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**Datasheet for the decision
of 15 May 2014**

Case Number: T 2132/10 - 3.5.05

Application Number: 07007851.4

Publication Number: 1850544

IPC: H04L12/58, H04Q7/22

Language of the proceedings: EN

Title of invention:

Mobile communication terminal, and method for transmission of image in mobile messenger service

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Mobile messenger service/SAMSUNG

Relevant legal provisions:

EPC Art. 54, 56, 123(2)

RPBA Art. 13(1)

Keyword:

Novelty - main and first auxiliary requests (no)
Admission of late-filed second auxiliary request - (yes)
Added subject-matter - second auxiliary request (yes)
Inventive step - third auxiliary request (no)

Decisions cited:

Catchword:



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Case Number: T 2132/10 - 3.5.05

**D E C I S I O N
of Technical Board of Appeal 3.5.05
of 15 May 2014**

Appellant: Samsung Electronics Co., Ltd.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 May 2010
refusing European patent application
No. 07007851.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: K. Bengi-Akyuerek
F. Blumer

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, posted on 5 May 2010, to refuse European patent application No. 07007851.4 on the ground of lack of inventive step (Article 56 EPC) with respect to a main request and a first auxiliary request, having regard to the combined disclosures of

D1: EP-A-1 331 786;
D4: US-A-2004/0057449.

II. Notice of appeal was received on 30 June 2010. The appeal fee was paid on the same day. With the statement setting out the grounds of appeal, received on 6 September 2010, the appellant filed new claims according to a main request, a first auxiliary request, and a second auxiliary request. It requested that the decision of the examining division be set aside and that a patent be granted on the basis of the main request or either of the auxiliary requests. In addition, oral proceedings were requested as an auxiliary measure.

III. A summons to oral proceedings scheduled for 15 May 2014 was issued on 27 January 2014. In an annex to this summons, the board gave its preliminary opinion on the appeal pursuant to Article 15(1) RPBA. In particular, objections were raised under Articles 123(2), 54 and 56 EPC, mainly having regard to D4.

IV. With a letter of reply dated 11 April 2014, the appellant submitted amended claims according to a new main request, a new first auxiliary request, and a new second auxiliary request together with counter-arguments regarding the objections raised in

the board's communication under Article 15(1) RPBA.

- V. Oral proceedings were held as scheduled on 15 May 2014, during which the appellant submitted a new second auxiliary request and renamed the former second auxiliary request as third auxiliary request. The admissibility and allowability of all the pending requests were discussed.

The appellant's final request was that the decision under appeal be set aside and that a patent be granted on the basis of the main request as filed with letter dated 11 April 2014, or, alternatively, on the basis of the first auxiliary request as filed with letter dated 11 April 2014, or on the basis of the second auxiliary request as filed during the oral proceedings before the board, or on the basis of the third auxiliary request, filed as second auxiliary request with letter dated 11 April 2014.

At the end of the oral proceedings, the decision of the board was announced.

- VI. Independent claim 9 of the **main request** reads as follows:

"A method for image transmission in execution of a mobile messenger service, the method comprising:

creating transmission packets of image data; and
sending the transmission packets of the image data to a counterpart mobile communication terminal (500, 600) over a packet data communication network;

characterized in that the method further comprises acquiring the image data and transmitting the obtained image data periodically with a predefined transmission period in response to a request for image transmission

during execution of the mobile messenger service."

Independent claim 8 of the **first auxiliary request** comprises all the method steps of claim 9 of the main request and further comprises the steps of

"receiving transmission packets of image data from the counterpart mobile communication terminal (500, 600) over the packet data communication network (300) during execution of the mobile messenger service" and

"decoding the transmission packets of the image data from the counterpart mobile communication terminal (500, 600); and
displaying the decoded image data."

Independent claim 9 of the **second auxiliary request** comprises all the method steps of claim 9 of the main request with the only difference that the sending step now reads (amendments underlined by the board):

"sending the transmission packets of the image data directly to a counterpart mobile communication terminal (500, 600) over a packet data communication network".

Independent claim 9 of the **third auxiliary request** comprises all the method steps of claim 9 of the main request with the only difference that the transmitting step now reads (amendments underlined by the board):

"transmitting the obtained image data periodically with a predefined transmission period of approximately one second in response to a request for image transmission during execution of the mobile messenger service."

The further independent claim 1 of all requests is directed to a corresponding mobile communication terminal comprising means for performing the steps of the respective independent method claim.

Reasons for the Decision

1. The appeal is admissible.

2. MAIN REQUEST

This request differs from the main request underlying the appealed decision in that claim 1 as amended further specifies that it is the packet data communication network interface unit that transmits the obtained image data.

This amendment was made in response to the objection raised by the board under Article 123(2) EPC and is based on the disclosure of page 13, last paragraph and page 14, second paragraph of the application as filed.

2.1 Article 52(1) EPC: Novelty and inventive step

In the board's judgment, independent claim 9 of this request does not meet the requirements of Article 52(1) EPC in conjunction with Article 54 EPC, for the following reasons:

2.1.1 The examining division and the appellant regarded document D1 as the closest prior art (cf. appealed decision, section II.2.2 and statement setting out the grounds of appeal, page 4, lines 9-13). However, the board holds that document D4 anticipates all the limiting features of claim 9:

A method for image transmission

- A) executing a mobile messenger service (see e.g. paragraph [0002]: "... providing group communication services relates generally to point-to-multipoint communication systems ... providing video, audio, image, and/or data in a group communication network" in conjunction with Fig. 2);
- B) acquiring image data (see paragraph [0037], first sentence: "A group member may select ... still image ... which he or she wishes to be sent to ... other group members ...");
- C) creating and sending transmission packets of the obtained image data periodically with a predefined transmission period to a counterpart mobile communication terminal ("other group member") over a packet data communication network to a counterpart mobile communication terminal in response to a request for image transmission during execution of the mobile messenger service (see paragraph [0037], last sentence: "The group member may choose to send ... a series of still images at a reduced rate of transmission, e.g., a certain number of still images per a certain time period ...").

2.1.2 As regards feature A), the appellant argued that the term "mobile messenger service" implied direct communications between the mobile terminals, i.e. communications without the intervention of any application server, in a full-duplex mode. This contrasted, however, with the system of D4 which comprised a server for enabling image communications and was operated in a half-duplex mode resulting in a discontinuity in the image transmission process.

In this regard, the board concedes that the system of D4 involves an intermediary server ("communication manager 218"; see Fig. 2) and half-duplex communications in which only one group member transmits data to other group members at any given time (see e.g. D4, paragraph [0022]). However, the board cannot subscribe to the above line of argument, basically for two reasons. Firstly, the board notes that the current claims do not indicate whether or not the underlying mobile messenger service involves an intermediate server or whether it uses a full-duplex or half-duplex mode. The description as filed merely states that a mobile messenger service corresponds to "an instant messaging application that allows registered users to communicate in real time via text transmission over the mobile Internet" (cf. page 1, penultimate line to page 2, first line). Rather, it is only claimed that image data is periodically sent to a counterpart mobile communication terminal - for whatever reasons. Secondly, D4 clearly discloses that the transmission packets of the image data are sent to a mobile group member, i.e. to a counterpart mobile communication terminal, as claimed (see paragraph [0037], first sentence: "A group member may select ... still image ... which he or she wishes to be sent to ... other group members ...").

2.1.3 As to feature B), the appellant submitted that D4 did not disclose that image data is acquired in response to a request for image transmission. However, it is apparent to the board that the wording of claim 9 does not reflect that image data is acquired in response to a request for image transmission but rather that the obtained image data is transmitted as a response to such a request. Moreover, the teaching of D4 that a

group member may choose to send e.g. still images to be subsequently sent to another group member (see once again D4, paragraph [0037]) is considered to inherently imply that image transmission is requested by the corresponding group member. Thus, the board finds that feature B) is also anticipated by D4.

- 2.1.4 As regards feature C), the appellant contended that the image transmission process as described in paragraph [0037] of D4 served only the purpose of reducing costs and of matching device capabilities rather than of periodically sending image data at a specified period from one mobile terminal to another as claimed. Furthermore, the phrase "during execution of the mobile messenger service" implied that image data was transmitted and received simultaneously, contrary to the system of D4 in which image data was exchanged in a half-duplex way via a push-to-talk functionality.

The board is not convinced by those arguments either. The information on the aim and purpose associated with a certain feature has no bearing on the assessment of whether or not that specific feature is anticipated by a prior-art document. Rather - regardless of whether the transmission of image data at a reduced transmission rate is done to reduce costs or to match device capabilities or for any other reason - what really counts in the context of assessing novelty in this case is that D4 palpably discloses in the last sentence of paragraph [0037] that image data ("still images") is periodically sent ("at a reduced rate of transmission") with a predefined transmission period ("certain time period") to a counterpart mobile terminal ("other group member") as required by feature C) of claim 9. Moreover, the board considers that the phrase "during execution of the mobile

messenger service" merely implies that, as long as the respective mobile messenger service is active, image data may be sent to and received from the counterpart mobile terminal. This is however also taught in D4.

2.2 In view of the above, the subject-matter of claim 9 of this request lacks novelty. In conclusion, this request is not allowable under Article 54 EPC.

3. FIRST AUXILIARY REQUEST

Independent claim 8 of this request differs from independent claim 9 of the main request in that it further specifies that

D) the transmission packets of the image data, received from the counterpart mobile communication terminal over the packet data communication network during execution of the mobile messenger service, are decoded and the decoded image data is displayed.

This amendment is based on e.g. claims 7 and 14 of the application as filed.

3.1 Article 52(1) EPC: Novelty and inventive step

3.1.1 The feature analysis concerning claim 9 of the main request set out in point 2.1 above applies *mutatis mutandis* to independent claim 8 of this request.

3.1.2 The board finds that D4 also discloses that the transmitted image data is received and displayed at the counterpart mobile terminal during execution of the mobile group communications, as required by feature D) (see e.g. D4, paragraph [0047]: "... CD 202 typically comprises an antenna 400, a display 410 ... Display 410

may be used for displaying video, still image, or text ..."). Furthermore, contrary to the assertion of the appellant that D4 did not unequivocally disclose decoding of the image data at the counterpart mobile terminal prior to the displaying step and that, according to the teaching of D4, decoding could conceivably be done by the intermediate server or not at all, the board considers that data of any type transmitted over a telecommunications network must inherently be decoded in order to reverse the original layer-specific encoding (e.g. link coding, network coding, encryption etc.) at an end device such as in a communication device ("CD") of D4 (see e.g. D4, paragraph [0032], third sentence: "Voice, video, and/or data is converted into data packets using a CD, the data packets being suitable for the particular data network through which communications to other users take place" or paragraph [0028], third sentence: "Encryption for secure groups is implemented on an end-to-end basis, meaning that encryption and decryption takes place within each CD"). Therefore, the decoding step is (at least) implicitly disclosed in D4 and thus feature D) is likewise considered to be anticipated by D4.

3.2 In conclusion, this request is also not allowable under Article 54 EPC.

4. SECOND AUXILIARY REQUEST

This request differs from the main request essentially in that independent claim 9 as amended now specifies that

E) the transmission packets of the image data are sent directly to the counterpart mobile

communication terminal (emphasis added).

Although this request was submitted during the oral proceedings, i.e. at a relatively late stage of the procedure, the board admitted it into the appeal proceedings under Article 13(1) RPBA, since it was regarded as an appropriate - though unsuccessful (see point 4.1 below) - reaction to the observations made in the board's communication under Article 15(1) RPBA and at the oral proceedings before the board that the term "mobile messenger service" alone did not imply "direct" communications between mobile terminals.

4.1 Article 123(2) EPC

The appellant provided page 13, lines 1-3 as the basis for feature E). This passage teaches that the "image transmission is directly accomplished between the host terminal 100 and the client terminal 500 without intervention of any server".

From this basis the board concludes that "direct transmission" means, in this context, that the respective image transmission between the mobile terminals should take place "without the intervention of any server". Since the latter expression is missing from feature E), the board finds that this amendment amounts to an inadmissible generalisation of the original subject-matter. This is all the more so, when considering that the skilled person would be aware from his common general knowledge that a "direct" transmission of data could also be performed in the presence of intermediate server intervention, for example in the event of transmissions via "virtual connections" over one hop (i.e. in a "direct" way) while the transmitted data or signalling data may still

be physically processed by one or more intermediary servers.

4.2 In conclusion, this request is not allowable under Article 123(2) EPC.

5. THIRD AUXILIARY REQUEST

This request differs from the main request essentially in that claim 9 as amended further specifies that

F) the predefined transmission period is
approximately one second (emphasis added).

Feature F) is supported by e.g. claims 6 and 13 of the application as filed.

5.1 Article 52(1) EPC: Novelty and inventive step

The board judges that independent claim 9 of this request does not meet the requirements of Article 52(1) EPC in conjunction with Article 56 EPC for the following reasons:

5.1.1 The feature analysis concerning claim 9 of the main request set out in point 2.1 above applies *mutatis mutandis* to claim 9 of this request.

5.1.2 However, feature F) of claim 9 is not directly and unambiguously disclosed in D4, since D4 fails to indicate by explicit statement or by unambiguous implication any concrete transmission period (see paragraph [0038]). Consequently, the subject-matter of claim 9 of this request is held to be novel over D4 (Article 54 EPC).

5.1.3 The appellant argued at the oral proceedings before the board that distinguishing feature F) had the technical effect of updating the sent images sufficiently often in order to satisfy the customer by "keeping the established connection going", rather than of providing a more cost-effective system as in D4.

In this context, the board considers the above effect to be the result of service-specific considerations of a service provider rather than of purely technical incentives or needs, which therefore cannot contribute to an inventive step. Rather, the board notes that selecting the proper transmission rate (i.e. the transmission period) to be employed in a mobile communications network like that described in D4 depends solely on practical circumstances like device capabilities, available system bandwidth, user preferences or even service considerations rather than on inventive skills. Accordingly, the skilled person in the field of mobile networks would set the corresponding transmission rate used in D4 to approximately one second as mandated by feature F), if dictated by practical needs (e.g. depending on whether transmission of "still images", "video" or "full video" is preferred; see D4, paragraph [0037], last sentence), and thus arrive at the solution of independent claim 9 in an obvious manner (Article 56 EPC).

5.1.4 For the above reasons, the subject-matter of claim 9 of this request does not involve an inventive step having regard to D4 and the skilled person's common general knowledge.

5.2 In conclusion, this request is not allowable under Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated