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**Datasheet for the decision
of 15 January 2009**

Case Number: T 0885/07 - 3.5.03

Application Number: 04253180.6

Publication Number: 1601169

IPC: H04M 1/2745

Language of the proceedings: EN

Title of invention:

User interface method and apparatus for initiating telephone calls to a telephone number contained in a message received by a mobile station

Applicant:

Research in Motion Limited

Headword:

-

Relevant legal provisions:

EPC Art. 56, 111(1), 113(1)

Relevant legal provisions (EPC 1973):

EPC R. 68(2)

Keyword:

"Substantial procedural violation (no)"

"Reimbursement of the appeal fee (no)"

"Remittal (no)"

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0885/07 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 15 January 2009

Appellant: Research in Motion Limited
295 Phillip Street
Waterloo, Ontario N2L 3W8 (CA)

Representative: Hibbert, Juliet Jane Grace
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 20 December 2006
refusing European application No. 04253180.6
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
R. Moufang

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 04253180.6 (publication number EP 1 601 169 A) on the ground that the subject-matter of the claims of each one of a main request and three auxiliary requests lacked an inventive step (Articles 52(1) and 56 EPC).
- II. The following documents which were referred to in the decision are relevant to the present decision:
- D1: EP 1 193 621 A; and
- D6: US 6 192 258 B.
- III. With the statement of grounds of appeal the appellant filed a new main request and new first to fourth auxiliary requests and submitted arguments in support. Oral proceedings were conditionally requested.
- IV. The appellant was summoned to oral proceedings. In a communication accompanying the summons, the board gave a preliminary opinion on the requests on file.
- V. In preparation for the oral proceedings, the appellant filed with a letter dated 13 January 2009 an amended set of claims identified as a fourth auxiliary request and presented arguments in support of the pending requests.
- VI. Oral proceedings were held on 15 January 2009.

The appellant requested that the decision under appeal be set aside, that the case be remitted to the first

instance for further prosecution and that the appeal fee be reimbursed (main request) or that a patent be granted on the basis of the claims of the annexes 2, 3, 4 or 5 filed with the grounds of appeal dated 30 April 2007 (first to fourth auxiliary requests) or on the basis of the claims as submitted with the letter dated 13 January 2009, with the proviso that in claim 1, line 1, "initiating" is inserted before "communications" (fifth auxiliary request).

At the end of the oral proceedings, after deliberation, the board's decision was announced.

VII. Claim 1 of the **first auxiliary request** reads as follows:

"A method for initiating telephone calls from a handheld mobile telephone device (202) which operates in a wireless communication network (104), comprising:

 providing a user interface on the handheld mobile telephone device (202) which includes a SEND key (308) exposed on a front side of the handheld mobile telephone device (202);

 providing the user interface with a viewing and selecting mechanism (312) positioned on a side of the handheld mobile telephone device (202);

 receiving a message (502) through a wireless receiver (212) of the handheld mobile telephone device (202);

 causing the message (502) to be visually displayed in a visual display (222) exposed on the front side of the handheld mobile telephone device (502), the message (502) including a telephone number string;

 causing a hyperlink (506) for the telephone number string in the message (502) to be created for use while the message (502) is visually displayed in the visual

display (222);

causing the hyperlink (506) for the telephone number string to be highlighted when a position marker in the visual display (222) is positioned over the hyperlink (506) by an end user with the viewing and selecting mechanism (312) during the visual displaying of the message (502); and

in response to a single depression of the SEND key (308) by the end user while the hyperlink (506) of the telephone number is highlighted, following the highlighting of the hyperlink (506) with the viewing and selecting mechanism (312) without any intervening key depressions: causing a telephone call to the telephone number string to be initiated through the wireless communication network (104)."

Claim 1 of the **second auxiliary request** differs from claim 1 of the first auxiliary request in that, in the third paragraph "on a side of" is replaced by "on" and in that the text of the last two paragraphs is replaced by the following text:

"causing the hyperlink (506) for the telephone number string to be highlighted when selected by an end user with the viewing and selecting mechanism (312) during the visual displaying of the message (502);

providing the option for either:

in response to a first depression of the viewing and selecting mechanism (312) while the hyperlink (506) is selected: causing a list of functions for the telephone number string to be visually displayed; and

in response to a second depression of the viewing and selecting mechanism (312) following the first depression of the viewing and selecting mechanism (312):

causing a telephone call to the telephone number string to be initiated through the wireless communication network (104);

or else

in response to a single depression of the SEND key (308) by the end user while the hyperlink (506) of the telephone number is selected, following the selection of the hyperlink (506) via the viewing and selecting mechanism (312) without any intervening key depressions: causing a telephone call to the telephone number string to be initiated through the wireless communication network (104)."

Claim 1 of the **third auxiliary request** differs from claim 1 of the second auxiliary request in that in the penultimate paragraph the second occurrence of "of the viewing and selecting mechanism (312)" is replaced by "while a telephone call function in the list is selected via the viewing and selecting mechanism (312)".

Claim 1 of the **fourth auxiliary request** differs from claim 1 of the third auxiliary request in that, in line 1, "telephone calls" is replaced by "communications" and in that the text as from "providing the option for either:" is replaced by the following text:

"providing the option for either:

in response to a first depression of the viewing and selecting mechanism (312) while the hyperlink (506) is selected: causing a list of functions for the telephone number string to be visually displayed, the list of functions including a telephone call function and a text message function; and

in response to a second depression of the viewing

and selecting mechanism (312) following the first depression while the telephone call function in the list is selected via the viewing and selecting mechanism (312): causing a telephone call to the telephone number string to be initiated through the wireless communication network (104), or in response to a second depression of the viewing and selecting mechanism (312) following the first depression while the text message function in the list is selected via the viewing and selecting mechanism (312): processing the text message function for initiating a text message to the telephone number string;

or else

in response to a single depression of the SEND key (308) by the end user while the hyperlink (506) of the telephone number is selected, following the selection of the hyperlink (506) via the viewing and selecting mechanism (312) without any intervening key depressions: causing a telephone call to the telephone number string to be initiated through the wireless communication network (104)."

Claim 1 of the **fifth auxiliary request** differs from claim 1 of the fourth auxiliary request in that, in the second paragraph, "exposed" is deleted and in that the text as from "providing the option for either:" is replaced by the following text:

"providing a first user interface processing option for initiating communications associated with the telephone number string, comprising:

in response to detecting a first depression of the viewing and selecting mechanism (312) while the hyperlink (506) is highlighted: visually displaying a

list of functions for the telephone number string in the visual display, the list of functions including a text message function and a telephone call function; and

in response to detecting a second depression of the viewing and selecting mechanism (312) following the first depression of the viewing and selecting mechanism (312) while the list of functions for the telephone number string is being visually displayed:

if the text message function in the list is selected via the viewing and selecting mechanism (312), processing the text message function for initiating a text message to the telephone number string;

alternatively, if the telephone call function in the list is selected via the viewing and selecting mechanism (312): causing a telephone call to the telephone number string to be initiated through the wireless communication network (104);

and providing a second user interface processing option for initiating communications associated with the telephone number string comprising:

in response to detecting a single depression of the SEND key (308) by the end user while the hyperlink (506) of the telephone number is highlighted, following the highlighting of the hyperlink (506) without detecting any intervening key depressions: causing a telephone call to the telephone number string to be initiated through the wireless communication network (104)."

Reasons for the Decision

1. *Main request*

- 1.1 The appellant argued that the examining division committed a substantial procedural violation in that the appellant's arguments in support of taking D6 as representing the closest prior art were not addressed in the decision under appeal, thereby contravening Rule 68(2) EPC 1973.

Further, the appellant argued that the examining division committed a substantial procedural violation in that it failed to allow the applicant's representative to present at the oral proceedings arguments in favour of selecting D6 as the closest prior art, thereby denying the applicant's right to react to the examining division's reasons for not considering D6 to be the closest prior art. The right to be heard pursuant to Article 113(1) EPC was therefore violated.

The appellant further submitted that at the oral proceedings before the examining division the representative was informed that "it was pointless presenting arguments in favour of D6 as the closest prior art, the matter had already been decided beforehand, and that only argumentation based on D1 should be advanced" (statement of grounds of appeal, page 3, 2nd paragraph). In this respect the appellant also submitted that at the oral proceedings the chairman of the examining division stated that if the representative insisted on presenting arguments "against D1 of the prior art", it would only have the effect of unnecessarily prolonging the proceedings as the point had already been decided (see the letter dated 13 January 2009, page 1 of the observations).

This, in the appellant's view, indicated that, while there might have been a notional opportunity to present further arguments, any such arguments would not have been listened to. Also for this reason, the right to be heard was violated.

- 1.2 In the board's judgement, the examining division did not commit any substantial procedural violation for the following reasons:

- 1.3 In the decision under appeal, the examining division gave reasons as to why D1 was chosen as representing the closest prior art. In particular, it was held that D1 disclosed most of the features of the independent claims (see the decision under appeal, point II.A.1). Reasons were also given as to why the argument presented by the applicant, according to which D1 could not be considered as representing the closest prior art, essentially because it was not concerned with the same problems as the application in suit, was not convincing ("The objective technical problem is however determined once the closest prior art has been chosen.", see the decision under appeal, point II.A.1).

In the board's judgement, these reasons are sufficient to give the applicant a fair idea of why its argument was not considered convincing and, hence, do not give rise to a violation of Rule 68(2) EPC 1973.

- 1.4 As concerns the applicant's right to be heard at the oral proceedings, the board refers to the minutes which, in the absence of proof to the contrary, are considered to correctly reflect the essentials of the oral proceedings.

The board notes that the appellant/applicant did not contest the correctness of the minutes at any stage of the proceedings.

The relevant part of the minutes reads as follows:

"3a. More specifically, the Applicant disputes that document D1 is the closest Prior Art to the subject-matter of Claim 1, either as presently on file or as amended in the Requests. According to him, document D1 and the application solve different technical problems, since document D1 addresses the problem of recognising per se a telephone number which may be present in a text stream, and converting the number into a computer-processable form such as a hyperlink, while the application addresses a problem lying in the field of simplifying user interfaces which can be used to initiate telephone calls from a mobile station.

The Chairman responded that the Problem-Solution-Approach has been applied for selecting document D1 as the closest Prior Art.

The Applicant pointed out that document D6 is more relevant, since it addresses the same problem as the present application and is directed to provide a solution of the problem by embodiments having a significant number of technical features in common with the embodiments of the present application.

The First Examiner replied that the present application addresses the user interface of a mobile telephone device, as document D1 does.

The Applicant insists that identifying and extracting a telephone number for a serial text string is not the point of the application.

The Chairman suggests no further discussion on the matter, since according to the Examining Division's opinion document D1 is the closest Prior Art."

Hence, according to the minutes, the applicant was given the opportunity to submit and did submit arguments as to why D6 was to be considered as being more relevant than D1. There is nothing in the minutes from which it could be concluded that the examining division was not open to argument on the question of whether D1 was the closest prior art or that the representative was hindered from presenting arguments in favour of D6 as the closest prior art. Nor can it be derived that the examining division was unwilling to listen to these arguments.

The board therefore concludes that the applicant's right to be heard on the issue of selecting the closest prior art was respected in accordance with Article 113(1) EPC.

1.5 In the absence of any substantial procedural violation or fundamental deficiency, the board sees no reason to remit the case to the department of first instance (cf. Article 11 RPBA and Article 111(1) EPC) or, if the appeal were allowable, to reimburse the appeal fee (cf. Rule 103(1)(a) EPC).

1.6 The main request is therefore not allowable.

2. *First auxiliary request*

2.1 In the board's view, D1 represents the closest prior art, since it relates, like the application in suit, to a method of initiating communications from a mobile telephone device by selecting a hyperlinked telephone number in an electronic text, e.g. in an electronic mail message (see D1, paragraphs [0008], [0012], [0020], and [0031], and Fig. 1A).

2.2 More specifically, D1 discloses, using the language of claim 1 of the first auxiliary request, a method for initiating telephone calls from a handheld mobile telephone device 100 (see D1, Fig. 1B) which operates in a wireless communication network 120, in which the method includes the steps of:
providing a user interface 101 on the handheld mobile telephone device 100, which includes keys (dialling control buttons 107 and navigation control buttons 108) and a visual display 105, all exposed on a front side of the handheld mobile telephone device (see Figs 1A and 1B);
providing the user interface with a viewing and selecting mechanism 107, 108 positioned on the front side of the handheld mobile telephone device;
receiving a message through a wireless receiver of the handheld mobile telephone device, the message including a telephone number string (paragraphs [0037] and [0040]);
causing a hyperlink for the telephone number string in the message to be created (paragraphs [0013], [0020] and [0081]); and
in response to a selection of a hyperlinked telephone number by an end user causing a telephone call to the selected telephone number string to be initiated through the wireless communication network (paragraphs [0020] and

[0081])).

Since the end user of the mobile telephone device can select a hyperlinked telephone number string in the received message in order to automatically dial the telephone number (see paragraphs [0012] and [0020]), it is implicit that the message is visually displayed on the visual display 105 and that the hyperlink is suitable for use while the message is visually displayed in the visual display.

2.3 The subject-matter of claim 1 of the first auxiliary request thus differs from the method disclosed in D1 by the following features:

i) causing the hyperlink for the telephone number string to be highlighted when a position marker in the visual display is positioned over the hyperlink by the end user with the viewing and selecting mechanism during the visual displaying of the message; and

ii) the telephone call to the hyperlinked, highlighted telephone number string is initiated in response to a single depression of a SEND key on the front side of the telephone device while the hyperlink of the telephone number is highlighted, following the highlighting of the hyperlink with the viewing and selecting mechanism without any intervening key depressions.

2.4 The highlighting of the hyperlink facilitates the operation of the mobile phone device by the user. D1 (cf. paragraphs [0020] and [0081]) does not give details about how the hyperlinked telephone number in the electronic mail message is visually displayed. Nor does it describe

how the selection of the hyperlinked telephone number by the user and the automatic dialling are technically implemented.

2.5 The board notes however that in D1 reference is made to mobile computing devices, such as mobile telephones and personal digital assistants (PDAs), which allow for navigation of the World Wide Web, in which a web page including hyperlinks is displayed, see D1, section 3 ("Background and Relevant Art"), paragraphs [0004] to [0006]. In paragraph [0006] it is described that when a user selects a hyperlinked URL (Uniform Resource Locator), the web browser is configured to navigate to the corresponding web page identified by the URL. Since D1 (see paragraph [0030]) discloses that the method of D1 may be practiced with many types of computer system configurations, including hand-held devices, it would have been obvious to the skilled reader that the handheld mobile telephone device 100 may be a PDA or a Smartphone.

2.6 The board further notes that at the filing date of the application (28 May 2004) it was part of the common general knowledge of a person skilled in the art that Internet Explorer is a widely-used web browser which is suitable for use in a mobile telephone device. The use of this browser in a PDA or Smartphone in order to implement the method of D1 would therefore not have required any inventive skill.

More specifically, Internet Explorer features the highlighting of a hyperlink in an HTML document when moving a cursor over the hyperlink by means of a selecting and viewing mechanism, e.g., a mouse or, in the case of a PDA, a joystick or a pen or, in the case of a Smartphone,

navigation buttons (cf. point 2.3, feature i)).

In the case of a mouse, subsequently clicking the left-hand mouse button causes the hyperlink to be selected, whilst clicking the right-hand mouse button causes a context menu, also referred to as shortcut or popup menu, to be invoked, which offers a limited list of functions which relate to the hyperlink and from which the user can subsequently select one. These selecting and context menu invoking operations may alternatively, as the case may be, be carried out by operating a switch of a joystick, by manipulating the pen on a touch screen, or by pressing corresponding selection buttons. In all cases, on positioning the cursor, i.e. a position marker in the visual display, over the hyperlink with the viewing and selecting mechanism during the visual displaying of the message, the hyperlink is highlighted and can either be selected directly or by invoking a context menu.

The board also notes that in the application in suit the step of visually displaying a list of functions for the telephone number string, i.e. a context menu, on depressing the viewing and selecting mechanism, i.e. a scroll wheel, is referred to as a conventional step for a mobile station (see column 12, lines 41 to 46, column 13, lines 15 to 17, and Fig. 4, step 422, of the application as published).

Applying the above-mentioned browser features to a hyperlink which is a telephone number string as described in D1, a selection of the highlighted, hyperlinked telephone number, either directly or via the context menu, would thus enable a telephone call to the hyperlinked telephone number to be initiated. It is further noted that,

since the functions in the limited list of the context menu are to relate to the hyperlinked telephone number string, it would have been obvious to include a telephone call function as one of the functions.

- 2.7 The board further notes that, since it is common that mobile telephones have a SEND key which can be pressed in order to initiate a telephone call, it would have been obvious to the person skilled in the art to, by way of addition or alternative, implement the selection of the highlighted, hyperlinked telephone number string by means of the SEND key such that when the SEND key is depressed while the hyperlink of the telephone number is highlighted, without any intervening key depressions, this would cause the telephone call to the hyperlinked telephone number string to be initiated (cf. point 2.3, feature ii)).
- 2.8 It follows that a person skilled in the art, when starting out from D1 and faced with the problems of facilitating the operation of the mobile telephone device of D1 and of technically implementing the steps of selecting and dialling a hyperlinked telephone number, would, without the exercise of inventive skill, have implemented the method by making use of a web browser as described above and using the SEND key for initiating the telephone call to the highlighted, hyperlinked telephone number string. Consequently, he would thereby have arrived at a method for initiating telephone calls which includes all the features of claim 1 of the first auxiliary request without the exercise of inventive skill.
- 2.9 The appellant argued that the thrust in D1 was that the hyperlink was automatically created without intervention by the user and that, by contrast, the present method did

involve human intervention in that the steps of identifying a telephone number and hyperlinking the telephone number only took place after the user had displayed the received message.

The board does not find this argument convincing for the following reasons. Firstly, claim 1 does not require a specific order in which the different steps of the method are to be carried out. In particular, it is not excluded that the step of causing a hyperlink is carried out before the step of causing the message to be displayed. The application as originally filed does not exclude this either and, in any case, does not provide a basis for carrying the step of hyperlinking only after the message is displayed. Conversely, D1 does not exclude that the disclosed method is carried out on a message which is displayed at the same time. Secondly, the board notes that according to D1 the step of identifying a telephone number in the electronic text is indeed carried out without intervention by the user (see D1, claim 1). However, the same applies to the method as claimed in claim 1, since a user intervention is only required in the step of causing the hyperlink to be highlighted (see point VII above). If, for the sake of argument, claim 1 were interpreted such that the step of hyperlinking would take place only after the message is displayed by the user, this would not contribute to an inventive step, since in the case of a mobile telephone device the user would, in any case, be able to make use of the hyperlinks only after the message is actually displayed and, consequently, there would be no need to create the hyperlinks in the message at an earlier stage.

2.10 The subject-matter of claim 1 of the first auxiliary request does not therefore involve an inventive step having regard to the disclosure of D1 and taking into account the common general knowledge of the person skilled in the art (Articles 52(1) and 56 EPC).

2.11 The first auxiliary request is therefore not allowable.

3. *Second and third auxiliary requests*

3.1 Claim 1 of the second and third auxiliary requests is not clear in that due to the wording "providing the option for either ... or else ..." it is unclear whether or not all of the steps in question are actually part of the method (or methods) for which protection is sought. The claim does not therefore comply with the requirements of Article 84 EPC (clarity).

3.2 If the claim were interpreted such that the feature specified in the last paragraph is merely optional, it would not comply with the requirements of Article 123(2) EPC (cf. the application as originally filed, claims 1 and 12 and Fig. 4).

3.3 If, alternatively, the claim were interpreted such that it defines a method which provides two possibilities of causing a telephone call to the hyperlinked telephone number to be initiated, namely a first one by making a selection in a context menu and a second one by directly pressing the SEND key, the subject-matter would lack an inventive step for the same reasons as set out above in respect of the first auxiliary request (see point 2).

3.4 The second and third auxiliary requests are therefore not allowable.

4. *Fourth and fifth auxiliary requests*

4.1 Claim 1 of the fourth auxiliary request suffers from the same clarity and disclosure problems as set out above in relation to the second and third auxiliary requests (see points 3.1 and 3.2).

4.2 Claim 1 of the fifth auxiliary request essentially corresponds to claim 1 of the fourth auxiliary request but includes amendments in an attempt to clarify the wording of the claim.

4.3 In comparison with claim 1 of the third auxiliary request, claim 1 of each of the fourth and fifth auxiliary requests essentially adds the option of selecting a text message function from the context menu.

4.4 At the filing date of the present application the sending of a text message, in particular a text message using the Short Message Service (SMS) communications protocol, between mobile telephone devices was however well-known. It would therefore have been obvious to the person skilled in the art to include a text message function, in addition to a telephone call function, in the list of the context menu, thereby offering the user the option to initiate a text message to the highlighted, hyperlinked telephone number string.

4.5 For this reason and the reasons as set out at point 2 in relation to the subject-matter of claim 1 of the first auxiliary request, claim 1 of the fourth and fifth

auxiliary requests does not involve an inventive step.

4.6 The fourth and fifth auxiliary requests are therefore not allowable.

5. It follows that none of the requests on file is allowable.

Order

For these reasons it is decided that:

1. The appeal is dismissed
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland