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**Datasheet for the decision
of 12 October 2007**

Case Number: T 1455/05 - 3.5.03

Application Number: 00309846.4

Publication Number: 1102502

IPC: H04Q 7/22

Language of the proceedings: EN

Title of invention:

Method and apparatus for a wireless telecommunication system
that provides location-based messages

Applicant:

Lucent Technologies Inc.

Opponent:

-

Headword:

Location-based messaging method/LUCENT

Relevant legal provisions:

EPC Art. 54, 84

EPC R. 71(2)

Keyword:

"Novelty - main and auxiliary request (no)"

"Clarity - main request (no)"

"Oral proceedings held in absence of appellant"

Decisions cited:

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Catchword:

-



Case Number: T 1455/05 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 12 October 2007

Appellant: Lucent Technologies Inc.
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 20 June 2005
refusing European application No. 00309846.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. J. Madenach
Members: F. van der Voort
R. Menapace

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 00309846.4, publication number EP 1 102 502 A.
- II. One of the reasons for the refusal was that the subject-matter of independent claim 1 was not new (Articles 52(1) and 54 EPC) having regard to the disclosure of:
- D1: WO 97/41654 A.
- III. In the notice of appeal the appellant requested that the decision be set aside and a patent be granted. With the statement of grounds of appeal the appellant filed a set of claims, intended to replace the claims on file, and submitted arguments in support.
- IV. In a communication accompanying a summons to oral proceedings the board gave a preliminary opinion in which, *inter alia*, objections under Article 84 EPC and under Article 52(1) EPC in combination with Article 54 EPC were raised.
- V. In response to the board's communication, the appellant filed new claims of a main and an auxiliary request, replacing the previous set of claims on file, and submitted arguments in support.
- VI. Oral proceedings were held on 12 October 2007 in the absence of the appellant. The board understood from the appellant's written submissions that the appellant requested that the decision be set aside and a patent

be granted on the basis of the claims of the main request or, failing that, on the basis of the claims of the auxiliary request, both requests as filed in response to the summons to oral proceedings. After deliberation, the board's decision was announced at the end of the oral proceedings.

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

"A location-based messaging method in a wireless communication network comprising:

receiving, by the wireless communication network, information sent from a wireless mobile unit;

CHARACTERIZED BY:

determining, by the wireless communication network, that the wireless mobile unit has entered a designated region based upon the received information;

outputting, by the wireless communication network, information relating to the designated region for the wireless mobile unit, the output triggered based upon determining that the wireless mobile unit has entered the designated region; and

storing, by the wireless communication network, map information for the designated region, wherein the output information includes map information."

Claim 1 of the auxiliary request differs from claim 1 of the main request only in that "for" in "outputting ... for the wireless mobile unit" was replaced by "to".

Reasons for the Decision

1. *Procedural matters*

1.1 The board considered it to be expedient to hold oral proceedings for reasons of procedural economy (Article 116(1) EPC). Having verified that the appellant was duly summoned the board decided to continue the oral proceedings in the absence of the appellant (Rule 71(2) EPC and Article 11(3) RPBA).

1.2 In the communication accompanying the summons, clarity and novelty objections were raised in respect of claim 1 as pending at the time. The appellant was thereby informed that at the oral proceedings it would be necessary to discuss these objections and, consequently, could reasonably have expected the board to consider at the oral proceedings these objections not only in respect of claim 1 pending at the time but also in respect of the amended versions of claim 1, which were filed by the appellant in response to the summons to oral proceedings. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment at the oral proceedings on any of these objections but, instead, chose to rely on the arguments as set out in the written submissions, which the board duly considered below.

1.3 Under these circumstances the requirements of Article 113(1) EPC are met and the board is in a position to give a decision.

2. *Clarity - claim 1 of the main request*

2.1 In claim 1 of the main request, the use of the term "for" in the feature "outputting ... information relating to the designated region for the wireless mobile unit" results in this feature being ambiguous. It may be interpreted in several different ways, for example, that the designated region is suitable for the wireless mobile unit, that the information is intended for, but is not yet outputted to, the wireless mobile unit, that information relating to the designated region is outputted to the wireless mobile unit, or that the designated region is that region which is designated to the wireless mobile unit. The claim is therefore unclear.

2.2 The appellant argued that a correct interpretation of the above-mentioned feature is that "the information may be output to the wireless mobile unit (claim 2), or the information may be out put [*sic*] to another internal device, for example, a wireless switching center 420". In support reference was made to FIG. 4 and paragraph [0025] of the application as published.

However, in the board's view, Article 84 EPC requires that the claims, rather than a combination of the claims and the description, shall define the matter for which protection is sought. The claims must therefore be clear in themselves, i.e. an addressee should be able to understand each of the claims without a need for him to refer to the description. The argument is therefore not convincing.

2.3 Because of the ambiguous wording, as pointed out above, claim 1 of the main request does not comply with the requirements of Article 84 EPC.

3. *Novelty - claim 1 of the main request*

3.1 If, for the sake of argument, the above-mentioned feature were interpreted in accordance with the appellant's interpretation as meaning that the information is intended for, but is not necessarily outputted to, the wireless mobile unit, the subject-matter of claim 1 would lack novelty for the following reasons.

3.2 D1, see the abstract and Figs 1 and 2, discloses a method of disseminating information to subscribers of a mobile telecommunications network. At a plurality of base stations of respective telecommunications networks 30, an information signal sent from a subscriber's mobile terminal 32, i.e. a wireless mobile unit, is received and, based upon the received information signals, a mobile terminal locating means 38 in each of the telecommunications networks determines the location of the mobile terminal 32 (D1, page 7, lines 27 to 30, and page 8, lines 1 to 6, 13 and 14). Upon determining that the mobile terminal is at a particular location, e.g. on a traffic route as stored in a subscriber's profile, and, hence, that it has entered a designated region, information intended for the wireless mobile terminal 32 and relating to the subscriber's route is outputted from a message distribution centre 10, via an "Enhanced Services Node" (ESN) 36, to the wireless mobile terminal 32, e.g. information about a traffic build-up which is causing delays further along the

route (page 3, lines 7 to 12, and page 8, lines 15 to 26). The message distribution centre 10 is connected to a plurality of information sources 20 including databases 22 (page 6, lines 18 to 23, Fig. 2). The transmitted information may be in a menu-driven format and may include the option of having maps in the subscriber's vicinity, i.e. for the designated region, downloaded to the subscriber terminal, in which these maps are stored in a directory database (page 8, lines 26 to 30, and claims 4 and 5).

3.3 The appellant's arguments in support of novelty of the subject-matter of claim 1 are as follows:

"... D1 teaches that a location of a subscriber is determined by the network via a mobile positioning center. D1 further teaches that the network sends information related to a specific region only if the subscriber had previously stored in "his/her profile" the travel destination of the subscriber. In other words, the network, as taught in D1, can only provide location dependent information for locations that have been previously stored in the subscriber's profile. The network cannot provide traffic information, or any other geographic region information, if the subscriber did not store a specific location in his/her profile.

Applicants have amended claims 1 and 30 (claim 29) for clarification. For example, claim 1 has been amended to recite, inter alia, "storing, by the wireless communication network, map information for the designated region, wherein the output information includes map information.

As remarked above, D1 fails to suggest or teach "storing, by the wireless communication network, map information for the designated region, wherein the output information includes map information" as recited in claims 1 and 29."

3.4 The board does not find these arguments convincing for the following reasons.

Claim 1 does not exclude that other conditions are to be met before the location dependent information is outputted. Hence, the entering of a designated region need not be the only condition. For example, it may also depend on whether or not a user has actually signed up for the particular information service or that a traffic problem has actually occurred, cf. paragraphs [0025] and [0033] and Fig. 7 of the application as published. Claim 1 merely requires that the output is triggered "based upon determining that the wireless mobile unit has entered the designated region". In the system of D1, this is also the case as soon as the system determines that the wireless terminal is on the stored route, see point 3.2 above. Hence, whether or not the system of D1 "can only provide location dependent information for locations that have been previously stored in the subscriber's profile" or whether or not the network is able to "provide traffic information, or any other geographic region information, if the subscriber did not store a specific location in his/her profile" is not relevant to the question of novelty of the subject-matter of claim 1.

Further, the feature of "storing, by the wireless communication network, map information for the designated region, wherein the output information includes map information" is known from D1, see point 3.2 above.

3.5 Interpreting the claim as set out in point 3.1, the board therefore concludes that the subject-matter of claim 1 of the main request lacks novelty having regard to the disclosure of D1 (Articles 52(1) and 54 EPC).

4. *Novelty - claim 1 of the auxiliary request*

4.1 Claim 1 of the auxiliary request differs from claim 1 of the main request only in that "for" in the feature "outputting ... information ... for the wireless mobile unit" is replaced by "to".

4.2 The appellant stated in his reply that D1 failed to suggest or teach this feature, but did not provide any reasons in support thereof.

The board notes, however, that in the system of D1 the same information is outputted for and to the wireless mobile unit, see point 3.2 above.

4.3 Hence, for the same reasons as set out at point 3 above in respect of claim 1 of the main request, the subject-matter of claim 1 of the auxiliary request lacks novelty having regard to the disclosure of D1 (Articles 52(1) and 54 EPC).

5. It follows that neither of the requests on file is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. J. Madenach