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**Datasheet for the decision
of 18 April 2023**

Case Number: T 1135/20 - 3.5.02

Application Number: 08748029.9

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Language of the proceedings: EN

Title of invention:

An information broadcasting system

Applicant:

Wienand, Neil Heinrich

Relevant legal provisions:

EPC Art. 56, 123(2)

Keyword:

Inventive step - main request (no)

Amendments - auxiliary request - extension beyond the content
of the application as filed (yes)



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Case Number: T 1135/20 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 18 April 2023

Appellant: Wienand, Neil Heinrich
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 11 October 2019
refusing European patent application No.
08748029.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: C.D. Vassoille
J. Hoppe

Summary of Facts and Submissions

- I. This is an appeal of the applicant against the decision of the examining division to refuse European patent application no. 08 748 029.9.
- II. The following document is relevant for the present decision:

D5: US 2003/0013466 A1
- III. In the decision under appeal the examining division came to the conclusion that the subject-matter of claims 1 and 13 of the main (and then sole) request was not new in view of document D5.
- IV. In a communication under Article 15(1) RPBA 2020, the board informed the appellant that the subject-matter of claim 1 of the main request appeared to be new but not to involve an inventive step in view of document D5, that the board was inclined not to admit the auxiliary request into the appeal procedure, and that notwithstanding this, the auxiliary request seemed not to meet the requirement of Article 123(2) EPC.
- V. With letter dated 28 February 2023, received on 6 March 2023, the appellant submitted further arguments in response to the board's preliminary observations on the appeal.
- VI. By a further letter dated 12 April 2023, received on 13 April 2023, the appellant informed the board that he would not attend the oral proceedings.

VII. Oral proceedings took place before the board on 18 April 2023 as a videoconference in the absence of the appellant.

The appellant (applicant) requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the main request or the auxiliary request, both filed with the statement of grounds of appeal.

VIII. Claim 1 of the main request reads as follows:

"An information broadcasting system (10) for broadcasting information to subscribers of the system, the system including:

an information receiving module (20) that is configured to receive information from a monitoring authority (18); and

an information transmitting module (22) that is configured to receive the information from the information receiving module (20) and to generate a Cell Broadcast Short Message Service (CBS) message that includes coded data relating to the information to relaying stations in at least one pre-selected geographical location to be relayed to subscribed communications devices (28) in said at least one pre-selected geographical location, said coded data being configured to correspond with at least one information component stored on said subscribed communications devices (28) and to identify a plurality of specific groups of subscribers, such that when subscribed communications devices (28) receive the CBS message, only the subscribed communications devices (28) of the

specific groups generate a notification corresponding to said at least one information component."

IX. The wording of claim 1 of the auxiliary request is as follows (the amendments made in relation to the main request are indicated by strike-through and underlining):

"An information broadcasting system (10) for broadcasting information to subscribers of the system, the system including:

an information receiving module (20) that is configured to receive information from a monitoring authority (18); and

an information transmitting module (22) that is configured to receive the information from the information receiving module (20) and to generate a Cell Broadcast Short Message Service (CBS) message that includes coded data relating to the information to relaying stations in at least one pre-selected geographical location to be relayed to subscribed communications devices (28) in said at least one pre-selected geographical location, said coded data being configured to correspond with ~~at least one~~ a respective information component of a plurality of information components, each comprising a text message stored on said subscribed communications devices (28) and to identify a plurality of specific groups of subscribers, such that when subscribed communications devices (28) receive the CBS message, only the subscribed communications devices (28) of the specific groups ~~generate a notification corresponding to said at least one information component~~ generate a notification

comprising the text message corresponding to said at least one information component."

- X. The relevant arguments of the appellant can be summarised as follows:

The following feature (a) of claim 1 was not disclosed in document D5: "an information receiving module that is configured to receive information from a monitoring authority". The examining division had argued that, in document D5, the monitoring authority comprised either a cell broadcasting (CB) entity 700 or a short message service (SMS) center. However, the CB entity 700 was only discussed in relation to the prior art. In relation to the SMS center, it was submitted that although this forwarded on messages it was not a "monitoring authority" in its normal signification.

Furthermore, the following feature (b) of claim 1 was not disclosed in document D5: "an information transmitting module that is configured to receive the information from the information receiving module and to generate a cell broadcast short message service message". The mobile station center (MSC) 400 in D5 did not carry out any cell broadcasting service (CBS) message generating step but merely forwarded on received data.

Finally, the following feature (c) of claim 1 also was not disclosed in document D5: "said coded data being configured to correspond with at least one information component stored on the said subscribed communication devices [...] only the subscribed communication devices [...] generate a notification corresponding to said at least one information component". In document D5, a code was included in the cell broadcasting (CB)

message which determined whether the message is displayed instantly or whether it is only indicated that a message has been received. Hence this did not correspond to the claimed approach of generating a notification corresponding to an internally stored information component on the communications device.

Document D5 was directed to an entirely different problem of permitting CB messages to be generated at a mobile station (MS) rather than at a cell broadcast entity (CBE). Furthermore, D5 only related to the manner in which a receiving device displayed received information according to the transmission scheme but did not disclose the generation of a notification corresponding to stored information components at the device.

Moreover, the distinguishing feature (b) contributed to an inventive step. In particular, it contributed to the technical effect of avoiding overloading or overwhelming the system. In document D5 the objective throughout was to permit generation of cell broadcasting service (CBS) messages at a mobile station (MS). In particular "coded data" - in this case comprising a serial number indicating a "display mode" (paragraph [0068], figure 6) must be generated at the mobile station as it was a matter of user stipulation.

Document D5 did not address issues such as managing system overload such that not only would the skilled person not have seen any benefit to shifting the generation to an alternative component. This would conflict with the function and purpose of D5.

Hence, feature (b) was not only novel but contributed to the technical effect of reducing overwhelm/overload issues.

Furthermore, as regards feature (c), in document D5, the message generated and encoded into cell broadcasting service (CBS) format at the mobile station (MS) included the serial number ("coded data") and message. The coded data effectively instructed the receiving mobile station whether to display the message immediately or later. The message itself was received with the serial number. Whilst it could be argued therefore that D5 taught to generate a notification in accordance with instructions received with coded data/ the corresponding information component, the notification generated did not itself correspond to the information component corresponding to the coded data but in fact was the message received in addition to the coded data. Consequently, feature (c) also contributed to the technical effect of avoiding overloading and overwhelming the system. Conversely, in D5, the data was carried through the entire transaction from transmission to reception.

The subject-matter of claim 1 was therefore novel and involved an inventive step in view of document D5.

Reasons for the Decision

1. *Main request - Inventive step (Article 56 EPC)*
- 1.1 The subject-matter of claim 1 of the main request does not involve an inventive step in view of document D5.

1.2 *Distinguishing feature*

1.2.1 The appellant argued that the subject-matter of claim 1 differs from document D5 in the following features:

(a) "an information receiving module (20) that is configured to receive information from a monitoring authority (18);"

(b) "an information transmitting module (22) that is configured to receive the information from the information receiving module (20) and to generate a Cell Broadcast Short Message Service (CBS) message"

(c) "said coded data being configured to correspond with at least one information component stored on said subscribed communications devices [...] only the subscribed communications devices [...] generate a notification corresponding to said at least one information component."

Feature (a)

1.2.2 The board considers that feature (a) is disclosed in document D5. Claim 1 does not provide a definition of the term "monitoring authority". To the extent that the appellant has argued that the short message service (SMS) center 550 (figure 4) of D5 does not correspond to the normal meaning of the term "monitoring authority", the board considers that the appellant has not submitted what that normal meaning should be.

1.2.3 In the light of the foregoing, the board is satisfied that any unit which is used to detect events such as the reception of messages is covered by the term "monitoring authority". Thus, any unit of document D5

that performs such a function is covered by the claimed concept of monitoring authority, in particular also the SMS center 550, which monitors the reception of messages from the mobile station center (MSC) 400 (see for example paragraphs [0079], [0085] and figures 4 and 8).

- 1.2.4 In addition, the information receiving module of feature (a) is substantially defined to be configured to receive information from the (not further defined) monitoring authority. Paragraph [0104] of document D5 contains a description of the invention (not of the prior art) and is in the context of figures 4, 5 and 8. According to this paragraph, the cell broadcasting (CB) center 650 recognises the SMS center 550 as one of the CB entities 700 and receives the "data burst message" from the SMS center 550.
- 1.2.5 The CB center 650 is therefore to be qualified as an "information receiving module" within the meaning of feature (a) and is thus configured to receive information from a monitoring authority (SMS center 550). The board notes that, in his letter of 28 February 2023, the appellant did not put forward any further arguments concerning feature (a).
- 1.2.6 In the light of the above, the board has come to the conclusion that feature (a) is disclosed by document D5.

Feature (b)

- 1.2.7 On the assumption that in document D5 the cell broadcasting (CB) center 650 is understood as an information receiving module according to feature (a), as assumed by the examining division, feature (b) is

not directly and unambiguously derivable from document D5.

- 1.2.8 According to feature (b), the information transmitting module is configured to receive the information from the information receiving module and to generate a cell broadcasting service (CBS) message.

The mobile station center (MSC) 400 of D5 receives information from the CB center 650 but does not generate a CBS message within the meaning of feature (b), contrary to what was found by the examining division. In particular, the passages of document D5 cited by the examining division in this context do not disclose anything in this respect. Feature (b) is therefore not directly and unambiguously derivable from document D5, if the CB center 650 is assumed to be the information receiving module.

Feature (c)

- 1.2.9 The board considers feature (c) to be disclosed in document D5. The appellant essentially argued that D5 did not disclose feature (c), as document D5 disclosed a code that was included in the cell broadcasting (CB) message which determined whether the message was displayed instantly or whether it was only indicated that a message has been received. In the appellant's view, this did not correspond to generating a notification corresponding to an internally stored information component on the communications device, as recited in feature (c).
- 1.2.10 The board notes first of all that in document D5 the message generated at the mobile station (MS) does indeed include, *inter alia*, the serial number ("coded

data") and the message content (see D5 at paragraph [0067]). However, to the extent that the appellant has argued that, contrary to document D5, in claim 1 the message itself is not included in the CBS message, the board does not consider this circumstance to be apparent, either explicitly or implicitly, from the wording of claim 1.

In particular, neither claim 1 as a whole nor feature (c) alone defines that the "coded data" excludes the transmission of the message content in the CBS message. In particular, claim 1 does not define the specific nature of the "coded data", the "notification" or the "information component". Claim 1 merely defines the "coded data being configured to correspond with at least one information component stored on said subscribed communication devices". This wording is so vague that it is not even clear what "correspond with" means in this context. The same applies to the vague wording "generate a notification corresponding to said at least one information component" according to feature (c).

In any event, the board is of the opinion that it cannot be inferred from the wording "generate a notification corresponding to said at least one information component" that the transmitted CBS message including the coded data does not contain any message content.

- 1.2.11 Furthermore, it was not disputed by the appellant that, in the case of document D5, the coded data instructs the receiving mobile station (MS) whether to display the received message immediately or later. In the decision under appeal, the examining division correctly

referred in this context to paragraph [0069] of D5, which states the following:

"If a display mode of a received message is 'immediate', the MS informs a user that a message has been received, and outputs a message content on the screen."

As is clear from paragraph [0069] in conjunction with the explanations and the table in paragraph [0068] of D5, the serial number that is part of the transmitted CBS message includes a "geographical scope (GS)" field, including a screen display mode (see the "GS value" in the table).

In this context, it was also not disputed by the appellant that document D5 teaches the generation of a notification in accordance with instructions received with coded data and the corresponding information component. However, it was argued that the notification generated did not itself correspond to the information component corresponding to the coded data, but was in fact the message received in addition to the coded data. This also contributed to the technical effect of avoiding overloading and overwhelming the system. Conversely, in D5, the data was carried through the entire transaction from transmission to reception.

- 1.2.12 The board does not agree with the appellant in this respect. As stated above, the wording of claim 1 is so vague that it cannot be inferred that the notification itself corresponds to the information component corresponding to the coded data and that this excludes the message to be received in addition to the coded data.

Rather, the board is convinced that a notification in the form of outputting the message content on the screen of the mobile station (MS) according to D5 would be understood by the skilled person to require that a corresponding information component be stored internally on the communications device (mobile station (MS)), while the coded data, including a "GS value", is in turn necessarily configured to correspond to a type of information component stored on the subscribed communications device. Otherwise, the communications device would not be able to process, for example, a GS value of "00" corresponding to an "Immediate" display mode and, consequently, to display the received message immediately (see the first line of the table in paragraph [0068]). Again, it should be noted that the term "information component" does not in any way imply that it is the actual message to be displayed in the form of a "notification" within the meaning of claim 1.

1.2.13 In the light of the above, the board concludes that feature (c) is disclosed in document D5.

1.3 *Objective technical problem*

1.3.1 It follows from the foregoing that the only distinguishing feature is feature (b), if it is considered that the CB center 650 corresponds to the "information receiving module" within the meaning of feature (a), as was done by the examining division.

1.3.2 The appellant argued that the distinguishing feature (b) contributes to the technical effect of avoiding the available bandwidth being overwhelmed or overloaded.

The board does not consider feature (b), namely the presence of an information transmitting module that is

configured to receive the information from the information receiving module (corresponding to the cell broadcasting (CB) center 650) and to generate a cell broadcast short message service (CBS) message including coded data, to affect the problem of managing system overload.

- 1.3.3 The appellant did not put forward any convincing arguments in this respect, apart from the alleged fact that in D5 the CBS message had forcibly to be generated in the mobile station.

The board is not convinced by the appellant's argument in this respect because the CBS message to be sent to the subscribers in D5 can be generated at different points in the system, such as in the MS 100, the SMS center 550 or the CB center 650 by means of a CB message converter 140 (see D5 in paragraph [0106]).

- 1.3.4 The board has therefore come to the conclusion that the objective technical problem arising from the distinguishing feature (b) is merely the provision of an alternative arrangement of the information transmitting module and consequently of the position where the CBS message is generated in the system.

1.4 *Obviousness*

- 1.4.1 The implementation of the distinguishing feature (b) in the information broadcasting system of D5 was obvious to the person skilled in the art.

- 1.4.2 First of all it is noted that since it is not clear from claim 1 that the CBS message has a reduced data content compared to the CBS message sent in D5, the advantage claimed by the appellant of avoiding the

overloading of the system does not result from the claimed subject-matter.

- 1.4.3 Paragraph [0106] of document D5 states that the CB message conversion module generating the CBS message, in particular the CB message converter 140, may be located in the mobile station (MS) 100, the SMS center 550 or in the cell broadcasting (CB) center 650.

For the sake of clarity, it is again noted that the CB message converter 140, as described in paragraph [0048], converts a data burst message into a CBS type message and thus serves to generate a CBS message within the meaning of feature (b) in the respective module (MS 100, SMS center 550 or CB center 650).

- 1.4.4 Document D5 in paragraph [0044] states that it is an object of the invention to provide a cell broadcasting service system and method that are capable of broadcasting and transmitting a short message that a general subscriber of a mobile communication generates. Correspondingly, document D5 states in paragraph [0066] that the CBS system of the invention of D5 allows a CB message to be generated even in a general mobile station (MS). However, this is only in addition to the generation and broadcasting of short messages at another point in the system, such as the cell broadcasting (CB) entity 700. Document D5 therefore does not preclude a CB message being generated in a different unit in the system other than the mobile station.

- 1.4.5 In addition to the above, the board notes that in D5, the user may, after having selected a cell broadcasting (CB) ID, indeed select further parameters of the message to be transmitted such as the message broadcast

range (see paragraph [0095]). Furthermore, paragraph [0096] describes that after the user has selected the required values, the CB message converter 140 generates a CB message by referring to the determined values and the message data. The controller then generates a transport layer message. However, as stated in paragraph [0098], the form of the CBS transport layer message is the same as the SMS transport layer message except for some field values, and it is only the conversion module such as the CB message converter 140 that converts the CB message into a CBS type message that can then be broadcasted to the subscribers. This converter 140, however, can be arranged in the mobile station 100, in the CB center 650 or in the SMS center 550 as well (see D5 in paragraph [0106]).

Therefore, the board does not agree with the appellant that the CBS message is necessarily generated in a mobile station (MS). Rather, as can be directly and unambiguously derived from D5 (see the board's comments above), the generation of the CBS message by means of the CB message converter is not limited to the mobile station. In this context it should be noted that claim 1 explicitly claims the generation of a CBS type message and not the generation of a CB message, which does not correspond to the CBS message to be transmitted to the subscribers within the meaning of feature (b).

In summary, document D5 aims to enable a general subscriber to broadcast and transmit a short message. This includes the possibility for the user of a mobile station 100 to select a CB ID and other values as described in paragraphs [0090] to [0093]. However, contrary to the appellant's view, the skilled person would not derive from document D5 a teaching according

to which the generation of the CBS message within the meaning of feature (b) can only take place in the mobile station 100. On the contrary, paragraph [0106] expressly states that the CB conversion module can also be arranged in other modules, such as the SMS center 550 and the CB center 650. The system of D5 provides the user of a mobile station with the possibility to send CB messages only as an additional measure.

- 1.4.6 Consequently, the board does not recognise any technical effect that arises from the provision of an information transmitting module that is configured to receive the information from the CB center 650 and to generate a cell broadcast short message service (CBS) message. Nor has the appellant credibly demonstrated such an effect.

The only decision that the skilled person would have to make in principle would be where the required generation of the CBS message should take place. The skilled person then would have a choice between several obvious possibilities, at least some of which are mentioned in document D5 (see paragraph [0106]). In addition, the skilled person would readily recognise that the generation of the CBS message can also be suitably carried out in a unit communicating with the CB center 650, if this is considered to correspond to the information receiving module. The information transmitting module could in this case be the mobile station center (MSC) 400 or any other module between the CB center 650 and the MSC 400, which receives the information from the CB center 650 and generates the CBS message.

Since the CBS message in document D5 is in any event generated by the CB message converter 140, the only

question for the skilled person would therefore be in which module it should be integrated. The answer to this question does not involve any inventive considerations, but is merely based on normal considerations which the person skilled in the art would inevitably make and implement according to the specific circumstances.

The appellant did not provide any further arguments in this respect. Rather, he focused on the alleged technical effect of feature (b) of "reducing overwhelm/overload issues", which, in the board's conviction, does not result from the provision of an information transmitting module within the meaning of feature (b).

1.5 *Result*

Therefore, having regard to document D5, the board concluded that the subject-matter of claim 1 does not involve an inventive step and thus does not fulfil the requirement of Article 56 EPC.

2. *Auxiliary request - Amendments (Article 123(2) EPC)*

2.1 The auxiliary request submitted by the appellant with the statement of grounds of appeal does not meet the requirement of Article 123(2) EPC.

2.2 Claim 1 of the auxiliary request has been amended as follows (amendments highlighted by underlining and strike-through):

" [...] said coded data being configured to correspond with ~~at least one~~ a respective information component of a plurality of information components, each comprising

a text message stored on said subscribed communications devices (28) and to identify a plurality of specific groups of subscribers, such that when subscribed communications devices (28) receive the CBS message, only the subscribed communications devices (28) of the specific groups ~~generate a notification corresponding to said at least one information component~~ generate a notification comprising the text message corresponding to said at least one information component."

2.3 As a basis for the amendments the appellant referred to original claims 5 and 14 (reference is made to the international publication no. WO 2008/144835 A1).

However, the board notes that original claim 5 says nothing more than that the notification corresponding to said at least one information component is in the form of a text message. Original claim 5 contains no information about the characteristics of the information component itself and, in particular, it does not say that the notification or the information component comprises a text message as recited in claim 1 of the auxiliary request.

In addition, the original claim 14 does not contain any reference to a text message.

Original claims 5 and 14 can thus not serve as a basis for the subject-matter as claimed with the auxiliary request and no other basis is discernible.

2.4 By letter dated 28 February 2023, received on 6 March 2023, the appellant, in response to the board's communication under Article 15(1) RPBA 2020, did not refer in any way to the board's corresponding

objections under Article 123(2) EPC that were raised against the auxiliary request in that communication.

2.5 In the absence of any counter-arguments, the board has concluded that claim 1 of the auxiliary request does not meet the requirement of Article 123(2) EPC.

2.6 The question of whether the auxiliary request was to be admitted into the appeal procedure could therefore remain unanswered.

3. *Result*

Since the main request does not fulfil the requirement of Article 56 EPC and the auxiliary request does not meet the requirement of Article 123(2) EPC, neither of the appellant's requests was allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

R. Lord

Decision electronically authenticated