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**Datasheet for the decision
of 3 September 2010**

Case Number: T 1792/06 - 3.5.05

Application Number: 03027818.8

Publication Number: 1429504

IPC: H04L 12/58

Language of the proceedings: EN

Title of invention:

Method and apparatus for forwarding multimedia message

Applicant:

LG Electronics, Inc.

Headword:

Multimedia message forwarding/LG

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step - Main and auxiliary requests (no)"

Catchword:

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Case Number: T 1792/06 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 3 September 2010

Appellant: LG Electronics, Inc.
20, Yoido-Dong, Youngdungpo-gu
Seoul (KR)

Representative: Katérle, Axel
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 27 June 2006
refusing European patent application
No. 03027818.8 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: A. Ritzka
Members: P. Cretaine
F. Blumer

Summary of Facts and Submissions

- I. This is an appeal against the decision of the examining division to refuse the European patent application No. 03 027 818.8 published as EP 1 429 504 A. The decision was announced in oral proceedings held on 6 June 2006 and written reasons were dispatched on 27 June 2006.
- II. The decision under appeal was based on the grounds that the subject-matter of the independent claims according to a main request was not new and that the subject-matter of the independent claims according to an auxiliary request did not involve an inventive step, having regard to the disclosure of
- D3: ETSI: "Multimedia Messaging Service (MMS), Functional Description, Stage 2", 3GPP TS 23.140 Version 5.4.0 Release 5, September 2002, pages 1-156.
- III. The notice of appeal was filed with letter received on 21 August 2006. The appeal fee was paid on the same day. In the statement setting out the grounds of appeal received on 31 October 2006, it was requested that the decision under appeal be set aside and that a patent be granted based on claims 1 to 5 of the auxiliary request as filed in the Oral Proceedings of 5 [sic] June 2006 before the examining division. Oral proceedings were requested on an auxiliary basis.
- IV. A summons to oral proceedings to be held on 3 September 2010 was issued on 11 June 2010. In an annex accompanying the summons the board expressed the

preliminary opinion that the subject-matter of independent claims 1 and 5 of the sole request lacked clarity (Article 84 EPC) and did not involve an inventive step (Article 56 EPC) having regard to the disclosure of D3.

- V. With a letter submitted on 3 August 2010 the appellant maintained the previous request as a main request and filed amended claims 1 to 5 as an auxiliary request, together with arguments in support of, *inter alia*, inventive step of the two claim sets.
- VI. Oral proceedings were held on 3 September 2010, during which the appellant filed an amended claim 1 as a new auxiliary request to replace the previous auxiliary request.
- VII. The appellant has requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request (claims 1 to 5 as filed during the oral proceedings before the examining division on 6 June 2006), or, subsidiarily, on the basis of the auxiliary request (claim 1 as filed during the oral proceedings before the board).
- VIII. Claim 1 of the main request reads as follows:
- "A multimedia message forwarding method for a multimedia messaging service (MMS) server, comprising the steps of:
- receiving a multimedia message (S11) to be transmitted to a first user agent,
 - setting an index in header information of the multimedia message to a value other than '0' so as to

discriminate the multimedia message from other multimedia messages,

- storing the multimedia message in association with the set index value,
- transmitting (S13), to the first user agent, the multimedia message including the set index value,
- receiving (S41), from the first user agent, multimedia message header information including the index,
- judging (S42) whether the received index has a value other than '0',
- if the value of the received index is '0', forwarding a multimedia message as provided by the first user agent to a second user agent,
- if the value of the received index is other than '0', forwarding a stored multimedia message having the same index value to a second user agent."

Independent claim 4 of the main request reads as follows:

"A multimedia messaging service (MMS) server, configured to:

- receive a multimedia message (S11) to be transmitted to a first user agent,
- set an index in header information of the multimedia message to a value other than '0' so as to discriminate the multimedia message from other multimedia messages,
- store the multimedia message in association with the set index value,
- transmit (S13), to the first user agent, the multimedia message including the set index value,
- receive (S41), from the first user agent, multimedia message header information including the index,

- judge (S42) whether the received index has a value other than '0',
- if the value of the received index is '0', forward a multimedia message as provided by the first user agent to a second user agent,
- if the value of the received index is other than '0', forward a stored multimedia message having the same index value to a second user agent."

Independent claim 5 of the main request reads as follows:

"A multimedia message forwarding method for a user agent, comprising the steps of:

- receiving a multimedia message from a multimedia messaging service (MMS) server, the multimedia message including an index set by the MMS server to a value other than '0' so as to discriminate the multimedia message from other multimedia messages,
- changing the index value to '0' if the multimedia message has been modified or if a predetermined server storage time set for the multimedia message has elapsed, and
- transmitting, to the MMS server, a multimedia message including the index value set to '0' for being forwarded to a recipient user agent."

Claim 1 of the auxiliary request reads as follows:

"A multimedia message forwarding method for a user agent, comprising the steps of:

- receiving a multimedia message stored in a multimedia messaging service (MMS) server from the MMS server, the multimedia message including an index set by the MMS

server to a value other than '0' so as to discriminate the multimedia message from other multimedia messages stored in the MMS server,

- changing the index value of the received index to '0' if the multimedia message is modified by the user agent, and

- transmitting, to the MMS server, the modified multimedia message including the changed index having the index value set to '0' for being forwarded to a recipient user agent when the multimedia message has been modified or, transmitting, to the MMS server, multimedia message header information including the index set to the value other than "0" for retrieving the stored multimedia message in accordance with the index value for being forwarded to a recipient user agent when the multimedia message has not been modified."

Reasons for the Decision

1. *Admissibility*

The appeal complies with the provisions of Article 106 to 108 EPC 1973. Therefore it is admissible (see Facts and Submissions, point III).

Main request

2. *Clarity*

Claim 1 states, after the judging step, that the server forwards to a second user agent "a multimedia message as provided by the first user agent" if the received

index value is "0". A step which defines the reception of a multimedia message by the server is however missing in claim 1. The appellant argued that it is implicit from the whole technical context of the claim that the multimedia message has been previously sent to the server by the first user agent.

Independent claim 5 defines steps performed by a user agent for forwarding a received multimedia message to a recipient user agent through a multimedia messaging service server. Method claim 5 defines, in the second step, that the user agent changes the index value of the received multimedia message to "0" **if the multimedia message has been modified**. This formulation does not define **when** the message has been modified and therefore does not exclude the case where the message has been modified during its transmission between the server and the user agent. However, according to the description and drawings, only a modification of the message by the user agent itself may lead to a change of the index value to "0" by the user agent, corresponding to the case where the user agent desires to send a new multimedia message. Therefore the feature of having the user agent changing the index value to "0" **if the user agent modifies the multimedia message** is missing in claim 5. The appellant argued that, since claim 5 is directed to a method performed by a user agent, it is clear that the claim only covers the case where the message is modified by the user agent itself.

The board is not convinced by the appellant's argumentation and sees no reason to change its preliminary opinion on these points. However, these are objections which could easily be overcome and are not

central to the issue of inventive step, which seems to be more decisive to the board in the present case. The assessment of inventive step of claims 1 and 5 has thus been performed as if claims 1 and 5 were including the above-mentioned missing features.

3. Inventive step - Article 56 EPC

3.1 Closest prior art:

It was common ground during the oral proceedings that D3 represents the closest prior art to the subject-matter of the claims according to the main and auxiliary requests.

D3 is an ETSI specification document for the Multimedia Messaging Service (MMS). A MMS server (see figure 2) receives MMS messages from sender user agents and forwards them to recipient user agents. When receiving from a sender user agent a new submitted message (see paragraphs 7.1.2.1 and 8.1.3, in particular table 2 defining the elements of the **MM1 submit.REQ. message**) intended for a recipient user agent, the server allocates a message reference to that message and may store the message under this message reference (or message ID) in a server mailbox (see paragraph 7.1.12). The server is able to send a notification message (see paragraph 8.1.4, in particular table 5 defining the elements of the MM1 notification.REQ. message) to the recipient user agent including this message reference but not the message content. The server is also able to immediately forward the message to the recipient user agent (page 25, lines 1 to 3 and 21). A first user agent may also request the server to forward a message

for which it was the intended recipient to a second user agent without having to first retrieve the message, by sending to the server a request including the message reference (see paragraph 8.1.6, in particular table 12 defining the elements of the **MM1 forward.REQ.** message).

- 3.2 In D3, the server forwards a new message submitted by a first agent upon receiving a message (**MM1 submit.REQ**) which may contain the message content but no message reference, this message being sent from the first user agent to the server. By contrast, the server forwards a message already stored in the server mailbox upon receiving a message (**MM1 forward.REQ**) which contains the message reference but no message content. Both messages are identified using a field "message type" placed in heading position in the message, i.e. in a message header. Based upon the value of the message type field in the header information of a message received from a first user agent, the server judges whether it has to forward a new message content or a stored message content to a second user agent, a stored message content being identified by its message reference sent in the same message as the message type.

In claim 1, a new message is sent to the server together with an index value equal to "0" in the header information of the message whereas in the case of a stored message to be forwarded only the index value of said message, previously allocated by the server, is sent to the server. The server judges based upon the value in the index field.

The differences between the subject-matter of claim 1 and the disclosure of D3 are thus that:

a) in claim 1, the submission of a new message is detected by the server upon reception of an index value "0" in header information received from the first user agent instead of being detected, as in D3, upon reception of a **predetermined message type value**, which may be different from "0", in header information received from the first user agent;

b) in claim 1, the forwarding command for a stored message is detected by the server upon reception of an index value other than "0" in header information received from the first user agent instead of being detected, as in D3, upon reception of a predetermined message type value in header information received from the first user agent;

c) in claim 1, a stored message to be forwarded is retrieved by the server based on the received index value instead of being retrieved, as in D3, based on a received message reference value in a different message field than the received message type value.

Feature a) is, in the board's judgement, a mere selection of a numerical parameter ("0") with no inventive merit in itself and which does not combine with features b) or c) to provide any surprising effect.

The technical effect of features b) and c) is that a single message field (the index) in a multimedia message header is used for determining both the type of operation to be performed by the server (forwarding of

a stored message) and the address of the message to be forwarded.

During the oral proceedings, the appellant acknowledged that although this technical feature leads to a multimedia forwarding scheme which involves a less complex message header than the prior art due to a single message field (the index) being used instead of two as in D3 (the message reference field and the message type field), this scheme also involves more overhead since the dual function of the index field has to be considered by the server and the user. Therefore, in the board's judgement, the distinguishing features do not provide any clear technical advantage over the prior art of D3. The claimed invention has thus to be considered as a mere alternative to the prior art.

The skilled person, starting from D3 and looking for an alternative, would thus use his common knowledge that a message field can be used for indicating both a function to be performed and data used in performing said function, as exemplified by the well-known Internet Protocol for IP packets routing: the destination address field, when filled with a legal IP address is interpreted by a router as a command for routing the packet to that specific IP address, while it is interpreted as a drop command when filled with an illegal IP address. By applying this common knowledge to the MM1 forward.REQ message (i.e. the forwarding command) of D3, the skilled person would combine the message reference field and the message type field in one single field which would define, when not filled with "0", both the function to be performed (retrieving a stored message for forwarding) and the data used for

performing the function (address of the stored message). The skilled person would thus arrive at the subject-matter of claim 1 without the exercise of inventive skill.

The board therefore judges that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC). Independent claim 4 contains the same features as claim 1 but expressed in terms of a system claim for a server and as such also does not meet the requirements of Article 56 EPC.

- 3.3 The main argument of the appellant, brought forward during the oral proceedings, is that, according to the alleged invention, the user has modifying capabilities of the received index to achieve a control function of the index, whereas the user in D3 does not touch the message reference. The board is not convinced by this argument for the following reasons: the term "index" used in the claims defines a message field and not the value transmitted in that field. Therefore the feature of having the user modifying the index, according to the claimed invention, has to be construed as meaning that the user enters the value "0" in the index field when submitting a new message to be forwarded. In that case the value in the index field is not related anymore to the value in the index field of a previously received message and the received index cannot be said to have been modified. The submission of a modified message equals the submission of a new message, whereby the index value and the message content are not related to any previously received message. This is also true for the scheme of D3 wherein the user changes the value

in the message type field when submitting a new message to be forwarded.

The appellant also argued that, according to claim 1, no message type has to be determined by the server when receiving the submission of a new message or the forwarding command of a stored message. This is however a logical consequence of the merging of the message type and message reference fields in a single index field. The determination of the index value by the server amounts to the determination of a message type, as also disclosed in D3.

The appellant further argued that the functions of the submit message and the forward message, which according to D3 are separate messages, may be combined, according to the invention, into one message only. In the board's judgement however, a submit message and a forward message according to claim 1 are not "combined into one message" but are actually distinct from each other since their index values are different.

The appellant argued that there is no hint in D3 which points towards using a mixed-type operator/operand as is specified in claim 1 in respect of the forward message. In the board's view however, since the skilled person is only looking for an alternative, he does not need any hint from D3 to apply his common knowledge to the MM1 forward.REQ message of D3.

- 3.4 Independent claim 5 relates to a method for a user agent for forwarding a multimedia message to a recipient user agent through a MMS server.

The first step of claim 5 is known from D3, the index value of claim 1 being read onto the message reference value set by the server in the multimedia message sent to the user agent in D3.

The second and third steps of claim 5 define the further submission by the user agent of a new (or modified) multimedia message or the re-submission of the received multimedia message in case the storage time of the received multimedia message in the server has elapsed. In both cases, the user agent sets the index value to "0" in the multimedia message.

In D3, the submission of a new (or changed) multimedia message is performed by sending a MM1 submit.REQ message including a message type field and a multimedia message content field to the server.

Using the value "0" in the message reference field of D3 to indicate the submission of a new (or changed) message does not, in the board's judgement, involve an inventive step for the reasons already given above, (see point 3.2).

Moreover D3 teaches that the MMS server provides the user agent with the time of expiry of the multimedia message (see D3, paragraph 8.1.4.4, table 5), which defines a predetermined server storage time for that message. The user being then able to determine if the storage time of a received message has expired, it is obvious for the skilled person to implement the forwarding of such an expired message as the forwarding of a new message.

For these reasons, the subject-matter of independent claim 5 does not involve an inventive step (Article 56 EPC).

- 3.5 The appellant argued that, according to claim 5, a single message format might only be required for forwarding a stored message as well as for submitting a new message. The board notes however that claim 5 does not define the forwarding of a stored message.

The appellant further argued that D3 did not disclose or suggest that the message reference might be changed in the user agent and that the possibility for the user agent of D3 to change a message reference would lead to errors in the forwarding of stored messages. The board judges however that claim 5 solely defines the use of a message field (the "index" field) by the user agent to indicate the submission of a new (or changed) message to the server; in that case the received index value, referring to a previously stored message, is not relevant anymore for the performing of the method according to claim 5.

The appellant also argued that D3 did not disclose to process the time of expiry in the user agent and that the skilled person would not consider such processing since error messages were provided when a user agent requested to forward an expired message. The board however considers that the mere presence of the time expiry field in the received message would incite the skilled person to use this information.

Auxiliary request

4. Claim 1 is directed to the method performed by the user agent for forwarding, through the server, either a modified (new) message with an index value "0" or a message already stored in the server with an index value previously set by the server. The forwarding scheme defined by claim 1 actually corresponds to the scheme defined in claim 1 of the main request but described from the user side. The board therefore judges, for the same reasons as for claim 1 of the main request, (see points 3.2 and 3.3 above), that the subject-matter of claim 1 is derivable in an obvious manner from the disclosure of D3 and the common knowledge of the skilled person. Claim 1 according to the auxiliary request therefore does not meet the requirements of Article 56 EPC.

5. In the absence of an allowable request the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:

K. Götz

A. Ritzka