Datasheet for the decision of 23 January 2020

Case Number: T 0297/16 - 3.5.03
Application Number: 07721649.7
Publication Number: 2020813
IPC: H04L29/08, H04M3/56, H04L12/18, H04L29/12, H04L29/06
Language of the proceedings: EN

Title of invention:
A method, device and system for implementing the session service

Patent Proprietor:
Huawei Technologies Co., Ltd.

Opponent:
James Poole Limited

Headword:
SIP conferencing system/HUAWEI

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Added subject-matter (yes) - all requests
Case Number: T 0297/16 - 3.5.03

DECISION
of Technical Board of Appeal 3.5.03
of 23 January 2020

Appellant: James Poole Limited
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 November 2015 concerning maintenance of the

Composition of the Board:
Chair K. Bengi-Akyürek
Members: T. Snell
R. Romandini
Summary of Facts and Submissions

I.  This decision, which was announced at the end of the oral proceedings held on 23 January 2020, concerns an appeal filed by the opponent (henceforth, appellant) against the decision of the opposition division concerning the maintenance of the opposed patent in amended form on the basis of the claims of the second auxiliary request filed with the letter dated 28 August 2015.

II. The appellant requests that the decision be set aside and that the patent be revoked.

The patent proprietor (henceforth, respondent) requests that the appeal be dismissed. Alternatively, the respondent requests that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 10 and 12 to 14, all as filed with the reply to the statement of grounds of appeal dated 22 August 2016, or auxiliary requests 1a, 4a, 6a, 12a and 14a, all as filed with submission dated 17 January 2020. The requests are to be considered in the following order: 1, 1a, 2, 3, 4, 4a, 5, 6, 6a, 7, 8, 9, 10, 12, 12a, 13, 14, 14a.

III. Claim 1 of the second auxiliary request referred to in point I (henceforth referred to as the main request) reads as follows (with feature annotations (1a) to (1h'')) having been added by the board, essentially conforming to the impugned decision, cf. point 15 of the reasons):

"(1a) A method for implementing the [sic] conference service, comprising:
(1b) sending (S202), by a conference initiator, a conference operation message which carries conference information,

(1c) wherein the conference information indicates more than one user that joins in the conference,

(1d) the conference operation message comprises at least one type of the following messages: SIP INVITE message, SIP REFER message, SIP SUBSCRIBER message, and HTTP message;

(1e) receiving (S204), by a network server, the conference operation message initiated by the conference initiator;

(1e') requesting, by the network server, a conference resource; and

(1f) adding, by the network server, more than one user terminal denoted by the conference information to the conference;

wherein the conference information comprises the following types of parameters:

(1g) a user identifier, adapted to denote the user that joins in the conference; and

(1h) a dialog identifier, adapted to denote a dialog where the user that joins in the conference is engaged, of an established call;

and the process of adding more than one user terminal denoted by the conference information to the conference comprises:
(1h') deciding, by the network server, the user that
joins in the conference according to the user
identifier and the dialog identifier, and

(1h'') adding, by the network server, the user that
joins in the conference to the conference by
redirecting said dialog where the user that joins in
the conference is engaged to the conference resource."

IV. For reasons of conciseness, the claims of the auxiliary
requests on file are not reproduced.

Reasons for the Decision

1. Claim interpretation - all requests

1.1 The claims as originally filed use the terms "dialog"
and "call". The meaning of these terms was contested by
the parties. For the sake of argument and in the
respondent's favour, the board interprets the term
"dialog" to mean a call leg comprising a signalling
channel and a media channel, which was the
interpretation given by the respondent. The board
considers that a plausible alternative meaning is that
the dialog comprises only the signalling part of a call
leg, whereas the call comprises the dialog and a media
channel. However, for the purposes of the reasoning
given below, this difference is moot.

1.2 The patent concerns a method for adding call
participants to a conference, e.g. in the context of a
conference signalling system based on SIP ("session
initiation protocol"). In essence, according to the
method as claimed in claim 1 of the main request, a
conference initiator sends a conference operation
message including a dialog identifier denoting a dialog of an established call where an intended conference participant is engaged. The network server adds the participant to the conference by "redirecting" said dialog to a conference resource previously requested by the network server.

2. Main request - claim 1 - Article 123(2) EPC

2.1 Feature (1h) of claim 1 of the main request specifies a dialog identifier, adapted to denote a dialog where the user that joins in the conference is engaged, of an established call. This does not specify which dialog of which established call is meant. In accordance with feature (1h"'), the joining user is then added to the conference by redirecting said dialog to the respective conference resource.

2.2 Claim 2 as originally filed specifies "a user identifier, adapted to denote a conference participant", and claim 3 requires "adding the conference participant by ... redirecting the call between the network server and the conference participant" (board's underlining).

2.3 It follows that claims 2 and 3 as originally filed concern the particular situation where the redirected call is a call between the network server and the conference participant, whereas claim 1 of the main request embraces redirecting other dialogs/calls in which the conference participant is engaged, e.g. those between a different server and the conference participant.

2.4 This broadening of the scope of claims 2 and 3 as filed is not directly and unambiguously based on any part of
the application as filed. In this respect, although claim 9 as filed more generally states "redirecting, by the network server, the dialog to the conference resource ...", there is no antecedent basis for "the dialog" in claim 9 or in claims 1, 7 and 8 on which claim 9 depends. Consequently, it is not directly and unambiguously derivable from claim 9 as filed that "the dialog" must refer to a dialog in which the conference participant is engaged, rather than, for example, the dialog of the call between the network server and the conference initiator. Indeed, this latter interpretation is plausibly more consistent with claim 8 as filed, which includes the feature "exchanging, by the network server, conference operation messages with the conference initiator".

2.5 The appellant argues that feature (1h) is supported by Fig. 7 and the associated description (cf. paragraph [0078] ff. of the underlying patent application as filed). However, Fig. 7 refers to the particular case where, at the outset, a conversation is already established between two users, A and B, via the "conference AS" (application server), whereby the redirected dialog/call is that between the conference AS (application server) and the conference participant B. Claim 1, however, does not include these limitations.

2.6 The board concludes that present claim 1 does not comply with Article 123(2) EPC.

3. Auxiliary requests - claim 1 - Article 123(2) EPC

The same deficiency is present in claim 1 of each auxiliary request, since none of these claims includes the express limitation in claim 3 as filed of
redirecting the call between the network server and the conference participant. This was not contested by the respondent. Claim 1 of each auxiliary request therefore does not comply with Article 123(2) EPC either.

4. **Conclusion**

As there is no allowable claim request, it follows that the patent must be revoked.

**Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar: 

The Chair:

B. Brückner 
K. Bengi-Akyürek

Decision electronically authenticated