

This communication is appended to the summons to oral proceedings under Article 116 EPC. It sets out the matters to be discussed at the oral proceedings and the preliminary non-binding opinion of the examining division in these matters. A final decision will only be reached at the end of the oral proceedings.

The examination is being carried out on the **following application documents**

Description, Pages

2-4, 14-20, 22-36, as published
38-43, 45-49,
51-53, 55-62,
65-67, 69, 70, 72,
74, 75

1, 6a, 7-13, 21, received on 19-07-2007 with letter of 09.07.2007
37, 44, 50, 54, 63,
64, 68, 71, 73, 76

5, 5a, 6 received on 18-11-2009 with letter of 18-11-2009

Claims, Numbers

1-50 received on 29-11-2010 with letter of 29-11-2010

Drawings, Sheets

1/24-24/24 as published

1 **Article 123(2) EPC**

The amendments filed with the letter dated 29-11-2010 introduce subject-matter which extends beyond the content of the application as filed, contrary to Article 123(2) EPC. The amendments concerned are the following:

1.1 Claim 1

1.1.1 No basis for "the means for obtaining" feature has been given. No proper basis could be determined.

- 1.1.2 There appear to be no basis in the application as filed for a database containing only identifiers. The database is therefore an unallowable intermediate generalisation of the License Table that the application defines as basis for this feature.
- 1.1.3 No basis appears to have been given for the complete "means of ascertaining feature". Furthermore, regarding the basis given on Section §9, page 62-63, the claimed elements of these means cannot be directly and unambiguously derived, indeed the claimed means appear to be a broad generalization of the content of section §9 without any real basis in the application disclosure.
- 1.1.4 The feature "wherein access [...] data item" is defined in terms of a result to be achieved (Article 84 EPC), and has further no basis in the application as filed, in which the process is at least based on the data of the license table. Furthermore, there appears to be no basis to define a requestor in relation to the licensing, which refers to users licensed to have access to the data.
- 1.1.5 It further appears that no basis has been given for the "access means" feature. No proper basis could be determined for this feature.
- 1.1.6 In addition to the above, even if in the original application, there are elements related to the claimed subject-matter (identifier creation, licensing related features), it does not appear that there is basis in the application as filed for the combination of features claimed. The claimed subject-matter appears to be some generalisation of concept as e.g. authorisation and licensing which appear in the application, but which cannot be directly and unambiguously derived from the application as filed.
- 1.2 In claim 5, the given basis on page 2 of the description refers to the background art, and therefore does not appear to apply to the invention. Furthermore, it is not clear what difference is made between a software product, and an executable software program. The latest is also neither defined in the application as filed, nor directly and unambiguously derivable in the context of the "licensing" or generally in the application as filed.
- 1.3 The subject-matter of claim 6 related to entities authorized to access the data item is a generalisation of the content of the licence table having not basis in the application as filed.
- 1.4 The subject-matter of claim 7 appears to duplicate the subject-matter of claim 1 in a different wording, since access is provide only when access is authorized. This duplication appears to have no basis in the application as filed.

- 1.5 Claiming a hash function in claim 8 does not appear to have a basis in the application as filed. Further, no linking the function to determination of the identifier does also not appear to have a basis in the application as filed.
- 1.6 The function of claim 9 should be linked to the function of claim 8. Having two different functions for an undefined purpose has no basis in the application as filed.
- 1.7 Having the identity means computing function without link to determination of the identifier has no basis in the application as filed. Additionally, claiming that "the function randomly distributes its outputs" is not clear and has no basis in the application as filed, as it is not claiming over what and how the distribution takes place.
- 1.8 In claim 11, the expression "substantially unique value" has no basis in the application as filed. And as above, it is not linked to the determination of the identifier. Furthermore, the expression is not clear, as it cannot be determined with certainty when a value would be substantially unique.
- 1.9 In claim 12, "said name" has not antecedent in the claims, the function is not linked to the identifier. Claiming that "the name" or even the identifier "will change when the data item is modified" is a wished effect (Article 84 EPC) which could be directed to the modification of the identifier when an item is changed or could be directed to the property of the function. Furthermore, there appears to be no basis for this feature in the context of the licensing, the indicated basis being directed to file operations.
- 1.10 The subject-matter of claim 14 does not appear to have a basis in the application as filed. The indicated basis refers to file and no being related to licensing. The claimed subject-matter appears to be an unallowable generalisation of features taken out of context.
- 1.11 The feature of claim 15 appears to duplicate features of claim 1. Further generalising the licensing table to a list of identifiers has no basis in the application as filed, as well as defining the table as a list.
- 1.12 The definition of the database of claim 16 is a generalisation of the function of the license table that encompasses many more different structure (e.g. a simple list of identifiers) that the one given as basis. Consequently, this does not have a basis in the application as filed.
- 1.13 No indexing related to the license table appears to be present if the application as filed. Consequently, no basis for the feature of claim 17 appears to exist.

- 1.14 The subject-matter of claims 18 appears to be a feature extracted of context which combination with the claimed subject-matter of claim 1 and a generalisation, both not having a basis in the application as filed.
- 1.15 The features of claims 19 to 21 appear to have no basis in combination with the features of claim 1 related to the licensing. It further appears to be a generalisation of the "tracking for accounting" disclosed on page 61-62 of the description, which do not find a basis in the application as filed.
- 1.16 A basis in original claim 11 cannot be found for claim 22. Furthermore, it is not clear how an identifier can comprise a request.
- 1.17 The above objections apply mutatis mutandis to claims 23 to 50.

2 **Article 84 EPC**

- 2.1 According to the description, a compound data item is defined according to the size of the data item. Consequently, in the claims (e.g. claim 2), where the expression "compound data item" is not defined, this expression is not fully supported by the description, as it leads to different interpretation which have no support in the description. The requirements of Article 84 EPC and therefore not met.

3 **Article 52(1) EPC**

- 3.1 In view of the above objections and with respect to the subject-matter considered in the communication dated 08.05.2009 (later referred to as C2), the subject-matter of the independent claims adds that the access control is based on data stored in a database. The subject-matter of claim 1 would therefore differ from the disclosure of D1 or D2 in the presence of an access control using a database to store access control information. As already argued in C2, implementing an access control in the systems of D1 or D2 is not considered as involving an inventive step (Article 56 EPC). Further using a database to store access control information is one possibility that a skilled person would use without use of any inventive skills (Article 56 EPC). Consequently, it is considered that even if the above objections according to Article 123(2) EPC and Article 84 EPC would be overcome, the core idea of subject-matter of claim 1 would not lead to an inventive step (Article 56 EPC).

4 **Conclusions**

- 4.1 At least some of the objections raised above are such that amendments overcoming them are not apparent. Refusal of the application under Article 97 (2) EPC should therefore to be expected.