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Datasheet for the decision
of 17 March 2011

Case Number: T 1298/08 - 3.5.03

Application Number: 04255943.5

Publication Number: 1528780

IPC: H04M 15/08

Language of the proceedings: EN

Title of invention:
Connection of one or more toll-free calls with one or more
mobile phones associated with one or more toll-free numbers

Applicant:
LUCENT TECHNOLOGIES INC.

Headword:
Toll-free calls/LUCENT

Relevant legal provisions:
EPC Art. 123(2)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Added subject-matter - main and auxiliary requests (yes)"

Decisions cited:
-

Catchword:
-

Case Number: T 1298/08 **-** 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 17 March 2011

Appellant:	LUCENT TECHNOLOGIES INC. 600 Mountain Avenue Murray Hill NJ 07974-0636 (US)
Representative:	Sarup, David Alexander Alcatel-Lucent Telecom Limited Unit 18, Core 3, Workzone Innova Business Park Electric Avenue Enfield EN3 7XU (GB)
Decision under appeal:	**Decision of the examining division of the European Patent Office posted 4 February 2008 refusing European patent application No. 04255943.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman:	A. S. Clelland
Members:	F. van der Voort
	R. Menapace

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Summary of Facts and Submissions

I.   This appeal is against the decision of the examining
        division refusing European patent application
        No. 04255943.5 (publication number EP 1 528 780 A).

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 replacement set of ten claims and submitted arguments
        in support.

III.   In a communication annexed to a summons to oral
        proceedings the board raised, without prejudice to its
        final decision, objections under, *inter alia*,
        Article 123(2) EPC against claims 1 and 8 of the
        request then on file. Further, the appellant's
        attention was drawn to Articles 13 and 15(3) RPBA and
        the appellant was informed that, if amended claims were
        filed, it would be necessary at the oral proceedings to
        discuss, if the claims were held admissible, the
        question of whether or not the claims complied with the
        requirements of, *inter alia*, Article 123(2) EPC.

IV.   In response to the board's communication, the appellant
        filed with a letter dated 16 February 2011 a
        replacement set of claims by way of a main request and
        a second set of claims by way of an auxiliary request
        and submitted arguments in support of these requests.
        Further, the appellant informed the board that it would
        not attend the oral proceedings and requested that they
        be cancelled and that the procedure be continued in
        writing.

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V.   The board subsequently informed the appellant that the request that the oral proceedings be cancelled and the procedure be continued in writing could not be granted and that the date fixed for the oral proceedings was maintained. Reasons were given.

VI.   Oral proceedings were held on 17 March 2011 in the absence of the appellant.

        From the letter dated 16 February 2011 the board understood the appellant to be requesting that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a main request or, failing that, on the basis of the claims of an auxiliary request, both requests as filed with the above-mentioned letter.

        At the end of the oral proceedings, after deliberation, the board's decision was announced.

VII.   The main request includes two independent claims, i.e. claims 1 and 7.

        Claim 1 reads as follows:

            "An apparatus, comprising:
            one or more control components (107, 109, 111) adapted to terminate toll-free calls;
            wherein the one or more control components are adapted to query a service control point component to determine standard telephone numbers for toll-free calls to toll-free numbers associated with landline telephonic devices for termination of the toll-free calls to the landline telephonic devices;

characterized in that:

the one or more control components comprise an internal database of one or more telephone numbers;

wherein the one or more control components are adapted to compare a toll-free number of an incoming toll-free call from a communication device (102) with the internal database to make a determination of association of the toll-free number with a mobile phone (116);

wherein upon the determination of association of the toll-free number with the mobile phone, the one or more control components are adapted to bypass the service control point component (112) to terminate the incoming toll-free call to the mobile phone (116)."

Claim 7 reads as follows:

"A method, comprising the steps of:

receiving, by a first control component (107, 109, 111), an incoming toll-free call (204) to a toll-free number from a communication device (102);

characterized by:

comparing, by the first control component, the toll-free number of the incoming toll-free call with an internal database of one or more phone numbers to make a determination of association of the toll-free number with a mobile phone (116);

querying a service control point component (112) to determine a standard telephone number for the incoming toll-free call if the toll-free number is not associated with the mobile phone;

passing the toll-free call, by the first control component, to a second control component (107, 109) to bypass the service control point component if the toll-

free number is associated with the mobile phone;

terminating, by the second control component, the incoming toll-free call to the mobile phone after receiving the toll-free call from the first control component."

Claim 1 of the auxiliary request differs from claim 1 of the main request in that the following feature is added:

"wherein the toll-free number is an 800 or 866 toll-free number;".

Claim 7 of the auxiliary request differs from claim 7 of the main request in that after "a mobile phone (116)" the wording ", wherein the toll-free number is an 800 or 866 toll-free number" is added.

Reasons for the Decision

1.   *Procedural matters*

1.1   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 and Article 15(3) RPBA.

1.2   In the communication accompanying the summons, objections under, *inter alia*, Article 123(2) EPC were

raised and the appellant was informed that at the oral
proceedings it would be necessary to discuss these
objections. Consequently, the appellant could
reasonably have expected the board to consider at the
oral proceedings these objections in respect of the
main and auxiliary requests as filed with the letter
dated 16 February 2011. In deciding not to attend the
oral proceedings the appellant chose not to make use of
the opportunity to comment at the oral proceedings on
any of the objections but, instead, chose to rely on
the arguments as set out in the written submissions,
which the board duly considered below.

1.3   In view of the above and for the reasons set out below,
        the board was in a position to give at the oral
        proceedings a decision which complied with the
        requirements of Article 113(1) EPC.

2.   *Article 123(2) EPC - claims 1 and 7 of the main request*

2.1   Whereas independent claim 1 as filed includes a feature
        relating to a connection of a toll-free call with a
        mobile phone, namely "one or more control components
        that connect with one or more mobile phones one or more
        toll-free calls", the term "connect" does not appear in
        claim 1 of the main request, see point VII above, and,
        instead, the terms "terminate" and "termination" are
        used.

2.2   In the application as filed, the feature of terminating
        a toll-free call to the mobile phone associated with a
        toll-free number is not the subject of any of the
        claims as filed and is only referred to in paragraphs
        [0029] and [0033] (reference being made to the

application as published) and Figs 2 and 3 ("TERMINATE
CALL"), i.e. only in the specific context of the
message flows 202 and 302 as described in paragraphs
[0026] to [0033], each representing an exemplary
operation of the apparatus 100 described in paragraphs
[0010] to [0025] and illustrated in Fig. 1.

More specifically, the description states that a
network component 106 or 108 (Fig. 1) receives the
toll-free call and that, if the network component
determines that the toll-free number is associated with
a mobile phone, the network component 106 (in
particular, a switch component 111 thereof) or the
network component 108 (in particular, a call state
control function component (CSCF) 107 or a mobile
switching center (MSC) 109 thereof) bypasses a service
control point (SCP) 112, by sending the toll-free call
in a bypass message 206 (Figs 2 and 3), to route the
call to a further network component 110 (paragraphs
[0011], [0015], [0019], [0026], [0027] and [0031]). The
further network component 110 employs a home location
register (HLR) component 114 in order to make a
determination of the location of the mobile phone 116
and subsequently creates a connection 212, 310 between
the communication device 102 and the mobile phone 116,
represented by "TERMINATE CALL" in Figs 2 and 3, in
order to deliver the toll-free call 204 (paragraphs
[0011], [0026] and [0029]).

Hence, in accordance with the description, in order to
bypass the SCP and terminate the call at least two
network components, namely a network component 106 or
108 and a network component 110, are required. The
apparatus as defined in claim 1 of the main request

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does not however include any network component.

2.3   Even if, for the sake of argument, it were assumed that
        in claim 1 it is implicit that the "control component"
        is part of a network component and that the terms
        "terminate" and "termination" are to be understood as
        synonymous with "connect" and "connection",
        respectively, the board notes that the claim seeks
        protection, *inter alia*, for an embodiment including
        only one control component which is adapted to
        terminate toll-free calls <u>and</u> adapted to compare a
        toll-free number of an incoming toll-free call with an
        internal data base to make a determination of
        association of the toll-free number with the mobile
        phone.

        The description as filed does not provide a basis for
        this embodiment, since a comparison of the toll-free
        number with an internal database to make a
        determination of association of the toll-free number
        with a mobile phone is carried out by network component
        106 or 108 (paragraphs [0014], [0018] and [0027]),
        whereas the control component of the further network
        component 110 is adapted to terminate (or connect)
        toll-free calls (paragraphs [0029] and [0033]). Hence,
        according to the description, at least two control
        components are required.

        Nor do the claims as filed provide a basis for the
        claimed subject-matter, since, contrary to present
        claim 1, claim 1 as filed does not include features
        which relate to a bypassing of an SCP, claims 2 to 5 as
        filed each require the presence of two control
        components, claim 6 as filed requires that the mobile

phone is associated with the toll-free number and a standard telephone number and further specifies that the control component is for sending an indicator to the mobile phone, claim 7 as filed includes features relating to a compilation of billing information, claims 8 and 10 as filed do not refer to any network or control components, and claim 9 as filed requires that the mobile phone is associated with the toll-free number and a standard telephone number ("making a determination of the standard telephone number associated with ...") and further requires the presence of a home location register component and a compilation of billing information.

2.4   The board cannot find a basis for the claimed subject-matter elsewhere in the application as filed. Nor did the appellant refer to any other parts of the application as filed.

2.5   The board therefore concludes that claim 1 of the main request defines a combination of features based on claim 1 as filed and some but not all features of the apparatus as described in the description with reference to the drawings, such that the claimed subject-matter constitutes an inadmissible intermediate generalisation, i.e. an undisclosed combination of selected features lying somewhere between an originally claimed broad disclosure and a more limited specific disclosure.

2.6   Claim 1 of the main request therefore contravenes Article 123(2) EPC.

2.7 Claim 7 of the main request includes the step of comparing, by the first control component, the toll-free number of the incoming toll-free call with an internal database of one or more phone numbers to make a determination of association of the toll-free number with a mobile phone.

However, according to the description as filed, this step is carried out by a network component 106 (in particular, a switch component 111 thereof) or a network component 108 (in particular, a call state control function component (CSCF) 107 or a mobile switching center (MSC) 109 thereof), using an internal database of the network component, in which the network component subsequently sends the toll-free call in a bypass message 206 to a network component 110 (paragraphs [0014], [0018] and [0027], and Figs 1 to 3), whereas claim 7 does not include these features.

Nor do the claims as filed provide a basis for the above-mentioned step of comparing, since a database is only referred to in claims 2, 3 and 9 as filed, in which, contrary to present claim 7, claims 2 and 3 as filed each require the presence of a mobile switching center or a call state control function of a public switched telephone network or a public land mobile network for comparing the toll-free number to one or more telephone numbers stored in a database component, whilst claim 9 as filed requires that the mobile phone is associated with the toll-free number and a standard telephone number ("making a determination of the standard telephone number associated with ...") and further requires the presence of a home location register component and a compilation of billing

information.

The board cannot find a basis for the subject-matter of claim 7 elsewhere in the application as filed. In the statement of grounds of appeal the appellant referred to paragraphs [0011], [0013] and [0017] in support. However, none of these paragraphs refer to the above-mentioned step of comparing. Nor did the appellant argue otherwise.

2.8   The board therefore concludes that the subject-matter of claim 7 of the main request defines an inadmissible intermediate generalisation and, hence, contravenes Article 123(2) EPC.

2.9   For the above reasons the main request is not allowable.

3.   *Article 123(2) EPC - claims 1 and 7 of the auxiliary request*

3.1   Since the additional features of claims 1 and 7 of the auxiliary request, see point VII above, do not affect the reasoning in respect of claims 1 and 7 of the main request, see point 2 above, the same objections apply to claims 1 and 7 of the auxiliary request.

3.2   Consequently, the auxiliary request is not allowable either.

4.   There being no allowable request, it follows that the appeal must be dismissed.

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Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

L. Fernández Gómez   A. S. Clelland