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**Datasheet for the decision
of 13 March 2012**

Case Number: T 0690/08 - 3.5.04

Application Number: 99947985.0

Publication Number: 1048166

IPC: H04N1/00

Language of the proceedings: EN

Title of invention:

IMAGE COMMUNICATION DEVICE AND METHOD FOR COMMUNICATION
TERMINAL

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Relevant legal provisions:

EPC Art. 123(2)
EPC 1973 Art. 56

Keyword:

Inventive step (main request - yes)

Decisions cited:

Catchword:



Case Number: T0690/08 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 13 March 2012

Appellant: Samsung Electronics Co., Ltd.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 21 November 2007
refusing European patent application No.
99947985.0 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: C. Kunzelmann
Members: R. Gerdes
C. Vallet

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 99 947 985.0.
- II. The examining division held in the decision under appeal that the application did not comply with Article 56 EPC because the claimed subject-matter of the main request and the first and second auxiliary requests was obvious in view of:
- D2: JP 10 098702 A with translation.
- III. Oral proceedings were held before the board on 13 March 2012. At the end of the oral proceedings the appellant requested that the decision under appeal be set aside and that a patent be granted in the following version: on the basis of the main request filed with the statement of grounds of appeal, alternatively on the basis of the first auxiliary request filed with letter dated 9 February 2012 or on the basis of the second auxiliary request filed with the statement of grounds of appeal.
- IV. Independent claims 1 and 7 of the main request read as follows:
- "1. A communication terminal capable of transmitting image data during a call, the communication terminal comprising:
- a camera (112) for capturing image data;
- a storage device (115) for storing the image data;

a transmitter (113) for converting the image data to a radio signal and transmitting the radio signal; and

a controller (110) for displaying an image transmission mode setting request on a display (118) during one of making an outgoing call and upon receiving an incoming call, allowing a user to select one of a first image transmission mode (217;319) and a second image transmission mode (237;333), before said one of an outgoing call and an incoming call is connected (223;321),

wherein the transmitted image data includes real-time image data in the first image transmission mode and previously stored image data in the second image transmission mode, and

wherein once the image transmission mode setting request is displayed, the call is not connected unless the user has selected an image transmission mode."

and

"7. A method for transmitting image data during a call in a communication terminal having a storage device for storing the image data, comprising the steps of:

displaying an image transmission mode setting request during one of making an outgoing call and upon receiving an incoming call, allowing a user to select one of a first image transmission mode (217;319) and a second image transmission mode (237;333), before said one of an outgoing call and an incoming call is connected (223;321);

transmitting the image data including real-time image data if the first image transmission mode is selected; and

transmitting the image data including previously stored image data if the second image transmission mode is selected,

wherein once the image transmission mode setting request is displayed, the call is not connected unless the user has selected an image transmission mode."

Claims 2 to 6 and 8 to 12 depend on claim 1 and claim 7, respectively.

- V. The wording of the claims according to the first and second auxiliary requests has no bearing on this decision.
- VI. The claims of the main request correspond to those of the first auxiliary request underlying the decision under appeal. With respect to this subject-matter the examining division used D2 as the closest prior art. The examining division did not challenge that the following two features of claim 1 were not disclosed in D2:
- (a) a controller for displaying an image transmission mode setting request on a display during one of making an outgoing call and upon receiving an incoming call, and
 - (b) wherein once the image transmission mode setting request is displayed, the call is not connected unless the user has selected an image transmission mode.

The examining division held that D2 disclosed a camera with two states instead of feature (a). It was argued that "D2 gives a hint in paragraph [0031] towards a displayed message in case the camera (2) is fixed". The examining division drew a parallel to the operation of switching off a PC, which can be effected by pressing a button or by displaying a pop-up menu (see decision under appeal, point 1 of the Reasons).

As regards feature (b) the examining division stated that it was usual in pop-up menus to wait for a reply from a user. Therefore this feature concerned only a well-known software implementation, (see decision under appeal, point 2 of the Reasons).

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments*
 - 2.1 A basis for independent claims 1 and 7 may be found in claims 1 and 8 and figures 1, 2 and 3 as filed.

The last feature of claim 1 (see point VI above, distinguishing feature (b)) is not explicitly disclosed in the application as filed. It is based on the flow charts in figures 2 and 3 as well as on the passages on page 3, line 39 to page 4, line 11 and page 5, lines 26 to 38 of the application as filed. The flow charts show loops for the determination of the transmission mode. When the loops are entered an image transmission mode setting request is displayed. Thereafter, it is determined whether a camera image transmission key input or a memory transmission key input is detected.

The flow diagram only proceeds to the call connection if one of these key inputs is detected (see also figures 2, 3 and page 3, line 39 to page 4, line 11). Hence, the application as filed discloses that selecting an image transmission mode is a precondition for connecting an incoming or outgoing call. The purpose of the invention is presented on page 1, lines 15 and 16, as being "when the user is not dressed or without makeup, the user will not want his or her image transmitted". The board is therefore convinced that the skilled person understands that the essential element of the loops shown in figures 2 and 3 as well as in the passage starting on page 3, line 39 to page 4, line 11 is that the call is not connected unless the user has selected an image transmission mode. Hence, the last feature of claims 1 and 7 is implicitly disclosed in the application as filed.

2.2 The subject-matter of dependent claims 2, 3 and 8, 9 is disclosed on page 3, lines 8 to 25 and in claim 7 as filed. Claims 4 and 10 correspond to claim 2 as filed. The subject-matter of claims 5, 6 and 11, 12 is shown in figure 2, steps 211 and 221.

2.3 Thus the amended claims comply with Article 123(2) EPC.

3. *Inventive step*

3.1 It is not disputed that D2 may be considered as reflecting the closest prior art with respect to the subject-matter of claim 1.

3.2 D2 discloses a communication terminal capable of transmitting image data during a call. The communication terminal is equipped with a camera to take pictures of the terminal's user. In a first

transmission mode a live image taken by the camera is transmitted to the other party. In order to ensure privacy the communication terminal disposes of a second transmission mode for transmitting a stored picture to the other party instead of the live picture (see abstract).

D2 discloses two safeguards to prevent accidental transmission of a live picture to the other party: Firstly, the communication terminal of D2 has a pocket in its housing that is used to hold the camera. The pocket is equipped with a pop-up mechanism to project the camera from the housing. If the camera is in its projected state a live camera image is transmitted to the other party, whereas a stored picture is transmitted if the camera is inserted into the housing. D2 also discloses that the state of live transmission may be indicated on the display "in message form". Hence, the setting of the transmission mode is apparent for the user from the position of the camera or a message on the display. As a second safeguard, the picture displayed on the local screen is selected in dependence on the transmission mode. If no live picture is being transmitted, the user's image is shown on the local screen. In contrast, in live transmission mode the other party's image is displayed (see figure 1, abstract and paragraphs [0006], [0007], [0016] and [0031]).

3.3 It is common ground that the following features of claim 1 are not disclosed in D2 (see also point VI above):

- (a) a controller for displaying an image transmission mode setting request on a display during one of

making an outgoing call and upon receiving an incoming call, and

(b) wherein once the image transmission mode setting request is displayed, the call is not connected unless the user has selected an image transmission mode.

3.4 These differences prevent a call being connected unless the user has made a selection of the transmission mode. Therefore, they coherently inhibit transmission of an undesired image and thus an intrusion into the user's privacy. The technical problem may therefore be seen as how to provide alternative means avoiding transmission of an undesired image.

3.5 The distinguishing features imply that according to D2 the status of the image transmission is indicated, whereas according to claim 1 a request is shown. They affect the operation of the communication equipment, such that for a terminal according to claim 1 a selection is required to be made on a call-by-call basis. This selection is to be made prior to call connection, not by way of visualising a status but by requiring an action from the user.

Neither D2 nor any other of the documents on file discloses or hints at requiring a selection of the transmission mode. Paragraph [0031] of D2, which was cited in the decision under appeal, only refers to the display of the status on the user's screen. A reaction to the display of the status message is not requested. It was also argued in the decision under appeal that feature (a) only presents a software alternative to a hardware solution. However, even if the status display were implemented in software, it would result in the

display of a status, and not of a request. Additionally in the decision under appeal, a parallel was drawn to switching off a PC, which could be effected by pressing a button or by displaying a pop-up menu. It is not contested that the on/off status of a PC may be changed by hardware or software. However, in both cases the user takes the initiative to change the status of the PC.

- 3.6 Thus the board holds that the terminal for which protection is sought with present claim 1 is a non-obvious alternative way of ensuring privacy in a communication terminal capable of transmitting image data. The board thus judges that, having regard to the state of the art, the subject-matter of claim 1 would not have been obvious to a person skilled in the art. Therefore, it involves an inventive step (Article 56 EPC 1973).
- 3.7 Claim 7 is an independent claim essentially relating to the corresponding method of transmitting image data. Claims 2 to 6 and 8 to 12 are dependent claims. Hence, the subject-matter of these claims also involves an inventive step.
4. The board sees no other objection which would prejudice the grant of a patent.
5. Since the subject-matter of the claims according to the main request has been found to meet the requirements of the EPC, the auxiliary requests need not be considered in this decision.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent in the following version:

Description:

pages 3 to 5 as published,
pages 1, 1a, 1b, 2, 6 received on 27 September 2006.

Claims:

1 to 12 of the main request as filed with the statement of grounds of appeal.

Drawings:

sheets 1/3 to 3/3 as published.

The Registrar:

The Chairman:



K. Boelicke

C. Kunzelmann

Decision electronically authenticated