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**Datasheet for the decision
of 29 September 2021**

Case Number: T 0920/17 - 3.5.06

Application Number: 09791756.1

Publication Number: 2335176

IPC: G06F21/00

Language of the proceedings: EN

Title of invention:

DATA PACKET GENERATOR FOR GENERATING PASSCODES

Applicant:

Wherepro, LLC

Headword:

Data packet generator/WHEREPRO

Relevant legal provisions:

EPC Art. 84

Keyword:

Claims - clarity (no)

Decisions cited:

Catchword:



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Case Number: T 0920/17 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 29 September 2021

Appellant: Wherepro, LLC
(Applicant) 16804 Minnetonka Boulevard
Minnetonka, MN 55345 (US)

Representative: Ström & Gulliksson AB
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 18 November
2016 refusing European patent application No.
09791756.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Müller
Members: T. Alecu
B. Müller

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division to refuse the application. The grounds for the refusal were lack of clarity (Article 84 EPC) and lack of inventive step (Article 56 EPC).
- II. The appellant requested with the statement of grounds of appeal that the decision of the Examining Division be set aside and that a patent be granted on the basis of the main request or of the auxiliary request. The main request is the same as the request refused by the Examining Division. The auxiliary request was filed with the statement of grounds.
- III. In the communication accompanying a summons to oral proceedings, the Board informed the appellant, *inter alia*, of its provisional opinion that the requests on file were not allowable for lack of clarity (points 2 to 6). The communication also stated that should the appellant indicate its absence, the oral proceedings might be cancelled and a decision be issued any time after such an indication (point 16).
- IV. The appellant did not respond in substance to the board's preliminary opinion, be it by way of amendments or arguments. However, in its letter of 15 September 2021 it indicated that "*neither the applicant nor the representative [would] attend at the oral proceedings*". These were subsequently cancelled.
- V. Claim 1 of the main request defines:

A data packet generator of a location authentication system, the data packet generator comprising:

a processing device;

memory storing data instructions, which when executed by the processing device cause the processing device to periodically generate a new passcode, each of the passcodes including a plurality of characters;

a wireless communication device that outputs a data packet including the new passcode as a network name, wherein the new passcode is an identifier of the data packet generator; and

an attachment device attaching the data packet generator to an object at a physical location known by a server of the location authentication system, the physical location recorded when the data packet generator is installed.

VI. Claim 1 of the auxiliary request defines:

A location authentication system comprising a data packet generator and a server, wherein the data packet generator comprises:

a processing device;

memory storing data instructions, which when executed by the processing device cause the processing device to periodically generate a new passcode, each of the passcodes including a plurality of characters;

a wireless communication device that outputs a data packet including the new passcode as a network name, wherein the new passcode is an identifier of the data packet generator; and

an attachment device attaching the data packet generator to an object at a physical location known by the server of the location authentication system, the physical location recorded when the data packet generator is installed.

Reasons for the Decision

The application

1. The application relates to a location authentication system. The location information (of a user device) can be used to track the position of a user or to provide access to protected resources (paragraphs 81, 82). The user device authenticates itself vis-à-vis the server by using passcodes provided by wireless generators attached in locations known to the server (claim 1 of both requests; paragraphs 65, 66, 73, 74); the server then knows that the user device is at the location of the wireless generator associated with the provided passcode. For security reasons, the generators masquerade as wireless access points and provide the passcodes as wireless network names (SSIDs, see paragraphs 440, 444 to 450).

Clarity (Article 84 EPC)

2. The Examining Division considered (point 1) that claim 1 of the main request lacked clarity because the scope of protection could not be defined without reference to elements external to the claimed data packet generator, in particular (point 1.1.2) the server, which records the physical location of where the generator was attached. It was thus "*impossible to decide whether a given object falls within the scope of claim 1*".
3. The appellant argued in the statement of grounds (section 2.1) that "*the skilled reader can unambiguously determine whether or not a given object satisfies the claim clause by answering the following questions:*

A) *Is the given object a data packet generator which comprises an attachment device?*

B) *Is this attachment device capable of attaching the data packet generator to an object at a physical location?*

C) *Is, in more particular, the attachment device capable of attaching the data packet generator to an object, the physical location of which is such that it*

C') can be known by a server of a location authentication system, and

C'') can be recorded when the data packet generator is installed?"

According to the appellant, if the answer to all questions is Yes, "*then the given object satisfies the claim clause*".

4. These arguments are not persuasive. This is due to the fact that answering questions C' and C'' (can the location of the object be known and recorded?) is not sufficient to determine whether the given object is covered by the claim. That an object location *can be known* (or recorded) by a server, which is true for any object, does not mean that *it is known*, which is what the claim requires. These external constraints cannot be assessed by the skilled person by looking at the object alone; this makes the scope of protection unclear.

5. Moreover, claim 1 of the main request is also ambiguous in the following sense: first, it leaves open whether the location is a priori known by the server (pre-defined locations - see paragraph 66), or is made known by the recording (location freely defined by the attachment place - see paragraph 227). Secondly, the object could be construed as a mobile device the (temporary) location of which is known (or knowable) to

the server (e.g. a table on which it is put), and this location being "recorded" when the data packet generator is attached (and presumably installed); or it could be construed as a stationary device attached permanently at a fixed physical location known to the server.

- 5.1 As stated in its preliminary opinion, the Board takes the view that these possible claim interpretations are all reasonable. One may consider that the claim covers only one of them, or comprises them all. There is certainly doubt as to which interpretation should be adopted (see for instance the grounds of appeal, page 5, penultimate paragraph, to page 6, paragraph 1, where the appellant insisted that the mobile device interpretation was not valid). This makes the scope of protection unclear.
- 5.2 The board thus finds claim 1 of the main request to lack clarity for this reason, too.
6. The amendments carried out in the auxiliary request solve the first issue (reference to external elements, point 4), but not the second (point 5).
7. In the light of the foregoing, the Board concludes that claims 1 of both requests lack clarity (Article 84 EPC).
8. Given this conclusion, the Board need not decide on the inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



L. Stridde

Martin Müller

Decision electronically authenticated