BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

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

Datasheet for the decision of 23 January 2009

Case Number: T 0395/06 - 3.5.05

Application Number: 00308578.4

Publication Number: 1089493

IPC: H04L 12/26

Language of the proceedings: EN

Title of invention:
Internet based remote diagnostic system

Applicant:
GENERAL ELECTRIC COMPANY

Opponent:
-

Headword:
Remote diagnostic system with paging channel/GE

Relevant legal provisions:
EPC Art. 52(1)

Relevant legal provisions (EPC 1973):
EPC Art. 56, 84

Keyword:
Inventive step - independent claims (no)
Clarity and conciseness - dependent claims (no)

Decisions cited:
T 1194/97

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0395/06 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 23 January 2009

Appellant: GENERAL ELECTRIC COMPANY
1 River Road
Schenectady
NY 12345 (US)

Representative: Pedder, James Cuthbert
London Patent Operation
General Electric International, Inc.
15 John Adam Street
London WC2N 6LU (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 18 October 2005 refusing European application No. 00308578.4 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: D. H. Rees
Members: M. Höhn
G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division dispatched 18 October 2005, refusing European patent application No. 00308578.4. The decision according to the state of the file was based on a reference to the communications issued during the examination procedure the reasoning of which was based on, among others, prior art document (following the numbering in the first instance):

D3: WO 9935805 A.

II. In the statement setting out the grounds of appeal filed with letter dated 23 February 2006 it was requested that the decision to refuse be set aside and that the application proceed on the basis of the claims currently on the file. Oral proceedings were also requested as an auxiliary measure.

III. A summons to oral proceedings to be held on 23 January 2009 in accordance with the appellant's request was issued on 3 November 2008. In an annex accompanying the summons the board expressed the preliminary opinions inter alia that the subject-matters of the independent claims 1 and 6 were considered obvious in the light of the prior art document D3 when combined with the skilled person's common general knowledge (Article 56 EPC 1973) and that dependent claims 7, 10 and 12 did not satisfy the requirements of Article 84 EPC 1973. The board gave its reasons for these objections and why the appellant's arguments were not convincing.

IV. In correspondence with the appellant's intention previously communicated to the board, nobody appeared to represent the appellant at the oral proceedings on 23 January 2009, which were then held in the appellant's absence.

V. The appellant had requested in writing that the decision to refuse be set aside and that the application proceed on the basis of the claims currently on the file. The board therefore takes the request to be on the basis of the set of claims 1 to 12 submitted with the letter dated 19 March 2004 and the description pages and the drawings as originally filed. The appellant had been informed of this interpretation of the appellant's request in the annex to the summons for oral proceedings.

VI. Independent claim 1 reads as follows:

"1. A remote diagnostic communication system comprising: a centrally located diagnostic center (12); and a point-of-presence, POP, server (14) located on a network coupled to said centrally located diagnostic center (12); characterised by at least one remote site (10) for collecting diagnostic data and for initiating a local connection to said POP server (14) to transfer said diagnostic data to said POP server (14) so that said diagnostic data can then be retrieved from said POP server (14) by said centrally located diagnostic center (12); and a paging channel (20) between said centrally located diagnostic center(12) and said at least one remote site (10) for prompting said at least one remote site (10) to initiate said local connection to said POP server (14)".

Independent claim 6 is directed to a corresponding method for communicating diagnostic data.

VII. After deliberation the board announced its decision.

Reasons for the Decision

1. The appellant was duly summoned, but did not appear in the oral proceedings. According to Article 15(3) RPBA the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case. Further since the appellant had been informed in the board's communication of the objections against the application, there can be no question of the appellant being taken by surprise and the appellant's right to be heard has been observed (Article 113(1) EPC).

Independent claims

2. *Article 56 EPC 1973 - Inventive step*

2.1 In the communication dated 13 November 2003 which is referred to in the appealed decision the examining division pointed out that document D3 described the same paging concept as the present invention (see section 1.7 of the communication mentioned). The board is of the opinion that D3 is the most pertinent prior

art document on file as it discloses the basic principle of the invention, i.e. using a paging channel between a centrally located host and a remote site unit for prompting the initially offline remote site to initiate a local connection for uploading data to the host.

2.2 D3 discloses (see e.g. figure 1) a remote communication system comprising a centrally located host (50) and a communication system (30) located on a network coupled to the centrally located host (see also page 5, paragraphs 2 and 3). It further discloses at least one remote site (12) for collecting data (page 5, paragraph 3) and for initiating a local connection to the communication system (page 10, first paragraph) to transfer the data to the centrally located host (see page 6, paragraph 4 and page 7, paragraph 3 mentioning uploading data from the remote device to the host). D3 further suggests the use of a paging channel (page 11, paragraph 3 and claim 18) between the centrally located host (50) and the at least one remote site (12) for prompting the at least one remote site to initiate said local connection to the communication system (30). D3 also addresses the intention of the present application to avoid the cost of long distance calls (page 3, paragraph 3, 4th sentence).

2.3 According to this analysis the subject-matter of claims 1 and 6 differs from the disclosure of D3 in that:

(a) the host is a diagnostic center and the data to be transferred is diagnostic data, and

(b) the communications system 30 is a POP-server and data is transferred to said POP server so that said

data can then be retrieved from said POP server by said centrally located host (12).

2.4 With regard to (a) it is noted that the system as defined in D3 is also suitable for diagnostic purposes and from a technical point of view there is no difference between the host 50 and the diagnostic center in the present application. The difference lies purely in the terminology used. That the type of data is diagnostic data is not considered a technical feature of the communications system, but rather depends on the intended use of the system. Whether it is e.g. only digital music data or diagnostic data does not play a role, because the nature of the data is not a functional one as defined in decision T 1194/97 (see OJ EPO 2000, 525, section 3.3 of the reasons) since the data being defective would not affect the functioning of the system. This difference therefore does not contribute to an inventive step.

2.5 The board agrees with the examining division that the objective technical problem solved by feature (b) is to find an alternative way to modems 32-38 (see figure 1 of D3) to transfer the data from the remote site to the host device (see section 4.1 of the communication dated 29 April 2005).

The examining division argued that the solution according to (b) was obvious in the light of on-demand Internet connections having been well known before the priority date of the present application. When establishing a local call to an Internet Service Provider ISP, the data must be sent to a POP server. To

illustrate this common general knowledge of the skilled person, the examining division again referred to D3.

The board agrees with this argumentation, in particular because D3 already mentions the use of POP-servers and the Internet in the context of the objective of avoiding long distance tariffs (page 2, last paragraph to page 3, first paragraph). Furthermore, D3 mentions that by initiating a local call by the remote site a communication link 11 is established as a service of the communication system 30. The communication link 11 is described as being comparable to a corporate intranet (D3, page 10, first paragraph), which corresponds to one of the embodiments described in the present application (see paragraph 5 of the A2-publication) and claimed in dependent claim 5.

2.6 Thus, it would have been obvious to the skilled person having the common general knowledge and in the light of the mention of POP servers and the use of an intranet with the objective to avoid long distance tariffs in D3, to realize the communication system 30 in the form of a POP server. This automatically entails that data is transferred to the POP server so that the data can then be retrieved from the POP server by the centrally located host being for example an ISP (see D3, page 9, first paragraph), because this is the inherent function of such a POP server.

The subject-matter of claims 1 and 6 is therefore obvious in the light of the teaching of D3 when combined with the skilled person's common general knowledge (Article 52(1) EPC and Article 56 EPC 1973).

Hence the sole request is not allowable and the appeal must be dismissed.

However, the board notes the following objections.

Dependent claims

3. *Article 84 EPC 1973 objections against claims 7, 10 and 12*

3.1 The additional feature specified in dependent claim 7 is considered redundant by the board in the light of the last two lines of independent claim 6 defining that it is the remote monitoring station which couples to the POP server, i.e. it initiates the local connection. The set of claims therefore lacks conciseness (Article 84 EPC 1973).

3.2 Independent method claim 6 specifies the use of a pager system by the diagnostic center to prompt the remote diagnostic monitoring station for initiating a local connection to the POP server. Claim 10 being dependent on claim 6 specifies to initiate a local connection "when diagnostic data are to be routed". This is understood to mean that the existence of diagnostic data triggering the local connection is an alternative to the pager rather than an additional feature. In consequence it does not make sense to prompt the local monitoring station by a pager anymore and the reader is left in doubt as to what alternative actually initiates the local connection, resulting in a lack of clarity of claim 10 (Article 84 EPC 1973).

3.3 The same objection applies against claim 12 which is also dependent on claim 6. Claim 12 specifies that the local connection is initiated "when an amount of data at the remote site exceeds a quantity" with the consequence that it does not make sense to prompt the local monitoring station by a pager anymore as specified in independent claim 6.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar The Chairman

K. Götz D. H. Rees