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**Datasheet for the decision
of 13 July 2012**

Case Number: T 2084/09 - 3.5.03

Application Number: 99903837.5

Publication Number: 1053631

IPC: H04M 17/00

Language of the proceedings: EN

Title of invention:

Method and system for accumulating call prepayment

Patentee:

FRANCE TELECOM

Opponent:

Vodafone Group PLC

Headword:

Accumulating call prepayment/FRANCE TELECOM

Relevant legal provisions:

EPC Art. 56

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Added subject-matter - yes"

"Inventive step - no"

Decisions cited:

T 0641/00

Catchword:

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Case Number: T 2084/09 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 13 July 2012

Appellant:
(Patent Proprietor)

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Respondent:
(Opponent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 9 September 2009
revoking European patent No. 1053631 pursuant
to Article 101(3)(b) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The present appeal arises from the decision of the opposition division posted on 9 September 2009 revoking European Patent No. 1053631.

The opposition was based on the grounds of Article 100(a) EPC.

The opposition division came to the conclusion that the subject-matter of *inter alia* claim 1 according to the then main, first and second auxiliary requests did not involve an inventive step in the light of the disclosure of

A1: Europolitan "Eurolite" brochure, 1994, Karlskrona, Sweden, and English translation,

and

A3: GB 2 313 744 A.

- II. An appeal was filed against this decision by the patentee (appellant), the appropriate fee was paid and the corresponding statement of grounds was filed. It was requested that the appealed decision be set aside and that the patent be maintained on the basis of a set of claims according to the main request filed with the grounds of appeal. Oral proceedings were requested as an auxiliary measure.

- III. With letter of 13 April 2012, the board summoned the parties to oral proceedings and gave its preliminary opinion on the matters to be discussed. It indicated

various deficiencies *inter alia* in relation to the requirements of Article 123(2) EPC and Article 56 EPC.

- IV. With letter received 15 June 2012, the appellant announced that it would not be in a position to attend the oral proceedings.
- V. With letter of 29 June 2012, the respondent likewise announced that it would not be present at the oral proceedings.
- VI. The oral proceedings took place on 13 July 2012 in the absence of the parties.

At their end, the chairman announced the board's decision.

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

"Call record processing apparatus (16) for a telecommunications system, said apparatus comprising:
an input data link for receiving call records generated in the telecommunications system;
a store (22) for user allocation records, said user allocation records being capable of holding first available allocations of usage associated with first predetermined temporal usage criteria and second available allocations of usage associated with second predetermined temporal usage criteria, at least one criterion of which is different to any of said first criteria, wherein said first and second allocations of usage are durations of service usage, and the user allocation records containing data for said first

allocations of usage and data for said second allocations of usage;

a rating call record processor (24) arranged to cumulatively reduce one of said first available allocations for call records holding call details satisfying said first criteria, and to cumulatively reduce one of said second available allocations for call records holding call details satisfying said second criteria; and

a billing call record processor (28) arranged to bill call records after rating thereof by said rating call record processor,

wherein said apparatus (16) is arranged to associate said first available allocations with said second available allocations so as to allow said rating call record processor (24) to reduce one of said first allocations for call records holding call details satisfying said second criteria, and

wherein said apparatus (16) is arranged to associate a predetermined allocation of usage with a subscriber, or group of subscribers, at the start of each of a plurality of consecutive usage periods, said allocation having a defined period of currency corresponding to the following usage period, such that a first available allocation is associated with a call record for a first usage period and a second available allocation is associated with said call record for a second usage period,

said rating call record processor (24) is arranged to reduce said first available allocation for service usage defined to occur within said first usage period, and to reduce said second available allocation for

service usage defined to occur within said second usage period, and

said rating call record processor (24) is arranged to reduce said first available allocation for service usage defined to occur within said second usage period, if at least a portion of said first available allocation remains after the end of said first usage period."

Independent claim 12 relates to a corresponding method.

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 parties, which were duly summoned, had informed the board that they would not attend the oral proceedings and, indeed, were absent. The oral proceedings were therefore held in the absence of the parties (Rule 115(2) EPC, Article 15(3) RPBA).

1.2 The present decision is based on objections under Article 123(2) EPC and Article 52(1) EPC in combination with Article 56 EPC which had already been raised in the board's communication. The parties had the opportunity to present their comments on these objections but neither party filed a substantive reply. In deciding not to attend the oral proceedings the parties, and in particular 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 statement of grounds of appeal, 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. *General observations:*

2.1 The opposition division decided that the claimed invention was not excluded from patentability by the provisions of Articles 52(1) and 52(2)c EPC (point 2 of the impugned decision). In the board's view, this is also the case for the amended set of claims.

2.2 The opposition also decided that the claimed subject-matter was novel over the cited prior art (point 4 of the impugned decision). In the board's view, this is also the case for the amended set of claims.

3. *Added subject-matter (Article 123(2) EPC):*

3.1 The board is unable to find the original basis for the amendments in claim 1 according to the present main request.

The present set of claims is based on the set of claims of the second auxiliary request considered in the impugned decision with the term "allocation" being replaced by "available allocation" and the term "usage criteria" being replaced by "temporal usage criteria" throughout claim 1.

3.2 The appellant in its grounds of appeal referred without any further explanation to paragraphs [0006], [0045] and [0048] of the granted patent as providing the original basis for these amendments.

However, as the board pointed out in the annex to the summons to the oral proceedings, paragraph [0006] of the patent does not contain the words "temporal" and "criteria".

As the board furthermore pointed out, paragraphs [0045] and [0048] of the patent contain the word "allocation" only in the sentence "... if there remains an allocation of usage within the previous bundle ...".

The board does not consider that the amendment which involves the term "available allocation" in many different combinations follows unambiguously and directly from these paragraphs.

3.3 The appellant did not argue otherwise in this respect and did not submit any further arguments in relation to the amendment in question.

3.4 In the absence of any further arguments by the appellant in relation to the above objections, the board concludes that claim 1 has been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. For this reason alone, the main request is not allowable.

4. *Claim 1, novelty and inventive step (Articles 54 and 56 EPC):*

4.1 Notwithstanding the above deficiency, the board has, for the sake of completeness, also considered the question of novelty and inventive step.

4.2 The board considers A3 as the closest prior art.

According to the appellant, the difference between the claimed invention and the system known from A3 is that

- a) there is a mechanism for maintaining more than one allocation of (available) usage having particular (temporal) criteria, and
- b) there is a mechanism for offsetting usage in a particular period against a usage allocation other than an allocation associated with the current period.

In other words, whereas in the system of A3 any call time bought for a period and not used during this period is lost, the invention provides for the unused call time to be transferred to the following period.

4.3 According to the appellant, these features serve to solve the problem which arises in A3, namely that the duration of service usage from a current period, if unused at the end of that period, is lost.

Although claim 1 as a whole is considered to meet the requirements of Article 52(1) EPC, it refers to an aim to be achieved in a non-technical field, namely providing the customer with a different tariff option, which is a business related aim and well known *per se*,

see A1 which relates to mobile telecommunication tariffs. This document shows (page 5(10) of the English translation, left column, last paragraph) a tariff similar to the one considered in the present invention.

4.4 For examining inventive step, the board follows established case law according to which, where a claim refers to an aim to be achieved in a non-technical field, this aim may legitimately appear in the formulation of the problem as part of the framework of the technical problem that is to be solved, in particular as a constraint that has to be met, cf. T 641/00 (OJ EPO 2003, 352, reasons point 7).

4.5 The formulation of such a problem, *i.e.* providing the customer with a different tariff option, cannot however justify an inventive step since it pertains to a non-technical field. In any case, it is routine for the various service providers in the field of mobile telecommunications to create many diverse bundles of tariffs, also with respect to handling the duration of services, in order to satisfy the customer's (and the service provider's own financial) requirements. In this respect, A1 is cited as an example of still another form of tariff (rollover in the form of cash).

The presence of an inventive activity can only be acknowledged on the basis of technical features which solve this problem.

Hence, it must be decided whether it is obvious to the skilled person to use the claimed technical features in order to solve the above problem.

4.6 In order to transfer unused time budgets from one time period to another time period, there must necessarily exist records of the two time budgets and hence a mechanism for maintaining more than one allocation of (available) usage having particular (temporal) criteria. There is also inevitably a need for a mechanism for offsetting usage in a particular period against a usage allocation other than an allocation associated with the current period.

Therefore, the difference between the claimed subject-matter and the known system as identified by the appellant was obvious to the skilled person.

Hence, the claim 1 does not meet the requirement of Article 56 EPC (lack of inventive step).

4.7 Turning to the appellant's arguments in the grounds of appeal, the board notes that these are essentially based on the disclosure of A1. This document discloses the rollover of unused time budgets in the form of a money transfer (page 5(10) of the English translation, left column, last paragraph). The appellant argues that the combination of the teachings of A3 and A1, on which the opposition division based its inventive step argument would not provide all the features of claim 1.

Be that as it may, the board's argument is based exclusively on A3 and the common general knowledge. A1 has only been cited as an example for the existence of different tariff options in the relevant field.

5. Since the only request of the appellant does not comply with the requirements of the EPC the appeal is dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

G. Rauh

A. S. Clelland