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**Datasheet for the decision  
of 18 December 2009**

**Case Number:** T 0880/08 - 3.5.03

**Application Number:** 00102575.8

**Publication Number:** 0998107

**IPC:** H04M 3/493

**Language of the proceedings:** EN

**Title of invention:**  
Interactive call-handling

**Patent proprietor:**  
Ronald A. Katz Technology Licensing, L.P.

**Opponent:**  
Vodafone Group plc

**Headword:**  
Interactive call-handling/KATZ

**Relevant legal provisions:**  
EPC Art. 100(c)

**Relevant legal provisions (EPC 1973):**  
-

**Keyword:**  
"Added subject-matter (yes)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0880/08 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 18 December 2009

**Appellant:** Ronald A. Katz Technology Licensing, L.P.  
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**Decision under appeal:** Decision of the opposition division of the  
European Patent Office posted 28 February 2008  
revoking European patent No. 0998107 pursuant  
to Article 101(2) EPC.

**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 opposition division revoking European patent No. 0 998 107, which is based on European patent application No. 00102575.8, which is a divisional application of European patent application No. 94107833.9 (publ. No. EP 0 620 669), which is a divisional application of European patent application No. 88312001.6 (publ. No. EP 0 342 295).
- II. The opposition was filed against the patent as a whole and, *inter alia*, on the ground that the claimed subject-matter extended beyond the content of the application as filed or the earlier applications as filed (Article 100(c) EPC).
- III. In its decision the opposition division held, *inter alia*, that the subject-matter of independent claims 1 and 9 as granted extended beyond the content of the parent and grandparent applications (Articles 76(1) and 100(c) EPC).
- IV. The proprietor (appellant) lodged an appeal against the decision. With the statement of grounds of appeal the appellant filed claims of a main request and auxiliary requests I to III and requested that the decision under appeal be reversed and that the patent be maintained in amended form on the basis of the claims of the main request or, alternatively, the claims of one of auxiliary requests I, II and III. Oral proceedings were conditionally requested.
- V. The respondent (opponent) did not file a reply to the statement of the grounds of appeal.

VI. The parties were summoned by the board to oral proceedings. In a communication accompanying the summons the board drew attention to issues to be discussed at the oral proceedings and gave a preliminary opinion *inter alia* on the question of whether or not the subject-matter of the independent claims of each of the requests on file extended beyond the content of the grandparent application as filed.

VII. In preparation for the oral proceedings the appellant filed with a letter dated 18 November 2009 a revised main request as well as revised auxiliary requests I and II and requested that these requests be admitted to the proceedings. Further arguments in support of these requests were submitted.

VIII. Oral proceedings were held on 18 December 2009.

In the course of the oral proceedings, the appellant filed a revised auxiliary request III as well as further auxiliary requests IV and V.

The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the main request as filed with the letter dated 18 November 2009 or, in the alternative, auxiliary request I or II, as filed with the letter dated 18 November 2009, or auxiliary request III, IV or V, as filed at the oral proceedings.

The respondent requested that the appeal be dismissed.

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

IX. Claim 1 of the main request reads as follows:

"A process for controlling operations of an interface via a telephone communication (C) system including remote terminals (T1-Tn), wherein the process involves

receiving signals, indicative of terminal digital data uniquely corresponding to a particular remote terminal and serving as key numbers associated with limits on use to entitle individual callers to access operations of the interface via the telephone communication system, said digital data being automatically provided by the telephone communication system,

receiving called number identification (DNIS) signals to indicate a called number automatically provided by said communication system to identify a select one of a plurality of different called numbers associated with a select format from a plurality of different formats operated under control of the interface;

utilizing the key numbers as identification for the individual callers;

qualifying the individual callers by testing to determine if the individual callers are entitled to access the operations of the interface to accomplish a transaction by comparing the key numbers for the individual callers with a file of key numbers stored in a memory (e.g. 98) and further testing the key numbers for the individual callers to determine if certain limits on use associated with the key numbers are reached and accordingly providing approval signals for qualified individual callers;

accessing the memory (e.g. 98) with key numbers

for the individual callers and storing data related to a call in the memory during communication with the interface; and

providing designation data via a voice generator for the current transaction to the individual callers and providing to the caller on-going accounting data related to the transaction during the call as to current use by the individual callers on-line."

Claim 1 of auxiliary request I differs from claim 1 of the main request in that, in the last paragraph, after "on-line", the wording "after the caller has been qualified and approved" is added.

Claim 1 of auxiliary request II differs from claim 1 of auxiliary request I in that the second paragraph is replaced by:

"receiving signals, indicative of a telephone number uniquely corresponding to a particular remote terminal and serving as key numbers associated with limits on use to entitle individual callers to access operations of the interface via the telephone communication system, said telephone number being automatically provided by the telephone communication system through an ANI equipment"

and in that the following paragraph is inserted between the fifth and sixth paragraph:

"providing voice signals to prompt said callers to input digital-signal data".

Claim 1 of auxiliary request III reads as follows:

"A processing system (P1) for use with a communication facility (c) and remote terminals (T1-Tn) for individual callers, wherein said remote terminals comprise a telephone instrument (12) including a voice communication device (10) and a digital input device in the form of an array of alphabetic numeric buttons (14) for providing data, said processing system (P1) comprising:

an interface structure (e.g. 20; IA1-1An; IB1-IBn) that is coupled to said communication facility (C) to interface said remote terminals (T1-Tn) for voice and digital communication, and that is capable of receiving caller data signals representative of data relating to said individual callers entered via said remote terminals and capable of receiving called number identification (DNIS) signals to indicate a called number automatically provided by said communication facility (C) to identify a select one of a plurality of different called number [sic] associated with a select format from a plurality of different formats operated under control of the interface structures;

a record structure, including a memory (Msl-Msn) and a control capability (All-Aln), said record structure connected to receive said caller data signals from said interface structure for accessing a file and storing certain of said data entered via said remote terminals (T1-Tn) relating to certain, select ones of said individual callers, said caller data signals including signals representing caller credit card number data and credit card expiration date data (132), which are verified when said select ones of said individual callers are on-line;

a qualification structure (93) coupled to said record structure for qualifying access by said

individual callers to said select format based on at least two forms of distinct identification including caller customer number data and at least one other distinct identification data element consisting of personal identification data provided by each of the individual callers, the caller customer number data associated with certain limits on use to entitle individual callers to access operations of the interface structure via said communication facility (C) and the personal identification data element being compared against stored data;

a switching structure (21) coupled to said interface structure (20) for switching certain select ones of said individual callers at said remote terminals to any one of a plurality of live operators wherein said live operators can enter at least a portion of said caller data relating to said select ones of said individual callers through interface terminals (IT), which is stored in said record structure, and

a voice generator for providing designation data for the current transaction to the individual callers and providing to the caller on-going accounting data related to the transaction during the call as to current use by the individual callers on-line."

Claim 1 of auxiliary request IV differs from claim 1 of auxiliary request III in that, in the last paragraph, after "on-line", the wording "after the caller has been qualified and approved" is added.

Claim 1 of auxiliary request V differs from claim 1 of auxiliary request III in that, in the fourth paragraph, the wording "if it has not been cancelled" is inserted between "communication facility (C)" and "and the



personal identification data element" and in that the fifth and sixth paragraphs are replaced by:

"a switching structure (21) coupled to said interface structure (20) for switching certain select ones of said individual callers at said remote terminals to any one of a plurality of live operators by either actuating an interface terminal for direct local communication between the caller and the operator or by aborting use of the interface and transfer to personal communication with the operator at an appropriate interface terminal wherein said live operators can enter at least a portion of said caller data relating to said select ones of said individual callers through interface terminals (IT), which is stored in said record structure, and

a voice generator of the interface structure (20) for providing voice signals to prompt said callers to input digital-signal data, providing designation data for the current transaction to the individual callers and providing to the caller on-going accounting data related to the transaction during the call as to current use by the individual callers on-line."

## **Reasons for the Decision**

1. *Amendment to a party's case*
  - 1.1 The respondent made no objection to the admission of the main request and auxiliary requests I and II, all as filed with the letter dated 18 November 2009, and auxiliary requests III, IV and V, as filed at the oral proceedings. Nor did the board see any reason to raise objection of its own motion.

1.2 The board therefore exercised its discretion pursuant to Article 13(1) RPBA to admit these requests.

2. *Added subject-matter*

2.1 Claim 1 of each one of the main request and auxiliary requests I and II is directed to a process which includes, *inter alia*, the step of "providing to the caller on-going accounting data related to the transaction during the call as to current use by the individual callers on-line" (see point IX above). System claim 1 of each one of the auxiliary requests III to V includes a corresponding feature, namely a voice generator which is for "providing to the caller on-going accounting data related to the transaction during the call as to current use by the individual callers on-line" (see point IX above).

2.2 The appellant argued, whilst referring to the patent specification, that the above-cited feature was particularly supported by paragraphs [0078] and [0098]. Further reference was made to col. 2, lines 41 to 46, paragraphs [0012] and [0013], column 9, line 50, to column 10, line 6, and paragraphs [0046],[0047],[0053] and [0071]. These references will each be considered below, in which, for the sake of argument, it will be assumed that the patent application, the parent application and the grand parent application, all as filed, include *expressis verbis* the above passages of the patent specification as referred to by the appellant, see also point 2.10 below.

2.3 Paragraph [0098] is part of a section of the description, i.e. paragraphs [0093] to [0116], which is

concerned with a specific operating format for a real-time television game show, in which the on-going accounting data may be provided by a recorded voice to each contestant. More specifically, paragraphs [0093] and [0098] read as follows (underlining by the board):

[0093]: "To consider another operating format in association with the television media, a system will now be described whereby television viewers participate on a real-time basis in a game show for prizes. The ability to involve television viewers in a program has the potential of expanding program interest along with the expanded participation."; and

[0098]: "The participant data is stored in an assigned cell of the memory 98 (FIGURE 4) for the caller and as the game proceeds, the processing unit 92 tallies the caller's score. Scores are interrelated between individual processing units to actuate the terminal CT. Thus, individual accounting occurs for each of the calling participants on an on-line basis dependent upon the success of the studio players and their association with the callers. On-going accounting data may be provided at intervals or real time by the recorded voice to each contestant.".

The board notes, however, that claim 1 of the main request is not limited to an operation relating to a real-time television game show, in which on-going accounting data is provided, which is related to a caller's game score as the game proceeds.

- 2.4 Column 9, line 50, to column 10, line 6, as referred to by the appellant is part of a section of the description,

i.e. paragraphs [0026] to [0047], which relates to another specific operating format, namely a health polling format which is used in order to "isolate a subset of people who are susceptible to a particular disease or infirmity" (paragraph [0026]), in which the caller provides "specific health data" (paragraph [0037]). Claim 1 is however not limited accordingly. Further, in this format reference is made only to the provision of a "designation number" and "acknowledgement digits", which are identification data formulated by a system processor, which does not change during the call, see col. 8, last line to col. 9, line 7, and Fig. 2. This data does not therefore constitute "on-going accounting data" as referred to in claim 1 of the main request, but rather corresponds to the "designation data" as is separately referred to in the claim (see the last paragraph).

2.5 Paragraph [0078] referred to by the appellant reads as follows:

"Whether a win or a loss is indicated within the processing unit 92 (FIGURE 4), the interface 20 is prompted to respond appropriately to the caller and announce the result. If there is a win, the designation may be reinforced and additional identification may be taken as explained above. Of course, if the prize simply involves credit to be applied to the caller's telephone bill or his credit account, identification and designation become less critical considerations."

This passage relates to yet another specific operating format, namely an instant lottery system (paragraphs [0071] to [0081]), whereas claim 1 is not limited

accordingly. Further, in the board's view, the announcement of the result of the lottery by the interface does not constitute "on-going" accounting data, but is data which is normally provided only once.

2.6 The passage at col. 2, lines 41 to 46, as referred to by the appellant discloses that the data received may be processed "according to a processing format that is appropriate, for example, to an auction sale, a lottery, a poll, a merchandising operation, or a game", but is completely silent on any on-going accounting data as referred to in claim 1 of the main request. The latter also applies to paragraphs [0012] and [0013] referred to by the appellant.

2.7 The board further notes that each one of the independent claims of the grandparent application as filed, i.e. claims 1 and 10, includes the feature according to which "automated voice responses to the calls are made from the receiving station (D) to the calling terminals (T1-Tn) prompting the callers to transmit digital-signal data to the receiving station (D) via the communication system (C)".

Claim 1 of the main request only refers to providing designation data and on-going accounting data, none of which imply the above-cited automated voice responses. The scope of the claim has therefore been extended.

2.8 The appellant argued that paragraph [0030] of the patent specification disclosed that, if ANI (automatic number identification) equipment was not employed, the voice generator provided automated voice responses. Further, it was argued that from paragraphs [0012],[0013] and

[0070] it followed that an automated voice-prompting capability was not essential.

2.9 The board notes however that claim 1 of the main request refers to a voice generator only in relation to the provision of designation data and does not exclude the use of ANI equipment. Further, paragraphs [0012] and [0013] are part of a description of the system as shown in Fig. 1, in which an interface 20 incorporates an "automated-voice capability", see col. 5, lines 12 to 17, and Fig. 1. The examples of operating formats referred to in paragraph [0070] are consistently described with reference to the system shown in Fig. 1, without any unambiguous statement that the automated voice capability of interface 20 is merely optional.

2.10 Consequently, even if it were assumed that the passages of the patent specification as referred to by the appellant are *expressis verbis* to be found in the patent application, the parent application and the grandparent application, all as filed, these passages do not provide a basis for a process as defined in more general terms in claim 1 of the main request, in which on-going accounting data is referred to without reference to a specific operating format and, consequently, the step of providing on-going accounting data can have various technical meanings, and in which automated voice responses to the calls are not required. Nor could the board find a basis for the claimed process in the remaining parts of the application and earlier applications as filed.

The same considerations apply to claim 1 of each of the auxiliary requests, it being noted in relation to the

omitted feature relating to automated voice responses that claim 1 of auxiliary request II even explicitly requires the use of ANI equipment (cf. point 2.8 above) and that, in the board's view, the added feature "providing voice signals to prompt said callers to input digital-signal data" in both this claim and claim 1 of auxiliary request V (see point IX above) still does not imply automated voice responses.

2.11 The board therefore concludes that the ground for opposition pursuant to Article 100(c) EPC prejudices the maintenance of the patent in view of the subject-matter of claim 1 of each of the main request and auxiliary requests I to V.

3. Since none of the appellant's requests is allowable, the appeal is to be dismissed.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland