

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 26 April 2022**

**Case Number:** T 1538/18 - 3.5.03

**Application Number:** 12153235.2

**Publication Number:** 2506635

**IPC:** H04W48/14, H04N7/18, H04M1/725

**Language of the proceedings:** EN

**Title of invention:**  
Computer readable storage medium, information communication  
device and link method

**Applicant:**  
Fujitsu Limited

**Headword:**  
Acquiring setting information/FUJITSU

**Relevant legal provisions:**  
EPC Art. 54, 56, 123(2)  
EPC R. 103(4)(c)  
RPBA 2020 Art. 12(8)

**Keyword:**

Decision in written proceedings: cancellation of hearing following appellant's announcement of non-attendance

Novelty - main and 1st auxiliary requests (yes)

Inventive step - main and 1st auxiliary requests (no)

Added subject-matter - 2nd auxiliary request (yes)



**Beschwerdekammern**  
**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 1538/18 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 26 April 2022**

**Appellant:** Fujitsu Limited  
(Applicant) 1-1, Kamikodanaka 4-chome  
Nakahara-ku  
Kawasaki-shi, Kanagawa 211-8588 (JP)

**Representative:** Haseltine Lake Kempner LLP  
Cheapside House  
138 Cheapside  
London EC2V 6BJ (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 24 January 2018  
refusing European patent application  
No. 12153235.2 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** J. Eraso Helguera  
R. Winkelhofer

## Summary of Facts and Submissions

- I. The appeal was lodged against the decision of the examining division to refuse the present European patent application for lack of novelty (Article 54 EPC) with respect to the independent claims of a main request, and for added subject-matter (Article 123(2) EPC) with respect to the independent claims of a first and a second auxiliary request.
- II. During the examination proceedings, the examining division referred *inter alia* to the following prior-art document:  
  
**D1:** US 2008/0075247 A1.
- III. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of any of a **main request** subject to the decision, a **first auxiliary request**, filed with the statement of grounds of appeal, and a **second auxiliary request** subject to the decision.
- IV. In a communication pursuant to Article 15(1) RPBA 2020, the board stated its (negative) preliminary opinion on the allowability of all the claim requests.
- V. In a response to the board's communication, the appellant subsequently informed the board that it would not be attending the arranged oral proceedings.
- VI. The board then cancelled those oral proceedings.
- VII. Claim 1 of the **main request** reads as follows:

"A computer readable storage medium having stored therein a program causing a computer to execute a process comprising:

requesting setting information from a device (3), the device (3) being a link target of the computer, wherein the setting information is information about whether one or more data link functions for capturing data from the device are valid or invalid;

acquiring the setting information transmitted by the device (3) in response to the request; and

executing the function of linking the computer with the device (3) based on the acquired setting information so as to capture data from the device on the, or one of the, valid data link functions."

Claim 1 of the **first auxiliary request** reads as follows (board's highlighting indicating amendments vis-à-vis claim 1 of the main request):

"A computer readable storage medium having stored therein a program causing a computer to execute a process comprising:

requesting setting information from a device (3), the device (3) being a mobile phone and a link target of the computer, and the computer being a personal computer, wherein the setting information is information about whether one or more data link functions for capturing data from the device are valid or invalid;

acquiring the setting information transmitted by the device (3) in response to the request; and

executing the function of linking the computer with the device (3) based on the acquired setting information so as to capture data from the device on the, or one of the, valid data link functions."

Claim 1 of the **second auxiliary request** reads as follows (board's highlighting indicating amendments vis-à-vis claim 1 of the first auxiliary request):

"A computer readable storage medium having stored therein a program causing a computer to execute a process comprising:

requesting to create a file of current setting information at the beginning of linking with a device (3), the device (3) being a mobile phone and a link target of the computer and the computer being a personal computer, wherein the setting information is information about whether one or more data link functions for capturing data from the device are valid or invalid, data captured by the data link functions being a picture data, a moving image data or data on the number of steps and the amount of activity;

acquiring the file of the current setting information after receiving a response notifying completion of creating the file, the response being transmitted by the device (3) in response to the request; and

executing the function of linking the computer with the device (3) not based on setting information acquired at the time of setup but based on the file of the current setting information so as to capture data from the device on the, or one of the, valid data link functions."

## **Reasons for the Decision**

1. *Decision in written proceedings*

1.1 In accordance with established case law, where oral proceedings are appointed upon a party's request and

where the party subsequently expresses their intention not to attend, the appellant's statement is equivalent to a withdrawal of the request for oral proceedings.

1.2 As the board does not consider holding oral proceedings to be expedient or necessary in this case (cf. Article 116(1) EPC), these were cancelled and a decision is to be handed down in written proceedings (Article 12(8) RPBA 2020).

1.3 Given that the appellant's indication of non-attendance was not submitted within one month of notification of the board's communication under Article 15(1) RPBA 2020, no reimbursement of the appeal fee can be ordered under Rule 103(4) (c) EPC.

## 2. MAIN REQUEST

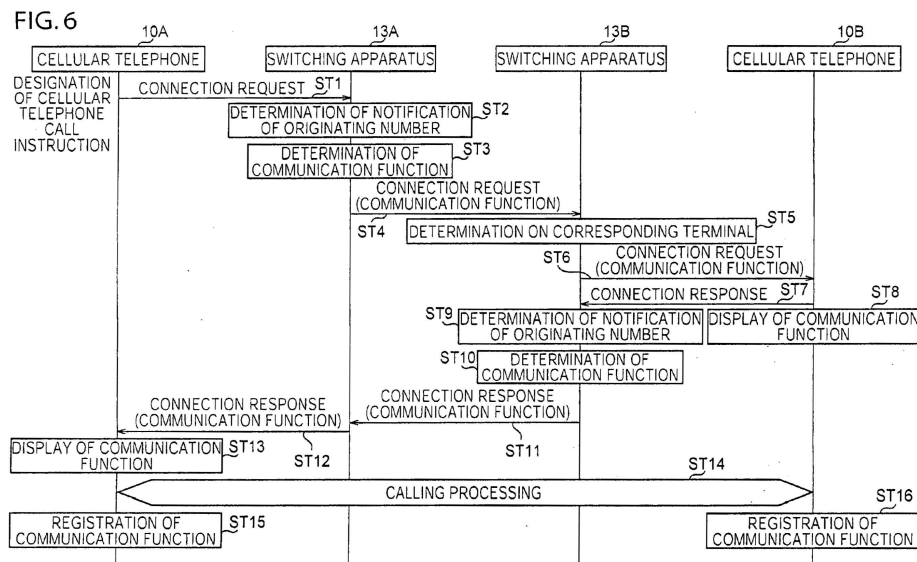
Claim 1 of the **main request** comprises the following limiting features (board's outline):

- (a) A computer readable storage medium having stored therein a program causing a computer to execute a process comprising:
- (b) requesting setting information from a device,
- (c) the device being a link target of the computer,
- (d) the setting information is information about whether one or more data link functions for capturing data from the device are valid or invalid;
- (e) acquiring the setting information transmitted by the device in response to the request;
- (f) executing the function of linking the computer with the device based on the acquired setting information

(g) so as to capture data from the device on the, or one of the, valid data link functions.

2.1 Claim 1 - novelty (Article 54 EPC) in view of D1

2.1.1 The examining division found in point 15 of the decision under appeal that the subject-matter of claim 1 was anticipated by **D1**. In particular, the examining division found that the claimed features were disclosed by paragraph [0008] and by references 10A, ST1, ST12 and ST14 in figure 6 reproduced below.



2.1.2 The appellant's arguments with respect to novelty and inventive step as to the main request are a mere copy of the arguments included in its reply to the annex to the summons to oral proceedings by the examining division. In this reply, the then applicant refuted the objections based on a feature mapping in which the examining division had identified one of the "switching apparatuses" of D1 as the claimed "computer".

2.1.3 The appellant's arguments concerning the main request are moot, because they do not address the actual



reasoning set out in Reasons 15 of the decision under appeal. The examining division had reacted to the applicant's reply to the summons and changed the feature mapping by considering one of the "cellular telephones" of D1 as the claimed "computer". The then applicant was notified of this change by the first examiner during a telephone conversation that took place prior to the first-instance oral proceedings (see the second paragraph of the minutes of this conversation):

"With respect to main request (filed on 02.03.2017) the division shares the reasoning made by the applicant with the letter of 20.11.17 with respect to the fact that the switching apparatus 13A of D1 (see figure 6) does not anticipate the computer of claim 1. It seems more appropriate to map said computer with the cellular phone 19A [*sic*] of D1. With this interpretation the requesting setting information step of D1 is considered to be anticipated by the connection request ST1 of figure 6 of D1. Therefore even with the interpretation of D1 suggested by the applicant the examining division is of the provisional opinion that the subject-matter of claim 1 (and corresponding independent claims 8 and 10) in [*sic*] not novel (Article 54(1)(2) EPC)."

2.1.4 The method disclosed in figure 6 of D1 involves four different entities: two cellular telephones, 10A and 10B, and two switching apparatuses, 13A and 13B. In Reasons 15 of the decision under appeal, the examining division mapped **feature (a)** onto reference 10A in figure 6, i.e. the cellular telephone 10A. It follows that cellular telephone 10A was considered the claimed *computer*.

- 2.1.5 The examining division did not explicitly indicate in Reasons 15 of the decision under appeal which one of the other entities of figure 6 of D1 was the claimed *device*. In principle, the claimed *device* could be mapped onto the **switching apparatus 13A**, because this entity receives the "CONNECTION REQUEST ST1" and sends the "CONNECTION RESPONSE ST12", both referenced by the examining division, or it could be mapped onto the **cellular telephone 10B**, because this is the entity with which the referenced "CALLING PROCESSING ST14" is established.
- 2.1.6 If the claimed *device* is mapped onto the switching apparatus 13A, D1 does not unambiguously disclose that this entity constitutes a "link target", as required by **feature (c)**, and that it is actually involved in the "CALLING PROCESSING ST14", which according to the feature mapping used in Reasons 15 of the decision under appeal corresponds to **features (f) and (g)**.
- 2.1.7 If the claimed *device* is mapped onto the cellular telephone 10B, the "CONNECTION REQUEST ST1" of D1 implies indeed a request by the cellular telephone 10A for setting information (i.e. communication functions) from the cellular telephone 10B, as required by **feature (b)**. The "connection request" is ultimately forwarded to cellular telephone 10B ("CONNECTION REQUEST (COMMUNICATION FUNCTION) ST6"), which replies thereto with a "CONNECTION RESPONSE ST7". It is on the basis of this response that the switching apparatus 13B determines the "COMMUNICATION FUNCTION" in ST10 and includes it in the "CONNECTION RESPONSE ST11" (see paragraph [0049]).

The setting information is however not transmitted by the cellular telephone 10B, as would be required by

**feature (e)**. Rather, information ("telephone number 090-1111-YYYY" of cellular telephone 10B) from which the setting information (i.e. "communication function" of cellular telephone 10B) is subsequently derived (via the "communication function table" of figure 5) is transmitted by cellular telephone 10B in the form of a "connection response" (see figure 6, step ST7) and is acquired by cellular telephone 10A (see figure 6, step ST12) in response to the "connection request" (see figure 6, ST1, ST6 and ST7 in conjunction with paragraphs [0048] and [0049]). Hence, the actual "setting information" is transmitted by either of switching apparatus 13B in ST11 or switching apparatus 13A in ST12. This is made prominently apparent by the fact that the "CONNECTION RESPONSE ST7" in figure 6, sent by cellular telephone 10B, contains no "COMMUNICATION FUNCTION".

Furthermore, there is no evidence that the setting information (i.e. communication functions such as "VIDEOPHONE", "SPECIFIC MAIL", "SPECIFIC RECEPTION") should be used at all for actual data transmission purposes during the "CALLING PROCESSING ST14" of figure 6. Rather, it would appear that the user is merely informed about alternative communications to be used *after* the ongoing telephone call is finished, as indicated in paragraphs [0035] and [0052] of D1. Hence, the "CALLING PROCESSING ST14" alone used in the feature mapping of the decision under appeal does not unambiguously disclose features (f) and (g). However, the use of the "COMMUNICATION FUNCTION" information registered for a communication party in subsequent communications is disclosed by other parts of document D1 (see e.g. paragraphs [0009], [0065]), in accordance with **features (f) and (g)**.

2.1.8 Considering cellular telephone 10A of figure 6 of D1 as the claimed "computer" and cellular telephone 10B of figure 6 of D1 as the claimed "device", the subject-matter of claim 1 thus differs from the disclosure of D1 in:

(e) acquiring the setting information transmitted by the device (rather than from an *intermediary* device) in response to the request,

and is therefore new (Article 54 EPC) over D1.

2.2 *Claim 1 - inventive step (Article 56 EPC) starting out from D1*

2.2.1 In D1, the communication functions of cellular telephone 10B are determined by switching apparatus 13B and managed by a communication business operator that operates the cellular telephone network (see paragraph [0039]).

2.2.2 The technical effect associated with the distinguishing features identified in point 2.1.8 above is that the control of a device's own setting information may be entrusted to the device itself. This in turn ensures that the setting information requested and acquired by the callers will be accurate and readily available, even when the subscriber of the called telephone number uses a device for the first time while the device's setting information (i.e. the "communication functions") is not yet available to the network operator.

2.2.3 The objective technical problem can thus be framed as "how to ensure an extended user control as regards the provision of setting information in the system of D1."

The person entrusted with this task is a technician from the field of telecommunications networks, like a telecommunications engineer.

- 2.2.4 The subject-matter of claim 1 does not involve an inventive step (Article 56 EPC) starting out from D1, for the following reasons:

Document **D1** features a centralised approach, where the caller obtains the callee's setting information from a *switching apparatus* rather than from the callee's *cellular telephone* directly. The skilled person would have easily recognised the trade-off arising from this approach: it gives the operator a tighter control of the communication functions usable by the cellular telephones and relieves the callee's cellular telephone from the burden of including this information in the connection response, but at the risk that the communication functions stored in the switching apparatus are outdated or incomplete. Thus, the skilled person seeking to minimise this risk would have put in place a distributed approach instead, where the setting information is transmitted by the callee's cellular telephone. Consequently, they would have introduced **feature (e)** into the system of D1 and thus arrived at the subject-matter of claim 1 without the exercise of any inventive skills.

- 2.3 Hence, the main request is not allowable under Article 56 EPC.

### 3. FIRST AUXILIARY REQUEST

Claim 1 of the **first auxiliary request** comprises the same limiting features as claim 1 of the main request,

and the following additional limitations (board's outline and highlighting):

(h) the device being a mobile phone;

(i) the computer being a personal computer.

3.1 *Claim 1 - novelty and inventive step starting out from D1*

3.1.1 The appellant submitted that if ST1 anticipated the request (**feature (b)**), the "link target" of cellular telephone 10A and the device from which setting information was requested (switching apparatus 13A) were not the *same* device. If ST12 anticipated the acquisition of setting information (**feature (e)**), the transmission ST12 did not originate from a "device being a link target of the computer" and ST12 was clearly not "setting information transmitted by the device". Further, **features (f) and (g)** were also not disclosed in D1, because the "computer" of claim 1 had been further defined as a personal computer and the "device" as a mobile phone.

3.1.2 The board agrees with the second difference (see point 2.1.8 above) but maintains that the remainder of the claimed features is already disclosed by D1. In particular, **D1** also discloses both **feature (h)** (see figure 6: "CELLULAR TELEPHONE 10B"), and **feature (i)**, see paragraph [0031] (emphasis added):

"FIG. 1 is a configuration diagram of an entire network to which is applied a communication system according to this embodiment. In addition, FIG. 1 illustrates a case that communication terminal apparatuses that the communication system has are

cellular telephones, but the invention is not limited thereto. Any communication apparatuses such as a **personal computer** (hereinafter referred to as a "**PC**"), PDA (Personal Digital Assistance) and the like may be used which have the communication function and display function. Further, **it is also possible to use different types of communication apparatuses on the calling and receiving sides.**"

3.1.3 The distinguishing **feature (e)** is the same as for claim 1 of the main request. Thus, the reasoning set out in point 2.2 above applies *mutatis mutandis* to the subject-matter of claim 1 of the first auxiliary request. As a consequence, it does not involve an inventive step starting out from D1 either.

3.2 Hence, the first auxiliary request is likewise not allowable under Article 56 EPC.

#### 4. SECOND AUXILIARY REQUEST

Claim 1 of the **second auxiliary request** comprises the same limiting features as claim 1 of the first auxiliary request and the following additional limitations (board's outline and highlighting):

(j) the requesting step being to create a file of current setting information at the beginning of linking with a device;

(k) the executing step being not based on setting information acquired at the time of setup but based on the file of the current setting information;

(1) data captured by the data link functions being a picture data, a moving image data or data on the number of steps and the amount of activity.

4.1 *Claim 1 - added subject-matter (Article 123(2) EPC)*

4.1.1 The examining division found in Reasons 17 of the decision under appeal that the amendment introduced by **feature (k)** was not disclosed in the application as filed. In particular, it was not disclosed in the passages provided by the applicant in point 4.1.2 of its submission of 20 November 2017.

4.1.2 The appellant submitted that the basis for these amendments could be found in figures 9, 10 and 12, in particular steps S313 to S316 of figure 10, and in the text at:

- page 32, line 23 to page 33, line 16;
- page 35, line 10 to page 36, line 9;
- page 37, line 15 to page 38, line 21;
- page 40, line 14 to page 41, line 6;
- page 41, line 19, to page 42, line 25;
- page 43, lines 14-17.

The appellant further submitted the following:

"In the specification, the description "*The device link unit 222 links with an information communication device that has mutually been authenticated and registered*" is found on page 15, lines 21-23. Further, as shown in fig. 8 and described on page 32, line 23 through page 33, line 16, the PC 2 and the mobile phone 3 mutually acquire the device information (the setting



information) at the time of setup (authentication and registration).

Based on these two sections of the description, it is submitted that it is clear that PC 2 and the mobile phone 3 mutually acquire the device information (the setting information) at the time of setup which is earlier than the linking.

Further, as described on page 41, line 19 through page 43, line 9, PC 2 acquires the setting information file from the mobile phone 3 at the beginning of the linking and links with the mobile phone using the acquired setting information file. Therefore, it is found that PC 2 does not use the setting information acquired at the time of setup, which is earlier than the linking, but uses the setting information acquired at the beginning of the linking."

4.1.3 This is not convincing.

First, **feature (k)** introduces into the claim, for the very first time, the term "time of setup". According to the appellant, this term comprises "authentication and registration" and "is earlier than the linking". However, such limitations cannot be inferred from the mere introduction of this broad term into present claim 1. This constitutes in itself an unallowable *intermediate generalisation*.

Second, it is not clear whether **feature (k)** intends to disclaim the acquisition of any setup information "at the time of setup" or rather the use of setup information acquired "at the time of setup" during the linking. The appellant seems to argue the latter.

Third, even considering the appellant's interpretation of the negative feature, the device and wireless LAN information acquired by the computer during the setup process in step S211 of figure 8 is not the same as the setting information acquired by the computer in figure 10 (see also figure 12) and defined in claim 1 by **features (d) and (1)**. That is, the application as filed does not disclose the acquisition of any "setting information", "at the time of setup", but rather "device and wireless LAN information".

4.2 It follows that the second auxiliary request is not allowable under Article 123(2) EPC.

5. Since there is no allowable claim request, the appeal must be dismissed.

## Order

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

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated