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**Datasheet for the decision  
of 11 July 2013**

**Case Number:** T 1676/10 - 3.5.03  
**Application Number:** 05254586.0  
**Publication Number:** 1622338  
**IPC:** H04L 29/06, H04L 29/12  
**Language of the proceedings:** EN

**Title of invention:**  
Roaming wireless client communication

**Applicants:**  
Avaya Communication Israel Ltd.  
MOTOROLA INC.  
PROXIM, INC.

**Headword:**  
Roaming wireless client communication/AVAYA

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

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

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

**Decisions cited:**

-

**Catchword:**

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Case Number: T 1676/10 - 3.5.03

**DECISION**  
of the Technical Board of Appeal 3.5.03  
of 11 July 2013

**Appellant:** Avaya Communication Israel Ltd.  
(Applicant 1) Atidim Technologies Park, Bldg. 3  
Tel Aviv 61131 (IL)

**Appellant:** MOTOROLA INC.  
(Applicant 2) 1301 East Algonquin Road  
Schaumburg, IL 60196 (US)

**Appellant:** PROXIM, INC.  
(Applicant 3) 935 Stewart Drive  
Sunnyvale, CA 94086 (US)

**Representative:** Williams, David Johnson  
Page White & Farrer  
Bedford House  
John Street  
London WC1N 2BF (GB)

**Decision under appeal:** Decision of the examining division of the  
European Patent Office posted 19 February 2010  
refusing European patent application  
No. 05254586.0 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** F. van der Voort  
**Members:** T. Snell  
M.-B. Tardo-Dino

## Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 05254586.0, with publication number EP 1622338 A. The application had been filed jointly by Avaya Communication Israel Ltd, Motorola Inc and Proxim Inc.

The refusal was based on the ground that the subject-matter of claim 1 of the only request was not new with respect to the disclosure of the document (Articles 52(1) and 54 EPC):

D1: WO 03/034683 A

II. A notice of appeal was filed against the above decision.

The relevant part of the notice of appeal is worded as follows:

"Dear Sirs,

**European Patent Application No. 05254586.0-1525**

**Avaya Communication Israel Ltd.**

We refer to the Decision to Refuse a European patent dated 19 February 2010 and confirm the Applicant's attention to appeal. This letter constitutes notice of appeal..."

III. In the statement of grounds of appeal, it was requested that the decision under appeal be set aside and the application be returned to the examining division with the order to grant a patent.

Oral proceedings were conditionally requested.

- IV. The registry of Board 3.5.05, to which the case was originally allocated, sent a communication pursuant to Article 108, first sentence, and Rule 101(2) EPC, to the effect that the notice of appeal was deficient as it did not appear to [correctly] contain the name and address of the appellant(s) (Rule 99(1)(a) in conjunction with Rule 41(2)(c) EPC). In particular, it was noted that the appeal was filed only in the name of one of the applicants although there were three. The representative was requested to remedy the deficiency within two months.
- V. In a response received within the time limit, the representative filed a corrected notice of appeal indicating the names and addresses of all three applicants/appellants. Hereinafter, the joint appellants are referred to for convenience as "the appellant".
- VI. For business reasons, the case was transferred to Board 3.5.03. In a communication setting out matters to be discussed at oral proceedings, the board stated that it understood the appellant to be requesting that the decision under appeal be set aside and a patent granted on the basis of claims 1-27 filed with the letter dated 11 January 2010, the same claims on which the examining division based its refusal. The board gave a preliminary opinion in which it was considered that the appeal was admissible but, *inter alia*, the subject-matter of claim 1 of the only request did not comply with Article 123(2) EPC.

VII. In a letter dated 10 July 2013, the appellant stated that it would not attend or be represented at the oral proceedings. The appellant did not comment on any of the board's objections raised in the communication, and instead requested that a decision be taken "based on the file as it now stands".

VIII. Oral proceedings were held on 11 July 2013 in the absence of the appellant. On the basis of the written submissions the board understood the appellant to be requesting that the decision under appeal be set aside and a patent granted on the basis of claims 1 to 27 as submitted on 11 January 2010.

At the end of the oral proceedings the board announced its decision.

IX. Claim 1 reads as follows:

"A method comprising:  
defining a home access point for a client as a first access point through which the client requests and is assigned a first network address;  
determining that the client is being serviced by a second access point different from the home access point;  
determining whether the client should change its home access point to the second access point from which the client receives service; and, if determined,  
defining the home access point as the second access point; and  
assigning a second network address to the client through the second access point."

## **Reasons for the Decision**

### 1. *Article 113(1) EPC*

This decision is based on reasons communicated to the appellant in the communication setting out the matters to be discussed at the oral proceedings. The appellant chose not to attend the oral proceedings and instead requested a decision "based on the file as it now stands", which the board understood to mean that the appellant had no wish to comment either orally or in writing on the board's objections raised in the communication. The board was therefore in a position to issue a decision at the oral proceedings complying with Article 113(1) EPC.

### 2. *Admissibility of the appeal*

Having regard to points IV and V of the "Summary of Facts and Submissions", the board concludes that the deficiency with regard to the names and addresses of the appellant was remedied in due time in response to the communication sent pursuant to Rule 101(2) EPC. The appeal is accordingly admissible (Rule 101(1) EPC).

### 3. *Added subject-matter (Article 123(2) EPC)*

#### 3.1 Claim 1 includes the following feature:

"defining a home access point for a client as a first access point through which the client requests and is assigned a first network address".

The board interprets this wording to mean either that a request and an assigned address pass through the first access point, although the access point does not itself assign the address, this being carried out by some undefined further entity, or that the access point itself deals with the request and assigns the address. In paragraph [0021], which corresponds to the passage indicated by the appellant in the statement of grounds of appeal as support for this feature, it is stated that "a server 180 using, for example, DHCP protocol, allocates IP addresses for STAs 140 upon request". In the same paragraph it is stated that "Server 180 allocates an IP address to STA 140 according to the VLAN to which STA 140 belongs, which is determined according to the specific AP 130 through which the request for the IP address was received". Hence, in accordance with the description a server assigns an IP address, ie not the access point itself or any other network entity, and not any address. The board can find no passage of the description or claims as filed in which there is a direct and unambiguous disclosure of an address assignment through an access point which does not require a server to assign an IP address, or which suggests that the access point itself could assign the address. Claim 1 therefore comprises subject-matter not supported by the application as filed.

- 3.2 This objection applies, *mutatis mutandis*, to the feature of claim 1 "assigning a second network address to the client through the second access point".

3.3 The appellant offered no arguments in reply to the board's objection, which was raised for the first time in the board's communication referred to above.

The board concludes that claim 1 is not allowable (Article 123(2) EPC).

4. *Conclusion*

As the only request is 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:

I. Aperribay

F. van der Voort