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**Datasheet for the decision
of 11 January 2021**

Case Number: T 1612/17 - 3.5.03

Application Number: 10775863.3

Publication Number: 2481227

IPC: H04W8/18, H04W8/24, H04W60/06,
H04W60/00

Language of the proceedings: EN

Title of invention:

Subscriber identification management broker for fixed/mobile networks

Patent Proprietor:

Truphone Limited

Opponent:

Giesecke+Devrient Mobile Security GmbH

Headword:

IMSI broker/TRUPHONE

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Decision in written proceedings: no oral proceedings requested
Added subject-matter - (yes): intermediate generalisation



Beschwerdekammern

Boards of Appeal

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Case Number: T 1612/17 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 11 January 2021

Appellant: Truphone Limited
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Respondent: Giesecke+Devrient Mobile Security GmbH
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 May 2017 concerning maintenance of the
European Patent No. 2481227 in amended form.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: T. Snell
C. Almberg

Summary of Facts and Submissions

- I. This case concerns the appeal of the patent proprietor (henceforth, "appellant") against the interlocutory decision of the opposition division maintaining the patent in amended form in accordance with the claims of the "third auxiliary request". The opposition division held that claims 1 and 16 of the patent as granted did not comply with Article 123(2) EPC (ground for opposition pursuant to Article 100(c) EPC).
- II. The appellant requests that the decision under appeal be set aside and that the patent be maintained as granted. Hence, it is requested that the opposition be rejected.
- III. The opponent (henceforth, "respondent") requests that the appeal be dismissed.
- IV. Neither party has requested oral proceedings, so that the decision can be handed down in writing (cf. Article 116(1) EPC).
- V. Claim 1 of the patent as granted reads as follows:

"A method for managing the automatic provision of a subscriber network identifier from a central network server (108) to a subscribed communication device (10), the method comprising:
receiving notification (200) at the central server relating to a change in the current location for the subscribed device;
determining (202) from the notification and from a list of subscriber network identifiers allocated to the subscribed device whether a new subscriber network

identifier is to be provisioned from the central server;
selecting a subscriber network identifier on the basis of the current location, if the determining step has determined that a new subscriber network identifier is to be provisioned; and
outputting (204) the selected subscriber network identifier for transmission to the subscribed device and adding (206) the selected subscriber network identifier to the list of subscriber network identifiers allocated to the subscribed device."

Reasons for the Decision

1. Technical context

The patent concerns the management of subscriber network identifiers, and relates in particular to the provision of new IMSIs (= International Mobile Subscriber Identity) to the SIM as the mobile user roams across different networks. This is achieved by means of a so-called "IMSI broker" located in a central network server which has access to an IMSI pool. When the IMSI broker receives notification of a change of location, e.g. a change of network, it determines whether the mobile user already has an appropriate IMSI for the new location, and, if not, allocates one from the pool. The broker then updates the HLR with the new IMSI.

2. Patent as granted - independent claims 1 and 16 - Articles 100(c) and 123(2) EPC

2.1 Claim 1 as granted includes the following limiting features (board's italics, feature labelling as used by the opposition division in the impugned decision):

M) A method for managing the automatic provision of a subscriber network identifier from a central network server to a subscribed communication device, the method comprising:

M1) receiving notification at the central server relating to a change in the current location for the subscribed device;

M2) determining from the notification

M21) *and from a list of subscriber network identifiers allocated to the subscribed device whether a new subscriber network identifier is to be provisioned from the central server;*

M3) selecting a subscriber network identifier on the basis of the current location, if the determining step has determined that a new subscriber network identifier is to be provisioned;

M4) outputting the selected subscriber network identifier for transmission to the subscribed device

M5) *adding the selected subscriber network identifier to the list of subscriber network identifiers allocated to the subscribed device.*

2.2 The features in question as regards added subject-matter are **features M21 and M5**, which were added to claim 1 during the examination proceedings.

- 2.3 The established criterion used by the Boards of Appeal for compliance with Article 123(2) EPC ("gold standard"), as pointed out by the appellant, is that amendments can only be made within the limits of what a skilled person would derive, *directly and unambiguously*, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the application documents as filed, including subject-matter *implicitly* disclosed.
- 2.4 The appellant argued that the opposition division "erred in its assessment of compliance with Art. 123(2) EPC as it failed to consider 'implicit disclosures' in the specification".
- 2.5 The board first of all agrees with the appellant with respect to the legal principles regarding compliance with Article 123(2) EPC ("gold standard"). However, the board does not agree that features M21 and M5 are implicitly disclosed in the patent, noting that an implicit disclosure, as correctly pointed out by the appellant, must concern subject-matter which is *a clear and unambiguous consequence of what is explicitly mentioned* in the light of the skilled person's common general knowledge, and not be merely obvious or plausible. This is however not the case here.
- 2.6 The opposition division argued essentially that the underlying application as filed only provided support for an embodiment in which an IMSI list is held *by the HLR*. In addition, the embodiment on which claim 1 was based necessarily involved an *IMSI*, there being no support for this embodiment in the context of a generic identifier (cf. impugned decision, points 2.3.1 to 2.3.4 of the reasons).

2.7 In the statement of grounds of appeal, the appellant counter-argued that, in addition to the HLR, the "IMSI broker" implicitly comprised a list of all IMSIs allocated to the subscriber device and that this list was maintained separately from the list which was maintained by the HLR. In this respect, emphasis was placed, *inter alia*, on the following passages:

(i) "The IMSI broker maintains a database of the status of IMSIs distributed to subscribers as they roam and use different networks" (cf. page 13, lines 21-22 as filed).

(ii) "The IMSI Broker records that a new IMSI has been provided, and updates, at step 206, the user's records in the HLR" (cf. page 15, lines 17-18 as filed).

2.8 The board notes firstly that features M21 and M5 neither define a list that is maintained by the broker/central server nor by the HLR, but a list that may be stored *anywhere*. Consequently, even if the appellant were correct as regards the interpretation of passages (i) and (ii), claim 1 would be unallowably broader than the disclosure of the application as originally filed (intermediate generalisation).

2.9 Secondly, the board does not agree with the appellant as regards the alleged implicit disclosure of passages (i) and (ii). These passages arguably only mean that the IMSI broker maintains a database of IMSIs that the broker itself has allocated, i.e. only those new IMSIs "*distributed to subscribers as they roam and use different networks*", e.g. in the context of an event log. This interpretation appears moreover to be consistent with one of the detailed embodiments

described in the description at page 21, line 22 ff., see in particular page 21, lines 26-33 and page 22, line 11.

In any event, it cannot be directly and unambiguously inferred that all IMSIs allocated to a subscriber are stored in a list held by the IMSI broker, including for example those IMSIs which are preloaded into the SIM of the subscriber (cf. page 13, lines 2-5 and page 29, lines 23-32), although claim 1 embraces this possibility. It is further to be noted that claim 5 as filed specifically defines "retrieving an IMSI list from the HLR for the subscribed device" and not from a list stored by the IMSI broker (see also page 17, lines 3-4: "An interface to the system HLR commands to: a. Retrieve the IMSI list of a subscribed user"), and that other references cited by the appellant are at best ambiguous as to which records are being referred to (cf. page 15, lines 8-11: "... the IMSI Broker ... checks the records for that subscribed user ..."; page 16, lines 18-19: "... the IMSI checker 510 is able to determine from the data record for the user ...").

2.10 Thirdly, claim 1 embraces any type of identifier, whereas passages (i) and (ii) relied upon by the appellant concern specifically an IMSI as identifier. Considering that these passages do not provide direct and unambiguous support for even this specific embodiment, this is even less the case for any other type of identifier embraced by claim 1.

2.11 Consequently, the board agrees with the opposition division and the respondent that claim 1 does not comply with Article 123(2) EPC.

2.12 This conclusion applies, *mutatis mutandis*, to independent claim 16, which is an apparatus claim essentially corresponding to claim 1.

3. *Conclusion*

As the appellant's sole request is not allowable, it follows that the appeal must be dismissed, with the consequence that the patent will be maintained in amended form in accordance with the interlocutory decision of the opposition division.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated