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**Datasheet for the decision  
of 19 March 2013**

**Case Number:** T 0745/10 - 3.5.03

**Application Number:** 00918483.9

**Publication Number:** 1166542

**IPC:** H04M 3/533, H04Q 7/22,  
H04L 12/58, H04Q 7/12

**Language of the proceedings:** EN

**Title of invention:**

System and method for integrating audio and visual messaging

**Applicants:**

Helferich, Richard J.  
Thompson Investment Group, LLC

**Headword:**

Integrating audio and visual messaging/HELFERICH-THOMPSON

**Relevant legal provisions:**

EPC R. 99(2)  
RPBA Art. 12(2), 12(4)

**Keyword:**

"Admissibility of the appeal (yes)"  
"Admissibility of the main request and first to fourth  
auxiliary requests (no)"  
"Added subject-matter - fifth to seventh auxiliary requests  
(yes)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0745/10 - 3.5.03

**DECISION**  
of the Technical Board of Appeal 3.5.03  
of 19 March 2013

**Appellants:**  
(applicants)

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**Decision under appeal:**

**Decision of the examining division of the  
European Patent Office posted 27 November 2009  
refusing European patent application  
No. 00918483.9 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** F. van der Voort  
R. Menapace

## **Summary of Facts and Submissions**

- I. This appeal is against the decision of the examining division refusing European patent application No. 00918483.9 which was published as international application PCT/US00/08261 with publication number WO 00/59196 A.
- II. The reason given for the refusal was that, after the examining division had exercised its discretion under Rule 137(3) EPC in that it did not admit to the examining proceedings claims of a final, single request filed during the oral proceedings before the examining division, there were no claims on file which were approved by the applicants within the meaning of Article 113(2) EPC.
- III. With the statement of grounds of appeal the appellants filed claims of a main request and first to fourth auxiliary requests and requested that the decision be set aside and that the case be remitted to the examining division for further prosecution or a patent be granted on the basis of any one of the main and first to fourth auxiliary requests. For each one of the requests a support table for each claim and arguments in support of novelty and inventive step of the claimed subject-matter were submitted. Oral proceedings were conditionally requested.
- IV. With a letter dated 16 March 2011 the appellants filed replacement claims for each of the main request and first to fourth auxiliary requests. The amendments were said to amend the dependency of certain claims and to correct minor clerical errors in the claims as filed

with the statement of grounds of appeal.

- V. A further letter dated 31 August 2011 was filed by the appellants, in which the attention of the board was drawn to a specific prior art document.
- VI. The board issued a communication in which a preliminary opinion on the admissibility of the appeal and on the admissibility of the main and first to fourth auxiliary requests was given. The appellants' attention was also drawn to Article 13(1) RPBA relating to amendment to a party's case.
- VII. In response to the board's communication, the appellants filed with a letter dated 29 August 2012 fifth to seventh auxiliary requests and submitted arguments in support of the admissibility of these requests as well as of the main request and first to fourth auxiliary requests already on file. For each one of the fifth to seventh auxiliary requests a support table for each claim and arguments in support of novelty and inventive step of the claimed subject-matter were submitted.
- VIII. The appellants were subsequently summoned to oral proceedings. In a communication accompanying the summons, the board gave a preliminary opinion on the admissibility of the fifth to seventh auxiliary requests.
- IX. In response to the summons the appellants informed the board that they would not attend the oral proceedings and requested that the appeal be continued in writing. No substantive submissions in reply to the communication were filed.

- X. In a subsequent communication the board informed the appellants that the oral proceedings would take place as scheduled.
  
- XI. Oral proceedings were held on 19 March 2013 in the absence of the appellants.

From the statement of grounds of appeal and the letters dated 16 March 2011 and 29 August 2012 the board understood the appellants to be requesting that the decision under appeal be set aside and a patent be granted or the case be remitted to the examining division, in either case on the basis of claims of a main request or, in the alternative, claims of any one of the first to fourth auxiliary requests, as filed with the letter dated 16 March 2011, or claims of any one of fifth to seventh auxiliary requests as filed with the letter dated 29 August 2012.

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

- XII. The **main request** includes four independent claims, namely claims 1, 6, 12 and 17.

Claim 1 of the main request reads as follows:

"A messaging system (150, 115, 117) for receiving messages from a first communication device (105) and transmitting them wirelessly to a second communication device (140, 145) and for receiving messages wirelessly from the second communication device and transmitting them,

the messaging system being configured to respond

to the reception of a visual message from the first communication device (105) addressed to the second communication device (140, 145) by transmitting received visual message data wirelessly to the second communication device (140, 145) together with a reply code,

characterised in that

the messaging system is configured to store the visual message and to associate the reply code with the stored visual message,

and in that

the messaging system is configured to respond to the reception, from the second communication device, of (a) information, comprising a reply code, indicating that an audio reply is to be sent to a visual message previously transmitted to the second communication device and (b) audio data by:

(i) using the received reply code to retrieve stored addressing information relating to the visual message associated with the received reply code;

(ii) using the stored visual message associated with the received reply code, and the received audio data, to form a reply message comprising the audio data and at least a part of the stored visual message; and

(iii) transmitting the reply message to a reply address obtained from the retrieved addressing information."

Claim 6 of the main request reads as follows:

"A communication device (140, 145) for wirelessly receiving and transmitting messages, the device comprising a user interface (356), a memory (358), and transmitting and receiving means (351, 352, 353, 354)

for transmitting messages to and receiving messages from a base station (125, 130), the user interface comprising a microphone,

the communication device being arranged to receive, from the base station, a visual message and data associated with the visual message,

characterised in that

the device is arranged to respond to a user input to the user interface, which user input indicates that the user wishes to reply to a visual message by sending an audio message, by transmitting to the base station (a) information, indicating that an audio reply is to be sent to a visual message, comprising a reply code, obtained from the data associated with the visual message to which the user wishes to reply, for identifying the visual message to which the user wishes to reply, and (b) audio data obtained from an audio input to the microphone,

and the device is arranged to respond to reception of an error code, indicating that the visual message cannot be replied to using the reply code, by searching its memory (358) for a name or address for the recipient of the audio reply and, if the name or address is found, transmitting it to the base station together with at least a part of the visual message to which the user wishes to reply."

Claims 12 and 17 of the main request are directed to a method of operating a messaging system and a method of operating a communication device, respectively, and include method features which correspond to the product features of claims 1 and 6, respectively.

The **first auxiliary request** includes four independent claims, namely claims 1, 8, 14 and 19.

Claim 1 of the first auxiliary request reads as follows:

"A communication device (140, 145) for wirelessly receiving and transmitting messages, the device comprising a user interface (356), a memory (358), and transmitting and receiving means (351, 352, 353, 354) for transmitting messages to and receiving messages from a base station (125, 130), the user interface comprising a microphone,

the communication device being arranged to receive, from the base station, a visual message and data associated with the visual message,

characterised in that

the device is arranged to respond to a user input to the user interface, which user input indicates that the user wishes to reply to a visual message by sending an audio message, by:

(a) determining whether the data associated with the visual message to which the user wishes to reply includes a reply code for identifying the visual message, and

(i) if the data associated with the visual message does include a reply code, transmitting the reply code to the base station,

(ii) if the data associated with the visual message does not include a reply code but does include a reply name, searching an address book stored in the memory (358) for addressing data associated with the reply name and transmitting the addressing data to the base station, and



(b) transmitting audio data, obtained from an audio input to the microphone, to the base station."

Claim 8 of the first auxiliary request reads as follows:

"A messaging system (150, 115, 117) for receiving messages from a first communication device (105) and transmitting them wirelessly to a second communication device (140, 145) and for receiving messages wirelessly from the second communication device and transmitting them,

the messaging system being configured to respond to the reception of a visual message from the first communication device (105) addressed to the second communication device (140, 145) by transmitting received visual message data wirelessly to the second communication device (140, 145) together with a reply code,

characterised in that

the messaging system is configured to store the visual message and to associate the reply code with the stored visual message,

and in that

the messaging system is configured to respond to the reception, from the second communication device, of (a) information, comprising a reply code, indicating that an audio reply is to be sent to a visual message previously transmitted to the second communication device and (b) audio data by:

(i) determining whether addressing information corresponding to the received reply code is stored and

(a) retrieving the addressing information if it is stored, or

(b) sending a request for addressing

information to the second communication device (140, 145) if the addressing information is not stored,

(ii) using the received audio data to form a reply message comprising the audio data; and

(iii) transmitting the reply message to a reply address obtained from the retrieved addressing information or from addressing information received from the second communication device in reply to the said request, as the case may be."

Claims 14 and 19 of the first auxiliary request are directed to a method of operating a communication device and a method of operating a messaging system, respectively, and include method features which correspond to the product features of claims 1 and 8, respectively.

The **second auxiliary request** includes four independent claims, namely claims 1, 5, 12 and 16.

Claims 1 and 12 of the second auxiliary request differ from claims 8 and 19 of the first auxiliary request in that in feature (ii) after "the audio data" the following wording is added:

"and, if there is a stored visual message associated with the reply code, including at least a part of the stored visual message in the reply message".

Claim 5 of the second auxiliary request differs from claim 1 of the first auxiliary request in that the following feature is added:

"and the device is arranged to respond, in the case that it has transmitted a reply code, to reception of an error code indicating that the visual message cannot be replied to using the reply code, by searching its memory (358) for a name or address for the recipient of the audio message and, if the name or address is found, transmitting it to the base station".

Claim 16 of the second auxiliary request differs from claim 14 of the first auxiliary request in that the following feature is added:

"and responding, in the case that the communication device has transmitted a reply code, to reception of an error code indicating that the visual message cannot be replied to using the reply code, by searching the memory (358) of the communication device for a name or address for the recipient of the audio message and, if the name or address is found, transmitting it to the base station".

The **third auxiliary request** includes four independent claims, namely claims 1, 4, 10 and 14.

Claims 1 and 10 of the third auxiliary request differ from claims 1 and 12 of the main request in that the features (i) to (iii) are replaced by the following wording:

"(1) in the case that there is a stored visual message associated with the received reply code  
(i) using the received reply code to retrieve stored addressing information relating to the visual message associated with the received

reply code;

(ii) using the stored visual message associated with the received reply code, and the received audio data, to form a reply message comprising the audio data and at least a part of the stored visual message; and

(iii) transmitting the reply message to a reply address obtained from the retrieved addressing information,  
and

(2) in the case that there is not a stored visual message associated with the received reply code

(i) requesting addressing information from the second communication device (140, 145),

(ii) forming a reply message comprising the received audio data and, in the case that at least a part of the visual message being replied to is received from the second communication device (140, 145) in addition to the addressing information, including in the reply message at least a part of the visual message being replied to; and

(iii) transmitting the reply message to an address obtained from addressing information received from the second communication device (140, 145).".

Claims 4 and 13 of the third auxiliary request are identical to claims 6 and 17, respectively, of the main request.

The **fourth auxiliary request** includes two independent claims, namely claims 1 and 10.

Claim 1 of the fourth auxiliary request reads as follows:

"A communication device (140, 145) for wirelessly receiving and transmitting messages, the device comprising a user interface (356), a memory (358), and transmitting and receiving means (351, 352, 353, 354) for transmitting messages to and receiving messages from a base station (125, 130), the user interface comprising a microphone,

the communication device being arranged to receive a visual message from the base station, characterised in that

the device is arranged to respond to an input by a user to the user interface by transmitting to the base station (a) information indicating that an audio reply is to be sent to a visual message, (b) addressing information for identifying the intended recipient of the audio reply, and (c) an audio message that has been pre-recorded at the device and stored in the memory (358).".

Claim 10 of the fourth auxiliary request reads as follows:

"A method of operating a communication device (140, 145) for wirelessly receiving and transmitting messages comprising

receiving a visual message from a base station, characterised by

responding to an input by a user to a user interface (356) of the communication device by transmitting to the base station (a) information indicating that an audio reply is to be sent to a visual

message, (b) addressing information for identifying the intended recipient of the audio reply, and (c) an audio message that has been pre-recorded at the device and stored in a memory (358) of the communication device.".

The **fifth auxiliary request** includes two independent claims, namely claims 1 and 6, which are identical to claims 6 and 17, respectively, of the main request.

The **sixth auxiliary request** includes two independent claims, namely claims 1 and 8, which are identical to claims 1 and 14, respectively, of the first auxiliary request, except that in feature (i) the wording "transmitting the reply code to the base station" is replaced by:

"transmitting to the base station information, indicating that an audio reply is to be sent to a visual message, comprising the reply code".

The **seventh auxiliary request** includes two independent claims, namely claims 1 and 7, which are identical to claims 5 and 16, respectively, of the second auxiliary request, except that, as in claims 1 and 8 of the sixth auxiliary request, in feature (i) the wording "transmitting the reply code to the base station" is replaced by:

"transmitting to the base station information, indicating that an audio reply is to be sent to a visual message, comprising the reply code".

## **Reasons for the Decision**

### 1. *Procedural matters*

1.1 The present decision is based on objections under Rule 12(4) RPBA and Article 123(2) EPC which had already been raised in the board's first and second communications. The appellants had the opportunity to present their comments on these objections. The board notes however that in response to the second communication the appellants filed a formal reply without discussing the issues raised in the communication. Further, in deciding not to attend the oral proceedings, the appellants chose not to make use of the opportunity to comment at the oral proceedings on any of the objections but, instead, chose to rely on the arguments as set out in the statement of grounds of appeal and in the letter dated 29 August 2012, which the board duly considered. Under these circumstances, the board was in a position to give a decision which complied with Article 113(1) EPC.

1.2 Although the appellants withdrew the request for oral proceedings, the board considered it to be expedient to hold oral proceedings for reasons of procedural economy (Article 116(1) EPC). The appellants had informed the board that they would not attend the oral proceedings and, indeed, were absent. The oral proceedings were therefore held in the absence of the appellants (Rule 115(2) EPC, Article 15(3) RPBA).

### 2. *Admissibility of the appeal*

2.1 Article 108 EPC in conjunction with Rule 99(2) EPC

requires that within four months of notification of the decision a statement setting out the grounds of appeal is filed which indicates the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based. The statement of grounds of appeal shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed and should specify expressly all the facts, arguments and evidence relied on (Article 12(2) RPBA).

2.2 In the present case, at the end of the oral proceedings before the examining division, the applicants submitted, by way of replacement, a single set of claims 1 to 10, on which the examination was to be based (cf. the minutes, point 13). The examining division exercised its discretion under Rule 137(3) EPC and did not admit the set of claims to the proceedings for the reasons set out in the decision under appeal. These reasons only concern an amendment made to claims 1 and 7, i.e. the addition of the features of previous claims 2 and 14, respectively. Subsequently, the examining division refused the application under Article 97(2) EPC due to the absence of a set of claims approved by the applicants within the meaning of Article 113(2) EPC.

2.3 The statement of grounds of appeal does not however give any reasons as to why the decision under appeal is incorrect, i.e. reasons on which the case for setting aside the decision is based. Instead, the statement of grounds of appeal includes only arguments in support of the patentability of the subject-matter of the claims of the main and first to fourth auxiliary requests as filed with the statement of grounds of appeal. In particular,



the board notes that the appellants did not argue that the examining division had incorrectly exercised its discretionary power not to admit the final set of claims or that facts on which the case was decided were incorrect. Nor does the board see any reason to question the facts or to overrule the examining division's discretionary decision not to admit the set of claims in question.

2.4 However, it is established case law that claims filed with the statement of grounds of appeal may suffice for an appeal to be substantiated, even if the statement of grounds of appeal does not explicitly set out why the decision under appeal is alleged to be incorrect, in particular when the filing of amended claims self-evidently deprive the decision under appeal of its basis.

2.5 In the present case, since all independent claims of at least one (in fact all) of the main and first to fourth auxiliary requests do not include the above-mentioned amendment on the basis of which the set of claims was not admitted to the examination procedure (see point 2.2 above), the factual basis for the refusal was removed and, hence, reasons for setting aside the decision under appeal were at least implicitly present.

2.6 Since the remaining requirements as set out in Articles 106 to 108 EPC and Rule 99(1) EPC are complied with as well, the board concludes that the appeal is admissible.

3. *Admissibility of the main request and first to third auxiliary requests*
- 3.1 In accordance with Article 12(4) RPBA the board has the power to hold inadmissible requests which could have been presented or were not admitted in the first instance proceedings.
- 3.2 The main request and first to third auxiliary requests each include four independent claims directed to a messaging system, a communication device, a method of operating a messaging system, and a method of operating a communication device, respectively (see point XII above).
- 3.3 The board notes that in the course of the oral proceedings before the examining division the applicants successively submitted four main requests, the first three of which each included four independent claims directed to a messaging system, a communication device, a method of operating a messaging system, and a method of operating a communication device, respectively. However, the fourth main request included only two independent claims which were directed to a communication device and a method of operating a communication device, respectively.
- 3.4 By withdrawing the first three main requests and submitting a single request which included independent claims which were only directed to a communication device and a method of operating a communication device, the applicants thereby prevented the examining division from giving a final decision on the merits of the first three main requests and, in particular, as regards the

independent claims of these requests which were directed either to a messaging system or a method of operating a messaging system.

3.5 Reinstating in appeal proceedings a claim directed to a messaging system or a claim directed to a method of operating a messaging system, as is the case with the present main and first to third auxiliary requests, would therefore compel the board either to give a first ruling on the critical issues, which would run contrary to the purpose of a second-instance ruling, or to remit the case to the department of first instance, which would clearly be contrary to procedural economy. In the board's view, a party is not at liberty to bring about the shifting of their case to the second instance as it pleases, since it would run counter to orderly and efficient proceedings in that it allows a kind of "forum shopping", thereby jeopardising the proper distribution of functions between the departments of first instance and the boards of appeal.

3.6 In view of the above and exercising its discretionary power in accordance with Article 12(4) RPBA, the board does not admit the main and first to third auxiliary requests.

#### 4. *Admissibility of the fourth auxiliary request*

4.1 Independent claim 1 of the fourth auxiliary request differs from claim 1 of the third main request as submitted in the course of the oral proceedings before the examining division *inter alia* in that the following features are deleted:

d1) the communication device is arranged to receive data associated with the visual message;

d2) the communication device is arranged to respond to user input which indicates that the user wishes to reply to a visual message by sending an audio message; and

d3) the communication device is arranged to respond to the user input by transmitting to the base station information which comprises a reply code which is obtained from the data associated with the visual message to which the user wishes to reply.

4.2 The board notes that during the oral proceedings the examining division gave a reasoned opinion that the subject-matter of claim 1 of the third main request lacked an inventive step (cf. the minutes, points 9 to 11). In response, the applicants withdrew this request and submitted the fourth main request. By withdrawing the third main request the applicants thus prevented the examining division from giving a final decision on its merits. Consequently, if the appellants had reinstated in appeal proceedings claim 1 of the third main request, this would have resulted in the above-mentioned undesirable "forum shopping".

4.3 The board further notes that at the oral proceedings the examining division considered that claim 1 of the first main request as filed at the beginning of the oral proceedings did not comply with the requirements of Article 123(2) EPC, since, *inter alia*, it did not include the feature relating to the reply code (cf. above-mentioned feature d3)). The same objection was raised in respect of the second main request. With the

third main request which included claims 1 and 8 which included the missing reply code feature, the objection was eventually overcome. It follows that by withdrawing the first and second main requests the applicants prevented the examining division from giving a final decision on the question of whether or not omitting the reply code feature contravened Article 123(2) EPC. It is however clear that the applicants could have presented these requests for final decision in the first instance proceedings.

4.4 Claims 1 and 10 of the fourth auxiliary request do not include the above-mentioned reply code feature and, hence, raise the same issue which had already been raised in the proceedings before the examining division and which could have been dealt with in the decision under appeal if the applicants had not withdrawn the first or second main request.

4.5 In view of the above and exercising its discretionary power in accordance with Article 12(4) RPBA, the board does not admit the fourth auxiliary request.

5. *Fifth to seventh auxiliary requests - Article 123(2) EPC*

5.1 The question of whether or not the fifth to seventh auxiliary requests are admissible need not be decided, since, in any case, each of the independent claims of these requests do not comply with the requirement of Article 123(2) EPC for the reasons as set out below.

5.2 Re. the fifth auxiliary request:

The application as filed does not provide a basis for the subject-matter of claim 1 of the fifth auxiliary request:

Concerning those features of the claim which were already present in claim 1 of the third main request which was pending before the examining division, but subsequently withdrawn, the appellants merely stated that this request was "ruled to be supported by the Examining Division", i.e. without indicating on which parts of the application as filed the features in question were based. The board notes however that in the minutes (point 9) it is merely stated that the third main request "appeared to meet the requirements of Article 123(2) EPC". In any case, the board was not able to find in the application as filed a basis for the features in question.

As to the remaining features of claim 1, i.e. the inclusion of a memory 358 and the features specified in the last paragraph, the appellants argued that a basis could be found at page 12, line 5, page 15, line 31, to page 16, line 5, and page 17, lines 5 to 10, of the description as filed.

These passages describe a process for sending a voice reply message, which is performed by a controller 357 (Fig. 3) of a mobile telephone 145 and which is illustrated in Fig. 4. Since not all of the components shown in Fig. 3 are included in claim 1, in particular the controller 357 and the processing module 355 are omitted, the claim is directed to an intermediate generalisation, i.e. a combination of selected features lying somewhere between an originally broad disclosure

and a more limited specific disclosure. A basis for this intermediate generalisation could however not be found.

Further, according to Fig. 4 and the corresponding text at page 14, line 28, to page 16, line 27, the steps of checking for an error code (step 420) and of searching the memory after having received the error code (step 428) are before the steps of determining that the addressing data is valid (again at step 420) and of transmitting audio data (step 424). Claim 1 of the fifth auxiliary request is however not limited accordingly.

Further, the step of tagging the invalid addressing data (step 422) is omitted from the claim. It is also noted that at page 16, line 4, it is disclosed that the search is for a name and address, whereas claim 1 refers to a name or address. Further, the error code is received from an integrated message gateway (IMG) 150, whereas claim 1 is more general. Nor does the process illustrated in Fig. 4 provide a basis for the feature that the name or address is transmitted together with at least part of the visual message to which the user wishes to reply. In this respect, it is noted that the passage at page 17, lines 5 to 10, referred to by the appellants, relates to another scheme, in which the name or address is transmitted along with the voice message to IMG 150. This scheme differs from the process illustrated in Fig. 4, in which the addressing data is sent separately to IMG 150 at step 418 (page 16, lines 3 to 5).

The board was not able to find a basis for the features according to the last paragraph of claim 1 of the fifth

auxiliary request in other parts of the application as filed.

5.3 Re. the sixth auxiliary request:

The application as filed does not provide a basis for the subject-matter of claim 1 of the sixth auxiliary request:

Concerning those features which were already included in claim 1 of the third main request, the same considerations as set out above at point 5.2 apply.

The appellants argued that a basis for the remaining features of the claim could be found at page 12, line 5, and page 15, lines 3 to 8, 11 to 13 and 25 to 27, of the description as filed and claim 134 as filed.

The cited passages concern Figs 3 and 4. These passages do not provide a basis for the claimed intermediate generalisation, it being noted that claim 1 of the sixth auxiliary request does not refer to a processing module 355, a controller 357, and an IMG 150, and that in the claim, both in step (a)(i) and step (a)(ii), the steps 412 to 414 of Fig. 4 are omitted and, in step (b), step 420 of Fig. 4 is omitted. As to claim 134 as filed, the board notes that it refers to a voice message and a system which forwards the voice message to an intended recipient, whereas claim 1 of the sixth auxiliary request does not, and that claim 134 does not refer to a base station, whereas present claim 1 does. Further, claim 134 as filed requires that a reply name is included in the messaging data, whereas in present claim 1 the reply name need not be included.



The board was not able to find a basis for the features in question in other parts of the application as filed.

5.4 Re. the seventh auxiliary request:

The application as filed does not provide a basis for the subject-matter of claim 1 of the seventh auxiliary request:

Claim 1 of the seventh auxiliary request combines the features of claims 1 of the fifth and sixth auxiliary requests. Hence, the considerations set out above at points 5.2 and 5.3 apply *mutatis mutandis*. The appellants additionally refer to claims 139 and 140 as filed. However, both claims are dependent on claim 134 and, hence, the considerations set out at point 5.3 in respect of claim 134 apply as well. Further, claim 139 additionally defines features concerning the operation of the system (transmission of an error message if the particular visual message is not available to the system), whereas present claim 1, which is directed to a communication device, does not (and cannot) include these features.

5.5 The above considerations apply, *mutatis mutandis*, to the independent method claim of each request, i.e. claims 6, 8 and 7, respectively.

5.6 The appellants did not file any substantive submissions concerning the above objections in respect of the fifth to seventh auxiliary requests, which had been raised in the board's second communication, and chose not to attend the oral proceedings.

- 5.7 The board therefore concludes that claim 1 of each of the fifth to seventh auxiliary requests does not comply with the requirement of Article 123(2) EPC. These requests are therefore not allowable.
6. All requests on file being either inadmissible or not 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