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Datasheet for the decision of 4 September 2018

Case Number: T 1779/15 - 3.5.05

Application Number: 05300066.7

Publication Number: 1562325

IPC: H04L12/24, G06F9/445

Language of the proceedings: EN

Title of invention:
Enabling communication node capabilities on a pay-per-use basis

Applicant:
Alcatel Lucent

Headword:
Node upgrade/ALCATEL

Relevant legal provisions:
EPC 1973 Art. 56
RPBA Art. 15(3)

Keyword:
Oral proceedings - non-attendance of the appellant
Inventive step - (no): juxtaposition of obvious measures

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Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1779/15 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 4 September 2018

Appellant: (Applicant)	Alcatel Lucent Site Nokia Paris Saclay Route de Villejust 91620 Nozay (FR)
Representative:	DREISS Patentanwälte PartG mbB Postfach 10 37 62 70032 Stuttgart (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 26 February 2015 refusing European patent application No. 05300066.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	K. Bengi-Akyuerek
	G. Weiss

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse the present European patent application for lack of inventive step, having regard to the disclosure of

D7: "Cisco 7400 Series Internet Router - A Quick Look", Cisco Systems, pp. 1-5, August 2001

or

D6: "Software Feature and Upgrade Licenses for the Cisco 7400 Series Internet Router", Cisco Systems, pp. 1-3, 26 March 2002,

combined with the disclosure of

D2: US-B-6 490 684.

II. With the statement setting out the grounds of appeal, the appellant re-filed the claims underlying the appealed decision as a main request and an amended set of claims as an auxiliary request. It requested that the examining division's decision be set aside and that a patent be granted on the basis of either of those claim requests. In addition, it requested oral proceedings as an auxiliary measure.

III. In a communication annexed to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board gave its preliminary opinion on the appeal. In particular, it endorsed the conclusion of the decision under appeal that claim 1 of the main request lacked an inventive step. However, it also stated that prior-art documents D7 and D6 did not appear to be

suitable starting points for the present subject-matter claimed and that document D2 was the most suitable starting point on file for the assessment of inventive step.

IV. In a letter of reply, the appellant informed the board that it would not be attending the scheduled oral proceedings and that the auxiliary request on file was withdrawn. It also submitted counter-arguments to the substance of the board's communication under Article 15(1) RPBA.

V. Oral proceedings were held *in absentia* on 4 September 2018. The board established from the file that 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. The auxiliary request had been withdrawn with the letter of reply.

After due deliberation on the basis of that final request and the written submissions, the board's decision was announced at the end of the oral proceedings.

VI. Claim 1 of the **main request** reads as follows:

"A method of enabling capabilities (40) on a telecommunication node (10) including a line card (12) for providing access to other telecommunication nodes through at least one port (14), and a control complex (16), characterized in that said method comprises the steps of:

storing a list of capabilities (40) of said line card (12) in memory (18) of the control complex (16) and, for each capability, an associated enabled

status (42, 58);

enforcing the enabled status (42, 58) of each capability by limiting operator access to configuration only of those capabilities (40, 56) which are enabled;

in response to instructions from an operator, enabling a specified capability (40, 56) by adjusting the enabled status (42, 58) of the specified capability (40, 56); and

calculating a charge for enabling the specified capability (40)."

Reasons for the Decision

1. *Non-attendance of the appellant at oral proceedings*

1.1 The appellant decided not to attend the scheduled oral proceedings before the board (cf. point IV above). Pursuant to Article 15(3) RPBA, the board is not "obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case."

1.2 In the present case, the appellant provided arguments in support of the patentability of the claims of the main request in response to the objections raised in the board's communication under Article 15(1) RPBA. The board considered those arguments and found that claim 1 of the main request still did not meet the requirements of Article 56 EPC 1973 (see point 2.1 below). So, in exercise of its discretion under Article 15(3) RPBA,

the board took a decision at the end of the oral proceedings, in the absence of the duly summoned appellant.

2. MAIN REQUEST

The claims of the main request are identical to the claims underlying the appealed decision.

2.1 *Novelty and inventive step*

2.1.1 The board finds that prior-art document **D2** is the most suitable starting point on file for the assessment of the claimed subject-matter's patentability, since - like the present invention - it is concerned with automatically enabling a network node's hardware or software features purchased from a device vendor.

2.1.2 More specifically, the board notes that D2 discloses the following limiting features of present claim 1, as labelled by the board:

A method of enabling capabilities ("features") on a telecommunication node ("ultrasound device 100" e.g. equipped with a "network link" or "network modem"; see e.g. column 2, lines 45-46) including a line card (inherently comprised in connection with a "network link") for providing access to other telecommunication nodes through a port ("port"; see e.g. column 5, line 12), and a control complex ("feature control manager 130"), said method comprising the steps of:

A) storing a list of capabilities ("device's feature set"; see column 2, line 37) of said node ~~line card~~ in a memory ("feature control database 160") of the control complex and, for each capability,

an associated enabled status (see e.g. column 3, lines 20-23: *"... the feature control manager 130 can provide the user with an updated list showing which features are enabled and which are disabled ..."*, in conjunction with Fig. 1);

B) enforcing the enabled status of each capability ~~by limiting operator access to configuration only of those capabilities which are enabled~~ (see e.g. column 1, lines 37-40: *"... an ultrasound device is installed with features that are not immediately available for use (i.e., the features are installed disabled) ..."*);

C) in response to instructions from an operator ("user"), enabling a specified capability by adjusting the enabled status of the specified capability (see e.g. column 3, lines 29-34; Fig. 2, step 230; Fig. 5, step 530);

D) calculating a charge (e.g. "reduced fee") for enabling the specified capability (implicitly disclosed by e.g. column 4, lines 37-39: *"... If the user does not want to purchase the right to permanently use the feature, a user can pay a reduced fee for temporary use ..."*).

2.1.3 The board understands that feature B) is related to the configuration of already *enabled* node capabilities, while feature C) is related to actually enabling the respective node capabilities.

2.1.4 In view of the above, the board agrees with the appellant that the subject-matter of present claim 1 differs from the disclosure of D2 in that (emphasis added by the board)

i) the list of capabilities to be enabled is related to the line card of the telecommunication node;

ii) operator access is limited to configuration only of those capabilities which are enabled.

Accordingly, present claim 1 is novel over D2 (Article 54 EPC 1973).

2.1.5 As to inventive step, the appellant submitted that the above distinguishing features contributed to solving the objective problem of "how to provide a method for a telecommunication node providing configuration of enabled capabilities" (see appellant's letter of 2 August 2018, page 3, fifth paragraph). Such a formulation cannot however be accepted since it evidently includes a pointer towards the problem's actual solution and does not account for the specific system sub-unit (i.e. the line card) which is to be enabled and configured.

2.1.6 Rather, the board holds that distinguishing features i) and ii) amount to implementation measures which may be enforced in an entirely independent way to solve unrelated technical problems. More specifically, the board finds that distinguishing feature i) is associated with the problem of "how to extend the system upgrade scheme of D2 to network communication features", whereas distinguishing feature ii) is associated with the problem of "how to implement administrative access policies for the system upgrade scheme of D2".

2.1.7 Therefore, the board takes the view that distinguishing features i) and ii) are associated with separate partial objective problems to be solved and thus do not interact with each other in such a manner that they induce an overall synergistic effect. This means in turn that the contribution of those features to an

inventive step can be individually assessed, i.e. on the merits of each distinguishing feature *per se*.

2.1.8 As to feature i), it is apparent to the board that the ultrasound device of D2 may comprise a *network* link or a modem (see e.g. D2, column 2, lines 45-46) and may likewise be an ultrasound *network* management server (see D2, column 2, lines 8-12). Thus, the board finds that the skilled person would understand from the teaching of D2 that "ultrasound device 100" may well be a specific telecommunication node with at least one line card. The skilled person would also infer from D2 that the "device's feature set" relates to both hardware (such as a "transducer") and software features (see e.g. column 2, lines 14-20). Based on that, the skilled person would immediately deduce that line cards (e.g. in modems) could involve different capabilities and, consequently, qualify as "hardware features" within the meaning of D2 relating to network communications. Accordingly, for the skilled person, storing and enabling/disabling the capabilities of the line card of the underlying network device 100 would be one of several equally likely and straightforward measures not requiring inventive skills.

2.1.9 As to feature ii), the board holds that policies for access to the features of a system to be upgraded depend primarily on *administrative* considerations or constraints, rather than on *technical* ones. Possible policies for configuration purposes could in principle range from allowing operator access to *all* (i.e. enabled and disabled) features of a device to only allowing access to *enabled* or *disabled* features, and any one policy could readily be selected from that range depending on the network administrator's needs. It goes without saying that the implementation of such

a selected policy is a straightforward measure, simply based on adapting the applicable access control list.

2.1.10 In view of the above, the board concludes that the above distinguishing features are associated with distinct partial objective problems and that their solutions amount to a mere juxtaposition of obvious implementation measures which do not produce any surprising synergistic effect going beyond the sum of their individual effects. Hence, the person skilled in the field of telecommunication networks, aiming to solve the aforementioned objective problems, would arrive at the subject-matter of present claim 1 in an obvious manner.

2.2 In conclusion, the main and sole request is not allowable under Article 56 EPC 1973.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated