previously entered by the user;

 as soon as the unlock occurs, starting a timer;

 entering a new combination by the user;

 if the timer did not expire before entry of the new combination:

 providing an indication to reenter the new combination;

 reentering the new combination by the user;

checking if the new combinations are entered before expiry of the timer and
if the new combinations are not entered before expiry of the timer:
relocking the memory lock system;
if the new combinations are entered before expiry of the timer:
comparing the entered and the reentered new combinations to check if the entered and the reentered new combinations match; and
if the entered and the reentered new combinations do not match, relocking the memory lock system; and
if the entered and the reentered new combinations match, indicating that the memory lock system is unlocked and recording the new combination."

VII. Claim 1 of the auxiliary request differs from that of the main request in that the memory lock system is *integrated in a portable memory storage device*, and the user unlocks the memory lock system *to access content stored in the portable memory storage device*.

Reasons for the Decision

1. *The invention*

The application is in the field of devices having a memory and a connector (see first lines of claim 1), e.g. USB Flash Drives (see description page 1, line 28).

The application provides a method of reconfiguring a combination of a memory lock system for such a device.

While a timer is running, a user has the possibility to enter a new combination for the lock system and to confirm that new combination. If the new combination and the confirmation match and are both entered before the timer expires, the new combination is recorded. Otherwise, the memory lock system is relocked. (See claim 1.)

2. *Novelty; Article 54(1) EPC 1973 and 54(3) EPC*

2.1 The board agrees with the appealed decision that the priority of the application is not valid, for either request. In particular, the priority application US 60/595,631 does not disclose that the user has to enter a new combination and confirm it before a timer expires, which is present as a number of method steps in claim 1 of both requests.

Indeed, while the priority application discloses a timer (see [Para 18], corresponding to the penultimate paragraph on page 9 of the present application), this timer only serves to keep the lock "locked" for a certain period of time or until a certain date. It is not used to let a user choose and confirm a new combination before expiry of the timer.

The second mention of a timer in the priority application is in [Para 26], top of page 7. No details about the use of this timer are however provided.

Using the appellant's wording (statement of grounds of appeal, page 7, third paragraph), this could arguably be called a minor deviation. However, the standard for valid priority as set out in the case law of the Boards of Appeal is whether the skilled person can derive the subject-matter of the claim directly and unambiguously,

using common general knowledge, from the previous application as a whole (see G 2/98, headnote). There is no room for ignoring a deviation as "minor". The board also notes that the deviation is one which is argued to render the claimed subject-matter inventive.

2.2 The board further agrees with the appealed decision that the application published as D2 validly claims the priority of US 60/747,926 for the relevant subject-matter (see G 2/98, points 6.2 and 6.8 of the reasons, and T 382/07, point 10 of the reasons). In particular, the method depicted in figure 3, which the examining division relied upon in its decision, is disclosed in said priority application as figure 6 with identical technical teaching. A one-to-one comparison of both figures demonstrates this fact. This much is conceded by the appellant (see the statement of grounds of appeal, page 6, last paragraph). For the further features of claim 1, see the reasoning below.

2.3 It is undisputed that the above-mentioned figure 3 of D2 discloses a flowchart for a method of reconfiguring a combination of a memory lock system, the system comprising a memory (see step 304), the method comprising:

- powering up the memory lock system (step 302);
- a user unlocking the memory lock system using a first combination that was previously in the memory lock system (step 304);
- as soon as the unlock occurs, starting a timer (step 306);
- entering a new combination by the user (step 308);
- if the timer did not expire before entry of the new combination (decision step 310):

providing an indication to re-enter the new combination (step 312);
re-entering the new combination by the user (step 314);
checking if the new combinations are entered before expiry of the timer (decision step 316) and
if the new combinations are not entered before expiry of the timer ("Yes" branch after decision step 316):
relocking the memory lock system (step 324);
if the new combinations are entered before expiry of the timer ("No" branch after decision step 316):
comparing the entered and the re-entered new combinations to check if the entered and the re-entered new combinations match (decision step 318); and
if the entered and the re-entered new combinations do not match ("No" branch after decision step 318),
relocking the memory lock system (step 324); and
if the entered and the re-entered new combinations match ("No" branch after decision step 318), indicating that the memory lock system is unlocked (step 320) and recording the new combination (step 322).

2.4 The fact that D2 typically relates to USB flash drives is mentioned on pages 1 to 3. In said priority it is also mentioned on pages 1 to 3.

USB flash drives have a (USB) connector.

2.5 Figure 1 and the corresponding passage in the description (page 8, lines 18 to 33) of D2 disclose a controller (120) connected to the connector (114), to a memory (122), and to a manipulatable input device (118) via different communication channels.

The appellant submits (statement of grounds of appeal, page 6, fourth paragraph) that D2 does not disclose that the connector is connected to the controller by a communication channel and the memory is connected to the controller by another communication channel.

According to the board, however, the word "connected" used in D2 implies a communication channel.

- 2.6 Figure 2 of the priority document US 60/747,926 also shows these features; here the wording "communication channel" is explicitly used.

Contrary to what is stated by the appellant (*ibid.*, page 7, second paragraph), figure 2 in US 60/747,926 does show a connector, viz. USB connector "US", which in figure 3 is correctly referred to as "USB".

Concerning the appellant's submission (*ibid.*, page 7, first paragraph) that US 60/747,926 does not unambiguously disclose that the embodiment of figure 6 is to be implemented in combination with the memory data lock system shown in figure 1 or 2, the board observes the following: figure 2 relates to a possible memory data lock system "in accordance with [an] embodiment of the present invention", and figure 6 relates to a possible combination reconfiguring system for a memory data lock system, also "in accordance with [an] embodiment of the present invention", according to the same application (see page 5 "Brief description of the drawings" and page 16, lines 3 to 5). In the absence of an indication to the contrary, the board considers that the skilled person would understand, directly and unambiguously, that document US 60/747,926 discloses that the method of figure 6 is to be used in conjunction with a device as in figure 2. The board

also notes that the appellant has not challenged this analysis, which was already contained in the board's preliminary opinion.

2.7 Both D2 and its priority application US 60/747,926 therefore disclose, in combination, all the features of claim 1 of the main request, the subject-matter of which is consequently considered not novel (Article 54(1) EPC 1973 and 54(3) EPC, in combination with Article 87 EPC 1973, 88(3) EPC and 89 EPC 1973, following the Reasons for G 2/98).

2.8 The same consideration applies to claim 1 of the auxiliary request, given that, as set out above under point 2.4, D2 as well as the indicated priority typically relate to USB flash drives, which are portable memory storage devices.

The subject-matter of that claim is consequently also considered not novel (Article 54(1) EPC 1973 and 54(3) EPC).

3. Under these circumstances, it need not be decided whether claim 1 of both requests also lacks inventive step according to Article 56 EPC 1973, as argued in the board's preliminary opinion.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



L. Stridde

M. Müller

Decision electronically authenticated