**BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS**

**BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE**

**CHAMBRES DE RECOURS
DE L'OFFICE EUROPÉEN
DES BREVETS**

Internal distribution code:
(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 20 January 2016**

Case Number: T 0861/11 - 3.5.06

Application Number: 01996161.4

Publication Number: 1397739

IPC: G06F9/00

Language of the proceedings: EN

Title of invention:
METHOD AND APPARATUS FOR RELATIONSHIP MANAGEMENT

Applicant:
Embrace Networks, Inc.

Headword:
Relationship management/EMBRACE NETWORKS

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (no)

Decisions cited:

Catchword:

Case Number: T 0861/11 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 20 January 2016

Appellant: (Applicant)	Embrace Networks, Inc. 950 Kifer Road Sunnyvale, CA 94086 (US)
Representative:	Grund, Martin Grund Intellectual Property Group Nikolaistrasse 15 80802 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 10 December 2010 refusing European patent application No. 01996161.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	W. Sekretaruk
Members:	A. Teale
	Martin Müller

Summary of Facts and Submissions

I.   This is an appeal against the decision, dispatched with
      reasons on 10 December 2010, to refuse European patent
      application No. 01 996 161.4 on the basis that the
      amendments to claim 1 according to a main and a first
      auxiliary request did not comply with Article 123(2)
      EPC. A second and a third auxiliary request were not
      admitted, Rules 116(2) and 137(3) EPC, since the
      subject-matter of claim 1 of these requests *prima facie*
      did not involve an inventive step, Article 56 EPC, in
      view of the document

      D1: Ryan Underwood, "To Connect and Serve, Silicon
           Valley upstart Embrace Networks has unveiled a
           system that Internet-enables any device,
           eliminating the need for costly 'one-off'
           solutions", "Publish", 24 April 2001, XP002206279,
           retrieved from the Internet on 16 July 2002 from
           URL http://www.embracenetworks.com/news/
           news_2001-04-24.html

      either taken alone or in combination with other
      documents.

II.   A notice of appeal was received on 10 February 2011 in
      which the appellant requested that the decision be set
      aside and a European patent granted. The appeal fee was
      paid on the same date.

III. With a statement of grounds of appeal, received on
      13 April 2011, the appellant submitted amended claims
      according to a main and first and second auxiliary
      requests. The appellant requested that the decision be
      set aside and that a European patent be granted on the
      basis of the claims according to the main or first or

second auxiliary request and the description and drawings on file, otherwise oral proceedings were requested.

IV.   In an annex to a summons to oral proceedings the board expressed doubts *inter alia* as to whether the subject-matter of claim 1 of all requests on file involved an inventive step, Article 56 EPC 1973, in view of D1. In particular, the board questioned whether the difference features between the subject-matter of claim 1 of all requests and the disclosure of D1 solved a technical problem and thus could contribute to inventive step.

V.   With a letter received on 18 December 2015 the appellant filed amended claims according a main and first to third auxiliary requests together with amended pages of the description.

VI.   At the oral proceeding held on 20 January 2015 the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request, or one of the auxiliary requests I, II or III, all filed with the letter of 18 December 2015.

VII.   The description pages on file for all requests are pages 1 to 5 and 17, received on 18 December 2015, page 4a, received on 13 March 2006, and pages 6 to 16, received on 12 October 2005.

VIII. The drawings on file for all requests are pages 1 to 7, as originally filed.

IX.   At the end of the oral proceedings the board announced its decision.

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

"1. A method of managing a relationship between a device
and a service provider comprising:

receiving at a service aggregator (320;508) a first
information from the device (310;502),

wherein the first information received at the service
aggregator (320;508) is selected from the group
consisting of device attribute information, branding
information, account information, device serial number
information, type of device information, application
information, and last time used information, and

wherein the service aggregator (320;508) has information
about one or more service providers and the service
aggregator is configured to select a specific service
provider from the one or more service providers for the
device based on the first information; and

transmitting a second information from the service
aggregator (320;508) to the device (310;502) directing
the device (310;502) to communicate with the specific
service provider (330;506), the second information being
based on the first information received from the
device."

XI.   Claim 1 according to the first auxiliary request only
       differs from that according to the main request in that,
       in the transmitting step, the expression "directing the
       device (310;502) to communicate with the specific
       service provider (330;506)" has been amended to read
       "directing the device (310;502) to **directly** communicate
       with the specific service provider (330;506)" (emphasis
       by the board).

XII.   Claim 1 according to the second auxiliary request reads as follows, the additions and deletions vis-a-vis claim 1 of the main request being indicated in **bold** or ~~struck through~~, respectively:

"1. A method of managing a relationship between a device and a service provider comprising:

receiving at a service aggregator (320;508) a first information from the device (310;502),

wherein the first information received at the service aggregator (320;508) is selected from the group consisting of device attribute information, branding information, account information, device serial number information, type of device information, application information, and last time used information, and

wherein the service aggregator (320;508) communicates the first information to a relation manager (510) which then communicates to the service aggregator (320;508) a user choice sent from the device and stored in the relation manager (510), and

wherein the service aggregator (320;508) has information about one or more service providers and the service aggregator is configured to select a specific service provider from the one or more service providers for the device based on the first information **and the user choice;** and

transmitting ~~a~~ **the** second information from the service aggregator (320;508) to the device (310;502) directing the device (310;502) to communicate with the specific service provider (330;506), the second information being

based on the first information **and user choice** received
from the device."

XIII. Claim 1 according to the third auxiliary request only
differs from that according to the second auxiliary
request in that, in the transmitting step, the
expression "directing the device (310;502) to
communicate with the specific service provider
(330;506)" has been amended to read "directing the
device (310;502) to **directly** communicate with the
specific service provider (330;506)" (emphasis by the
board).

XIV.   The claims according to each of the main and first to
third auxiliary requests also comprise an independent
claim 18 to a computer-readable medium referring to the
method of claim 1 and an independent claim 19 to an
apparatus setting out steps according to any of claims 1
to 17.

Reasons for the Decision

1.   The admissibility of the appeal

       In view of the facts set out at points I to III above,
       the appeal complies with the admissibility criteria
       under the EPC and is therefore admissible.

2.   The context of the invention

2.1   The technical disclosure of the invention starts at
       paragraph [0038] after numerous statements (see
       paragraphs [0031] to [0037]) broadening its
       interpretation. The invention relates to the use of a
       "service aggregator" to manage the relationships between

electronic devices (such as a digital camera; see
[0043]) and one or more service providers via a network
such as the Internet, a LAN or a wireless network.
According to figure 1 and its description (see paragraph
[0040]), clients are connected via the network to
servers acting as web sites, application service
providers, aggregators, search engines or database
resources. Figure 2 and its description (see paragraphs
[0039], [0041] and [0042]) disclose a personal computer
suitable for acting as one of said clients or servers.
As illustrated in figure 3, bidirectional communication
can occur between each of a device, a service aggregator
and a service provider, it being clear from the
description that such communication may occur via the
Internet; see paragraph [0043]. The device can be a
handheld digital camera linked to the service aggregator
and the service provider via a "USB to Ethernet to DSL
modem to Internet type connection". The service provider
may be a web site portal for the upload of pictures from
the device and may communicate with the service
aggregator via the Internet. The camera may have a
display and a keyboard for user input; see paragraph
[0044]. The service aggregator may send a series of
options to the device for user selection, one option
being to upload pictures to the service provider, as
above. Other options allow the device to communicate
with a service provider which can print photos received
from the device, allow pictures to be uploaded to a
group picture viewing web site or allow pictures to be
printed and sent by post to recipients.

2.2   The options presented to the device by the service
aggregator can be based on information received from the
device and on information regarding the services
provided by the service provider; see paragraph [0045].
There may be several service providers which receive

pictures, print them and mail them back to the user, and
the user can already have accounts set up with different
service providers or can use the device to set up a new
account with a service provider (see paragraph [0046]).

2.3   The information received from the device can be, for
        instance, device attribute information, branding
        information, account information, device serial number
        information or application information; see paragraph
        [0047].

2.4   Figure 4 illustrates "relationship management" in the
        context of communication between a device and a
        relationship manager, which *inter alia* checks whether an
        update is available for the device; see paragraphs
        [0049] and [0050]. As shown in figure 5, a relationship
        manager (RM), service aggregator (SA), several service
        providers and several devices can all be connected via a
        network to form an "environment for relationship
        management"; see paragraphs [0051] to [0053]. According
        to paragraph [0052], the environment operates as
        follows. A device may automatically communicate
        information about itself to the service aggregator,
        which communicates information about the device to the
        relationship manager. The relationship manager
        communicates to the service aggregator choices to send
        to the device. The user then uses the device to make a
        choice. The service aggregator receives the user choice
        from the device and conveys this to the relationship
        manager for storage. The relationship manager upon
        receiving and registering the choice sends the service
        aggregator information to communicate to the device.
        This information "may instruct the device to communicate
        directly with the appropriate service provider" to
        provide services based upon the user's choice; see
        paragraph [0052], last sentence.

3.   The meaning of the terms "direct" and "directly"

3.1   In the grounds of appeal the appellant argued that the
         transmitting step in the last paragraph of claim 1 of
         the requests then on file was to be understood as being
         limited to <u>direct</u> communication between the device and
         the service provider in the sense that there was no
         intervening network.

3.2   In its preliminary opinion the board questioned this
         position, pointing out that claim 1 of all requests did
         not limit the communication between the device and the
         specific service provider to **"direct"** communication.
         Indeed the original application provided no basis for
         assuming that the device, for instance a handheld
         digital camera, could be "directly" connected to the
         service provider. Claim 1 covered communication between
         the device and the service provider occurring via an
         intervening network such as the Internet; see figure 3
         and page 12, lines 7 to 8.

3.3   According to the submission of 18 December 2015, the
         appellant had not intended to argue that "direct"
         communication between the device and the service
         provider was performed in the absence of any
         communication network. The appellant had instead
         intended to argue that the device did not need to
         communicate via special-purpose network components, in
         particular the service aggregator or the relation
         manager. In the oral proceedings the appellant argued
         that the expression in claim 1 according to the first
         and third auxiliary requests "directing the device ...
         to **directly** communicate with the specific service
         provider ..." (emphasis by the board) should be
         understood to mean that communication between the device

and the specific service provider did not pass via the
service aggregator, or in the case of the third
auxiliary request, via the relation manager. According
to the appellant, the basis for this interpretation was
the last sentence of paragraph [0052] (corresponding to
paragraph [0035] of the original application) which
states, referring to the embodiment shown in figure 5,
that "This information may instruct the device to
communicate directly with the appropriate service
provider ... to provide services based upon the user's
choice".

3.4   Regarding claim 1 according to the main and second
        auxiliary requests, which do not use the term "directly"
        in the transmitting step, the board finds that the path
        taken by communication between the device and the
        specific service provider is not specified by the claim,
        either on its own or when understood in the light of the
        description and drawings. Regarding claim 1 according to
        the first and third auxiliary requests, the board finds
        that the term "directly" in the context of communication
        via a network such as the Internet has no limitative
        effect and certainly does not exclude communication
        passing via the service aggregator or the relation
        manager. There is also no mention in the description and
        figures of reducing the computing load on the service
        aggregator. In the context of the application the board
        understands the term "directly" as meaning "without the
        need to repeat the selection step".

4.   The meaning of the term "directing" in claim 1

In the oral proceedings the appellant argued that the
term "directing" in the expression "directing the device
to communicate with the specific service provider ..."
meant that communication must actually occur between the
device and the service provider. The board does not
accept this argument, understanding this part of claim 1
as such, and also when understood in the light of page
15, lines 19 to 20, of the description, to mean that the
device is given information about which service provider
has been selected for the client to communicate with.
The claim does not imply that the client uses this
information to communicate with the service provider or
how. Hence the board finds that the claim does not
require that the client use this information at all.

5.   Document D1

5.1   According to its title, D1 concerns Internet-enabling
       devices, the technology (developed by the appellant)
       "handling all the details to consummate the needed
       'handshake' between a device and a service provider";
       see the 6th paragraph starting "Now a company ..." In
       the case of an Internet-enabled digital camera, pictures
       can be sent directly from the camera via the Internet to
       a website; see 8th paragraph, starting "Take the
       example ..." D1 states that "... just send the pictures
       straight to whatever Web site you wanted them to go". In
       this way, the system known from D1 avoids the need to
       first upload the pictures to a computer and from there
       to a website. It is stressed that "We want there to be
       no need for manual intervention". According to the
       penultimate paragraph, the "Embrace Network system"
       combines two elements. The first is the client-side
       hardware and software that controls access between the
       device and the network, which the board understands to
       be the Internet. The second element consists of the

server application that controls communication between
the network and a service provider. As the appellant has
argued, in D1 communication between the camera and the
service provider passes through the server application.

5.2   The appellant argued in the oral proceedings that in D1
        the device did not have to know the location of the
        selected service provider, since it always communicated
        via the server application as an intermediate unit.

5.3   Hence, in terms of claim 1 of the main and first, second
        and third auxiliary requests, D1 discloses a method of
        managing a relationship between a device and a service
        provider, the device communicating with the service
        provider.

5.4   The subject-matter of claim 1 of the main request
        differs from the disclosure of D1 in the following
        features. As will be explained below, the difference
        features can be grouped into features "a" and "b", as
        follows:

        a.   receiving at a service aggregator a first
                information from the device, wherein the first
                information received at the service aggregator is
                selected from the group consisting of device
                attribute information, branding information,
                account information, device serial number
                information, type of device information,
                application information, and last time used
                information, and wherein the service aggregator
                has information about one or more service providers
                and the service aggregator is configured to select
                a specific service provider from the one or more
                service providers for the device based on the
                first information; and

b.   transmitting a second information from the service
      aggregator to the device directing the device to
      communicate with the specific service provider,
      the second information being based on the first
      information received from the device.

6.   Inventive step, Article 56 EPC 1973

6.1   The main request

6.1.1 The appellant has argued that, although the difference
      features set out elements which were known *per se*, it
      was their combination that was inventive. According to
      the appellant, at the filing date, there was a "major
      trend" towards connecting devices having limited
      computing ability to the Internet and it was becoming
      important to enhance the capabilities of such devices,
      especially when multiple service providers had to be
      contacted by the device to access new features and
      services. The invention solved the objective technical
      problem of "how to manage relationships of a device
      having limited computing resources in order to provide
      improved functionality to said device via the Internet".
      Based on information from the device and a response from
      the service aggregator, the device then contacted the
      selected service provider without an "intervening
      network" (which, in the light of the appellant's
      subsequent arguments, the board now understands to mean
      "without passing via the service aggregator or the
      relation manager"). The appellant also argued that the
      invention did not require the device to have the
      computing resources necessary to create or register user
      profiles.

6.1.2   In the submission of 18 December 2015 the appellant
        argued that the transmitting step in claim 1 involved
        transmitting a second information to the device
        directing it to communicate with the service provider.
        Hence the difference features over D1 solved the
        technical problem of providing an improved method of
        managing a relationship between a device and a service
        provider allowing a reduction in the number of
        computationally expensive input/output operations with
        the user. Moreover, the computational load on the
        service aggregator was reduced, since, according to the
        transmitting step in claim 1, communication of the
        device with the service prover did not pass via the
        service aggregator.

6.1.3   In the oral proceedings the appellant argued that the
        invention reduced the need to enter data or search on a
        simple Internet-enabled device to select a service
        provider by using a service aggregator to, based on
        information from the device, select a service provider
        and send information on the chosen service provider to
        the device. The invention did not merely automate human
        activity, since a user would not select a service
        provider in this way. Moreover, according to the
        invention, once the service aggregator had selected the
        service provider, it was no longer involved in
        communication between the device and the service
        provider, thereby reducing the computing load on the
        service aggregator. The invention also had the advantage
        that the device did not need to store details of all the
        available service providers.

6.1.4   As explained above, the board does not understand claim
        1 as excluding that communication of the device with the
        service provider passes via the service aggregator. The
        board finds that features "a" and "b", set out above,

solve different problems, there being no synergistic
effect.

6.1.5   Regarding feature "a", D1 does not indicate how the
         service provider is selected, although there is a hint
         at some sort of selection in the eighth paragraph which
         states "send your pictures straight to whatever Web site
         you wanted them to go to" (emphasis by the board). In
         the oral proceedings the appellant's representative
         stated that, in his understanding of D1, the server
         application might provide such a selection service. The
         board finds that this is not directly and unambiguously
         derivable from D1. Feature "a" solves the technical
         problem of automating selection of the service provider,
         in itself an obvious problem for the person skilled in
         the computing art starting from D1. The types of first
         information set out in the claim, for instance device
         attribute information, upon which the selection is
         based do not result in the solution of a technical
         problem going beyond the automation of the selection. It
         would moreover have been a usual matter of design to
         implement this selection at a server, a server already
         being known from D1 (see penultimate paragraph), which
         can be considered to be the claimed service aggregator,
         based on information from the device as a usual matter
         of design. The skilled person would also have been
         disinclined to store information on all the possible
         service providers in the camera of D1 in view of its
         limited memory capacity and the need to update such
         information in all the devices which are to be connected
         to the Internet.

6.1.6   In the oral proceedings the appellant had no further
         comments regarding feature "a", choosing to focus on
         feature "b" instead.

6.1.7   The appellant has argued that feature "b" gives the
        device the potential to communicate with the service
        provider and that this is sufficient to solve a
        technical problem. The board does not accept this
        argument and finds that in the present case, where
        communication between the device and a service provider
        need not occur, a communication problem is not solved.

6.1.8   The appellant has also argued that feature "b" solves
        the problem of reducing the load on the service
        aggregator because it is only involved initially in
        enabling the device to communicate with a selected
        service provider and from then on is no longer involved
        in such communication. The board does not accept this
        argument because there is no direct and unambiguous
        disclosure in the original application that subsequent
        communication does not pass via the service aggregator,
        nor is a reduction in the load on the service aggregator
        even hinted at. Also claim 1 does not exclude
        communication between the device and the service
        provider passing via the service aggregator.

6.1.9   Hence claim 1 leaves open whether the device acts on the
        received information to communicate with the selected
        service provider and, even if the intended communication
        did take place, it would not achieve the alleged load
        reduction on the service aggregator. As the appellant
        has not put forward any other technical problem solved
        by feature "b" and the board is not aware of any itself,
        it must be concluded that feature "b" does not solve a
        technical problem.

6.1.10 The board finds that the subject-matter of claim 1 of
        the main request lacks inventive step, Article 56 EPC
        1973, in view of D1 and the common general knowledge of
        the skilled person.

6.2   The first auxiliary request

        Since, as explained above, the board regards the term
        added to claim 1 "directly" as having no limitative
        effect in this context, the subject-matter of claim 1 of
        the first auxiliary request lacks inventive step,
        Article 56 EPC 1973, for the same reasons as set out for
        the main request.

6.3   The second auxiliary request

6.3.1   Claim 1 differs from that of the main request in the
        addition of the following passage:

        "wherein the service aggregator (320;508) communicates
        the first information to a relation manager (510) which
        then communicates to the service aggregator (320;508) a
        user choice sent from the device (310;502) and stored in
        the relation manager (510), and"

        and in that in the penultimate paragraph the service
        aggregator is now configured to select a specific
        service provider "based on the first information **and the
        user choice**" (emphasis by the board). Likewise in the
        transmitting step in the last paragraph the second
        information transmitted from the service aggregator to
        the device is "based on the first information **and user
        choice** received from the device" (emphasis by the
        board).

6.3.2   The appellant has argued, regarding a previous version
        of the claim, that the references to a "relation
        manager" and a "user choice" emphasize the relationship
        management aspects of the invention.

6.3.3   The board understands the added features in the light of
         paragraph [0052] of the description to mean that first,
         based on information about the device, the device user
         is presented with choices and makes a choice which is
         stored in the relation manager; see page 15, lines 14 to
         19. Then the relation manager, based *inter alia* on the
         user choice, sends the service aggregator informator to
         pass on to the device enabling it to communicate with
         the appropriate service provider.

6.3.4   In the submission of 18 December 2015 the appellant
         argued, regarding the second and third auxiliary
         requests, that the claimed "direct" communication
         between the device and the service provider not only
         avoided the service aggregator but also the claimed
         relation manager. In the oral proceedings the appellant
         also argued that the relationship manager increased the
         flexibility with which the user could enter data.

6.3.5   Compared to claim 1 of the main request, the effect of
         the amendments is that the selection of a service
         provider depends not only on information about the
         device, which may be branding or account information,
         but also on a user choice, the nature of this choice not
         being disclosed in the description and drawings or
         specified in claim 1. The amendments also specify that a
         further server, termed the "relation manager", is
         provided for storing user choices.

6.3.6   The board finds that these additional features are
         unable to lend inventive step to claim 1. As regards
         their effect on difference "a" (see main request), the
         board considers it obvious in view of D1 ("whatever Web
         site you wanted it to go") that the choice of the
         service provider is made partly dependent on the user's
         choice. It could, for instance, concern account

preferences, such as "Do you wish to use the camera
manufacturer's default photo web site?". The addition of
the user choice to feature "a" does not cause a
technical problem going further than automating
selection of the service provider to be solved. Also the
provision of storage for such user choices is regarded
as a usual design choice for the person skilled in the
computing art. The board can find no basis in the
original application for the appellant's assertion that
the relationship manager increases the flexibility with
which the user can enter data. Turning to difference
"b", the fact that the information sent to the device
enabling it to communicate with the service provider
depends in some way on a non-specified user choice does
not lend it technical character and thus does not cause
it to contribute to inventive step.

6.3.7   Hence the board finds that the subject-matter of claim 1
        according to the second auxiliary request lacks
        inventive step, Article 56 EPC 1973, in view of D1 and
        the common general knowledge of the skilled person.

6.4   The third auxiliary request

6.4.1   Since, as explained above, the board regards the term
        added with respect to claim 1 of the second auxiliary
        request "directly" as having no limitative effect in
        this context, the subject-matter of claim 1 of the third
        auxiliary request lacks inventive step, Article 56 EPC
        1973, for the same reasons as set out above for the
        second auxiliary request.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

B. Atienza Vivancos   W. Sekretaruk

Decision electronically authenticated