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 25 May 2010

Case Number: T 1442/07 - 3.5.03

Application Number: 97905681.9

Publication Number: 0878086

IPC: H04M 11/00

Language of the proceedings: EN

Title of invention:
Voice internet transmission system

Applicant:
I-Link Worldwide, Inc.

Opponent:
-

Headword:
Internet telephony/I-LINK WORLDWIDE

Relevant legal provisions:
EPC Art. 52(1), 56, 123(2)
EPC R. 137(4)

Keyword:
"inventive step (main request) - no"
"added subject-matter (auxiliary request) - yes"

Decisions cited:
-

Catchword:
-

b

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1442/07 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 25 May 2010

Appellant: I-Link Worldwide, Inc.
Suite 202
65 E. Wadsworth Park Drive
Draper
UT 84020 (US)

Representative: Wombwell, Francis
Potts, Kerr & Co.
15, Hamilton Square
Birkenhead
Merseyside CH41 6BR (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 2 April 2007 refusing European application No. 97905681.9 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: A. S. Clelland
Members: A. J. Madenach
M-B. Tardo-Dino

Summary of Facts and Submissions

I. The present appeal is against the decision of the examining division to refuse application No. 97905681.9 on the ground that the subject-matter of independent claims 1 and 17 lacked an inventive step (Article 56 EPC).

The examining division based their decision on

D1: Sears, Andrew: "The Effect of Internet Telephony on the Long Distance Voice Market", retrieved on 25 February 2002 from the Internet, URL: http://itel.mit.edu:/itel/docs/EFFECT/COMPETITIVE.DOC, last revised on 14 January 1995.

II. In a notice of appeal and subsequently filed grounds of appeal the appellant restated as a main request claims 1-32 in the form filed on 14 November 2005 which correspond, apart from claims 31 and 32, to the version underlying the appealed decision, and submitted claims 1-32 according to an auxiliary request. As an auxiliary measure oral proceedings were requested.

III. Independent claim 1 according to the main request reads as follows:

"A real-time audio transmission system for transmitting voice/sound via the Internet, between at least two devices which are themselves incapable of formatting voice/sound data for Internet transmission, said system comprising:

at least one originating telephone means for real-time transmission of an analog signal representing sound via a first switched telephone network;

at least one originating audio engine means for receiving the analog signal in real-time via the first switched telephone network, for verifying that the signal comes from the at least one originating telephone means that is authorized to transmit the signal, for scanning and deactivating malfunctioning audio engine hardware, for obtaining a destination telephone number from the at least one originating telephone means, for digitizing said signal, compressing the signal, encapsulating the signal within at least one Internet packet using an Internet protocol such that the at least one Internet packet is suitable for transmission via the Internet, and for transmitting the at least one Internet packet via the Internet in real-time;

at least one receiving audio engine means for receiving the at least one Internet packet transmitted by the originating audio engine means, de-encapsulating the at least one Internet packet to retrieve the signal, de-compressing the signal, converting the signal back to an analog form, and transmitting the analog signal via a second switched telephone network in real-time; and

at least one receiving telephone means for receiving the analog signal via the second switched telephone network in real-time."

Independent claim 17 according to the main request relates to a corresponding method.

Independent claim 1 according to the auxiliary request reads as follows:

"In a dispersed Internet protocol network that supplies communication and data services across components that are electrically attached to a central arbitration server, a method of allowing communication applications to modify call detail records for services rendered on a per record basis by providing generic fields that allow the central arbitration server to collect billing information for any application without having to anticipate it, the method comprising: the step of initiating a control path connection on a network layer between individual components attached to the dispersed network and at least one central arbitration server for centralized arbitration of service requests received from the individual components; the step of receiving a service request; the step of initiating a data path connection between the individual components designated by the service request; and the step of the central arbitration server initiating a service layer to supply the requested service; the step of the central arbitration server generating a call detail record for the service request and populating one or more call detail record fields thereof by default; and the step of the central arbitration server allowing an application corresponding to the requested service to extend the one or more call detail record fields known to the central arbitration server by allowing the application to populate a generic filed [sic] within the call detail record with information specific to the requested service provided by the application in order to allow the application to add information on a per call detail record basis, wherein the generic field within the call detail record can be populated by a plurality of applications to add information specific to services offered by each of the plurality of applications."

Independent claim 18 according to the auxiliary request relates to a communication and data services network.

IV. In a communication of 8 February 2010 pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal, accompanying a summons to oral proceedings, the board gave its preliminary opinion, raising objections under Articles 123(2) EPC and Article 52(1) in combination with Article 56 EPC, and Rule 137(4) EPC.

More specifically, those parts of the communication which are relevant to the present decision, i.e. points 4 to 6, are reproduced below:

"4. *Original disclosure of amendments (Article 123(2) EPC):*

4.1 Present claims 31 and 32, depending on independent claim 17, define a combination of features which does not appear to be supported by the originally filed application.

Present claim 17 is based on original claim 27 to which features of original claims 28 and 29 have been added. Present claims 31 and 32 are based on original claims 43 and 44, which depended directly on original claim 27. Therefore, the original set of claims did not define a combination of the features of claims 27, 28, 29 and 43/44 as presently claimed in claims 31 and 32.

The board could not find any support for the combination of features defined in present claims 31 and 32 in the application as originally filed, nor did the appellant provide any arguments in support.

4.2 Therefore, in the board's preliminary opinion the subject-matter of claims 31 and 32 appears to extend beyond the beyond the (*sic*) content of the application as originally filed contrary to the requirements of Art. 123(2) EPC.

5. *Claim 1 of the main request: Novelty and inventive step (Articles 54 and 56 EPC):*

5.1 The claimed invention generally relates to a voice Internet transmission system which enables a person to have a conversation via the Internet without having to use a computer at either end of the conversation. In particular, the system consists of two non-Internet capable devices (originating and receiving telephone means) being enabled to connect to the Internet and to transmit packets of Internet formatted data comprising digitized, compressed and encrypted conversation between the devices. The apparatus which makes this possible is a system of originating and receiving audio engine means which perform analog/digital or digital/analog transformation, compression/de-compression and encapsulation/de-encapsulation of the received analog or digital voice/sound data.

The aim of the present invention is to obviate a computer at either end of the conversation (as shown in Figure 1 of the application) and, instead, allow the use of standard telephone handsets (as shown in Figure 2 of the application).

5.2 Document D1 proposes itself the same object, i.e. replacing computers at both ends of the communication line and allowing the use of a regular phone (page 3, four last lines).

At this point, the board notes the striking similarity between the system shown in Figure 1 on page 4 of D1 and that of Figure 2 of the application if the phone gateway is identified with the voice-engine (audio engine according to claim 1).

5.3 In particular, according to the board's preliminary opinion, D1 discloses a audio transmission system for transmitting voice/sound via the Internet (page 3, lines 20-23).

The system considered in D1 is a real-time system as follows from the statement on page 4, line 4 that it should be "similar to current Internet telephony applications" which themselves provide "real-time voice communications" (page 2, line 15). This is further supported on page 3, lines 9-10: "provide sound quality comparable to a regular phone most of the time", regular phone service being generally considered to allow real-time conversation.

The transmission is between at least two devices which are themselves incapable of formatting voice/sound data for Internet transmission (Dl, page 2 lines 6-8; page 3 line 21 - page 4, line 6; Figure 1).

The known system comprises:

at least one originating telephone means for real-time transmission of an analog signal representing sound via a first switched telephone network (Dl, Figure 1: connection between "Your Call" and "Local Phone Gateway); and

at least one originating audio engine means (the "Local Phone Gateway" in D1) for receiving the analog signal in real-time via the first switched telephone network, this feature being implied by the fact that according to D1 a "regular phone" is used and that a call between the phone and the phone gateway is placed as a local phone call (Dl, page 3, line 19 - page 4, line 6; Figure 1), for verifying that the signal comes from the at least one originating telephone means that is authorized to transmit the signal (Dl, page 4, lines 1-2), and for obtaining a destination telephone number from the at least one originating telephone means (Dl, page 4, line 1; the user dials the destination phone number).

The fact that, according to D1, transmission of the phone call is via the Internet implies that the local phone gateway is for digitizing the analog signal, compressing the signal (Dl, page 5, lines 6-16 disclose the benefits of compression in this context), encapsulating the signal within at least one Internet

packet using an Internet protocol such that the at least one Internet packet is suitable for transmission via the Internet, and for transmitting the at least one Internet packet via the Internet in real-time (Dl, page 3, line 21 - page 4 line 6; Figure 1).

The known system comprises furthermore:

at least one receiving audio engine means for receiving the at least one Internet packet transmitted by the originating audio engine means, de-encapsulating the at least one Internet packet to retrieve the signal, decompressing the signal, converting the signal back to an analog form, and transmitting the analog signal via a second switched telephone network in real-time, de-encapsulation, decompression and digital to analog conversion, these features being implicit for the same reasons as above (Dl, page 3 line 21 - page 4 line 6; Figure 1); and

at least one receiving telephone means for receiving the analog signal via the second switched telephone network in real-time (Dl, page 3, line 21 - page 4, line 6; Figure 1: "destination phone").

5.4 The subject-matter of claim 1 differs from the disclosure of Dl in that the audio engine means comprise means for scanning and deactivating malfunctioning audio engine hardware.

In the board's preliminary opinion, the subject-matter of claim 1 is therefore new.

5.5 It appears, however, that this feature is part of the routine procedures the skilled person would perform in order to assure the functioning of the system. As such, it would have been obvious for the skilled person to provide the audio engine means with the claimed functionalities.

5.6 The appellant argues in its ground of appeal basically that D1 related to a hypothetical telephone system, implying that the disclosure of D1 is not a workable one for the skilled person.

The board does not, preliminarily, accept this argument as the system shown in Figure 1 of D1 differs from previously known Internet-Telephony (as acknowledged in D1 in the chapter "Overview of the Current Market" on pages 2 and 3 and basically corresponding to the system shown in Figure 1 of the present application) by adding an analog phone and switched telephone network between the computer and user at the originating and receiving sides, respectively. This, however, appears to have been within the skilled person's capabilities at the priority date of the application.

The appellant argues furthermore that the statement in D1 about the functionality of the phone gateway as "an overlay network on the existing network, which would require additional equipment to deliver the same calls" (D1, page 6, lines 10-12) is incorrect and in stark contrast to the present invention.

The board remarks preliminarily that the claimed invention does not specify the audio engine means, which correspond to the known phone gateways, in any more detail than does D1.

With respect to the appellant's arguments relating to the real-time transmission, reference to point 5.3 above is made.

With respect to the appellant's arguments under points 4.6 to 4.8 (first occurrence) of the grounds of appeal, again reference to point 5.3 above is made.

Regarding the argument that the skilled person would not incorporate PSTN features into an Internet based system, the board is of the opinion that the features in question would follow from routine practice not restricted to PSTN (see point 5.5 above).

6. *Auxiliary request:*

6.1 The board is not able to track down the original disclosure of the subject-matter of claims 1 or 18 of this request. The appellant did not provide any indication in this respect.

A quick check reveals that terms like "arbitration" or "generic" used in these claims are not used in the original application, making it difficult to see how these claims could meet the requirements of Article 123 (2) EPC.

6.2 Moreover, it appears that the claims of the auxiliary request create a new case in the sense that they relate to unsearched subject-matter and would, thus, not be admissible under Rule 137 (4) EPC."

V. With letter of 17 February 2010 the appellant's representative requested that the oral proceedings be rescheduled on the grounds that he would be attending a conference in the USA on the same date. The board denied this request in a communication of 5 March 2010. Reasons were given.

With letter received on 18 May 2010, the appellant withdrew his request for oral proceedings and requested a written decision. No substantive submissions in reply to the communication were filed.

Oral proceedings took place as scheduled on 25 May 2010 in the absence of the appellant. At their end, the chairman announced the board's decision.

Reasons for the decision:

1. *Request to reschedule oral proceedings:*

With letter of 17 February 2010 the appellant's representative asked the board to reschedule the oral proceedings arranged on 25 May 2010 on the grounds that he would be attending a conference in the USA which had already been booked. In a telephone call of 23 February 2010 the board asked the representative for proof of the booking of the conference. No proof was offered, and the request was denied.

With letter of 10 April 2010, the appellant withdrew his request for oral proceedings and requested a written decision.

2. *Articles 52(1), 56 and 123(2) EPC and Rule 137(4) EPC:*

After having reconsidered the objections raised in its communication and having noted that the appellant did not file any substantive submissions in reply to the communication, the board confirms the reasoning as expressed in its communication and therefore maintains the objections raised, see point IV above.

Accordingly, the board concludes that the subject-matter of claim 1 of the main request does not involve an inventive step, that claims 31 and 32 of the main request do not comply with the requirement of Article 123(2) EPC, that claim 1 of the auxiliary request does not comply with the requirement of Article 123(2) EPC and that the claims of the auxiliary request contravene the requirements of Rule 137(4) EPC.

In consequence, since at least one claim of each request is not allowable, there is no request which is allowable.

2. 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 Chairman

D. Magliano A. S. Clelland