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**Datasheet for the decision
of 20 May 2011**

Case Number: T 1006/09 - 3.5.06

Application Number: 02761182.1

Publication Number: 1423795

IPC: G06F 15/16

Language of the proceedings: EN

Title of invention:

System for routing instant messages from users in a customer service group

Applicant:

Genesys Telecommunications Laboratories, Inc.

Headword:

Customer service centre/GENESYS

Relevant legal provisions:

EPC Art. 84, 56

Keyword:

"Clarity (main request) - no"

"Inventive step (first auxiliary request) - yes"

Decisions cited:

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Catchword:

-



Case Number: T 1006/09 - 3.5.06

D E C I S I O N
of the Technical Board of Appeal 3.5.06
of 20 May 2011

Appellant: Genesys Telecommunications Laboratories, Inc.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 1 December 2008
refusing European application No. 02761182.1
pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: D. H. Rees
Members: G. Zucka
C. Heath

Summary of Facts and Submissions

- I. The appeal is against the decision by the examining division dispatched on 1 December 2008 to refuse European patent application 02 761 182.1 on the basis that the subject-matter of all the claims lacks an inventive step, Article 56 EPC, in view of the following documents:
- D1: WO 01/40959 A
- D7: E.D. Zwicky *et al.*: "Building Internet Firewalls", O'Reilly Media, Sebastopol, USA, June 2000, pages 51-52 (the page numbers mentioned in the European search report are incorrect)
- D8: GB 2 338 870 A
- II. A notice of appeal was received on 30 January 2009, the appeal fee being paid on the same day. A statement of the grounds of the appeal was received on 6 April 2009.
- III. The appellant requested that the decision be set aside, implicitly maintaining the claims as refused, i.e. claims 1 to 42 as originally published. The appellant further requested oral proceedings as an auxiliary measure.
- IV. The board issued a summons to oral proceedings. In an annex to the summons, the board set out its preliminary opinion on the appeal. In particular, it argued that the independent claims (1, 18 and 31) do not satisfy the requirements of Article 84 EPC.

V. Given the objection under Article 84 EPC, the board gave no opinion on inventive step for the originally filed claims. Instead, it noted that, although, according to the appellant, the purpose of the invention is to enable a call centre to cope with multiple instant messaging systems that may be used by the clients, the claims do not reflect this. In claim 1, there is merely an identification of an instant messaging "version". In claims 18 and 31, no identification of any kind takes place.

The board noted that the problem of the use of multiple instant messaging systems by the clients would, indeed, apparently not arise in the system disclosed by D1.

VI. On 1 March 2011, the appellant filed a first and a second set of claims "according to" a first and a second auxiliary request, while stating that "the description will be amended,...as soon as an agreement has been achieved on the allowable subject-matter".

The board interprets this as meaning that the appellant requests, as a first and second auxiliary request, the grant of a patent with respectively said first and second set of claims, with the original description including any necessary amendments, and with the original drawings.

The appellant further requested that if, after having examined the "enclosed amended claims", the board comes to the conclusion that the application is "in a condition to be remitted to the first instance", a decision on the remittal be taken without oral proceedings. In a fax sent on 14 March 2011, the

applicant reformulated this request as a third auxiliary request, to cancel the oral proceedings if "one of the auxiliary requests overcomes the clarity objections and the application could thus be remitted for further prosecution on this basis".

The board interprets this third auxiliary request as meaning that the appellant abandons his prior conditional request for oral proceedings if the board comes to the conclusion that the application should be remitted to the first instance for further prosecution, on the basis of the main request or either of the first and second auxiliary requests.

VII. For the reasons given below, the board concludes that the application should be remitted to the first instance for further prosecution, on the basis of the first auxiliary request. Oral proceedings were, therefore, cancelled.

VIII. The independent claims of the main request (i.e. of the published application) read as follows:

Claim 1

A routing system operable on a datapacket-network for intelligent routing of instant messages between clients connected to the network and customer service representatives (CSRs) connected to the network comprising:

at least one instant message server connected to and addressable on the network; and

at least one intermediate server connected to and addressable on the network and accessible to the

instant message server the intermediate server having access to routing rules and capability;

characterized in that clients connected to the network and operating instant message software connect to the instant message server for the purpose of establishing communication with available customer service representatives, and wherein assertion of a connection link advertised by the instant message server establishes bi-directional communication between the client machine and the intermediate server, the intermediate server interacting with including identifying the client and version of instant message software used by the client for the purpose of routing the client request to an appropriate customer service representative thereby establishing an active instant message connection between the client and the selected customer service representative.

Claim 18

A proxy server for routing instant messages sourced from clients connected to a datapacket-network to selected ones of a plurality of customer service representatives connected to the network and representing an enterprise:

at least one bi-directional data port for receiving data thereto and sending data there from;

at least one version of instant messaging software executable therein for generating, sending, and receiving instant messages;

a software routing component executable therein for routing client instant message requests to selected IP addresses on the network; and

a software firewall component operable therein and capable of IP address translation;

characterized in that the server receives incoming instant message events for routing, identifies and interacts with individual clients using instant message protocol and routes qualified requests to available customer service representatives based on enterprise routing rules for instant messaging.

Claim 31

A method for establishing an instant message communication channel over a datapacket-network between a client and a customer service representative representing an enterprise based on returned results of at least one executed routing routine comprising steps of:

- (a) client establishment of a network connection;
- (b) establishing a client-to-server connection with an instant message server using an instant messaging software application;
- (c) establishing a connection from the instant message server to an intermediary proxy server through client link assertion;
- (d) the proxy server interacting with the client using instant messaging software to obtain information for routing;
- (e) the proxy server requesting execution of at least one intelligent routing routine on behalf of the client request and information obtained through client interaction; and
- (f) routing the client request from the proxy server to an appropriate customer service representative based on results of routine execution.

IX. The independent claims of the first auxiliary request read as follows:

Claim 1

A proxy server for routing instant messages sourced from clients connected to a datapacket-network to selected ones of a plurality of customer service representatives connected to the network and representing an enterprise:

at least one bi-directional data port for receiving data thereto and sending data there from;

at least two different versions of instant messaging software executable therein for generating, sending, and receiving instant messages;

a software routing component executable therein for routing client instant message requests to selected IP addresses on the network; and

characterized in that the proxy server determines the different versions of instant messaging software for each client and interacts with the clients using the version of instant messaging software determined to obtain information from the client for routing by requesting execution of at least one intelligent routing routine on behalf of the client requests and information obtained through the interaction with the clients; and

routes the client requests from the proxy server to an appropriate customer service representative workstation having a like version of instant message software as the client's request being received based on results of routine execution.

Claim 14

A method for establishing an instant message communication channel over a datapacket-network between a plurality of clients and customer service representatives representing an enterprise based on returned results of at least one executed routing routine comprising steps of:

(a) establishment of a network connection for two or more clients;

(b) establishing a client-to-server connection from the at least two clients with at least two instant message servers, each server using a disparate, proprietary version of instant messaging software applications;

(c) establishing a connection from the instant message servers to an intermediary proxy server through client link assertion;

(d) determining at the intermediary proxy server the different versions of instant messaging software;

(e) the proxy server interacting with the client using the version of instant messaging software determined in step (d) to obtain information from the client for routing;

(f) the proxy server requesting execution of at least one intelligent routing routine on behalf of the client requests and information obtained through interaction with the clients; and

(g) routing the client requests from the proxy server to an appropriate customer service representative workstation having a like version of instant message software as the client's request being received based on results of routine execution.

Reasons for the decision

1. *The admissibility of the appeal*

In view of the facts set out at points I and II above, the appeal is admissible, since it complies with the EPC formal admissibility requirements.

2. *Main request*

2.1 *Clarity, Article 84 EPC*

2.1.1 The three independent claims (1, 18 and 31) intend to address the same inventive concept. This is implicitly acknowledged by the appellant, since its arguments only deal with claim 1. However, the terminology in each of these claims is very different; in addition, some of the terminology is not clear. In particular, this applies to the following:

- Claims 1 and 31 refer to an "instant message server", which does not feature in claim 18.

- Claim 1 refers to an "intermediate server", which apparently corresponds to the "proxy server" of claim 18 and the "intermediary proxy server" of claim 31.

- In claim 1, the "intermediate server" has access to "routing rules and capability". In claim 18, reference is made to "enterprise routing rules for instant messaging". In claim 31, routing takes place on the basis of "routine execution".

- In claim 1, there is an "assertion of a connection link" and in claim 31, a "client link assertion". These do not feature in claim 18.

- In claim 1, the "intermediate server" identifies the client and the version of instant messaging software. In claim 18, there is no such identification. Claim 31 merely refers to "information obtained through client interaction".

- Claim 18 refers to a "software firewall...capable of IP address translation", which does not feature in claims 1 and 31.

- The expression "intermediate server interacting with including" in claim 1 is not clear; it would appear that some text is missing.

2.1.1 *Conclusion on clarity for the main request*

The independent claims of the main request, taken as a whole, do not clearly define the matter for which protection is sought and, therefore, do not fulfil the requirements of Article 84 EPC.

2.2 *Conclusion on the main request*

As it does not satisfy the requirements of, at least, Article 84 EPC, the main request is not allowable.

3. *First auxiliary request*

3.1 *Article 123(2) EPC*

3.1.1 The appellant has given the following sources for the amendments made to the claims:

- Page 9, lines 4-7 of the original description discloses intelligent routing of instant messages between a plurality of clients and customer service representatives.

- Page 9, lines 15-20 of the original description discloses the proxy server interacting with the client for identifying the version of instant message software used by the client for the purpose of routing the client request to an appropriate customer service representative, thereby establishing an active instant message connection between the client and the selected customer service representative.

- Page 12, lines 13-16 of the original description discloses that the interaction between the proxy server and the clients comprises an identification of the version of the instant message software used by the client, which implies that the clients use different versions of said software.

- Page 12, lines 17-20 of the original description discloses that the proxy server determines the existence of a network-connected customer service representative having a compatible instant messaging software to that used by the client. The client requests are routed from the proxy server to a customer

service representative having a compatible instant messaging software to that used by the client.

- Page 12, lines 27-28 of the original description states that the use of a firewall through which the transaction is conducted is an *optional* feature.

- Steps (d) to (f) of the original claim 31 have been added to claims 1 and 14.

3.1.2 *Conclusion on Article 123(2) EPC*

On the basis of the above analysis the board agrees that the first auxiliary request satisfies the requirements of Article 123(2) EPC.

3.2 *Clarity, Article 84 EPC*

At the beginning of claim 1, the word "comprising" is obviously missing before the colon. Claim 1 also includes features defined as steps of a method (e.g. "the proxy server determines") although it is an apparatus claim. Apart from these easily correctable matters, the claims of the first auxiliary request satisfy the requirements of Article 84 EPC.

3.3 *Closest prior art*

Document D1 is the closest prior art available to the board for the claims of the first auxiliary request. It discloses the handling of customer interaction requests to a customer service centre with customer service representatives. Interaction may be via the Internet.

Web page chat, via a browser application, may be used for such requests (see page 11).

3.4 *Novelty, Article 54(1)(2) EPC*

3.4.1 At least the following features of claim 14 are not disclosed by D1:

- *two different instant messaging software versions*

Although the web page chat in D1 may be called an "instant messaging" application, there is no indication in D1 of the use of two different versions of such an application; in fact, it is clear in D1 that there is only one version available to the clients, *i.e.* the web page chat that is offered as a browser application.

- *a determination which instant messaging software version is used by the clients*

Such a determination is not necessary in D1, as no instant messaging application is running at the client's side. The clients are forced to use the web page chat that is made available to them as a browser application and that comes only in one version.

- *routing the client request to a customer service representative workstation having a like instant messaging software version as the client*

In D1, there are no different instant messaging software versions and routing can, therefore, not be based on that criterion.

3.4.2 The subject-matter of claim 1 differs from the disclosure of D1 by the apparatus features corresponding to the above method features.

3.4.3 *Conclusion on novelty*

It follows from the above analysis that the subject-matter of claims 1 and 14 of the first auxiliary request is novel.

The same is necessarily true for the dependent claims of that request.

3.5 *Inventive step, Article 56 EPC*

3.5.1 With regard to claim 1, there is no immediate reason why the person skilled in the art would amend the system of D1 to make an identification of the instant messaging version possible. The problem solved with respect to D1 is to replace use of a particular in-built chat function by use of one of a plurality of instant messaging systems available on the Internet. While the skilled person arguably could come to the claimed solution once the problem is posed, the board takes the view that this problem would not arise in a natural way, starting from D1 and taking into account normal circumstances and also the other prior art documents available.

In the embodiment that is specifically disclosed in D1, a proprietary in-house program called "CyberCall PowerAgent" on the business web page is used to handle all web communications. No identification of the software used on the client's side is, therefore, required or even useful. There is no apparent reason why the skilled person would want to introduce such an identification in this specifically disclosed embodiment.

In fact, the skilled person would need to make abstraction from the example given in D1 and look only at the general teaching that is given in the introductory part of the description of that document. He (or she) would then need to interpret the word "chat" on page 5, line 21 in a broad sense and imagine a situation where the clients have different instant messaging software, causing problems for the service centre. Finally, he would have to conclude that, in such a situation, it is necessary to identify which software is used. This is something that the skilled person, obviously, *could* do but the board does not find it at all persuasive that, starting from the teaching of D1, he *would* do it.

Therefore, it can not be concluded, on the basis of D1 and the other prior art documents available to the board, that the subject-matter of claim 1 is not inventive.

3.5.2 The same argument applies to claim 14.

3.5.3 *Conclusion on inventive step*

It follows from the above analysis that the subject-matter of claims 1 and 14 of the first auxiliary request is inventive, at least with respect to the prior art documents currently in the procedure.

The same is necessarily true for the dependent claims of that request.

3.6 *Remaining issues*

3.6.1 It can not *a priori* be excluded that a further search would produce a document that represents better prior art than D1, since there were major clarity problems with the claims examined in the first instance.

3.6.2 The description does not cite a document disclosing the prior art that corresponds to the preamble of the independent claims (Rule 42(b) EPC).

3.6.3 The "incorporation by reference" in the "cross-reference" section on page 1 of the description casts doubt on the exact content of the application, including possibly the claims (Article 84 EPC).

3.6.4 There are minor clarity issues concerning claim 1 (see point 3.2).

4. *Conclusion*

The subject-matter of the claims of the first auxiliary request is new and inventive with regard to the prior art available to the board. However, the request is not

in a state on the basis of which grant of a patent could be ordered (see point 3.6). The board, therefore, considers it appropriate to remit the case for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution on the basis of the first auxiliary request.

The Registrar:

The Chairman:

B. Atienza Vivancos

D. H. Rees