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**Datasheet for the decision
of 9 February 2011**

Case Number: T 0037/08 - 3.5.01
Application Number: 03722624.8
Publication Number: 1497768
IPC: G06F 17/60, H04L 12/14
Language of the proceedings: EN

Title of invention:

Method for controlling subscriber accounts in connection with a pre-paid IN platform, and a pre-paid mediator

Applicant:

Comptel Corporation

Opponent:

-

Headword:

Controlling subscriber accounts/COMPTEL

Relevant legal provisions:

EPC Art. 52(1), 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 54(1), 54(2), 56

Keyword:

"Novelty (no): requests 1, 2, 5, 6, 9-12, 18, 20, 22, 23"

"Novelty (yes): requests 3, 4, 7, 8, 13, 14, 17, 19, 21"

"Inventive step (no): requests 3, 4, 7, 8, 13, 14, 17, 19, 21"

"Added subject matter (yes): requests 3, 4, 7, 8, 13, 14, 17"

Decisions cited:

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Catchword:

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Case Number: T 0037/08 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 9 February 2011

Appellant: Comptel Corporation
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Representative: Lipsanen, Jari Seppo Einari
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 14 August 2007
refusing European patent application
No. 03722624.8 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: S. Wibergh
Members: P. Scriven
P. Schmitz

Summary of Facts and Submissions

I. The appeal is against the Examining Division's decision to refuse European patent application 03722624.8.

II. The decision is based on a main request and a series of six auxiliary requests. The Examining Division found the main request not to be allowable, because it lacked inventive step, in the light of document

D2: WO 00/24161 A1,

and decided not to admit the auxiliary requests.

III. In the statement setting out the grounds of appeal, the appellant requested that the decision be set aside, and submitted a series of sixteen requests, to be taken in the order given. Requests 1, 3, ... 11 (odd numbered requests up to 11) were that a patent be granted on the basis of a respective set of claims 1 - 14; these correspond to the auxiliary requests before the Examining Division. Request 13 was that a patent be granted on a set of claims 1 - 12, corresponding to the main request before the Examining Division. The even numbered requests 2, 4, ... 14 were that the case be remitted to the Examining Division, with the order that the requirement of Article 56 EPC is fulfilled for the claims of the preceding odd numbered request. Request 15 was for a written communication and an opportunity to comment and rectify. Request 16 was that oral proceedings be held.

In the view of the appellant, the Examining Division erred in not recognizing that while the present

invention ensures that funds are available before any service use may take place, D2 does not. Rather, D2 allows services to be used for some time, even after funds have run out. In addition, it is argued, the present invention operates in real-time, whereas the method disclosed in D2 does not.

- IV. On 21 October 2010, the Board sent a summons to attend oral proceedings on 9 February 2011 and set out its provisional view that none of requests 1 - 14 was allowable.

- V. By letter dated 25 January 2011, the appellant requested that oral proceedings be held by video conference, but the Board could not accede and informed the appellant accordingly.

- VI. With a letter dated 1 February 2011, the appellant filed a further set of requests, numbered 17 - 23, together with supporting argumentation, and indicated that there would be no representation at the oral proceedings.

The appellant's argument is, in essence, a reinforcement of the points already made, namely that, according to D2, services may be used for some time, even after funds have been exhausted, whereas the present invention prevents any use of services when funds are not available; and that despite D2 claiming to be a real-time method, it is not so in fact.

- VII. Oral proceedings were held as scheduled, in the absence of the appellant. At the end of them, the Board announced its decision. The pending requests were

requests 1 - 14 as filed with the statement of grounds of appeal and requests 17 - 23 as filed with the letter dated 1 February 2011.

VIII. Claim 1 of request 1, which is the appellant's main request, reads as follows.

"A method for managing customer accounts in connection with a Pre-Paid platform (8), in which method

- applications (3) communicate with the Pre-Paid platform (8),

characterized in that

- the applications (3) are arranged to communicate with a proxy (4) and the Pre-Paid platform correspondingly (8) with a charging module (5), in which case the proxy (4) and the charging module (5) communicate with each other in a logically predefined manner,

- the proxy (4) is used to collect and manage the services used by the customers, the charging models, and the rating,

- the proxy (4) is used to control the delivery of the service used by the user such that the proxies (4) prevent services being delivered to the user, if the price of the service is greater than the funds in the Pre-Paid account, and

- the charging module (5) is used to bill the customer's Pre-Paid account, which is located on the Pre-Paid platform (8), or in a system behind it."

Reasons for the Decision

1. Procedural matters

1.1 Oral proceedings were scheduled to be held on 9 February 2011. On 25 January 2011, the appellant requested that they be held by video conference. In consideration of the facts that the Boards of Appeal have no established procedure for holding oral proceedings by video conference, and that the request was filed only two weeks in advance of the scheduled date, the Board decided that it could not accede to this request.

1.2 Oral proceedings were held as scheduled, in the absence of the applicant. In accordance with Article 15(3) RPBA, the Board considers that the appellant relies on his written case.

2. Requests 1 and 2

2.1 Request 1 is the appellant's main request; it was the first auxiliary request before the Examining Division.

2.2 The Board finds that D2 discloses the combination of features defined in claim 1, and, therefore, that the subject matter of claim 1 is not novel.

2.3 Specifically, D2 discloses a method of charging for services using a pre-paid account (D2, page 1, lines 3 - 4). In this method, an intermediary sits between applications and the pre-paid platform. D2 calls the intermediary a *mediator unit* (D2, page 7, line 5). Communications between the applications and the pre-paid platform pass through the mediator. This is set out, in D2, from line 1 of page 7, to line 16 of page 8. The Board sees this as a description of a method in which applications communicate with the pre-paid platform in such a way that the applications communicate with a proxy, the proxy with a charging module, and the charging module with the pre-paid platform so as to bill the pre-paid account. In the method disclosed in D2 (page 7, lines 7 - 29), the proxy is used to collect and manage services used, charging models and rates. It also (D2, page 8, lines 17 - 25) prevents the subscriber from using the services if the price is greater than the funds in the pre-paid account.

2.4 The appellant disputes this at three points.

2.5 The first disputed point is this. The appellant argues that the invention as defined in claim 1 involves a proxy and a charging module which are distinct entities, and that D2 does not disclose two distinct entities.

2.5.1 The Examining Division seems to have followed that, but then to have concluded that separation of the two functions into different modules would have been obvious to the skilled person. However, the Board does not consider that the proxy and the charging module

need, according to the claim, be separate entities at all.

2.5.2 The claim does ascribe two different labels, namely "proxy" and "charging module", but it is possible for different names to refer to the same physical entity. It is the Board's view that, according to the terms of the claim, something must provide the function of a proxy and something must provide the function of a charging module; and D2 discloses that.

2.5.3 The claim also states that the proxy and the charging module must communicate with one another. This is also disclosed in D2, because the data collected (that is the function of the proxy) is converted to charging data which is then sent to the billing system (that is the function of the charging module). That is, the two functions communicate.

2.6 The Board, therefore, cannot follow the appellant on the first point, and considers that D2 does disclose a proxy and charging module as defined in claim 1.

2.7 The second disputed point is this. The appellant argues that the methods of D2 allow a service to be delivered even if no funds are available, until the lack has been detected, whereas the method of the invention does not allow the service even to start if there are insufficient funds.

2.7.1 D2 comprises two embodiments, set out from lines 17 to 25 of page 8, and from line 26 of page 8 to line 2 of page 9. D2 states the following about the first of them: *If the amount of money in the prepayment account has*

been exhausted, the billing unit 15 informs this to the packet network which prevents the subscriber from using the services for example by deactivating the contexts 21 to 25... The second embodiment, similarly, provides that [i]f the prepayment account ... is exhausted, and a new sum cannot be transferred from the billing unit 15 ... the subscriber 10 is prevented from using the services.

- 2.7.2 Claim 1 formulates it in this way: the proxies (4) prevent services being delivered to the user, if the price of the service is greater than the funds in the Pre-Paid account.
- 2.7.3 The claim, then, talks of prevention of delivery, whereas the D2 talks of the prevention of use. The Board sees this as two ways of saying the same thing.
- 2.7.4 The Board cannot see anything in the application which implies that no use of the service has been made prior to the check on funds. In the example set out from line 26 of page 6 to line 11 of page 7, although final delivery of an SMS is not made, a significant amount of processing has been carried out, that is, the service has been used to some extent.
- 2.7.5 The Board, therefore, cannot see the distinction the appellant seeks to draw.
- 2.8 In the third disputed point, the appellant asserts that the claimed invention operates in real-time, whereas D2 does not.

2.8.1 The appellant states that, while D2 claims that the method it discloses operates in real-time, it is not really true. The appellant does not substantiate this allegation, other than to say that the method disclosed in D2 works *substantially in real time*. This terminology seems to be taken from line 28 on page 1 of D2. According to the appellant, the word *substantially* indicates that that method is not actually a real-time method. The Board finds, however, that there are many places at which D2 uses the term *real-time* without qualification (e.g. page 1, line 4; page 2, lines 27 and 35; page 8, line 12), and that the skilled person would understand that the method is intended to operate in real-time, or as near to it as makes no practical difference.

2.8.2 The appellant further asserts that the term real-time is used for marketing purposes, rather than as an indication with real technical content, without, however, providing any evidence.

2.8.3 The Board, therefore, cannot follow these arguments about D2.

2.8.4 Nor can the Board see anything in claim 1 which implies real-time operation. Indeed, the sending of charging data before service delivery necessarily involves some delay in service delivery, and this is simply accepted. The question of whether or not the methods disclosed in D2 are or are not real-time methods is, therefore, not relevant to the assessment of novelty.

2.9 The Board, therefore, cannot follow the appellant on the third point.

2.10 For these reasons, the Board is satisfied that the subject matter defined in claim 1 is disclosed in D2. It follows that the requirement of novelty (Articles 52(1) EPC and 54(1) and (2) EPC 1973) is not met, and that requests 1 and 2 cannot be allowed.

3. Requests 3 and 4

3.1 Claim 1 is the same as claim 1 according to requests 1 and 2 with the additional stipulation *that charging data is transmitted to the Pre-Paid platform prior to service delivery.*

3.2 The application as filed provides a basis for this only when the service is SMS or a voice call (page 4, lines 19 - 22; page 6, line 26 - page 7, line 11). The sending of charging data prior to the delivery of other services has no clear basis. The amendments, therefore, go beyond the content of the application as filed, and the Board finds that these requests do not comply with Article 123(2) EPC.

3.3 The Board also considers that there is a lack of inventive step. The reasons are as follows.

3.4 In the example of the invention set out from line 26 of page 6 to line 11 of page 7, the charging data are only generated once the service has started running. There is a distinction to be made between delivery of a service and, in this example, delivery of the SMS. Reception of a message at a mobile switching centre is part of the SMS service and an essential part of the delivery of that service. Nevertheless, the full SMS

service is not delivered and it seems that claim 1 must be read such that the charging data are sent before the service is complete.

3.5 According to D2, a running service is stopped once funds become insufficient, and this requires that charging data are sent before the service stops running. However, it is not quite clear that this is really the same thing as sending the data before service delivery, as stated in claim 1. The Board, then, tends to the view that this feature does provide novelty.

3.6 The effect of this feature, as argued by the appellant, is to prevent fraud, by which the Board understands that a user should not be allowed to use a service for which funds are not available. As it stands, this effect is not a technical one, and it is necessary to consider what the corresponding technical problem is. The Board notes that the sending of data before a particular time does not imply that the data is used by the recipient before that time; it is, however, a necessary condition for such use. The technical problem can, then, be formulated in this way: allow a check to be made, before service delivery, on whether sufficient funds are available. It would be obvious to the skilled person, faced with this problem, that she would have to provide for the charging data to be sent in time. The Board does not consider that this requires anything beyond the skilled person's general technical knowledge. Nor, apparently, does the appellant, since the application does not provide more information on this feature than the statement that it is implemented (page 4, lines 19 - 22).

3.7 The Board, therefore, considers that the requests are not allowable, firstly because they fail to comply with Article 123(2) EPC, and secondly because they fail to comply with Article 52(1) EPC in combination with Article 56 EPC 1973.

4. Requests 5 and 6

4.1 Claim 1 according to these requests differs from that of requests 1 and 2 in that the term the proxy ... is used to control the delivery of the service used by the user has been replaced by the proxy ... is used to control delivery of the requested service intended to use by the user.

4.2 Apart from evident linguistic problems with this formulation, it seems to be the appellant's intention to specify that the service in question is one which the user has requested.

4.3 The Board considers this to have been implicit in the claim according to requests 1 and 2, so that the subject matter of claim 1 according to requests 5 and 6 is no more novel than that of claim 1 according to requests 1 and 2. These requests, therefore, are not allowable.

5. Requests 7 and 8

5.1 Claim 1 according to these requests combines the amendments of requests 3 and 4 with those of requests 5 and 6. The arguments already given show that there is a failure to comply with Article 123(2) EPC, that the requirement of inventive step (Articles 52(1) EPC and

56 EPC 1973) is not met, and so that these requests are not allowable.

6. Requests 9 and 10

6.1 Claim 1 differs from that of requests 1 and 2 in that *Pre-Paid platform* has been replaced by *Pre-Paid platform for non-voice services*.

6.2 The Board considers that the GPRS of D2 (D2, page 3, line 30 - 32; page 3, line 33 - page 4, line 7, inter alia) is a non-voice service, and concludes that the subject matter defined in claim 1 is not novel (Articles 52(1) EPC and 54(1) and (2) EPC 1973), and so that these requests are not allowable.

7. Requests 11 and 12

7.1 Claim 1 is identical to that of requests 9 and 10, except that "for non-voice services" now reads "for MMS, SMS, or GPRS services".

7.2 As D2 is directed to pre-payment in the context of GPRS, the Board concludes that the subject matter of claim 1 is not novel (Articles 52(1) EPC and 54(1) and (2) EPC 1973) and that these requests are not allowable.

8. Requests 13 and 14

8.1 This was the main request before the Examining Division.

8.2 Claim 1 is identical to claim 1 according to requests 3 and 4, except that prevent services being delivered to the user, if the price of the service is greater than

the funds in the Pre-Paid account ... now reads prevent services being delivered to the user, if the user's pre-paid account is empty, or if the price of the service is greater than the funds in the Pre-Paid account ...

- 8.3 The amendment does not affect the argument with regard to Article 123(2) EPC.
- 8.4 In the method defined in claim 1 of request 3 and 4, free services are always available. In the method defined in claim 1 of requests 13 and 14, free services are denied when the account is empty. That is the force of the amendment.
- 8.5 Nevertheless, the Board considers that the argument regarding inventive step, given above for requests 3 and 4, carries over to requests 13 and 14. Whereas for requests 3 and 4, the technical problem was to allow for a check on whether there were sufficient funds, for the present requests, it is to allow for checks on whether there are sufficient funds or zero funds. The argument is otherwise unchanged.
- 8.6 The Board, therefore, considers that these requests are not allowable, firstly because they fail to comply with Article 123(2) EPC, and secondly because the subject matter of claim 1 fails to comply with Article 52(1) EPC in combination with Article 56 EPC 1973.

9. Requests 17 - 24

- 9.1 Claim 1 of requests 17, 18, 20, 22 and 23 are identical to claim 1 of requests 13 and 14, 1 and 2, 5 and 6, 9

and 10, and 11 and 12, respectively, except for the insertion of a definite article and the change from *user* to *customer*.

9.1.1 These are not amendments which change the situation regarding novelty, inventive step, or added subject matter.

9.2 Claim 1 of requests 19 and 21 are, respectively, identical to claim 1 of requests 3 and 4, and 7 and 8, except for the insertion of definite article, the change from *user* to *customer*, and stipulation that charging data are sent prior to *call connection* or *SMS transmission*.

9.2.1 The definite article and the change from *user* to *customer* have no effect on novelty and inventive step.

9.2.2 Although the objection under Article 123(2) EPC no longer applies (see points 3.2 and 5.1, above), that under Articles 52(1) EPC and 56 EPC 1973 is not affected.

9.3 The Board concludes that claim 1 of each of requests 17 - 23 either lacks novelty or lacks inventive step, for the reasons already set out with respect to requests 1 - 14, and that these requests are not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

T. Buschek

S. Wibergh