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**Datasheet for the decision
of 3 September 2015**

Case Number: T 1942/12 - 3.5.07

Application Number: 10151286.1

Publication Number: 2214107

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:

Method and system for sharing location information and recording medium using the same

Applicant:

HTC Corporation

Headword:

Sharing location information/HTC

Relevant legal provisions:

EPC Art. 56, 123(2)

RPBA Art. 13(1)

Keyword:

Request for oral proceedings via video conference - (refused)
Inventive step - main request, second auxiliary request (no)
Amendments - first auxiliary request (not allowable)
Late-filed request -
third and fourth auxiliary requests (not admitted)

Decisions cited:

T 1266/07, T 0037/08, T 0663/10, T 1427/10, T 2425/10,
T 1930/12

Catchword:



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Case Number: T 1942/12 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 3 September 2015

Appellant:
(Applicant)

HTC Corporation
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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 20 April 2012
refusing European patent application No.
10151286.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman

R. Moufang

Members:

R. de Man

P. San-Bento Furtado

Summary of Facts and Submissions

I. The applicant (appellant) appealed against the decision of the Examining Division refusing European patent application No. 10151286.1.

II. The decision cited the following documents:

D1: EP 1 950 984 A1, published on 30 July 2008; and

D2: WO 02/098148 A2, published on 5 December 2002.

The Examining Division decided *inter alia* that the then main and first to third auxiliary requests did not meet the requirements of Article 123(2) EPC, that the subject-matter of claim 1 of the main request was not new and that the subject-matter of claim 1 of the first to third auxiliary requests lacked inventive step. The objections as to novelty and inventive step were based on "the normal process of manual selection between, and composition of, an e-mail or MMS on a mobile device, incorporating a photograph and descriptive text" and on documents D1 and D2.

III. With the statement of grounds of appeal, the appellant replaced its requests with a main request based on the main request considered by the Examining Division and an auxiliary request based on the third auxiliary request considered by the Examining Division. The appellant requested oral proceedings via video conference in the event that the auxiliary request was not considered allowable.

IV. In a communication accompanying a summons to oral proceedings, the Board introduced the following document from the European search report:

D3: US 6 161 131 A, published on 12 December 2000.

The Board expressed the provisional opinion that both the main request and the auxiliary request infringed Article 123(2) EPC and that the subject-matter of claim 1 of both requests appeared to lack inventive step. The Board further raised a number of clarity objections. The appellant was informed that the oral proceedings would be held as a normal hearing.

- V. With a letter dated 3 August 2015, the appellant replaced its substantive requests with a new main request and first to fourth auxiliary requests.
- VI. With a letter dated 28 August 2014 [sic], the appellant informed the Board that it had decided not to attend the oral proceedings.
- VII. Oral proceedings were held on 3 September 2015 in the absence of the appellant. At the end of the oral proceedings, the chairman pronounced the Board's decision.
- VIII. Claim 1 of the main request reads as follows:

"A method for sharing location information, for enabling a mobile device to share graphic location information with a remote device, the method comprising steps as follows:

obtaining the graphic location information by a first display software (S110), the graphic location information comprises [sic] data of a point of interest (POI), the data comprising any of a name, a longitude and latitude, an address, a telephone number, a photo, a date of the photo being taken, time, a map image, a

text file, an audio file, a video file, and a rating, or a combination thereof;

inserting the graphic location information into a document having an image file format which can be displayed by a second display software (S120), wherein the second display software is different from the first display software and the graphic location information inserted into the document comprises the photo and a text description related to the POI, and further comprises the name of the POI; and

transmitting the document to the remote device (S130)."

IX. Claim 1 of the first auxiliary request reads as follows:

"A method for sharing location information, for enabling a mobile device to share graphic location information with a remote device, the method comprising steps as follows:

obtaining the graphic location information by a first display software (S110), the graphic location information comprises [sic] data of a point of interest (POI), the data comprising any of a name, a longitude and latitude, an address, a telephone number, a photo, a date of the photo being taken, time, a map image, a text file, an audio file, a video file, and a rating, or a combination thereof;

inserting the graphic location information into a document which can be displayed by a second display software (S120); and

transmitting the document to the remote device (S130),

wherein the step of inserting the graphic location information into the document corresponding to the second display software comprises:

receiving a selection instruction to select the document which can be opened by the second display software to insert the graphic location information into the document,

opening an online electronic map according to the graphic location information; and

saving the online electronic map as a single document being a file in a hypertext markup language (HTML) format, in particular a MHTML file, or including an [sic] uniform resource locator (URL) address of the online electronic map."

- X. Claim 1 of the second auxiliary request differs from claim 1 of the main request in the replacement of "and further comprises the name of the POI" with "and further comprises the name and the address of the POI" and in the addition of the following text at the end of the claim:

"wherein the step of inserting the graphic location information into the document corresponding to the second display software comprises:

producing the document according to a postcard format; and

correspondingly filling the graphic location information in the corresponding fields in the postcard format."

- XI. Claim 1 of the third auxiliary request reads as follows:

"A method for sharing location information, for enabling a mobile device to share graphic location information with a remote device, the method comprising steps as follows:

obtaining the graphic location information by a first display software (S110), wherein the first display software integrates a photo of a point of interest (POI) and related information of the POI into a POI collection, each page in the POI collection represents one POI, and one page in the POI collection comprises the graphic location information, wherein the graphic location information comprises a name, an address and the photo of the POI, and at least the name and the photo of the POI are displayed on the page of the POI in the POI collection;

inserting the graphic location information into a document corresponding to a second display software (S120), wherein the second display software is different from the first display software, and the second display software is installed in the remote device; and

transmitting the document to the remote device (S130)."

XII. Claim 1 of the fourth auxiliary request differs from claim 1 of the third auxiliary request in that the text "inserting the graphic location information into a document corresponding to a second display software (S120), wherein" is replaced with the following text:

"producing a multimedia document according to a postcard format and filling the graphic location information in the corresponding fields in the postcard format, wherein the multimedia document corresponding to a second display software (S120),"

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

2. *The request for oral proceedings via video conference*

Since the "general framework" that would be required as a prerequisite for holding oral proceedings by video conference before a board of appeal, as set out in decision T 1266/07 of 26 November 2009, reasons 1.2, is currently not in place, the appellant's request that oral proceedings be held by video conference was refused (see also decisions T 37/08 of 9 February 2011, reasons 1.1; T 663/10 of 23 March 2012, reasons 1.1; T 1427/10 of 25 July 2013, reasons 2; T 2425/10 of 30 April 2014, reasons 2; T 1930/12 of 30 April 2015, reasons 2.1 to 2.3).

3. *The invention*

3.1 The background section of the application explains that users of a conventional mobile device may share information with users of a remote device by inserting information, such as articles, music or photos, in a document in a specific format and transmitting the document to the remote device as an e-mail, SMS or MMS.

3.2 Mobile devices differ in software and hardware specifications. If a mobile device utilises its own "display software" to display "graphic location information", the receiving device must, according to the background section, support the same display software in order to view received graphic location information. If it does not, the receiving device might not be able to display the graphic location

- information, or might display only the texts related to the graphic location information.
- 3.3 The summary and detailed description of the application address this problem in various ways, all based on the idea of converting the graphic location information into a document format supported by the remote device.
4. *Admission of the main request, first auxiliary request and second auxiliary request*
- 4.1 The main request and the first auxiliary request correspond to the main request and the auxiliary request filed with the statement of grounds of appeal with amendments to address objections as to added matter and clarity raised in the Board's communication accompanying the summons to oral proceedings. Consequently, the Board admits these requests into the proceedings (Article 13(1) RPBA).
- 4.2 The second auxiliary request essentially corresponds to the main request with the additional feature of dependent claim 4 added to the independent claims. Since this amendment does not raise issues that the Board cannot deal with without adjournment of the oral proceedings, the second auxiliary request is admitted into the proceedings as well (Article 13(1) RPBA).
5. *Main request - inventive step*
- 5.1 Claim 1 of the main request defines a method "for sharing location information, for enabling a mobile device to share graphic location information with a remote device".

The graphic location information comprises data of a "point of interest" or POI. Although the term "graphic" suggests that the location information must be in a graphical format, the claim states that the data may comprise "any of a name, a longitude and latitude, an address, a telephone number, a photo, a data of the photo being taken, time, a map image, a text file, an audio file, a video file, and a rating, or a combination thereof".

The graphic location information is obtained by a first display software and inserted into a "document having an image file format" which can be displayed by a second display software. This document is transmitted to the remote device, which presumably contains the second display software.

The claim further specifies that the inserted graphic location information "comprises the photo and a text description related to the POI".

- 5.2 Document D3, column 2, lines 37 to 67, and Figure 1, discloses an apparatus 10 comprising a digital camera, computer monitor, keyboard and transmitting processor. The apparatus is connected to a cell phone 34 through which it communicates with the Internet 28.

A user may use the camera to take a digital image, which is then merged with a "postcard template" (see column 3, lines 1 to 26). The postcard template overlays text over the digital image, which "preferably indicates a geographical location where the image was taken or landmark shown in the digital image", resulting in a "processed digital postcard". The user may further enter, into the template, information

including an e-mail address and a message (column 3, lines 27 to 40).

The processed digital postcard is itself a digital image, as confirmed by document D3, claim 1 ("wherein the processor attaches a geographical indication to the first digital image to form a second digital image" and "wherein the text specifying the geographical location is overlaid [sic] on top of the first digital image to form the second digital image").

The postcard may be transmitted via the Internet to the e-mail address entered (column 1, lines 53 to 59, and column 3, lines 55 to 64). Figure 4 shows the postcard on the remote device of the recipient (column 3, line 65, to column 4, line 8).

In the example shown in Figure 3, the digital image is an image of the Empire State Building and thus relates to a point of interest, and the text overlaid on the image reads "GREETINGS FROM NEW YORK".

5.3 In terms of claim 1, the software used at the apparatus 10 is "first display software" which obtains "graphic location information" comprising a photo of a point of interest and a text description related to the point of interest. The software inserts this graphic location information into "a document having an image file format" by overlaying the text over the digital image to produce a processed digital postcard image. The resulting digital postcard image is transmitted by e-mail to a remote device.

5.4 The software at the remote device used for displaying the received postcard is "second display software". Since this software merely needs to display the

received digital image, it may be conventional image viewing software or a conventional e-mail client. It is therefore obvious that the second display software may be "different" from the first display software used at apparatus 10.

5.5 Claim 1 further specifies that:

- the method is for enabling a mobile device to share graphic location information with a remote device; and
- the inserted graphic location information further comprises the name of the POI.

5.6 Although it could be argued that the method disclosed in document D3 already enables cell phone 34 to share graphic location information with the remote device of the recipient of the postcard, at the priority date of the present invention the skilled person would in any event have considered integrating the apparatus 10 and cell phone 34 into a single mobile device such as a smartphone.

5.7 The feature specifying that the graphic location information further comprises the name of the POI relates to the non-technical cognitive content of the text that is overlaid on the first digital image. It therefore does not contribute to inventive step.

5.8 With respect to document D3, the appellant argued essentially that the claimed steps of inserting the graphic location information into an image file and transmitting the image file to the remote device had to be distinguished from "transmitting as an attachment of e-mail" and from "transmitting by embedding into the text of e-mail". However, document D3 does in fact

disclose these steps as claimed (see points 5.2 and 5.3).

5.9 Thus the subject-matter of claim 1 lacks inventive step (Articles 52(1) and 56 EPC).

6. *First auxiliary request - added subject-matter*

6.1 Claim 1 of the first auxiliary request is based on claim 1 of the auxiliary request filed with the statement of grounds of appeal. That claim included the following features:

"opening an online electronic map according to the graphic location information; and

saving the online electronic map as a single document in a hypertext markup language (HTML) format."

6.2 In its communication, the Board indicated that what appeared to be meant by those features was that the output returned by a web-based map service such as Google Maps (cf. paragraph [0043] of the description of the application as filed) was saved as a single HTML document. Presumably, the intended output of the service was (a portion of) a geographical map. It was not clear, however, how a geographical map could be saved as a single HTML document. Even if the geographical map was provided in a format as simple as a single image file, it was, to the Board's knowledge, not possible to save it as a single HTML document, because documents written in the HTML format consisted of textual information (including textual links to image files to be embedded in the rendered HTML document) and not of image data.

In response to this concern, the appellant filed the present first auxiliary request. Claim 1 of this request includes the following features:

"opening an online electronic map according to the graphic location information; and

saving the online electronic map as a single document being a file in a hypertext markup language (HTML) format, in particular a MHTML file, or including an uniform resource locator (URL) address of the online electronic map."

- 6.3 According to the appellant, support for this amendment was to be found in paragraph [0043] of the description when taking into account that "the general knowledge of HTML files also includes the knowledge that a web page can be stored / saved in a single HTML-compatible file having the so-called 'MIME HTML' or short 'MHTML' format (also see <https://en.wikipedia.org/wiki/MHTML>)".

According to the Wikipedia entry for MHTML cited by the appellant, MHTML is a "web page archive format used to combine in a single document the HTML code and its companion resources that are otherwise represented by external links (such as images, Flash animations, Java applets, and audio files)".

- 6.4 The application as filed makes no mention of the MIME HTML or MHTML format and in particular does not disclose that the "single document being a file in a hypertext markup language (HTML) format" may be an MHTML file. The feature "saving the online electronic map as a single document" is not based on original paragraph [0043], but on original dependent claim 4 and paragraph [0045]. Paragraph [0045] refers to a "single document in an HTML format", which is transmitted to a

remote device. This remote device activates a browser to open "the HTML file".

6.5 In the Board's view, the skilled person reading original dependent claim 4 and paragraph [0045] would understand the "single document" of claim 1 to be an HTML file, i.e. a file containing HTML code, hence not an archive combining HTML code and its companion resources. The skilled person might realise, as the Board did, that saving an online electronic map "as a single document" in the HTML format is problematic, but that does not mean that the skilled person would unambiguously interpret "a single document being a file in a hypertext markup language" as a single archive comprising *inter alia* an HTML file. The skilled person might, for example, also consider the possibility that the word "single" should not be taken too literally or was added in error. In addition, the application as filed does not specifically disclose the MHTML format as one example of such an archive format. The insertion of the feature "in particular a MHTML file" hence lacks a basis in the application as filed.

6.6 The insertion of the phrase "or including an uniform resource locator (URL) address of the online electronic map" similarly lacks a basis in the application as filed. Although paragraph [0043] and original dependent claim 3 refer to a URL address of an online electronic map, that address is formed by "filling the location information in the corresponding fields" of the URL address and not following a step of "opening an online electronic map according to the graphic location information" as now claimed.

6.7 The subject-matter of claim 1 hence extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

7. *Second auxiliary request - inventive step*

7.1 Claim 1 of the second auxiliary request adds to claim 1 of the main request essentially that the document transmitted to the remote device is produced "according to a postcard format" and that inserting the graphic location information into the document comprises "correspondingly filling the graphic location information in the corresponding fields in the postcard format". Both features are based on original dependent claim 5.

In addition, the inserted graphic location information additionally comprises "the address of the POI".

7.2 The latter feature only distinguishes the claimed method from what is disclosed in document D3 in terms of the non-technical cognitive content of the text that is overlaid on the first digital image. It can therefore not contribute to inventive step.

7.3 The Board considers that, since the document to be transmitted is not only produced "according to a postcard format", but also has an "image file format", the "fields in the postcard format" may be interpreted as predetermined locations within the postcard image where elements of graphic location information are to be inserted.

7.4 In document D3, the document transmitted to the remote device is a "processed digital postcard", i.e. the document is produced "according to a postcard format".

In addition, text indicating a geographical or landmark location is inserted at the top of the postcard image (see column 3, lines 33 to 35, and Figure 3).

7.5 Each of the features added to claim 1 therefore either provides no technical contribution or does not further distinguish the claimed invention from document D3. The subject-matter of claim 1 of the second auxiliary request consequently lacks inventive step (Articles 52(1) and 56 EPC).

8. *Third and fourth auxiliary requests - admission*

8.1 The third and fourth auxiliary requests were filed with the letter dated 3 August 2015 and do not correspond to any of the requests filed with the statement of grounds of appeal. In particular, they include features relating to a "POI collection" that were not present in the previous requests and were in fact contained neither in the originally filed claims nor in any of the requests decided on by the Examining Division.

8.2 According to the appellant, claims 1, 2 and 3 of the third auxiliary request are identical to claims 1, 7 and 8 of the granted version of the corresponding US application. Similarly, claims 1, 2 and 3 of the fourth auxiliary request are identical to claims 16, 17 and 18 of the granted version of the corresponding US application.

The appellant specified a basis in the application as filed for these two newly filed requests. However, in support of patentability the appellant merely "respectfully submitted that the USPTO considered these claims to be novel and non-obvious".

- 8.3 In principle, the statement of grounds of appeal has to contain an appellant's complete case (Article 12(2) RPBA). According to Article 13(1) RPBA, an amendment to an appellant's case after it has filed its grounds of appeal may be admitted and considered at the Board's discretion, said discretion to be exercised inter alia in view of the current state of the proceedings and the need for procedural economy.
- 8.4 In the Board's view, the third and fourth auxiliary requests cannot be seen as an attempt to address issues newly raised in the Board's communication. Although they are apparently an attempt to overcome the objection of lack of inventive step, that objection had already been raised in the decision under appeal. The appellant has given no reason why these requests could not have been filed with the statement of grounds of appeal or, even more appropriately, in the course of the first-instance proceedings (Article 12(4) RPBA). In this context, the Board does not consider it relevant that the United States Patent and Trademark Office has found these amended claims allowable.
- 8.5 In addition, the appellant has not substantiated why the third and fourth auxiliary requests overcome the objection of lack of inventive step and has therefore not placed the Board in a position to understand why the appellant considers that, for example, the features relating to the "POI collection" contribute to a non-obvious solution of a technical problem. The mere statement that another patent office considered the amended claims to be novel and non-obvious is of no help.

8.6 For these reasons, the Board exercises its discretion under Article 13(1) RPBA not to admit the third and fourth auxiliary requests into the proceedings.

9. *Conclusion*

Since none of the requests admitted into the proceedings is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



I. Aperribay

R. Moufang

Decision electronically authenticated