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**Datasheet for the decision
of 6 November 2013**

Case Number: T 1709/09 - 3.5.06

Application Number: 05011848.8

Publication Number: 1607822

IPC: G06F 1/00

Language of the proceedings: EN

Title of invention:

Portable apparatus and its method of unlocking with simplified PIN code

Applicant:

NEC Corporation

Headword:

Simplified PIN/NEC

Relevant legal provisions (EPC 1973):

EPC Art. 54(1), (2)

EPC Art. 111(1)

Keyword:

"Novelty (yes)"

"Remittal to the department of first instance (yes)"



Case Number: T 1709/09 - 3.5.06

DECISION
of the Technical Board of Appeal 3.5.06
of 6 November 2013

Appellant:
(Applicant)

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted 4 March 2009
refusing European patent application
No. 05011848.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: A. Teale
Members: G. Zucka
W. Sekretaruk

Summary of Facts and Submissions

I. The appeal is against the decision by the examining division, dispatched on 4 March 2009, to refuse European patent application 05011848.8 on the basis that the independent claims 1 and 11 of the main and the auxiliary request were not clear, Article 84 EPC 1973, and the subject-matter of these claims was not inventive, Article 56 EPC 1973. The following documents were cited during the first instance procedure:

D1: US 2004/0 082 322 A1

D2: US 6 560 274 B1

D3: EP 1 246 434 A1

II. A notice of appeal was received on 16 April 2009, the appeal fee being paid on the same day. The appellant requested that the appealed decision be set aside and a patent granted. The appellant also made an auxiliary request for oral proceedings.

III. A statement of grounds of appeal was received on 14 July 2009 in which the appellant requested that the decision be set aside and a patent granted on the basis of the claims 1 to 20 labelled "Main Request" filed with the grounds of appeal, description pages 1 and 4 to 27 as originally filed and pages 2, 2a and 3 received on 4 December 2006, and drawing sheets 1 to 9 as originally filed. The appellant also made auxiliary requests 1 and 2 which were identical to the main request, except for different claims 1 and 11 labelled respectively "First Auxiliary Request" and "Second Auxiliary Request", both filed with the grounds of

appeal. The appellant reiterated the conditional request for oral proceedings.

IV. The board issued a summons to oral proceedings. In an annex to the summons, the board set out its preliminary opinion on the appeal. The following documents were introduced by the board:

D4: ETS 300 509, "European digital cellular telecommunications system (Phase 2); Subscriber Identity Modules (SIM) Functional characteristics (GSM 02.17)", September 1994.

D5: SRC Technical Note 1997-033, "Strengthening Passwords", Martín Abadi *et al.*, 16 December 1997.

V. In a reply to the summons, received on 4 October 2013, the appellant filed a new main request comprising claims 1-20 labelled "Main Request" and two auxiliary requests comprising claims 1 and 11 labelled "First Auxiliary Request" and "Second Auxiliary Request", respectively. It also filed new description pages 1 and 27 for all requests.

VI. Oral proceedings were held on 6 November 2013, in the course of which the appellant filed amended claims 1 and 11 and requested, as a sole request, that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 and 11, dated 6 November 2013, together with claims 2 to 10 and 12 to 20 of the previous main request, received on 4 October 2013.

VII. The description and drawings on file are as follows:

Description:

pages 1 and 27, received on 4 October 2013
pages 2, 2a and 3, received on 4 December 2006
pages 4 to 26 as originally filed.

Drawings:

Sheets 1 to 9, as originally filed.

VIII. Independent claim 1 reads as follows:

A method comprising:

setting a first predetermined code and a second predetermined code in a memory of a portable apparatus;

unlocking at least one of functions provided to the portable apparatus, said unlocking comprising

first judging (505) whether or not an entered code is a predetermined first code;

second judging (506) whether or not a predetermined second code is entered, if said predetermined first code is not entered; and

unlocking said one of functions provided to said portable apparatus (1), if said predetermined first or second code is entered, **characterized in that** the character length of said predetermined first code is shorter than the character length of said predetermined second code and that all characters of said predetermined first code are identical to designated several characters included in said predetermined second code,

wherein the entered code is compared with a part of said predetermined second code.

Independent claim 11 sets out an apparatus having apparatus features corresponding to the method features of claim 1.

Reasons for the decision

1. Reference is made to the transitional provisions in Article 1 of the Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the European Patent Convention of 29 November 2000, for the amended and new provisions of the EPC, from which it may be derived which Articles of the EPC 1973 are still applicable to the present application and which Articles of the EPC 2000 shall apply.

2. *The admissibility of the appeal*

In view of the facts set out at points I to III above, the appeal is admissible, since it complies with the EPC formal admissibility requirements.

3. *Allowability of amendments, Article 123(2) EPC*

Given that the amendments to claim 1 have the effect that the choice of a first and a second predetermined code, all characters of the first code being identical to designated several characters included in the second code, results in a concrete limitation of the claimed method (see point 5 below), it needs to be established whether this limitation is disclosed in the original application documents. The board judges that this is the case: the original description discloses both a

situation in which codes satisfying these conditions are set by the portable apparatus itself (*i.e.* the default values mentioned on page 10, lines 24 to 26, of the original description) and a situation in which codes satisfying the same conditions are set by the user (see page 20, lines 5 to 10, of the original description). The requirement of Article 123(2) EPC has therefore been satisfied.

4. *Clarity, Article 84 EPC 1973*

In the annex to the summons the board objected to the clarity of the expression "the predetermined first code is compared with a part of said predetermined second code" in claim 1 of the then auxiliary requests 1 and 2. The wording "predetermined first code" has been replaced by "entered code", and the board consequently considers that present claim 1 is clear.

5. *Interpretation of the claims*

In the annex to the summons the board pointed out that the choice of the codes necessarily takes place before the unlocking method is applied and that it therefore had no limiting effect on the unlocking method claimed in claim 1. The claim is now no longer directed to an unlocking method but to a method which comprises a step of setting the codes and an unlocking step. As the claim is presently formulated, the board judges that all the features contained in it impose concrete limitations on the claimed method itself.

6. *The closest prior art*

6.1 In the communication of the examining division dated 6 November 2008, which was indicated as the basis for the appealed decision, the closest prior art was considered to be "the well known use of PIN and PUK codes in mobile phones", the relevant features of the usage of PIN and PUK codes being considered to be that, firstly, the PIN code is usually four digits and is used to unlock the phone, secondly, if the PIN has been entered wrongly three times, the PUK code has to be entered in order to unlock the phone and, thirdly, the PUK code is longer than four digits. According to the examining division, these codes were extensively used in mobile phones well before the priority year of the application (2004), so that these features should be considered to form part of the common general knowledge, their existence requiring no further proof.

6.2 Whilst the board agrees that the use of PIN and PUK codes was well known before the priority date of the present application, the appellant not having contested this fact, the board nevertheless considers it necessary to introduce a prior art document, viz. D4, to give an exemplary embodiment of what exactly was known before said date. D4 describes a particular kind of PIN and PUK codes, viz. the ones that are part of the European Communication Standard ETS 300 509. Thus D4 discloses (see section 5.6 "PIN management") a method comprising setting a first predetermined code and a second predetermined code in a memory of a portable apparatus (PIN/PUK); unlocking at least one of functions ("functions, and actions on SIM data")

provided to a portable apparatus (Mobile Equipment ME),
said unlocking comprising

first judging whether or not an entered code is a
predetermined first code (PIN);

second judging whether or not a predetermined
second code (PUK) is entered, if said predetermined
first code is not entered; and

unlocking said one of functions provided to said
portable apparatus, if said predetermined first or
second code is entered, the character length of said
predetermined first code (e.g. 4 decimal digits) being
shorter than the character length of said predetermined
second code (8 decimal digits).

6.3 The board considers that, from all the documents cited
in the search report or during the first instance and
appeal proceedings, D4 represents the closest prior art.

7. *Novelty, Article 54(1), (2) EPC 1973*

7.1 The subject-matter of claim 1 differs from the method
disclosed by D4 in that:

(a) all characters of said predetermined first code
are identical to designated several characters
included in said predetermined second code,
wherein

(b) the entered code is compared with a part of said
predetermined second code.

These features are not disclosed by D4 or any other
document introduced thus far, and the subject-matter of
claim 1 is therefore novel in view of those documents

(Article 54(1) and (2) EPC 1973). The same holds for claim 11.

8. *The objective technical problem*

According to the appealed decision (see point 5.6 in the communication referred to in the decision), the problem solved by distinguishing feature (a) is to enhance user-friendliness, whilst feature (b) follows from the requirements specification for the method of unlocking at least one of functions provided to the portable apparatus. Although the board agrees that these problems are indeed also solved by said distinguishing features, it finds that in the present case it is possible to identify an objective *technical* problem solved by distinguishing features (a) and (b), *viz.* to reduce the number of keystrokes necessary for the unlocking process. The board further judges that features (a) and (b), which solve this problem, impose a concrete technical limitation on the method claimed in claim 1 and, in an analogue manner, the apparatus set out in claim 11.

9. *Remittal, Article 111(1) EPC 1973*

9.1 Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case for further prosecution. The Board uses its discretion and remits the case to the examining division because the reasons for the appealed decision do not even consider the *possibility* that the subject-matter of

claims 1 and 11 solves a technical problem by technical means, and thus do not consider whether it was known or obvious before the priority date of the application to unlock an apparatus either with some full code or with an alternative code consisting of several designated characters of the full code.

Especially in view of the extensive amendments made to the independent claims, it seems appropriate to consider whether an additional search is necessary.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution.

The Registrar:

The Chairman:

B. Atienza Vivancos

A. Teale