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 16 January 2009

Case Number: T 1580/06 - 3.5.03

Application Number: 99301142.8

Publication Number: 0938225

IPC: H04M 7/00

Language of the proceedings: EN

Title of invention:
System and method for providing advanced calling features to a packet network-based communication device

Applicant:
LUCENT TECHNOLOGIES INC.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
Inventive step (yes, following amendment)

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1580/06 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 16 January 2009

Appellant: LUCENT TECHNOLOGIES INC.
600 Mountain Avenue
Murray Hill NJ 07974-0636 (US)

Representative: Sarup, David Alexander
Alcatel-Lucent Telecom Limited
Unit 18, Core 3, Workzone
Innova Business Park
Electric Avenue
Enfield EN3 7XU (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 23 May 2006 refusing European application No. 99301142.8 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: A. S. Clelland
Members: T. Snell
R. Moufang

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 99301142.8, with publication number EP-A-0938225. The decision was based on the ground that the subject-matter of the claims did not meet the requirement of inventive step under Article 56 EPC with respect to the disclosures of the following documents:

D1: WO-A-97/31492
D2: EP-A-0510411

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

III. In the statement of grounds of appeal the appellant argued that the subject-matter of independent claims 1 and 7 involved an inventive step with respect to the combination of D1 and D2.

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 Article 52(1) EPC in combination with Articles 54 and 56 EPC, were raised.

In the above communication, the board referred to D1 and D2, and, by virtue of its power under Article 114(1) EPC, *inter alia* to the following additional document cited in the European search report:

D4: EP-A-0800328

V. In a response to the board's communication, the appellant submitted comments together with replacement claim sets of a main and an auxiliary request.

VI. Oral proceedings were held on 16 January 2009. In the course of the oral proceedings, the appellant filed a single request comprising claims 1-4 to replace all previous requests. The appellant requested that the decision be set aside and a patent granted on the basis of the main request filed during the oral proceedings. After deliberation, the board's decision was announced at the end of the oral proceedings.

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

"A processor of a first user communication device “UCD” (120, 130, 150, 360) (310) for providing a call processing feature to the first UCD that communicates over a packet network (100) by transmitting and receiving streams of Internet telephony data packets (210),

said processor executing instructions to:

buffer Internet telephony data packets of a call composed of a stream of Internet telephony data packets and associated with said first UCD;

make a determination, that the call composed of the stream of Internet telephony data packets and associated with the first UCD requires a specified alternative processing, wherein said specified alternative processing is forwarding said call directed

to the first UCD to a second UCD, said determination being made based on a comparison between extracted information from said Internet telephony data packets and stored user programmable call forwarding criteria, and

cause said Internet telephony data packets associated with said call to be processed in accordance with said specified alternative processing, wherein the processor executes instructions to request transmitting the buffered packets to the second UCD if it is determined that the call requires forwarding said call to the second UCD,

wherein transmitting the buffered packets to the second UCD comprises substituting the destination address in the header of the packets with the address of the second UCD."

VIII. Claim 3 reads as follows:

"A method of providing a call processing feature to a first user communication device “UCD” (120, 130, 150, 360) that communicates over a packet network (100) by transmitting and receiving streams of Internet telephony data packets (210) that are associated with said first UCD, the method comprising:

buffer *[sic]* Internet telephony data packets of a call composed of a stream of Internet telephony data packets and associated with the first UCD;

determining that the call composed of the stream of Internet telephony data packets (210) and associated

with the first UCD requires a specified alternative processing, wherein said specified alternative processing is performed at the first UCD and said specified alternative processing is forwarding said call directed to the first UCD to a second UCD, said determining being based on a comparison between extracted information from said Internet telephony data packets and stored user programmable call forwarding criteria; and

causing said Internet telephony data packets associated with said call to be processed in accordance with said specified alternative processing, wherein transmitting the buffered packets to the second UCD is requested if it is determined that the call requires forwarding said call to the second UCD,

wherein transmitting the buffered packets to the second UCD comprises substituting the destination address in the header of the packets with the address of the second UCD."

Reasons for the Decision

1. *The appellant's request*

Although not explicitly stated, the board understands that the appellant's main request includes the pages of description and sheets of drawings currently on file, namely:

Description:

Pages 3-15 as originally filed;
Pages 1, 2, 16 received on 04.08.2005 with letter of 28.07.05;
Page 2a filed by telefax on 10.02.06.

Drawings: Sheets 1/5 - 5/5 as originally filed.

2. *Basis for the amendments (Article 123(2) EPC)*

2.1 All references to the present application as originally filed are to the published version EP-A-0938225.

2.2 Claim 1 is based essentially on claims 1 and 2 as originally filed, amended *inter alia* to further include the features of buffering the data packets and transmitting the buffered packets to the second UCD by substituting the destination address in the header of the packets with the address of the second UCD. These features are disclosed in paragraphs 0031-0033 of the description.

2.3 It is also now specified that the processor is a processor of a user communication device. This feature is based on paragraph 0037 of the description, which states that the packet interception, call forwarding and call forwarding criteria routines may reside together in the user station.

2.4 The only other substantive amendment to claim 1 is the replacing of the expression "continuous media communication data packets" by the term "Internet telephony data packets".

2.4.1 It is unambiguously clear, eg from paragraphs 0001, 0006 and 0007 of the description, that the present application concerns packet-based telephony, and Internet telephony in particular.

2.4.2 The new term "Internet telephony data packets" is understood by the board in a broad sense, ie embracing all packets associated with an Internet telephony call.

2.4.3 As regards compliance with Article 123(2) EPC, the board has considered whether the term "continuous media communication data packets" as used in the originally filed application (in particular original claim 1) embraces all data packets associated with a continuous media communication, or whether this term should be construed narrowly as packets which necessarily include "continuous media data" (eg speech data).

2.4.4 In the board's view, this latter interpretation is not consistent with the disclosure of the present invention as originally filed. In the only two originally disclosed embodiments of call blocking and call forwarding, call processing is effected on data packets detected at the start of a call (cf. col. 5, lines 49-54 and col. 8, lines 25-30). The board finds it implausible that speech or other media data would be present in the packets received at the very start of the call. Hence in the board's view, the term "continuous media communication data packets" as used in originally filed claim 1, in the light of the description, is to be interpreted broadly in the sense of "all data packets which are associated with a continuous media communication", ie including packets

transmitted at the start of the call associated with the continuous media communication, but not necessarily including continuous media data.

2.4.5 Given the board's broad interpretation of the term "continuous media communication data packets", and given that as already mentioned the description discloses that the continuous media communication may be an Internet telephony call, the board concludes that the replacing of the term "continuous media communication data packets" by the term "Internet telephony data packets" does not introduce subject-matter extending beyond the content of the application as originally filed.

2.5 The above comments in respect of claim 1 apply *mutatis mutandis* to corresponding method claim 3.

2.6 Dependent claims 2 and 4 are based on original claims 6 and 12, amended for consistency with new claims 1 and 3.

2.7 Hence the board is satisfied that claims 1-4 meet the requirements of Article 123(2) EPC.

3. *Clarity (Article 84 EPC)*

The board is satisfied that the language of the claims, and in particular the term "Internet telephony data packets", is sufficiently clear.

4. *Inventive step (Articles 52(1) and 56 EPC)*

4.1 The present invention relates to the provision of a call forwarding facility in an Internet telephony environment.

4.2 The board regards D1 as representing the closest prior art. D1, like the present invention, relates to call forwarding in Internet telephony (cf. page 13, section 4, entitled "Deflect Call").

In accordance with the call forwarding procedure disclosed in D1 (cf. page 13, lines 8-23), when a user B forwards a call from user A to a second user M, B returns a "deflect call" message to A over a control channel. This message contains the phone number to which the call is to be forwarded (phone number M). Thereafter B releases the control channel to A, and A places a new call to user M.

4.3 The subject-matter of claim 1 differs from the disclosure of D1 mainly in that, to forward a call from a first user communication device (UCD) to a second UCD, received and buffered data packets of the Internet telephony call are retransmitted by substituting the original destination in the packet header with the address of the second UCD.

In other words, the received packets are rerouted. In the context of the D1 example mentioned above, this would require that packets received at user B from user A be retransmitted by user B directly to user M by replacing the address of user B in the packets by the address of user M.

4.4 The board considers that the skilled person starting out from D1 would have no motivation to alter the call forwarding procedure disclosed in D1, which requires that a signalling packet be transmitted back to the calling station and a new call set up by the calling station, and instead adopt the solution of replacing the address and forwarding the buffered Internet telephony packets to the new destination. In this respect, the board is not aware of any document concerned with the forwarding of Internet telephony calls which would encourage the skilled person to abandon the approach taught by D1 and adopt the claimed solution.

4.5 In particular, document D2 (cited by the examining division in the impugned decision) provides no hint in this regard as it is concerned with call forwarding via a circuit-switched core telephony network. D2 therefore provides no teaching obviously relevant to the rerouting of received packets in a packet-switched environment.

4.6 Document D4 is a further document concerned with call forwarding in a packet network, albeit an ATM network. However, D4 implements call forwarding by the called station creating and sending out a control packet (cell) which directs the network to transfer the call to the specified remote direction (cf. D4, col. 16, lines 43-50). It appears likely, as argued by the appellant, that the network sets up a new virtual connection from the caller to the new destination, no longer involving the original destination. Hence, D4, insofar as it could provide any teaching applicable to Internet

telephony communications, discloses a similar solution to D1.

4.7 The board therefore concludes that on the basis of the prior art at its disposal, the subject-matter of claim 1 was not obvious at the priority date of the application. The requirement of inventive step is therefore deemed to be fulfilled (Articles 52(1) and 56 EPC).

4.8 The above comments in respect of claim 1 apply *mutatis mutandis* to independent claim 3.

5. *Further prosecution*

5.1 The description requires adapting to the new claims. The board however considers that this matter is best dealt with by the examining division.

5.2 The board notes a linguistic error in claim 3 which will require correction, in that the term "buffer" in line 4 (referring to the line numbers in the left-hand margin) of page 3 of the claims should apparently be "buffering".

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to grant a patent on the basis of claims 1-4 of the request filed at oral proceedings and a description still to be adapted.

The Registrar: The Chairman:

D. Magliano A.S. Clelland