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**Datasheet for the decision
of 21 April 2010**

Case Number: T 2004/07 - 3.5.03

Application Number: 02252553.9

Publication Number: 1253772

IPC: H04M 15/00

Language of the proceedings: EN

Title of invention:

Consolidated billing in a wireless network

Applicant:

LUCENT TECHNOLOGIES INC.

Opponent:

-

Headword:

Billing in wireless network/LUCENT

Relevant legal provisions:

EPC Art. 54
RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Novelty - main request (no)"
"Admissibility - auxiliary request (no)"

Decisions cited:

-

Catchword:

-

Case Number: T 2004/07 - 3.5.03

**DECISION
of the Technical Board of Appeal 3.5.03
of 21 April 2010**

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

Representative: Sarup, David Alexander
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 20 June 2007
refusing European application
No. 02252553.9 pursuant to Article 97(1)
EPC 1973.

Composition of the Board:

Chairman: F. van der Voort
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. 02252553.9 (publication No. EP 1253772) on the ground that the subject-matter of claims 1 and 8 was not new with respect to the disclosure of

D2: WO 00/72572 A.

II. In the notice of appeal the appellant requested that the decision be set aside and a patent granted. With the statement of grounds of appeal the appellant filed new claims 1-10 to replace the claims on file. Arguments in support were also submitted.

III. In a communication annexed to a summons to oral proceedings the board gave a preliminary opinion that, *inter alia*, the subject-matter of independent claims 1 and 8 was not new with respect to the disclosure of document D2. With regard to any future amendments to the appellant's request, attention was drawn to Article 13 RPBA. The appellant was also informed that, if amended claims were filed, it would be necessary at the oral proceedings to discuss their admissibility and, if the claims were held admissible, to consider whether or not they complied with the requirements of the EPC, in particular Articles 123(2), 83, 84 and 52(1) EPC.

IV. In response to the board's communication, the appellant filed, with a letter dated 21 March 2010, two new sets of claims to replace the claims on file entitled a "first set of claims", hereinafter referred to as the main request, and a "second set of claims", hereinafter referred to as the auxiliary request, the latter being for consideration by the board if it did not accept the first set. Arguments were submitted in support of both requests. The appellant stated that it did not intend to attend the oral proceedings.

V. Oral proceedings were held on 21 April 2010 in the absence of the appellant.

The board understood the appellant to be requesting, in writing, that the impugned decision be set aside and a patent be granted on the basis of the claims of the main request or, failing that, on the basis of the claims of the auxiliary request, both requests as filed with the letter dated 21 March 2010.

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

VI. Both requests include two independent claims, ie method claim 1 and system claim 8. In view of the board's reasoning

set out below, only claim 1 of each request is reproduced here *verbatim*.

Claim 1 of the **main request** reads as follows:

"A method of billing for in a wireless network communication system, comprising:
establishing a service data node module (80) in the wireless network (1), the service data node module storing user information, service information, and network information in a service data node (60), the user information and service information being associated with the network information;
allowing a user to select a service by accessing the service data node module without accessing a home location register of a service provider; and
billing (100) the user based on the selected service."

Claim 1 of the **auxiliary request** reads as follows:

"A method of billing for in a wireless network communication system, comprising:
establishing a service data node module (80) in the wireless network (1), the service data node module storing user information, service information, and network information in a service data node (60), the user information and service information being associated with the network information;
determining actual use of a service on a call-by-call or session-by-session basis through a dynamic bill information processor (84) in operative communication with the service data node;
correlating the determined actual use with packet count information through a radius accounting server (86) in operative communication with the dynamic billing information processor;
allowing a user to select a service by accessing the service data node module; and
billing (100) the user based on the selected 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, which was duly summoned, had informed the board that it would not attend the oral proceedings and, indeed, was absent. The oral proceedings were therefore held in the absence of the appellant (Rule 115(2) EPC, Article 15(3) RPBA (OJ 11/2007, pages 537 to 547)).
 - 1.2 In the communication accompanying the summons, the board raised an objection under Articles 52(1) and 54 EPC based on the disclosure of document D2. 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 in respect of the main request filed with the letter dated 21 March 2010. The appellant was also informed that the board would have to consider the admissibility of any new requests. The board also mentioned that compliance with the requirements of Articles 123(2), 83 and 84 would have to be determined. Hence the appellant could also reasonably have expected the board to consider these issues in respect of the claims of the auxiliary request filed with the letter dated 21 March 2010. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment at the oral proceedings on any of the issues but, instead, chose to rely on the arguments as set out in the written submissions, which the board duly considered below.

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

2. *Main Request*

2.1 *Claim interpretation*

2.1.1 The present application relates to a method of billing involving the use of a service data node module (cf. Fig. 2; 60) to facilitate the processing of service requests. The service data node module is arranged to dynamically store and allow access to user, service and network information (cf. col. 10, lines 11-15 of the application as published). The user information is obtained from the home location register HLR and dynamically stored in the service data node module (cf. col. 10, lines 23-24 and col. 12, lines 35-38). When a user requests a service, the service data node module proceeds to check its storage to locate the appropriate user and network information (cf. col. 12, lines 41-48). Although not explicitly stated, it appears that when the user requests a service, the HLR is not required to be consulted as the relevant user data are already stored in the service data node module as a result of dynamic and/or periodic updates (cf. col. 10, lines 33-36).

2.1.2 In view of the above, the expression "allowing a user to select a service by accessing the service data node module without accessing a home location register of a service provider" used in claim 1 is interpreted by the board as meaning "allowing a user to select a service by accessing the service data node module without accessing the home location register when the user accesses the service data node". This is moreover in accordance with the interpretation placed on this feature by the appellant, cf. eg the letter of reply to the summons, dated 21 March 2010, page 3, lines 1-3.

2.2 *Novelty - Articles 52(1) and 54 EPC*

2.2.1 Using the language of claim 1, document D2 discloses a method of billing for [use] in a wireless network communication system, comprising:

establishing a service data node module (Fig. 1: "services client" 112) in the wireless network (NB: in Fig. 1, the access network 145 - which may be wireless, cf. page 3, lines 25-26 - and the core network 100 can be regarded as sub-networks of a global wireless network), the service data node module storing user information (cf. page 9, lines 6-8), service information (cf. page 7, line 9: "the service(s) requested"), and network information (cf. page 7, lines 9-10: "a required QoS, connection duration") in a service data node (NB: the services client implicitly stores the above information, even if only temporarily, since it reports this information to the billing server), the user information and the service information being associated with the network information (this is implicit considering that they all concern the same service request);

allowing a user to select a service by accessing the service data node module (cf. page 8, lines 8-11 and 25-27: "the service request is forwarded to the services client 112"); and

billing the user based on the selected service (cf. page 9, lines 18-21).

2.2.2 The only further feature of claim 1 is the step of allowing a user to select a service by accessing the service data node module "without accessing a home location register of a service provider".

2.2.3 As stated above, this feature is interpreted in the sense that the home location register (HLR) is not accessed when the user selects a service. In the board's view, this feature is disclosed in document D2. On page 9, lines 6-8 it is stated that "Subscription data is obtained from a Home Location Register (HLR, not shown) or equivalent element and is stored at the services client 112 when the services client 112 is instantiated". As the board understands "instantiated" in this context to mean "created" or "set up", and as the service client already exists when the user requests a service (cf. page 8, lines 26-27), it follows that it has been provided with data from the HLR before the service request is made. Hence, as in the present application, the user selects a service by accessing a service data node, ie the services client 112, "without [at the time of requesting the service] accessing a home location register of a service provider".

Furthermore, the board notes that on page 14, lines 3-6, of D2, the following is stated in connection with the

initiation of another service request during an established session: "At step 421, a test is performed to determine whether the user, via the access device 154, initiates another service request..... If another session is requested, services client 112 analyzes the request and the current resource assignments at step 427." In the board's view, in this case, as a session is already ongoing, and as the services client 112 has stored the user data originally obtained from the HLR and used it for the processing of the previous request, the new service request is accordingly processed by the services client "without [at the time of requesting the new service] accessing a home location register of a service provider".

- 2.2.4 The appellant's arguments may be summarised as follows: D2 represents only the conventional art wherein user, service and network data are stored at different portions of the network independently and unlinked with each other. D2 does not provide one central data base for storing user information, service information, and network information in an easily accessible, logically connected manner. In contrast to D2, the service data node module of the present invention stores and "associates" the user and the service data with the network data without having to access various elements located throughout the network, whereby "associates" means "the establishing of a relationship between at least two different parameters or the logically linking of at least two parameters".

However, the board notes that the language of claim 1 does not preclude that the services client 112 obtains data from various parts of the network in order to process a request. It is merely required that a services data node module is established for storing the various data and that the user is allowed to select a service by accessing the service data node module without accessing a home location register of a service provider. These requirements are met by the system disclosed in D2 since all necessary data for processing a service request are received by or are already stored in the services client without, as explained above, a need to access the HLR. As the data are received by or already stored in the services client, they are, at least temporarily, stored together in the services client prior to the data being transmitted to the billing server. Moreover, the claim wording requires no special meaning to be attached to the term "associates". As stated above, the user information and the service information are associated with the network information as they all concern the same service request. Hence the board finds the appellant's arguments unconvincing.

- 2.2.5 Hence, the board concludes that document D2 discloses all the features of claim 1 of the main request. The subject-matter of claim 1 of the main request is therefore not new within the meaning of Articles 52(1) and 54 EPC.

2.3 As claim 1 of the main request is not allowable, the main request as a whole is not allowable.

3. *Auxiliary request*

3.1 Claim 1 of the auxiliary request includes the feature:

"correlating the determined actual use with packet count information through a radius accounting server (86) in operative communication with the dynamic billing information processor".

3.2 In the board's view, this feature does not appear to be directly and unambiguously based on the application as filed, contrary to Article 123(2) EPC. The only mention of correlation occurs in paragraph [0068] of the description, where the following is stated in respect of billing based on packet calls: "When request for authentication goes to the DA/IWF module 25, information regarding the packets, which may include data rate information, is sent to the radius accounting server 86 for correlation. A packet counter is used as a simple network management protocol (SNMP) management information base (MIB) for counting the packets transferred during the user requested service. This packet count information is then provided in the radius accounting server 86 to process and determine how the service will be billed".

The board notes that in the above-cited paragraph, it is not stated what is to be correlated with the packet count information in the radius accounting server. This passage also does not seem to imply to the skilled person that the packet count information is to be correlated with "the determined actual use" as specified in the claim. Indeed, the board finds this feature technically confusing, since plausibly the packet count information itself represents the "actual use" of the service. Thus there are also doubts as to compliance with Articles 83 and 84 EPC. It is noted that the appellant has provided no technical explanations or arguments with respect to this feature.

3.3 In accordance with Article 13(1) RPBA, "Any amendment to a party's case after it has filed its grounds of appeal ... may be admitted at the board's discretion". A commonly used criterion by the boards of appeal for deciding whether to admit a request at a late stage of the procedure is whether the new claims are clearly allowable. Since for the above reasons, claim 1 of the auxiliary request, and consequently the auxiliary request as a whole, is not clearly allowable, the board exercises its discretion under Article 13(1) RPBA not to admit the auxiliary request.

4. Since there is no allowable request, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

F. van der Voort