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**Datasheet for the decision
of 2 March 2017**

Case Number: T 2096/10 - 3.5.01

Application Number: 07758644.4

Publication Number: 1994498

IPC: G06Q30/00, G06Q20/00

Language of the proceedings: EN

Title of invention:

M-COMMERCE VIRTUAL CASH SYSTEM, METHOD, AND APPARATUS

Applicant:

QUALCOMM Incorporated

Headword:

M-Commerce virtual cash system / QUALCOMM

Relevant legal provisions:

EPC Art. 56, 123(2)

RPBA Art. 15(3)

Keyword:

Inventive step - virtual cash system (no - not technical)

Decisions cited:

T 0258/03, T 0641/00



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Case Number: T 2096/10 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 2 March 2017

Appellant: QUALCOMM Incorporated
(Applicant) Attn: International IP Administration
5775 Morehouse Drive
San Diego, CA 92121 (US)

Representative: Dunlop, Hugh Christopher
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 17 May 2010 refusing European patent application No. 07758644.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: M. Höhn
P. Schmitz

Summary of Facts and Submissions

- I. This appeal is against the Decision of the Examining Division to refuse European patent application No. 07758644.4 on the ground of lack of inventive step (Article 56 EPC). The division referred to prior-art publication:

D1: US 2005/0107067 A1.
- II. In the statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request, first or second auxiliary requests, all filed with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis.
- III. In its communication, subsequent to the summons to oral proceedings, the Board expressed its preliminary opinion that all requests lacked inventive step (Article 56 EPC). Furthermore, it appeared that the second auxiliary request fulfilled neither the requirements of Article 84 EPC nor the requirements of Article 123(2) EPC.
- IV. In a reply, the appellant withdrew the request for oral proceedings and requested a decision based on the grounds of appeal and the state of the file.
- V. Oral proceedings were held on 2 March 2017 *in absentia*. After due consideration of the appellant's arguments the Chair announced the decision.
- VI. Claim 1 of the main request reads as follows:

"A method for operating a virtual cash system comprising:

- wirelessly receiving at a wireless device (12) available cash information transmitted over a wireless communication network and corresponding to an amount of money deposited in an account record (38) associated with said wireless device (12) to enable a user determined portion of said amount of money to be spent directly from said wireless device (12) as cash in a transaction;
- generating an indicator (16) of said available cash information and said account record (38) by said wireless device (12) for receiving by a machine to enable said account record (38) to be identified and debited for said user determined portion of said amount of money; and
- wirelessly receiving at said wireless device (12), an updated available cash information transmitted over the wireless communication network and comprising a new available cash amount after a debiting of said account record (38) for said transaction."

Claim 1 of the first auxiliary request adds to the end of the second (generating) feature, "wherein said indicator (16) further comprises information to restrict spending authorization to purchases at a particular point of sale or information to restrict spending authorization to a predetermined cash amount".

Claim 1 of the second auxiliary essentially adds to the main request that a security code is associated with the account record, replaces the first two lines of the second feature with, "generating at said wireless device an indicator (16), said indicator comprising account identification information and a security code, the security code comprising the bank security code as

a fixed portion and a rolling code, the security code for verifying the transaction", and adds to the end the feature, "the rolling code is not wirelessly received at said wireless device over the wireless communication network".

VII. The appellant argued essentially as follows:

Technical modifications needed to be made to the infrastructure of D1 in order to implement the payment scheme of the invention.

D1 did not disclose that the device 104 or any other component was configured to transmit initial or updated cash information to the wireless device. D1 only disclosed that information stored in the matching device 103 was transmitted via the wireless network to the mobile device 101. Accordingly, a component in D1 had to be connected to the wireless network and configured (e.g. programmed) to transmit to the mobile device the initial cash information and the updated available cash information following a transaction.

The Examining Division did not correctly apply the 'Comvik Approach' because the payment scheme administrator would not pass requirements including details about using a wireless system to the technical skilled person.

The feature that the rolling code was not wirelessly received at said wireless device in claim 1 of the second auxiliary request was supported by paragraph [0034] of the description. The fact that a rolling code is used meant that it could not be transmitted to the mobile device because otherwise someone in possession

of the device would have access to it and be able to defeat the rolling code change.

Reasons for the Decision

Non-attendance at oral proceedings

1. The appellant withdrew the request for oral proceedings and requested a decision based on the grounds of appeal and the state of the file. The oral proceedings took place in the absence of the appellant.

Article 15(3) RPBA stipulates that the Board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Hence, the Board was in a position to announce a decision at the end of the oral proceedings that met the requirements of the appellant's right to be heard (Article 113(1) EPC).

Main request

2. The claimed invention is directed to a mix of technical and non-technical features. The Board does not dispute that the method according to claim 1 has technical character since it involves a wireless device which implies the use of a mobile communication network. The invention is an invention in the sense of Article 52(1) EPC (see T0258/03 "Auction method/HITACHI", OJ EPO 2004, 575).

2.1 However, an invention consisting of a mixture of technical and non-technical features and having technical character as a whole is to be assessed with respect to the requirement of inventive step by taking account of all those features which contribute to said technical character whereas features making no such contribution cannot support the presence of inventive step (see T 0641/00 "Two identities/COMVIK", Headnote I, OJ EPO 2003, 352).

2.2 The Board agrees with the decision under appeal that the features related to the underlying specific payment scheme "per se" pertain to an administrative method, i.e. to the non-technical part of claim 1. Starting from a system for carrying out financial transactions using wireless devices, such as that disclosed in D1, claim 1 differs by these features, shown not struck-out below:

A method for operating a ~~virtual~~ cash system comprising:

- ~~wirelessly receiving at a wireless device (12)~~ available cash information ~~transmitted over a wireless communication network~~ and corresponding to an amount of money deposited in an account record (38) ~~associated with said wireless device (12)~~ to enable a user determined portion of said amount of money to be spent directly ~~from said wireless device (12)~~ as cash in a transaction;
- generating an indicator (16) of said available cash information and said account record (38) ~~by said wireless device (12)~~ for receiving ~~by a machine~~ to enable said account record (38) to be identified and debited for said user determined portion of said amount of money; and

~~- wirelessly receiving at said wireless device (12), an updated available cash information transmitted over the wireless communication network and comprising a new available cash amount after a debiting of said account record (38) for said transaction.~~

2.3 The non-technical nature of such a payment scheme is apparent because it could be carried out without communication means just by having a look in one's wallet (representing the account) and presenting the amount of money as coins or bills (having the function as an indicator) and having another look in the wallet to see how much money is left. Alternatively, the transaction could be performed in a traditional and well known manner by using a debit card or a credit card (representing the account), the card number being presented as an indicator to the card reading terminal for debiting the amount of money. Checking the validity of the card in a terminal and performing the transaction, verifies whether the available funds are sufficient for carrying out the transaction.

2.4 These features therefore cannot contribute to the inventive step of the invention and can be part of the requirements given to the technical skilled person. The only differences that can count for inventive step are therefore any details of implementing the payment scheme on the known hardware. The Board therefore agrees with the examining division that the technical problem is how to implement the payment scheme on the known hardware.

2.5 The Board does not agree with the appellant's assertion that this formulation of the problem implies that the requirements that the payment scheme administrator has passed to the technical skilled person included details

about using a wireless system. The skilled person already knows about the wireless system because that is given in the starting point for the evaluation of inventive step (closest prior art). The payment scheme administrator merely provides the payment scheme that the technical skilled person has to implement. The question is whether this is obvious or not.

- 2.6 The Board agrees with the examining division that the person skilled in the art within the meaning of Article 56 EPC, a computer expert provided with the complete description of the non-technical abstract payment scheme, would find the implementation obvious in view of the normal skills and the general knowledge of computer programming.

Considering the appellant's arguments about technical modifications, the Board agrees that such details are indeed technical modifications. However, D1 already discloses wirelessly receiving at a wireless device financial data transmitted over a wireless communication network (see e.g. identifier 105, 106 in figure 1; [0010]; see also [0026] "This data is summarized as payment transaction data and is transmitted via a control message to the customer's mobile telephone terminal") The Board considers that programming the system to provide the wireless device with initial or updated cash information, as per the non-technical requirements, would be straight-forward for the skilled person. In fact, as noted by the examining division, the claim gives no details of the "implementation", so that it is essentially no more than the *idea* of implementing the respective payment scheme features.

2.7 Similar arguments apply, *mutatis mutandis*, to corresponding independent claims 9, 13 and 17.

2.8 The subject-matter of claims 1, 9, 13 and 17 therefore does not involve an inventive step (Article 56 EPC).

First auxiliary request

3. Claim 1 according to this request adds that the indicator further comprises information to restrict spending authorization to purchase at a particular point of sale or information to restrict spending authorization to a predetermined cash amount.

3.1 The Board shares the view in the decision under appeal that the added features are also a part of the administrative concept discussed in detail for the main request and, hence, are considered to be non-technical, therefore not involving an inventive technical contribution.

3.2 D1 suggests using a credit card number as a form of virtual cash (see [0005] of D1). A credit card usually has a limit for spending. When checking the credit card it is inherently also checked whether the transaction is within the limit thereby involving information to restrict spending authorization to a predetermined cash amount according to claim 1. Such a feature is therefore not only a non-technical aspect of the payment scheme, but was also known in the field of financial transactions carried out in communication networks for which technical means for implementing the additional method steps were known in the art. The subject-matter of claim 1 therefore also lacks inventive step when starting from a wireless communication network infrastructure (as exemplified by D1) in view of the

skilled person's common general knowledge of programming.

Second auxiliary request

4. Claim 1 according to this request adds to claim 1 of the main request details of a security code, in particular the use of a bank security code as a fixed portion and a rolling code.

The Board agrees with the decision under appeal that no direct and unambiguous disclosure is found for the feature that a rolling code is generated at the wireless device as explicitly claimed in claim 1 of the third auxiliary request before the examining division. The passages cited by the appellant as antecedent basis (i.e. [0032] to [0035]) only seem to imply that the wireless device generates the *indicator*, not the code itself.

Similarly, the Board has doubts that the feature that the rolling code is not wirelessly received at said wireless device, as in claim 1 of the present second auxiliary request, is disclosed. The Board is not convinced by the appellant's argument that the fact that a rolling code is used means that it cannot be transmitted without compromising it; it could be encrypted, for example.

- 4.1 Notwithstanding the above, the Board agrees that the decision under appeal is correct in stating that the use of a combined fixed code and rolling code was known in the art, as acknowledged in the application (see [0035] with reference to US 5598475 and US 6980655). Since this reference to prior art is the only concrete disclosure of how such codes might be used, the Board

does not see any possible inventive contribution with regard to their technical implementation. Moreover, the Board judges that the skilled person would consider using such known codes faced with the ever present problem of improving security.

4.2 Since further aspects in claim 1 regarding the use of a combined fixed code and rolling code are not clearly disclosed in the application as filed, irrespective of whether they are technical or non-technical, they cannot be considered for assessing inventive step.

4.3 The additional features therefore do not render the claimed subject-matter of the independent claims non-obvious.

5. Thus, none of the requests fulfils the requirements of the EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated