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**Datasheet for the decision
of 28 January 2009**

Case Number: T 1059/07 - 3.5.03

Application Number: 05250717.5

Publication Number: 1566954

IPC: H04M 3/493

Language of the proceedings: EN

Title of invention:

Method and system for navigating applications

Applicant:

LUCENT TECHNOLOGIES INC.

Opponent:

-

Headword:

Navigating applications/LUCENT

Relevant legal provisions:

EPC Art. 113(1), 116(1), 123(2)

EPC R. 115(2)

RPBA Art. 15(3)

Relevant legal provisions (EPC 1973):

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Keyword:

"Oral proceedings held in absence of appellant"

"Added subject-matter (yes)"

Decisions cited:

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Catchword:

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Case Number: T 1059/07 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 28 January 2009

Appellant: LUCENT TECHNOLOGIES INC.
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Representative: Sarup, David Alexander
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 22 February 2007
refusing European application No. 05250717.5
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 05250717.5 (publication number EP 1 566 954 A) for the reason that the independent claims did not comply with the requirements of Article 84 EPC.
- II. In the notice of appeal the appellant requested that the decision be set aside and a patent be granted. With the statement of grounds of appeal the appellant filed a first set of claims, intended to replace those on file, and a further set of claims by way of an auxiliary request. Arguments in support were also submitted.
- III. In a communication annexed to summons to oral proceedings the board raised, without prejudice to the board's final decision, objections under, *inter alia*, Article 123(2) EPC in respect of, *inter alia*, the independent claims of each request.

More specifically, in respect of independent claim 4 of the main request it was noted that the application as originally filed did not appear to provide a basis for the feature that the unified interface server is configured to completely construct the composite grammar before the telephony server analyzes the modulated signal. This objection was also raised in respect of independent claim 6 of the auxiliary request.

- IV. In response to the board's communication, the appellant filed an amended main request and an amended auxiliary request and submitted arguments in support of these requests. In particular, in respect of the above-

mentioned objections (see point III) the appellant submitted the following arguments:

"Moreover, the Board suggested that the application as originally filed does not provide a basis for the feature that the unified server is configured to *completely* construct the composite grammar *before* the telephony server analyzes the modulated signal. Appellants have amended claim 4 to remove the recitation of *completely* from claim 4."; and

"In section 4.2, the Board noted that the objections set forth in sections 3.3 with respect to claim 4 applied *mutatis mutandis* to auxiliary claim 6 (current auxiliary claim 5). Appellants have amended current auxiliary claim 5 to address the concerns of the Board with respect to this objection."

The appellant requested that a patent be granted and that, if claims 1, 4 and 7 were not found to be patentable, the auxiliary claims be considered.

In a further letter the appellant informed the board that it would not attend the scheduled oral proceedings and requested that the oral proceedings be cancelled and that the procedure be continued in writing.

- V. In a subsequent communication the board informed the appellant that the request that the oral proceedings be cancelled could not be granted and that the date fixed for the oral proceedings was maintained. Reasons were given.

VI. Oral proceedings were held on 28 January 2009 in the absence of the appellant. After deliberation, the board's decision was announced.

VII. Claim 4 of the main request reads as follows:

"A communications system (10), comprising:
an interface server (37) configured to communicate with a browser module (30), to query respective application servers (32, 34, 36), and to access a plurality of applications each having a grammar and to construct a composite grammar including the grammars of each of the plurality of applications;
a telephony server (22) configured to receive a modulated signal correlative to an audio command, to analyze the modulated signal to identify a constituent of the composite grammar, and to select a token corresponding to the constituent, wherein the interface server is configured to construct the composite grammar before the telephony server analyzes the modulated signal; and
a browser module (30) configured to acquire the token and to use the token to access an entry point for one of a plurality of applications based upon the token."

Claim 5 of the auxiliary request differs from claim 4 of the main request in that, in the second paragraph, "and main menu applications" is inserted after "including the grammars of each of the plurality of applications", in that, in the second and third paragraph, "composite grammar" is replaced by "common vocabulary", and in that the last paragraph reads as follows:

"a browser module (30) configured to receive the token, to determine to which of the plurality of applications the token may be associated and to use the token to access content from one of the plurality of applications, the browser automatically exiting an active application if the token is not associated with the currently accessed application."

Reasons for the Decision

1. *Procedural matters*

1.1 From the appellant's submissions the board understands that the appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, alternatively, on the basis of the claims of the auxiliary request, both sets of claims as filed in response to the communication annexed to the summons to oral proceedings.

1.2 The board considered it to be expedient to hold oral proceedings for reasons of procedural economy (Article 116(1) EPC). The appellant, which was duly summoned, had informed the board that it would not attend the oral proceedings and, indeed, was absent. The oral proceedings were therefore held in the absence of the appellant (Rule 115(2) EPC, Article 15(3) RPBA).

1.3 The present decision is based on an objection under Article 123(2) EPC which had already been raised in the board's communication. The appellant had the opportunity to present its comments on this objection and, indeed,

made amendments and submitted arguments in support of the present claims. Under these circumstances, the board was in a position to give a decision which complies with Article 113(1) EPC.

2. *Article 123(2) EPC*

2.1 Claim 4 of the main request and claim 5 of the auxiliary request do not comply with the requirements of Article 123(2) EPC for the following reasons:

2.2 Claim 4 of the main request includes the feature that "the interface server is configured to construct the composite grammar before the telephony server analyzes the modulated signal". Claim 5 of the auxiliary request includes the same feature, in which "composite grammar" is replaced by "common vocabulary".

2.3 The board notes that the above feature was introduced in the course of the examination procedure, namely in an attempt to overcome an inventive step objection raised by the examining division in its second communication (see the applicant's letter dated 14 June 2006, page 3, 2nd paragraph). A basis for the amendment was however not provided by the applicant.

2.4 None of the claims as originally filed include the above feature or define otherwise any particular order of the operations of the interface server and the telephone server in relation to one another.

Nor does the description as originally filed disclose the above feature. More specifically, in paragraphs [0029], [0032] and [0033] (reference is made to the

application as published), it is described that the token to be transmitted to the browser module 30 by the telephony server 22 may be determined by reference to a common vocabulary, e.g. a composite grammar, disposed on the telephony server. This step is however carried out after the constituent, in the example an audio code, has been recognized, i.e. after the telephony server 22 has analyzed the modulated signal as described in column 6, line 51, to column 7, line 9.

In the board's view, the analysis of the modulated signal in the telephony server 22 to positively identify a constituent of the common vocabulary in the signal requires that a certain amount of information about that constituent is available in order to be able to identify it. This does not however require that the interface server 37 is configured to construct the common vocabulary before the telephony server 22 analyzes the modulated signal. Hence, in the board's view, there is no implicit disclosure either.

- 2.5 The board further notes that neither in the statement of grounds of appeal nor in the reply to the board's communication did the appellant refer to any passage in the description, any drawing or any claim as originally filed in support of the above-mentioned amendment. The submissions by the appellant (see point III above) that claim 4 of the main request was amended in order to remove the recitation of "completely" and that claim 5 of the auxiliary request was amended in order to address the concerns of the board with respect to this objection are not convincing, since they either do not fully address the objection raised or do not provide any argument in support of how the objection was overcome.

2.6 The board therefore concludes that the subject-matter of claim 4 of the main request and of claim 5 of the auxiliary request extends beyond the content of the application as filed and, hence, contravenes Article 123(2) EPC.

2.7 The main and auxiliary requests are therefore not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland