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Datasheet for the decision of 19 October 2011

Case Number: T 1109/09 - 3.5.03

Application Number: 06250269.5

Publication Number: 1686781

IPC: H04M 3/51

Language of the proceedings: EN

Title of invention:
Interactive selection of ringback tones by the calling party

Applicant:
LUCENT TECHNOLOGIES INC.

Headword:
-

Relevant legal provisions:
EPC Art. 56, 113(1)
EPC R. 115(2)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Oral proceedings held in absence of appellant"
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1109/09 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 19 October 2011

Appellant: LUCENT TECHNOLOGIES, INC.
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Decision under appeal: **Decision of the examining division of the European Patent Office posted 29 December 2008 refusing European patent application No. 06250269.5 pursuant to Article 97(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 examining division refusing European patent application No. 06250269.5, publication number EP 1 686 781 A.

II. The reason given for the refusal was that the subject-matter of claim 1 lacked an inventive step, Articles 52(1) and 56 EPC.

III. The following documents were referred to in the decision under appeal:

D1: WO 99/09731 A;

D2: US 4 577 067 A;

D3: EP 1 113 655 A; and

D4: US 2004/0120494 A.

IV. In the notice of appeal the appellant requested that the decision be set aside and a patent be granted. In the statement of grounds of appeal the appellant requested that the appeal be considered on the basis of the claims, description and drawings currently on file.

V. In a communication accompanying a summons to oral proceedings the board gave a preliminary opinion in which objections under Articles 84 and 123(2) EPC, and Article 52(1) EPC in combination with Article 56 EPC were raised.

VI. In response to the board's communication, the appellant filed with a letter dated 19 September 2011 an amended set of claims, intended to replace the previous set of claims on file, and submitted arguments in support. The appellant further informed the board that it did not intend to attend the oral proceedings.

VII. Oral proceedings were held on 19 October 2011 in the absence of the appellant. The board understood from the appellant's written submissions that the appellant requested that the decision be set aside and a patent be granted on the basis of the set of claims as filed with the letter dated 19 September 2011. At the end of the oral proceedings the board's decision was announced

VIII. Claim 1 of the current set of claims reads as follows:

"A method, comprising the steps of:

receiving a call setup message (206), for a call from a calling communication device (110) to a called communication device (112), over a signaling network (118) and from an originating mobile switching center (106) associated with the called communication device, wherein the originating mobile switching center receives a call setup request (204) for the call;

sending a confirmation message (208), over the signaling network, to the originating mobile switching center to create a communication path (210), over a bearer network (120), from the calling communication device to an intelligent peripheral (124) during a call setup for the call;

characterized in that:

wherein the step of receiving the call setup message comprises receiving an initial address message

(206), wherein the call is routed by a service control point (122) to the intelligent peripheral that receives the call setup message, wherein the service control point and intelligent peripheral are configured to provide a ringback tone service to the called communication device, wherein the intelligent peripheral is selected by a home location register (114) associated with the called communication device, wherein the intelligent peripheral and service control point comprise a recordable data storage medium (150);

wherein the step of sending the confirmation message comprises sending an address complete message (208) to the originating mobile switching center over the signaling network from the intelligent peripheral to create the communication path from the calling communication device to the intelligent peripheral;

the method further characterized by the steps of:

preselecting a ringback tone based on input from a user of the called communication device;

performing a playback of the ringback tone to the calling communication device over the communication path to the calling communication device during the call setup for the call;

monitoring (310) the communication path, during the call setup for the call and before a receipt of a release message (216), from the originating mobile switching center and over the signaling network, for input (212, 312) from a user of the calling communication device that corresponds to a selected change to a characteristic of the playback of the ringback tone to the calling communication device;

performing the selected change, upon a determination that the user input corresponds to a predetermined change to the playback of the ringback

tone, during the playback of the ringback tone, during the call setup of the incoming call, and before the receipt of the release message."

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). Having verified that the appellant was duly summoned the board decided to continue the oral proceedings in the absence of the appellant (Rule 115(2) EPC and Article 15(3) RPBA).

1.2 In the communication accompanying the summons, objections under Articles 84 and 123(2) EPC and Article 52(1) EPC in combination with Article 56 EPC were raised in respect of claim 1 as pending at the time and the appellant was informed that at the oral proceedings these objections would be discussed. Consequently, the appellant could reasonably have expected the board to consider at the oral proceedings these objections not only in respect of claim 1 pending at the time but also in respect of the amended version of claim 1, which was filed by the appellant in response to the summons to oral proceedings. 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 these objections 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 and for the reasons set out below, 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. *Inventive step*

2.1 Document D4 relates to a custom ringback service in a telecommunications system (cf. D4, the abstract).

More specifically, D4 discloses, using the language of claim 1, a method including the steps of:

receiving at a service control point (SCP) 114 (D4, Fig. 1), which may be combined with an intelligent peripheral (IP) 116 (D4, paragraph [0025]), a call setup message, for a call from a calling communication device 108 to a called communication device 110, over a signaling network and from an originating mobile switching center 102 associated with the called communication device, wherein the originating mobile switching center 102 receives a call setup request for a call (paragraphs [0029] and [0031]); and

sending by the SCP 114/IP 116 a confirmation message over the signaling network to a mobile switching center, which may the same as the originating mobile switching center 102 (paragraph [0029], last sentence), to create a communication path, over a bearer network, from the calling communication device to the SCP 114/IP 116 during a call setup for the call (paragraph [0032], claim 1 and Fig. 2);

wherein the step of receiving the call setup message comprises receiving an initial address message (paragraphs [0031] and [0042]), wherein the call is routed by the SCP 114 to the IP 116 that receives the call setup message

(paragraphs [0031] to [0033] and Fig. 2);

wherein the SCP and IP are configured to provide a ringback tone service to the called communication device 110 (paragraph [0030]),

wherein the IP 116 is selected on the basis of information stored in a home location register (HLR) 112 associated with the called communication device 110 (paragraphs [0030] to [0033]),

wherein the SCP 114/IP 116 comprises a recordable storage medium (paragraph [0026]), and

wherein the step of sending the confirmation message comprises sending an address complete message (paragraph [0055]) to the originating mobile switching center 102 over the signaling network from the SCP 114/IP 116 to create the communication path between the calling communication device and the SCP 114/IP 116.

The method of D4 further includes the steps of performing a playback of a custom ringback tone to the calling communication device over the communication path to the calling communication device 108 during the call setup for the call (paragraph [0034]).

Further, D4 discloses that, based on input from a user of the called communication device 110, a ringback tone is preselected as the custom ringback tone, which may be a music clip, an announcement, or a video clip (paragraphs [0007], [0026], [0027] and [0035]).

2.2 The subject-matter of claim 1 differs from the method disclosed in D4 in that the method of claim 1 additionally includes the steps of:

monitoring the communication path, during the call setup for the call and before receipt of a release message,

from the originating mobile switching center and over the signaling network, for input from a user of the calling communication device that corresponds to a selected change to a characteristic of the playback of the ringback tone to the calling communication device; and

performing the selected change, upon a determination that the user input corresponds to a predetermined change to playback of the ringback tone, during the playback of the ringback tone, during the call setup of the incoming call, and before the receipt of the release message.

These additional steps enable the calling party to interact with the ringback tone service. For example, if the ringback tone is a song that the calling party does not like, the calling party may select another song, or if the ringback tone is an important message and the calling party misses a portion of it, it may replay the message (cf. the present application, paragraph [0004] of the A-publication).

2.3 The technical problem underlying the claimed subject-matter when starting out from D4 may therefore be seen in improving the capabilities of the known ringback tone service.

2.4 The formulation of this problem does not contribute to an inventive step, since improving the capabilities of an existing telecommunication service is a common goal for a person skilled in the art.

2.5 The board notes that at the priority date it was well-known that a disadvantage of telephone communications systems in which a music clip is played when a calling party is waiting for the call to be answered (as is the

case in the system disclosed in D4) is that the calling party is forced to listen to the music clip, even if it does not like it, until the called party answers the call, see, e.g., D1, page 1, lines 20 to 28, D2, col. 1, lines 56 to 66, D3, col. 2, lines 4 to 7 and 23 to 35, and the present application, paragraph [0003]. The appellant did not contest this.

Further, the board notes that each one of the systems disclosed in D1 to D3 overcomes the above-mentioned disadvantage by providing an interactive service which enables the calling party to make a selected change to a characteristic of the music clip by sending a voice or DTMF command signal in order to, for example, turn down the playback volume or select another music clip, see D1 (the abstract, page 2, lines 1 to 8, and page 3, lines 1 to 14), D2 (the abstract, col. 2, line 34, to col. 3, line 21) and D3 (the abstract and paragraph [0012]).

More specifically, in the method of D1 the called terminal is provided with an evaluation unit ("Auswerteeinheit AWE") which monitors the communication path, during the time the calling party has to wait, i.e. until the call is answered by the called party, for input from the calling party that corresponds to a selected change to a characteristic of the playback of the ringback tone to the calling communication device, and which performs the selected change, upon a determination that the user input corresponds to a predetermined change to playback of the ringback tone, during the playback of the ringback tone, i.e. during the call setup of the incoming call and before the call is finally answered (D1, the abstract, page 5, lines 1 to 10, and Fig. 1).

2.6 At the priority date it would therefore have been obvious to a person skilled in the art, when starting out from D4 and faced with the above-mentioned technical problem, to expand the ringback tone service of the system of D4 by providing an interactive service for the calling party for the same purpose as disclosed in, e.g., D1. In order to achieve this, since in D4 the SCP 114/IP 116 provides the ringback tone service and supports the preselection of one of the stored audio/video clips available as custom ringback tone, it would have been obvious for the skilled person to additionally provide the SCP 114/IP 116 with an evaluation unit for monitoring the communication path during the time the calling party has to wait. Thus, until the call is answered by the called party, the evaluation unit waits for input from the calling party that corresponds to a selected change to a characteristic of the playback of the ringback tone to the calling communication device, and performs the selected change, upon a determination that the user input corresponds to a predetermined change to playback of the ringback tone, during the playback of the ringback tone, i.e. during the call setup of the incoming call and before the call is answered.

According to D4 the custom ringback tone is typically disconnected when the connection with the called party 110 is completed (paragraphs [0004] and [0036]). More specifically, when the call is answered, the IP link is released by sending over the signaling network a release message from the originating mobile switching center to the IP (paragraph [0078] and Fig. 4, step 11).

In view of the above, it follows that the skilled person facing the technical problem set out at point 2.3 above

would expand the method as disclosed in D4 by including the monitoring and performing steps as defined in claim 1. He would thereby arrive at a method which includes all the steps of claim 1 without the exercise of inventive skill.

2.7 The appellant essentially argued that according to D1 the interactive ringback tone service was implemented by modifying the endpoint of the called party, which was a private branch exchange (PBX) which provided additional routing of the calls to one of several telephone extensions connected to the PBX, wherein the call must be terminated to the PBX before a selected change to a characteristic of the ringback tone could be made. The same argument applied to the method disclosed in D2. Further, D3 disclosed an automatic call distribution (ACD) controller in an Internet Protocol (IP) network but also referred to a "well-known" implementation in a Private Branch Exchange device with specialized software. Similarly to Dl and D2, in the method of D3 the call was initiated with and answered by the ACD controller. In contrast, claim 1 recited that the call was to the called communication device and that the call setup message was from the originating mobile switching center associated with the called communication device. A service control point routed the call to the intelligent peripheral for the playback of the ringback tone, instead of the called party device performing the playback. The intelligent peripheral monitored a communication path during the call setup for the call and before receipt of a release message from the originating mobile switching center. A combination of the system of D4 with the system of either Dl, D2, or D3 would have required either a call which was initially

directed to the IP of D4 as an endpoint for the call with the IP being modified to monitor for the user input, or a routing of the call from a mobile switching center to a PBX system as disclosed in Dl to both monitor for the user input and create a communication path to the called mobile phone.

2.8 The board does not find these arguments convincing. Each one of D1, D2 and D3 aims at overcoming the disadvantage of existing telephone communications systems that a music clip is played when a calling party is waiting for the call to be answered and the calling party is forced to listen to the music clip, even if it does not like it, until the called party answers the call (see above, point 2.5, first paragraph). In the board's view, it would have been evident to the skilled person that, from the perspective of the calling party, it is of no importance where the ringback tone service equipment is actually located in the network, as long as he/she can easily interact with the ringback tone service in order to change the characteristic of the playback of the ringback tone during the waiting time. Similarly, whether or not the waiting time is caused by the time needed to reach one of the extensions connected to a private branch exchange or to reach a called party directly is of no importance to the calling party. Hence, a person skilled in the art, faced with the above-mentioned technical problem of improving the capabilities of the ringback tone service disclosed in D4, would have recognised from each one of D1, D2 and D3 that the service could be made interactive. Adapting the system of D4 accordingly would not require the introduction of a PBX or ACD, as argued by the appellant, since, see points 2.1 and 2.6 above, in D4 the SCP 114/IP 116 is already configured to provide the

ringback tone service and to preselect one of the stored audio/video clips available as a custom ringback tone. Consequently, by providing the SCP 114/IP 116 with the corresponding monitor and performing means in order to implement the interactive ringback tone service, the monitoring of the communication path and the performing of the selected change would be made available to the calling party during the time he/she has to wait, which in D4 is typically until the call is answered by the called party.

2.9 The board therefore concludes that the subject-matter of claim 1 does not involve an inventive step (Articles 52(1) and 56 EPC).

3. The sole request not being allowable, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Rauh A. S. Clelland