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D E C I S I O N
of 24 March 2006

Case Number: T 0901/04 - 3.5.03

Application Number: 01306906.7

Publication Number: 1225777

IPC: H04Q 7/38

Language of the proceedings: EN

Title of invention:

Method for performing a predetermined action on wireless calls based on caller's location

Applicant:

LUCENT TECHNOLOGIES INC.

Opponent:

-

Headword:

Screening wireless calls/LUCENT

Relevant legal provisions:

EPC Art. 116(1), 113(1), 56

EPC R. 68(1)

RPBA Art. 11(3)

Keyword:

"Inventive step (no)"

Decisions cited:

T 1059/04, G 0010/93, T 0641/00

Catchword:

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Case Number: T 0901/04 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 24 March 2006

Appellant: LUCENT TECHNOLOGIES INC.
600 Mountain Avenue
Murray Hill, NJ 07974-0636 (US)

Representative: Sarup, David Alexander
Lucent Technologies NS UK Limited
5 Mornington Road
Woodford Green, Essex IG8 0TU (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 23 December 2003
refusing European application No. 01306906.7
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: A. Ritzka
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division dated 23 December 2003, refusing European patent application No. 01 306 906.7 for the reason that the subject-matter of claims 1 and 5 lacked novelty having regard to the disclosure of:

D1: WO 98 31168 A

Objection was also raised that the subject-matter of claim 8 did not involve an inventive step having regard to the disclosure of D1 and that claim 8 did not comply with Article 84 EPC as to clarity.

II. Notice of appeal was filed on 9 February 2004 and the appeal fee paid. With the statement of grounds of appeal filed on 23 April 2004 the appellant submitted new claims 1 to 9 to replace the claims on which the appealed decision was based.

III. The board issued an invitation to oral proceedings accompanied by a communication. In the communication it expressed the preliminary view that claims 1, 5 and 7 did not comply with the provisions of Articles 84, 52(2) (c) and 56 EPC.

IV. With a letter filed on 20 February 2006, in response to the communication, the appellant filed new claims 1 to 3 based on previous claims 7 to 9 to replace the existing claims. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of these claims.

V. In the letter the appellant announced that it would not attend the oral proceedings and requested that the oral proceedings be cancelled and the procedure continued in writing. In response, the board informed the appellant that this request would not be granted, and that the oral proceedings would take place as scheduled.

VI. Oral proceedings took place as scheduled on 24 March 2006. Neither the appellant nor its representative attended the hearing. After deliberation on the basis of the submissions and requests of 20 February 2006 the chairman announced the board's decision.

VII. Claim 1 according to the main request reads as follows:

"A method of performing an action on wireless calls, comprising:
receiving a wireless call by an answering point;
determining by the answering point whether the received wireless call falls within a class of wireless calls the class of wireless calls being one of location incentive offers, wireless based games, and wireless location based advertisements; and
performing a predetermined action by an enhanced geographic service adjunct on the received wireless call when the determining step determines that the received wireless call falls within the class of wireless calls."

Reasons for the Decision

1. *Oral proceedings*

As pointed out by this board in a different composition in decision T 1059/04, the function of a board of appeal is to reach a decision on the issues presented to it, not to act as an alternative examining division (cf. G 10/93, OJ 1995 172, in particular point 4).

According to Article 116(1) EPC, oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at request of any party to the proceedings. Oral proceedings are considered as an effective way to discuss cases mature for decision, because the appellant is given the opportunity to present its concluding comments on the outstanding issues (Article 113(1) EPC). A decision can be made at the end of oral proceedings based on the requests discussed during oral proceedings (Rule 68(1) EPC). In accordance with Art. 11(3) of the Rules of Procedure of the Boards of Appeal the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

The need for procedural economy dictates that the board should reach its decision as quickly as possible while giving the appellant a fair chance to argue its case. In the present appeal the holding of oral proceedings was considered by the board to meet both of these requirements. The appellant gave no reasons to support

the request to cancel the oral proceedings scheduled by the board and to continue the procedure in writing. The board considered that, despite the appellant's announced intention not to attend, the twin requirements of fairness and procedural economy were still best served by holding the oral proceedings as scheduled. The mere choice by the appellant not to attend was not a sufficient reason to delay the board's decision. If the appellant had attended the oral proceedings, it would have had an opportunity to present its comments. The board considered therefore that Article 113(1) EPC had been satisfied. The request to cancel the scheduled oral proceedings and to continue the procedure in writing was therefore refused.

2. *Technical background*

The application in suit concerns a wireless telecommunications system in which for calls of a particular type or class a predetermined action which is based on the caller's location is performed, see paragraph [0001]. For example emergency calls relating to a known incident might be routed to an audio message so that the emergency network is not overloaded, see paragraph [0003]. A detailed description of such a method is given at paragraphs [0005] to [0028]. Although the description largely relates to emergency wireless calls, reference is made to other classes of wireless calls such as location based incentive offers, wireless based games and wireless location based advertisements, see paragraph [0029]. The only other detail given in the description about the call classes

is that the classification is by the number being called.

3. *Interpretation of claim 1*

Present claim 1 does not mention emergency calls, despite the fact that the description is largely based on them, but instead is limited to a class of wireless calls "being one of location [based] incentive offers, wireless based games, and wireless location based advertisements". A wireless call is received by an "answering point" and a predetermined action is performed by what is referred to as an "enhanced geographic service adjunct". The terms "answering point" and "enhanced geographic service adjunct" are of unclear scope, so that it is necessary to consider how they are in fact used in the description.

In paragraph [0029], which refers to the claimed classes of wireless calls, no indication of an "answering point" nor of an "enhanced geographic service adjunct" can be found. The description of the preferred embodiment mentions a Public Safety Answering Point, PSAP, which receives emergency calls, and an enhanced geographic emergency service adjunct, EGESA, which replaces a geographic emergency service adjunct known in the prior art and includes a voice response unit, see paragraphs [0006], [0012] and [0013]. In response to a call screening request from the PSAP, the EGESA determines a screening area and performs a screening operation according to predefined rules, see paragraphs [0016] and [0017]. There is no reference to these terms in relation to the subject-matter now claimed. In the light of the description as

a whole the board understands "answering point" as being a location to which calls are routed and "enhanced geographic service adjunct" as means for performing some unspecified action within a predetermined area.

It is thus arguable that the subject-matter of claim 1 is of indeterminate scope. However, for the present decision it is understood as an adaption of the method of the preferred embodiment disclosed at paragraphs [0005] to [0028] to location [based] incentive offers, wireless based games, and wireless location based advertisements.

4. *Inventive step*

The board's comments on inventive step are based on the interpretation of claim 1 discussed above, see point 3.

D1 is said at page 1, lines 8 to 10 to relate to informing mobile stations as to prior requested emergency call connections from substantially the same geographic area, i.e. a method of performing an action on wireless calls. From Figure 1 and the associated description it can be seen that emergency calls are passed to a Public Safety Answering Point (PSAP) 20.

A mobile telephone 10 originates an emergency call connection towards the PSAP by merely dialling a predetermined short number, the signal being received by a base transceiver station and forwarded to a mobile switching centre, see D1, page 4, lines 6 to 13. The mobile switching centre recognises that the mobile station is requesting an emergency call connection and

establishes a call connection 60 towards the associated PSAP 20, see page 4, lines 17 to 20. Thus, according to D1 a wireless call is received by the mobile switching centre and it is determined whether the received wireless call falls within the class of emergency calls.

Page 7, lines 13 to 37 of D1 refers to the situation which arises when a second mobile station originates an emergency call connection towards the PSAP. The location data representing the second mobile station is received at a so-called second application module within the PSAP which stores the location data and determines whether an emergency has already been reported from approximately the same location area. If an emergency has already been reported from this area, the second mobile station is provided with an announcement message. The functions provided by the second application module are those of an "enhanced geographic service adjunct" insofar as the term can be understood, in that the calls are screened based on location. Thus, if it is determined that the received wireless call falls within the class of emergency calls, a predetermined action, namely determining whether an emergency has already been reported from approximately the same location area, and, if so, providing a message, is performed on the wireless call by an "enhanced geographic service adjunct".

The subject-matter of claim 1 differs from the disclosure of D1 merely in that it is determined whether the received wireless call falls within a specific class of wireless calls, the class of wireless calls being one of location [based] incentive offers,

wireless based games and wireless location based advertisements.

According to the application in suit, paragraph [0029], lines 25 to 27, the classes of wireless calls are identified by the number being called. Although the paragraph goes on to indicate that the invention is not limited to identifying a class by number, no other method of identification is disclosed. Thus, the different classes differ from each other in the number called and the content. These differences are considered as relating to an organisational rather than a technical problem. Organisational features can not contribute to the technical character of the claimed subject-matter and in particular, in accordance with the established case law (see e.g. T0641/00 EPO OJ 2003, 352) they cannot support the presence of an inventive step. But even if these features were considered to have technical character, it would have been obvious to apply the method disclosed by D1 in the context of emergency wireless calls for wireless calls of other classes, such as location [based] incentive offers, wireless based games and wireless location based advertisements.

Thus, the subject-matter of claim 1 does not involve an inventive step.

5. *Appellant's arguments*

The appellant argues that a difference should be seen in that D1 is concerned with the problem of conserving resources. Mobile phone callers are said to be screened to prevent them from calling the PSAP regarding the

same emergency by geographical area whereas according to the claimed subject-matter actions on calls are not based on emergency calls or geographical area, but on specific classes of calls, namely location [based] incentive offers, wireless based games, and wireless location based advertisements. As noted above however, these alleged differences are entirely devoid of any technical character.

6. There being no other requests, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland