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**Datasheet for the decision
of 29 March 2012**

Case Number: T 2209/08 - 3.5.04

Application Number: 98948163.5

Publication Number: 1016280

IPC: H04N7/14

Language of the proceedings: EN

Title of invention:

APPARATUS AND METHODS IN IMPROVING AND ENHANCING TELEPHONY
TELECOMMUNICATIONS

Applicant:

Genesys Telecommunications Laboratories, Inc.

Headword:

Relevant legal provisions:

EPC 1973 Art. 56

Keyword:

Inventive step (no) - alternative solution

Decisions cited:



Case Number: T2209/08 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 29 March 2012

Appellant: Genesys Telecommunications Laboratories, Inc.
(Applicant) 2001 Junipero Serra Boulevard
Daly City, CA 94014 (ETATS-UNIS D'AMERIQUE)

Representative: White, Duncan Rohan
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 27 June 2008
refusing European patent application No.
98948163.5 pursuant to Article 97(2) EPC 1973.**

Composition of the Board:

Chairman: F. Edlinger
Members: A. Dumont
C. Vallet

Summary of Facts and Submissions

- I. The appeal is directed against the decision to refuse European patent application No. 98 948 163.5.
- II. The examining division refused the application on the ground that the subject-matter of claim 1 according to the main request was not new over the prior art disclosed in:

D6: WO 97/28635 A1.

The examining division also found *inter alia* that the subject-matter of dependent claim 3 lacked an inventive step, the feature of claim 3 being an obvious and routine substitute for a feature of D6.

- III. With the statement of grounds of appeal, the appellant filed claims according to a (sole) main request, in particular with an amended claim 1 essentially combining the features of claims 1 and 3 on which the impugned decision was based.
- IV. In an annex to the summons to oral proceedings the board expressed its provisional opinion that amended claim 1 lacked an inventive step, agreeing to the reasoning in the impugned decision.
- V. In a facsimile letter received at the EPO on 27 March 2012 the appellant announced that he would not be attending the oral proceedings.
- VI. Oral proceedings took place on 29 March 2012, in the absence of the appellant.

VII. The appellant had requested in writing that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 4 filed with the statement of grounds of appeal.

VIII. Claim 1 reads as follows:

"A system for coordinating telephone and data communications comprising:
a provider site connected to the Internet network wherein a customer may connect by computer and interact with a web page by the provider site; and
a service assistance centre associated with the provider site comprising one or more service agents having access to a telephone network;
wherein the web page has a selectable icon that, when selected by the customer, initiates a request for a telephone connection between the customer and one of the service agents in the service assistance centre and **characterised in that** the telephone network includes an IPNT network."

IX. The appellant's arguments may be summarised as follows.

The invention is distinguished over D6 by the characterising clause of claim 1. Since D6 was published a single month before the priority date of the present invention, it was difficult to see how an invention that was not obvious at the date of D6 could possibly be obvious at the date of the present invention.

Reasons for the Decision

1. The appeal is admissible.

2. It is not contested that a system according to the preamble of claim 1 is known from the prior-art document D6. The telephone network in D6 is ISDN transmitted over PSTN (see D6, page 7, lines 15 to 19). The invention thus differs from the prior-art system only by the feature of the characterising portion of claim 1, namely by the telephone network including an IPNT network, instead of the PSTN network of D6.
3. The technical problem to be solved can be formulated as finding an alternative implementation of the telephone network in the system of D6.
4. Internet Protocol Network Telephony (IPNT) is described in the present application as being known per se in the context of telephone networks, as a result of advances in computer technology and telephony equipment and infrastructure (see page 2, line 26 to page 3, line 4). IPNT is thus an obvious alternative candidate to PSTN, when Internet and telephone are used together, as is the case in D6.
5. The description of the present invention states that the skilled person would apply the principles described for a PSTN network to an IPNT network "without undue experimentation" (see page 68, lines 19 to 21). The board agrees. The appellant did not qualify this statement, nor did he mention any particular technical measure necessary to apply the known principles to IPNT, which would be indicative of particular obstacles to overcome. Neither does the present application describe such measures or obstacles.
6. The appellant argues that an invention that was not obvious at the date of D6 could not be obvious at the

priority date of the present invention. The prior art must however be assessed from the point of view of the skilled person at the relevant date of the invention. As a result, whether the invention was obvious at the publication date of D6 is not the relevant question. Moreover, it cannot be deduced from the fact that the author of D6 did not mention IPNT that this was not an obvious alternative since it cannot be expected that every obvious alternative is mentioned individually in a prior art document.

7. In view of the above, the subject-matter of claim 1 results from the choice of an alternative telephone network, which was obvious at the priority date of the present application. This choice does not involve an inventive step as required by Article 56 EPC 1973. Consequently the (sole) request is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated