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**Datasheet for the decision  
of 3 July 2018**

**Case Number:** T 1553/12 - 3.4.01

**Application Number:** 08725959.4

**Publication Number:** 2130202

**IPC:** G10L11/00

**Language of the proceedings:** EN

**Title of invention:**

VOICE-CONTROLLED COMMUNICATIONS SYSTEM AND METHOD HAVING AN  
ACCESS DEVICE OR BADGE APPLICATION

**Applicant:**

Vocera Communications, Inc.

**Headword:**

**Relevant legal provisions:**

EPC Art. 54(1), 54(2), 84, 56, 113(1)  
RPBA Art. 13(1), 15(3)

**Keyword:**

Novelty - main request, first auxiliary request, auxiliary request 1A (no)

Claims - clarity - second auxiliary request (no)

Inventive step - third and fourth auxiliary request (no)

Oral proceedings - held in absence of appellant

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1553/12 - 3.4.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.01**  
**of 3 July 2018**

**Appellant:** Vocera Communications, Inc.  
(Applicant) 525 Race Street  
San Jose, CA 95126 (US)

**Representative:** Gillard, Matthew Paul  
Withers & Rogers LLP  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 22 February  
2012 refusing European patent application No.  
08725959.4 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** P. Fontenay  
**Members:** T. Zinke  
J. Geschwind

## **Summary of Facts and Submissions**

- I. The examining division refused European patent application No. 08 725 959.
- II. In its decision the examining division held that independent claim 1 of a main request was not novel as compared to document D1 (WO-A-2004/021149) and independent claim 1 of auxiliary request 1 lacked an inventive step starting from D1 as closest prior art in combination with common general knowledge.
- III. The appellant (applicant) filed an appeal against the decision.

With 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 enclosed sets of claims according to a main request, or alternatively, a first, second or third auxiliary request. The main request and the first auxiliary request were identical to the main request and auxiliary request 1 on which the impugned decision was based.

- IV. At the appellant's request, a summons to attend oral proceedings was issued.

In a communication pursuant to Art. 15(1) RPBA, the appellant was informed of preliminary objections of the Board with regard to the requests then on file. In particular, the Board considered that independent claims 1 of the main request and the first auxiliary request lacked novelty, that the amendments of independent claims 1 of the second and third auxiliary requests lacked support in the original disclosure

(Art. 123(2) EPC) and clarity (Art. 84 EPC) and that the subject-matter of claim 1 of the second auxiliary request also was insufficiently disclosed (Art. 83 EPC).

V. In reply, by letter of 31 May 2018, the appellant filed claim sets for a new auxiliary request 1A, a revised third auxiliary request and a new fourth auxiliary request. The main request, first auxiliary request and second auxiliary request were maintained. In addition, the appellant provided arguments with regard to the basis in the original application for the amendments made. The appellant also commented on clarity (Art. 84 EPC) and support in the original disclosure (Art. 123(2) EPC) for the revised third auxiliary request and on novelty and inventive step for the first, revised third and fourth auxiliary requests. No further arguments were provided with regard to the main request and the second auxiliary request.

VI. With a letter dated 27 June 2018, the appellant withdrew its request for oral proceedings and stated that it looked *"forward to learning in due course the decision that the Board reaches on the present appeal based on the written submissions already on file"*.

VII. The oral proceedings took place as scheduled, in the absence of the appellant.

VIII. Claim 1 of the main request reads as follows:

*"1. A voice controlled communications system, comprising:  
a control computer;  
an access device having a speaker, a microphone, a memory and a processing unit that executes a badge*

*application stored in the memory, and that communicates with the control computer;*  
*wherein the access device with the badge application further comprises an unassigned state and an assigned state such that the badge application is initially in the unassigned state when it has not been assigned to a user, the badge application enters the assigned state when the badge application has been assigned to a user and the badge application returns to the unassigned state when the user has finished using the badge application so that the badge application is dynamically bound to the user while the user is using the badge application; and*  
*wherein the control computer further comprises a voice recognition system that receives voice commands from a user using the microphone and badge application and wherein the badge application is assigned to a particular user when the user first issues any command from the badge application to the voice recognition system."*

Claims 2 to 8 are dependent claims.

- IX. Independent claim 1 of the first auxiliary request is amended as compared to claim 1 of the main request by the added feature: *"wherein the control computer further comprises an authentication unit for authenticating a user's access to the system"* at the end of the claim.
- X. In independent claim 1 of auxiliary request 1A the added feature of the first auxiliary request is further amended by specifying: *"wherein the control computer further comprises an authentication unit for authenticating a user's access to the system when the*

access device is used to access the system" (emphasis added to show the amendment).

- XI. Independent claim 1 of the second auxiliary request is amended as compared to claim 1 of the main request by removing the features that the processing unit executes a badge application and by adding the feature *"wherein the memory is configured to store: an operating system for controlling operation of the access device; store and execute a transmission application for controlling communications functions of the access device; and store and execute a badge application for implementing badge functionality on the access device"* after the mention of the access device.
- XII. Independent claim 1 of the revised third auxiliary request is amended as compared to claim 1 of the main request by adding the feature *"wherein the access device comprises a cellular telephone capable of communicating with at least one cellular base station, to enable communications via the communications system"* at the end of the claim.
- XIII. Independent claim 1 of the fourth auxiliary request is amended as compared to claim 1 of the main request by incorporating the added features of auxiliary request 1A and the amendment made in the revised third auxiliary request.

### **Reasons for the Decision**

1. The appeal is admissible.

2. Main Request

2.1 The claim set of the main request is identical to the main request on which the decision under appeal is based. In the appealed decision, the examining division held that the subject-matter of independent claim 1 was not novel as compared to document D1.

2.2 Document D1 is a patent application from the same applicant as the present application. The specifications and figures of both D1 and the present application are identical to a certain extent. The present application, however, further includes additional embodiments, claims and general passages (for instance: page 2, line 27 to page 3, line 28; page 6, lines 7 to 16; page 7, lines 9 to 12; page 9, 14 to 21; page 14, lines 10 to 18; page 16, line 13 to page 17, line 15; page 21, line 18 to page 23, line 16) and Fig. 3Z.

2.3 In the statement setting out the grounds of appeal, the appellant argued that document D1 does not disclose directly and unambiguously a badge application stored in a memory.

2.4 It can be derived from document D1, however, that the processing unit of D1 (cf. CPU, page 10, lines 5 to 7) executes instructions for using the badge. These instructions qualify as a "*badge application*", since an application is nothing more than a series of instructions.

2.5 The appellant argued that the claimed "*badge application*" is something different from the set of instructions that is used by the CPU in D1, because the claimed "*badge application*" is needed to enable a



general purpose access device to function as a badge. The Board, however, agrees with the examining division in that the device as depicted in Fig.3I of D1 including a CPU without the set of instructions would also not function as a badge in the voice-controlled communication system. Hence, also the set of instructions of D1 is needed to enable the device to function as a badge.

- 2.6 These instructions used by the CPU in D1 have to be stored somewhere. A person skilled in the art considers that a memory storing instructions for a CPU is implicitly present when a CPU is explicitly disclosed. Otherwise the CPU could not work. The skilled person would exclude an arrangement with a CPU in one device and the memory with the instructions in another device (e.g. the access point or the central computer), because of the resulting time lag and the ubiquitous availability of electronic circuits including CPU's and memories at the priority date of the application. Hence, claim 1 of the present main request lacks novelty (Art. 54(1), (2) EPC).
- 2.7 The appellant further argued that the processing of the system is not completely performed in the badge of document D1 (statement of grounds, page 3, last paragraph dealing with novelty of the main request). This argument, however, misses the point. Independent claim 1 of the main request also does not claim that all processing of the system is performed in the badge.
- 2.8 The Board understands that the actual embodiments that were described in document D1 and in the present application might work differently. The badge on which document D1 might have been based could have been a "simple" device with a "simple" CPU only being able to

deal with a restricted instruction set specifically used for the badge. The access device of the present application might, in contrast, be a general purpose device, in which a badge application might run besides other applications. This difference, however, is not claimed.

2.9 Hence, independent claim 1 of the main request lacks novelty as compared to document D1 (Art. 54(1), (2) EPC).

2.10 Therefore, the main request is not allowable.

3. First auxiliary request

3.1 Independent claim 1 of the first auxiliary request differs from independent claim 1 of the main request by the incorporation of the feature *"wherein the control computer further comprises an authentication unit for authenticating a user's access to the system"*.

Further details about the authentication unit, or how the authentication is actually performed are neither claimed nor are they disclosed in the specification. Hence, the Board interprets this feature as *"restricting a user's access to the system"* so that there is a process involved which ensures that only authorized users and/or access devices can access or use the system and not every person or every access device. In particular, it is noted that it is not claimed in claim 1 of the first auxiliary request that the access made via the access device is authenticated, contrary to the argumentation provided by the appellant (cf. letter of 31 May 2018, paragraph bridging pages 1 and 2).

3.2 Document D1 discloses a plurality of such authentication processes that restrict a user's access to the system, i.e.

- (a) D1 discloses an application for registering new users that might be protected by a login name and password (cf. page 20, lines 10 to 32, in particular lines 30 to 32).
- (b) Also an access to the system when actually using the voice-controlled system after the registration took place already, is implicitly disclosed in D1. It is stated *"If desired, a customer could permit external access to the application so that a support person or some other agent could monitor and/or troubleshoot the system externally"* (page 20, lines 15 to 17). This implies an authentication process that not only allows permission but also restriction (i.e. authentication) of external access to the system.
- (c) D1 also discloses an *"Assignment on First Use"* (page 43, lines 25 to 30), which reads:

*"If the badge is unassigned at the time the Genie is hailed, the Genie will greet the user and ask the user to say his name. If the name is recognized, the badge will then be assigned to the user. Note that the assignment will work only if the user had been previously registered in the system. The assignment may also be predicated on a successful match of the voiceprint of the user, using the verification feature of the speech recognition system."*

This implies that in D1 even an authentication process is also present when the user accesses the system with the access device (i.e. the badge). This process prevents a user with a name that is not found or where the voiceprint do not match to use the system.

Since these authentication processes are disclosed in document D1, an authentication unit must necessarily be present as well.

3.3 Therefore, the subject-matter of claim 1 of the first auxiliary request is not novel as compared to D1.

3.4 Hence, the first auxiliary request is not allowable.

4. Auxiliary Request 1A

4.1 Auxiliary request 1A is admitted into the appeal proceedings, since the amendments made are considered to be made in order to overcome the objections raised by the Board in its communication under Art. 15(1) RPBA (Art. 13(1) RPBA).

4.2 Lack of novelty (Art. 54(1), (2) EPC)

The amendment made to independent claim 1 of auxiliary request 1A clarifies that the authentication unit authenticates the user's access to the system when the access device is used to access the system. This, however, is also the case when the system disclosed in D1 assigns the access device on first use (cf. section c) above).

Hence, the subject-matter of claim 1 of auxiliary request 1A is not novel as compared to the disclosure of document D1.

4.3 Consequently, auxiliary request 1A is not allowable.

5. Second Auxiliary Request

5.1 Clarity (Art. 84 EPC)

According to the appellant (cf. section "*Amendments*", bridging pages 5 and 6 of the statement of grounds), the amendments made to claim 1 of the second auxiliary request were disclosed on page 17, lines 10 to 13 of the original application. The referred passage reads "*For example, when the badge application is being used to access the voice-controlled system, the memory may store an operating system 59a that controls the overall operation of the access device, a transmission application 59b to control the communications functions of the access device and a badge application 59c that implements the functions and operations of the badge device described above.*" There is no disclosure in this passage that the memory also "*executes*" the transmission application and the badge application as is currently claimed.

As a matter of fact, it is not disclosed, and also not derivable from the application what is meant by the fact that the memory would execute applications. It is the Board's understanding, that it was intended to somehow claim that the memory stores the applications, which are, however, executed by the processing unit. This, however, is not reflected by the claim's wording which somehow suggests that the memory would also actively contribute to the implementation of the

various functions and operations thus generating doubts as to the actual meaning of the terms employed contrary to the requirements of Art. 84 EPC as to clarity.

5.2 Hence, the second auxiliary request is not allowable.

## 6. Revised Third Auxiliary Request

6.1 The revised third auxiliary request is admitted into the appeal proceedings, since the amendment made re-incorporates the control computer into independent claim 1 in order to overcome an objection raised in the Board's communication pursuant to Art. 15(1) RPBA (Art. 13(1) RPBA).

6.2 The Board is satisfied that the amendment made to the revised third auxiliary request comply with the requirements of Art. 123(2) EPC. In particular, it is originally disclosed in the combination of original claims 34 and 39 that the access device comprises a cellular phone.

6.3 Inventive step (Art. 56 EPC)

6.3.1 Document D1 does not disclose the incorporated feature *"wherein the access device comprises a cellular telephone capable of communicating with at least one cellular base station, to enable communications via the communications system"*.

6.3.2 According to the appellant's argumentation in the statement setting out the grounds of appeal, the technical effect of this feature is that *"the range over which the communications system can be used is greatly increased compared to the system of the prior art"* (cf. page 7, first paragraph under headline

*"Inventive Step - Article 56 EPC"*). The Board agrees to the existence of this technical effect.

Consequently, the technical object of the claimed invention might be formulated as *"increasing the range over which the communications system can be used"*.

- 6.3.3 Due to the ubiquitous use of cellphone technology, it is, however, common general knowledge for a person skilled in the art, that the use of cellular phones that communicate with cellular base stations increases the range for communication systems. Hence, the solution is obvious for a person skilled in the art starting from document D1 as closest prior art and using common general knowledge.

Therefore, the subject-matter of claim 1 of the revised third auxiliary requests lacks an inventive step (Art. 56 EPC).

- 6.4 Consequently, the revised third auxiliary request is not allowable.

## 7. Fourth Auxiliary Request

- 7.1 Since the amendments made to claim 1 of the fourth auxiliary request constitute an attempt to overcome the objections raised by the Board in its communication under Art. 15(1) RPBA, the fourth auxiliary request is admitted into the appeal proceedings (Art. 13(1) RPBA).

### 7.2 Inventive step (Art. 56 EPC)

Independent claim 1 of the fourth auxiliary request combines the amendments made with regard to the independent claims 1 of auxiliary request 1A and the

revised third auxiliary request. As discussed above, document D1 already discloses all features that are claimed in independent claim 1 of auxiliary request 1A. So the distinguishing feature of claim 1 according to the fourth auxiliary request is the same as the one discussed above with regard to the revised third auxiliary request.

Consequently, according to the same argumentation as above, independent claim 1 of the fourth auxiliary requests lacks an inventive step starting from document D1 as closest prior art in combination with common general knowledge.

7.3 Hence, the fourth auxiliary request is not allowable.

8. Right to be heard (Art. 113(1) EPC)

8.1 The reasons for the present decision with regard to the main request, the first and second auxiliary requests are all mentioned in the Board's communication under Art. 15(1) RPBA. The appellant, however, failed to make any substantive submissions in reply. The Board has no reason to change its opinion as set out in this communication.

8.2 Appellant absent from oral proceedings

According to established case law (cf. Case Law of the Boards of Appeal of the EPO, 8th edition, July 2016, section IV.E.4.2.6 d), "*Applicant (proprietor) absent from oral proceedings*", pages 1137-1138), an appellant filing amended claims in response to a Board's communication under Art. 15(1) RPBA has to expect that the allowability of the newly filed claims will be considered during the oral proceedings and that a



decision be based on objections which might arise against such claims in its absence.

For this reason, in the present case, the appellant refraining from participating at the oral proceedings de facto renounced to submit its comments orally, if any. In accordance with the provisions of Art. 15(3) RPBA, the appellant was then treated as relying only on its written submissions.

### **Order**

#### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



R. Schumacher

P. Fontenay

Decision electronically authenticated