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Datasheet for the decision of 17 September 2008

Case Number: T 1366/06 - 3.5.03

Application Number: 04250902.6

Publication Number: 1473953

IPC: H04Q 7/32

Language of the proceedings: EN

Title of invention:
Cellular communication standard employment by mobile cellular communication device for network management information exchange with network infrastructure device

Applicant:
Lucent Technologies Inc.

Headword:
Apparatus for management of a communication network/LUCENT

Relevant legal provisions:
EPC Art. 56, 113(1)
EPC R. 115(2)
RPBA Art. 15(3)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step - no"
"Oral proceedings held in absence of appellant"

Decisions cited:
-

Catchword:
-

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Case Number: T 1366/06 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 17 September 2008

Appellant: Lucent Technologies Inc.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 20 April 2006 refusing European application No. 04250902.6 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: A. S. Clelland
Members: T. Snell
M-B. Tardo-Dino

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 04250902.6, with publication number EP-A-1473953. The decision was based on the ground that the subject-matter of claim 1 did not meet the requirement of inventive step under Article 56 EPC with respect to the disclosure of the following document:

D1: WO-A-00/65851

II. In the notice of appeal the appellant requested that the decision be set aside and a patent granted.

III. With the statement of grounds of appeal the appellant filed a replacement set of nine claims to replace the previous set of nine claims. The appellant also submitted arguments with respect to inventive step.

IV. In a communication accompanying a summons to oral proceedings the board gave a preliminary opinion in which objections under Article 123(2), Article 84, and Article 52(1) in combination with Article 56 EPC were raised.

In respect of inventive step, the board relied on document D1 combined with the common knowledge of the person skilled in the art.

V. In response to the board's communication, the appellant submitted comments and a replacement set of five claims to replace the previous set of nine claims.

VI. In a further response the appellant announced that it would not be attending the oral proceedings scheduled for 17.09.08. The appellant requested that the oral proceedings be cancelled and that the procedure be continued in writing.

VII. The board informed the appellant with a communication dated 29.08.08 that the request to cancel the oral proceedings could not be granted and that the date fixed for oral proceedings was maintained.

VIII. Oral proceedings were held on 17.09.08 in the absence of the appellant.

According to the written submissions, the appellant requested the grant of a patent on the basis of claims 1-5 filed on 16.05.08.

The board understood that the request implicitly included the following additional application documents:

Description:

Pages 1-15 as originally filed; pages 3A and 3B filed on 14.04.05.

Drawings:

Sheet 1/1 as originally filed.

After due deliberation, the board announced its decision.

IX. Claim 1 of the appellant's request reads as follows:

"An apparatus for management of a communication network (108),

CHARACTERIZED BY:

a mobile cellular communication device (106) of a universal mobile telephone system network (108) that employs a cellular communication standard to exchange one or more portions of network management information with a network infrastructure device (122, 124, 126, 128, 130, 132, 134, 136, 144, 146, 148, 150, 152) of the universal mobile telephone system network (108);

wherein the cellular communication standard comprises the Universal Mobile Telephone System (UMTS) standard;

wherein the network management information comprises management and/or service information for diagnostic testing, upgrading, or reconfiguration of the network infrastructure device;

wherein the network infrastructure device comprises any of a radio network controller, a radio terminal, a mobile switching centers *(sic)*, a home location registers *(sic)*, a general packet radio service gateway support node, a charging gateway, or a serving general packet radio service support nodes *(sic)*;

wherein the mobile cellular communication device manages the network infrastructure device based on one or more inputs from a user of the mobile cellular communication device;

wherein the mobile cellular communication device comprises a graphical user interface that is configured to allow a user to choose a selected management procedure from a listing of available management procedures for execution by the network infrastructure device;

wherein the network management information comprises a request to execute the selected management procedure;

wherein the mobile cellular communication device comprises a cellular phone or personal digital assistant that is operable with the UMTS standard to receive a wireless voice, data, and/or short message service."

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). The appellant, having been duly summoned, informed the board that it would not attend the oral proceedings. The appellant also requested cancellation of the oral proceedings and continuation of the procedure in writing. The board however did not see any reason to cancel the oral proceedings, which it considered to be an appropriate procedural step for dealing with the case in a reasonable time, whilst providing the appellant with a full opportunity to defend its case. The appellant did not provide any

reasons for cancelling the oral proceedings either. The request that the oral proceedings be cancelled was therefore refused and the oral proceedings were held in the absence of the appellant (Rule 115(2) EPC and Article 15(3) RPBA).

1.2 In the communication accompanying the summons, an objection pursuant to inventive step was raised in respect of claim 1 pending at the time. The appellant was thereby informed that at the oral proceedings it would be necessary to discuss this objection and, consequently, could reasonably have expected the board to consider at the oral proceedings this objection not only in respect of claim 1 pending at the time but also in respect of the amended version of claim 1, which was 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 on any objections raised by the board at the oral proceedings, but instead chose to rely on the arguments set out in the written submissions.

1.3 In accordance with 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 oral proceedings of any party duly summoned who may then be treated as relying only on its written case. The appellant's request that the procedure be continued in writing, which the board interpreted as a request for a further communication before a decision is issued, was therefore refused.

1.4 In view of the above, the board was in a position to give a decision at the oral proceedings which complied with the requirements of Article 113(1) EPC.

2. *Claim 1 - Inventive Step (Articles 52(1) and 56 EPC)*

2.1 The present invention relates to a mobile cellular device able to carry out management functions pertaining to an infrastructure device of a communications network. The cellular device communicates with the network via the UMTS standard (Universal Mobile Telephone System) to transmit network management information to the network infrastructure device. According to claim 1 the network management information may be *inter alia* for reconfiguration of the network infrastructure device, and the network infrastructure device may be *inter alia* "a radio terminal" (for example a base station with which the cellular device is currently in communication).

2.2 The board considers that document D1 represents the closest prior art.

D1 discloses a telecommunication network operating primarily according to the DECT standard for cordless telephones. However, D1 also contemplates the network being a cellular system, as mentioned in the abstract in line 7. The system disclosed in D1 comprises a mobile terminal PP ("portable part") which can transmit reconfiguration software, ie network management information for reconfiguration, to a fixed part FP, ie a base station of the system (cf. D1, page 7, lines 3-5: "The method and system .... contemplates the possibility of the FP or PP being configured or

reconfigured by software relayed by the other part"). The portable part is therefore an apparatus for management of a communication network within the meaning of the present application.

2.3 The subject-matter of claim 1 differs from the disclosure of D1 essentially in that, according to claim 1,

(i) the mobile cellular communication device is operable with the UMTS standard to receive a wireless voice, data, and/or short message service; and

(ii) the mobile cellular communication device manages the network infrastructure device based on one or more inputs from a user of the mobile cellular communication device, wherein the mobile cellular communication device comprises a graphical user interface that is configured to allow a user to choose a selected management procedure from a listing of available management procedures for execution by the network infrastructure device, and wherein the network management information comprises a request to execute the selected management procedure.

2.4 With respect to distinguishing feature (i), the board agrees with the examining division that UMTS is one of several straightforward design options which would have been available to the skilled person implementing a mobile cellular network. The board moreover notes that D1 mentions the possible use of CDMA technology (cf. page 8, line 3), on which the UMTS standard is based. This point has not been disputed by the appellant in these appeal proceedings. UMTS mobile

transceivers are generally designed to be operable to receive a wireless voice, data, and/or short message service. In the view of the board, therefore, these aspects do not contribute to inventive step.

2.5 With regard to distinguishing feature (ii), the board notes that the mobile part PP of D1 comprises a "configuration application which is a high-level user interface application running as a user application", enabling "the PP ... to access Internet based servers for the retrieval of software" (cf. page 5, lines 11-15 and 21-24). If the mobile part is to access the Internet, a graphical user interface is regarded by the board as being a necessary prerequisite.

The board notes further that according to D1, [the procedures of] "Configuration or reconfiguration can either be manual or automatic" (cf. page 7, lines 24-25). Manual reconfiguration implies one or more user inputs to the system.

2.6 Having regard to the above, the board regards the technical problem to be solved starting from document D1 as being to facilitate the procedure of inputting user instructions for carrying out manual reconfiguration of the fixed part (base station).

2.7 Given that D1 teaches as one option to reconfigure the fixed part by software relayed by the mobile part, where this is to be controlled manually, the board considers it as one of the obvious options to be considered by the skilled person to command reconfiguration based on user inputs at the mobile device, all the more so as the mobile part is far more

likely to be equipped with a graphical user interface and keyboard for user interaction than the fixed part. It follows that a user must be in a position to view available reconfiguration procedures on the mobile part and to request that a reconfiguration procedure be carried out by inputting user instructions to the device.

Furthermore, given that D1 lists at least six different aspects of uploading data from the mobile device to reconfigure the fixed terminal (cf. page 6, line 11 - page 7, line 2, items (2) to (7)), the person skilled in the art would in the board's view find it obvious to present at least some of these reconfiguration procedures in the form of a displayed list, all the more so as the board regards it as common practice, where mobile telephones are equipped with a graphical user interface, to provide menu-driven software enabling a user to choose a desired procedure from a displayed list. In this respect, it is noted that the appellant has not challenged the board's view that it belonged to the skilled person's common general knowledge at the priority date of the present application (31.03.03) to equip mobile devices with a graphical user interface.

Hence in the judgement of the board, starting from prior art document D1, it would be obvious for the person skilled in the art making use of their common general knowledge to incorporate the subject-matter of distinguishing feature (ii) into the communication system of D1.

2.8 In the statement of grounds, the appellant argues that "The high-level user interface [of document D1] allows access to Internet based servers for retrieval of software (e.g., parameters for the procedures) but fails to disclose user selection of a set of procedures".

It is not clear to the board whether the appellant is drawing attention here to the distinction between parameters and procedures, or to the concept of "a set of procedures". However, since claim 1 no longer refers to "a set of procedures", this aspect is not relevant for inventive step. With regard to the distinction between parameters and procedures, it seems to the board that selecting a parameter for use in a procedure inherently requires selection of the procedure itself; e.g. if a reconfiguration procedure is to be carried out by installing a new encryption key (parameter) downloaded from the Internet, the user must select not only a download of the key, but also request reconfiguration of the encryption procedure to use the new key. Such a scenario is similar to the example referred to in the description of the present application, paragraph 0035, which states: "In one example, the update information is a parameter to the procedure".

Moreover, on page 8, lines 6-8, D1 states, in relation to configuration software transferred to a base station: "This software does not have to contain actual code which is run on either one of the terminals ... it could be purely configuration information". From this statement the board considers that a skilled person would understand that D1 contemplates the transfer of

either parameters or entire software for running a procedure.

For these reasons, the board finds the appellant's argument unconvincing.

2.9 The appellant also submitted the following argument in the statement of grounds:

"Document D1 also fails to disclose that a graphical user interface is configured to allow a user to choose a first set of procedures that comprises a portion of one or more available procedures of a network infrastructure device and/or mobile cellular communication device. For example, only procedures of interest to a specific user may be displayed on the graphical user interface. In a further example, only procedures of a selected network infrastructure device may be displayed on the graphical user interface."

Even allowing for the amended version of this feature which no longer refers to a graphical user interface "configured to allow a user to choose a first set of procedures that comprises a portion of one or more available procedures", but now reads "... configured to allow a user to choose a selected management procedure from a listing of available management procedures for execution by the network infrastructure device", the board notes that claim 1 is not limited to either of the examples mentioned by the appellant.

Hence the board is not convinced by this argument either.

2.10 Finally, in the submission accompanying the latest claims the appellant has argued as follows:

"Applicant's claim 1 provides for an apparatus that allows a user (network technician, paragraph 3) to execute management procedures on a network infrastructure device using a cellular phone or personal digital assistant. Accordingly, the network technician can manage a remote network infrastructure device of the communication network by using the communication network itself and using existing equipment that is configured to operate with the communication network (i.e., cellular phones). In the case where the network infrastructure device to be managed is not the base station with which the mobile cellular communication device is currently registered, the communication network forwards the communication to the appropriate device, as recited in claim 5."

However, as explained above, the board considers that in the light of the disclosure of D1, an apparatus as claimed in claim 1 that allows a user to execute management procedures on a network infrastructure device using a cellular phone does not involve an inventive step. Although the board agrees that the system of the current application contemplates the management of remote parts of the network infrastructure by network technicians, whereas D1 is limited to the reconfiguration of the base station to which the mobile device is connected, claim 1 is not limited to the management of remote infrastructure devices, but embraces the embodiment of reconfiguration of the local base station. Moreover, it is not

technically relevant whether or not the user carrying out the reconfiguration is a network technician.

Hence, these arguments do not convince the board either.

In view of the above, the board concludes that the subject-matter of claim 1 does not involve an inventive step (Articles 52(1) and 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano A. S. Clelland