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# Datasheet for the decision of 6 September 2013

**Case Number:** T 0402/10 - 3.5.02

**Application Number:** 00300175.7

**Publication Number:** 1022701

**IPC:** G08C 17/02, H04M 11/00

**Language of the proceedings:** EN

**Title of invention:**
Remote control of devices with paging messages

**Applicant:**
Alcatel Lucent

**Headword:**
-

**Relevant legal provisions:**
EPC Art. 123(2)

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

**Decisions cited:**
-

**Catchword:**
-


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**Case Number:** T 0402/10 - 3.5.02

# D E C I S I O N
**of the Technical Board of Appeal 3.5.02**
**of 6 September 2013**

**Appellant:** (Applicant)
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted 15 July 2009 refusing European patent application No. 00300175.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman:** M. Ruggiu
**Members:** M. Rognoni
W. Ungler

## Summary of Facts and Submissions

I. The applicant has appealed against the decision of the examining division refusing European Patent application no. 00 300 175.7.

II. In the contested decision, the examining division held, *inter alia*, that claims 1, 2, 8 to 14, 15, 16 and 23 to 29 contained subject-matter which extended beyond the content of the application as originally filed. Hence, the application violated Article 123(2) EPC.

III. With the statement of grounds of appeal dated 10 November 2009, the appellant maintained the claims "*currently on file*" as "Primary Request" and filed new claims according to a first auxiliary request and a second auxiliary request.

IV. In a communication dated 23 May 2013 accompanying the summons to oral proceedings, the Board expressed the preliminary view that all the appellant's requests appeared to offend against Article 123(2) EPC.

V. In reply to the Board's communication, the appellant filed with a letter dated 5 August 2013 a new main request and new first, second and third auxiliary requests.

With the same letter, the appellant requested that the oral proceeding scheduled for 6 September 2013 be cancelled and that the case be remitted to the examining division for further prosecution. In case the oral proceedings were not cancelled, the appellant

informed the Board that they would not attend or be represented at the oral proceedings.

VI. Having considered the appellant's request for cancellation of the oral proceedings, the Board decided that it was expedient to hold oral proceedings as scheduled.

VII. Oral proceedings were held on 6 September 2013 in the absence of the appellant.

VIII. The appellant requested in writing that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution on the basis of claims 1 to 31 of the main request or of one of the first, second and third auxiliary requests, all filed with letter of 5 August 2013.

IX. Claim 1 according to the main request reads as follows:

"A system for operation of a remotely located computer-controlled device (150; 250), comprising

receiver means (110; 210) for receiving at least one paging message, each paging message including content data, said receiver means (110; 210) being co-located with said remotely located computer-controlled device (150; 250), characterized by:

means (130; 230) for comparing the content data of each said at least one paging message to a set of allowed commands; and

means (140; 240) for sending at least one specific command to said remotely located computer-controlled device (150; 250), each specific command being determined as a result of the comparing of the content

data of each said at least one paging message to the set of allowed commands,

wherein the content data includes a program, wherein each specific command (123) causes said remotely located computer-controlled device (150) to perform a sequence of actions,

and wherein one of said at least one specific command sent to said remotely located computer-controlled device (150; 250) includes the program."

Claim 1 of the first auxiliary request reads as follows:

"A system for operation of a remotely located computer-controlled device (150; 250), comprising:

receiver means (110; 210) for receiving at least one paging message, each paging message including content data having at least one command string, said receiver means (110; 210) being co-located with said remotely located computer-controlled device (150; 250), characterized by:

means (130; 230) for comparing the at least one command string of the content data of each said at least one paging message to a set of allowed commands; and

means (140; 240) for sending at least one specific command to said remotely located computer-controlled device (150; 250), each specific command being determined as a result of the comparing of the at least one command string of the content data of each said at least one paging message to the set of allowed commands,

wherein the content data includes a program, wherein each specific command (123) causes said

remotely located computer-controlled device (150) to perform a sequence of actions,

and wherein one of said at least one specific command sent to said remotely located computer-controlled device (150; 250) includes the program."

Claim 1 of the second auxiliary request reads as follows:

"A system for operation of a remotely located computer-controlled device (150; 250), comprising:

receiver means (110; 210) for receiving at least one paging message, each paging message including content data having at least one command string, said receiver means (110; 210) being co-located with said remotely located computer-controlled device (150; 250), characterized by:

means (130; 230) for comparing a first portion of the at least one command string of the content data of each said at least one paging message to a set of allowed commands; and

means (140; 240) for sending at least one specific command to said remotely located computer-controlled device (150; 250), each specific command being determined as a result of the comparing of the first portion of the at least one command string of the content data of each said at least one paging message to the set of allowed commands,

wherein the content data includes a program, wherein each specific command (123) causes said remotely located computer-controlled device (150) to perform a sequence of actions,

and wherein one of said at least one specific command sent to said remotely located computer-controlled device (150; 250) includes the program."

Claim 1 of the third auxiliary request reads as follows:

"A system for operation of a remotely located computer-controlled device (150; 250), comprising:

receiver means (110; 210) for receiving at least one paging message including command data, said receiver means (110; 210) being co-located with said remotely located computer-controlled device (150; 250);

means (130; 230) for comparing the command data of said at least one paging message to a set of allowed commands; and

means (140; 240) for sending at least one specific command to said remotely located computer-controlled device (150; 250), each specific command being determined as a result of the comparing of said command data to said set of allowed commands,

wherein said at least one paging message further includes a program,

and wherein one of said at least one specific command sent to said remotely located computer-controlled device (150; 250) includes the program."

In all requests, claims 2 to 14 and claim 31 are dependent on the corresponding claim 1. Claim 15 relates to a "method for operation of a remotely located computer-controlled device" comprising all the features of the corresponding claim 1 expressed in terms of method steps. Claim 16 to 30 are dependent on the corresponding claim 15.

X. The arguments submitted by the appellant in writing may be summarized as follows:

In its communication, the Board incorrectly identified the "program" specified in claim 1 of all requests with a string of commands and concluded that after comparing a received string of commands with a set of allowed commands, corresponding specific commands, each performing one or more actions, were sent to the device.
However, a person skilled in the art would understand from the original specification that a program was sent as additional information associated to one command in the paging message.

The original application documents clearly disclosed that a specific command was sent to the remotely located computer-controlled device as a result of a match between the received paging message and one of the allowed commands. The comparing with a set of allowed commands necessarily implied that the paging message included one or more commands. If a program was the only content data of a paging message, it would be not be clear how a comparison between a program and a set of allowed commands should be carried out, although such comparison was a feature of the invention specified in all independent claims. As a matter of fact, the absence of any disclosure directed to comparing a program with a set of allowed commands was evidence that a program had to be associated with a command.

Furthermore, the notion of "program" appeared for the first time in the original application at page 6, line 16 to 22 which recited that an "entire program" could be transmitted to a device via a one-way pager for checking the status of a target and making choices based on self-contained logic within the message. For example, a Java applet could be transmitted with a Java Virtual Machine implemented in the target receiver or target device where the Virtual Machine was augmented with a library of functions to access external control and sensors of the device. Such an applet upon receipt might perform extensive data collection and perform advanced corrective actions.

As this reference to a "program" and in particular to a "Java applet" followed a passage reciting that it was possible to rearrange the paging message or provide more or less information in a message, the skilled reader would understand that an "entire program" was just an example of "more information" additionally provided in a message.

Hence, if correctly interpreted, the original application clearly disclosed that a "program" was an additional content to a command included in the paging message, and that such program was transmitted in the specified command.

Claims 1 and 15 of the main request and of the auxiliary requests gave alternative wordings intended to cover the fact that the program was an additional content in the paging message.

Contrary to the opinion expressed by the examining division in the contested decision, the transmission of a program as recited in claims 1 and 15 of all requests was supported by the original application documents.

## Reasons for the Decision

1. The appeal is admissible.

*Main request*

2.1 Claim 1 according to the main request relates to a *"system for operation of a remotely located computer-controlled device"* comprising the following features:

a) receiver means for receiving at least one paging message,

$a_1$) each paging message including content data,

$a_2$) said receiver means being co-located with said remotely located computer-controlled device,

b) means for comparing the content data of each said at least one paging message to a set of allowed commands;

c) means for sending at least one specific command to said remotely located computer-controlled device,

$c_1$) each specific command being determined as a result of the comparing of the content data of each said at least one paging message to the set of allowed commands,

d) wherein the content data includes a program,

e) wherein each specific command causes said remotely located computer-controlled device to perform a sequence of actions, and

f) wherein one of said at least one specific command sent to said remotely located computer-controlled device includes the program.

2.2 Claim 1 differs from claim 1 considered in the contested decision only in that the wording *"to perform at least two actions"* has been replaced by *"to perform a sequence of actions"* (see feature e)).

As pointed out by the appellant, this amendment is directed to overcoming one of the objections under Article 123(2) EPC raised in the Board's communication.

2.3 As to the objection that feature f) was not disclosed in the application as filed, the appellant has essentially submitted that a person skilled in the art would understand from the original specification that a program was sent as additional information associated to one command in the paging message.

In particular, the appellant argued that a compulsory feature of the present invention was the comparison of data included in a paging message with a set of allowed commands. The fact that the application did not show how a program could be compared with a set of allowed commands, was evidence that a paging message could only send a program together with a command, for which such comparison was described in the original application.

Furthermore, due to the nature of the program (JAVA applet) given as an example of an "entire program" to be transmitted in a paging message to a computer-controlled device, the person skilled in the art would understand that such program had to be accompanied by a particular command for loading and launching the program in the device.

2.4 In summary, the appellant has essentially argued that a correct interpretation of the original disclosure clearly pointed to the fact that a program was an additional content of the paging message and that such program had to be transmitted together with a specific command.

3.1 It is specified in paragraph [0010] of the published application that "*the present invention uses an existing paging or satellite paging system to send trigger signals or commands to operate remotely-located electronic or mechanical devices*".

"*The received paging message typically will contain either one or more pre-set commands or trigger signals, or will contain at least one more sophisticated command string. Either numeric-only or alphanumeric paging systems may be employed, with the latter being particularly useful for an application utilizing the command string approach*" (application as published, paragraph [0011] - underlining added).

Examples of commands, such as "deviceId", "command", "unlockKey etc. are given in paragraphs [0012] and [0013].

Paragraph [0014] points out that it "*is also possible to rearrange the message suggested above or provide more or less information in a message. It is also possible that many commands may be contained in a single message. For this purpose, the commands may be delimited by length fields or command delimiter code within the message body. The command may also be delimited to multiple commands by predefining positions for the commands within the message itself or a particular command may signal the requirement for further commands within the same message. The simple message provided above should not be considered as limiting and other message formats and commands contained therein may come to mind depending on the particular device to be triggered or the like*" (underlining added).

Furthermore, it is specified in paragraph [0015] that an "*entire program may be transmitted to a device via a one way pager 110 for checking the status of a target and make choices based on self contained logic within the message. For example, a JAVA applet may be transmitted with a JAVA Virtual Machine implemented in the target receiver or target device where the Virtual Machine is augmented with a library of functions to access external controls and sensors of the device. Such an applet upon receipt may perform extensive data collection and perform advanced corrective actions*".

3.2 In the opinion of the Board, paragraphs [0014] and [0015] imply that a single message may contain a set of commands and that such set of commands may constitute an entire program. In fact a "program" is by definition

a sequence of instructions (*i.e.* a string of commands) that can be interpreted and executed by a computer.

On the other hand, there is no evidence in the application as filed that the system of the present invention would send a "program" as an additional content to a "command" contained in a paging message or that a "specific command" would "include" a program.

3.3 As to the appellant's argument that the absence of any disclosure directed to comparing a "program" with a set of allowed commands was evidence that a program was associated with a command, since the comparison of content data of the paging message with a set of allowed commands was a compulsory feature of the invention, the Board considers that this feature is fully compatible with the interpretation that a program in the context of the invention is in fact a sequence of (allowed) commands to be interpreted and executed by a computer-controlled device.

3.4 In summary the Board finds that the features of claim 1 of the appellant's main request specifying that the content data of a paging message include at least one specific command and that the one specific command includes a "program" relates to subject-matter which is not disclosed in the application as originally filed and thus violates Article 123(2) EPC.

*Auxiliary requests*

4.1 As pointed out by the appellant (see letter dated 5 August 2013, third page, last paragraph), all requests "give alternative wordings intended to cover

the fact that a program is an additional content in a paging message". In fact, also the independent claims 1 of all requests include the feature that *"one of said at least one specific command sent to said remotely located computer-controlled device includes the program"* (cf. feature f) of claim 1 of the main request).

4.2 Hence, for the same reasons given above, also the first to third auxiliary requests contain subject-matter extending beyond the content of the application as originally filed (Article 123(2) EPC).

5. As none of the appellant's requests complies with Article 123(2) EPC, the application has to be refused.

**Order**

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

The appeal is dismissed.

The Registrar: The Chairman:

U. Bultmann M. Ruggiu