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**Datasheet for the decision
of 27 June 2013**

Case Number: T 2073/10 - 3.5.03

Application Number: 05756106.0

Publication Number: 1886481

IPC: H04M 15/00, H04M 3/487

Language of the proceedings: EN

Title of invention:
Method and system for delivering advice of charge in a
communications system

Applicant:
Telefonaktiebolaget LM Ericsson (publ)

Headword:
Message delivery system/ERICSSON

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
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Catchword:
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Case Number: T 2073/10 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 27 June 2013

Appellant: Telefonaktiebolaget LM Ericsson (publ)
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 15 April 2010
refusing European patent application
No. 05756106.0 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: F. van der Voort
Members: T. Snell
R. Menapace

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 05756106.0, with international publication number WO 2006/128474 A, on the ground that the subject-matter of the claim 1 of each of a main and three auxiliary requests did not involve an inventive step with respect to the disclosure of the document

D7: US 6721795 B1.

II. In the statement of grounds of appeal the appellant requested that the decision be set aside and that a positive decision in accordance with Article 97(1) be issued. Claims of a main request and two auxiliary requests were submitted with the statement of grounds, whereby the claims of the main request are the same as those of the main request refused by the examining division.

Oral proceedings were conditionally requested.

III. In a communication accompanying a summons to oral proceedings the board gave a preliminary opinion that, *inter alia*, the independent claims of none of the requests met the requirement of inventive step (Articles 52(1) and 56 EPC) with respect to the disclosure of document D7.

IV. In a response to the board's communication, the appellant maintained the three requests on file, as the main, second and third auxiliary requests, respectively,

and additionally filed claims of a new first auxiliary request.

V. Oral proceedings were held on 27 June 2013. The appellant withdrew the second and third auxiliary requests, and requested that the decision under appeal be set aside and a patent granted on the basis of claims 1 to 16 of the main request as filed with the statement of grounds of appeal or on the basis of claims 1 to 15 of the first auxiliary request filed with the letter dated 27 May 2013. After deliberation, the board's decision was announced at the end of the oral proceedings.

VI. Claim 1 of the main request reads as follows:

"A method for delivering a plurality of service related pre-emptive advice of charge messages (609) to a plurality of terminals (5a-z) in a communications system (2), wherein delivery of said messages is controlled by rules (610), each of said rules corresponding with one of said messages for controlling a contents, applicability, and delivery of said message, wherein administrative information for each of said plurality of terminals is available in said communications system (2), said method comprising generating (600) said messages (609), selecting terminals (5a-z) according to selection conditions for delivering said messages (609), and sending said messages (609) to said terminals (5a-z), characterized in that, said rules each comprise said selection conditions and one or more pre-scanning conditions;
wherein said pre-scanning conditions relate to at least

one of a group of status and availability of physical and functional access, and subscription information relating to services and facilities;
wherein said selection conditions relate to aspects relating to historical usage of facilities and services;
wherein prior to selecting said terminals (5a-z) said method comprises a step of pre-scanning of said terminals (5a-z) according to said pre-scanning conditions for verifying applicability of one or more of said pre-scanning conditions of said rules (610)."

Claim 1 of the first auxiliary request reads as follows:

"A method for delivering a plurality of service related pre-emptive advice of charge messages (609) to a plurality of terminals (5a-z) in a communications system (2), wherein delivery of said messages is controlled by rules (610), each of said rules corresponding with one of said messages for controlling a contents, applicability, and delivery of said message, wherein administrative information for each of said plurality of terminals is available in said communications system (2), said method comprising generating (600) said messages (609), selecting terminals (5a-z) according to selection conditions for delivering said messages (609), and sending said messages (609) to said terminals (5a-z), characterized in that, said rules each comprise said selection conditions and one or more pre-scanning conditions;
wherein said pre-scanning conditions relate to administrative information comprising at least one of a

group of status and availability of physical and functional access, and subscription information relating to services and facilities;
wherein said selection conditions relate to aspects relating to historical usage of facilities and services;
wherein prior to selecting said terminals (5a-z) said method comprises a step of pre-scanning of said terminals (5a-z) according to said pre-scanning conditions for verifying applicability of one or more of said pre-scanning conditions of said rules (610) for checking whether said rules (610) are applicable for a terminal, wherein a rule/terminal combination passing said pre-scanning is an active rule/terminal identifier pair for delivering pre-emptive advice of charge messages (609)."

Reasons for the Decision

1. *Claim 1 (main request) - interpretation*

Claim 1 relates to a "method for delivering a plurality of service related pre-emptive advice of charge messages .. to a plurality of terminals .. in a communication system". In essence, message delivery is controlled by rules which comprise selection conditions for selecting terminals for delivering messages, and a step prior to the step of selecting comprising pre-scanning according to pre-scanning conditions. The last clause of claim 1 reads "said method comprises a step of pre-scanning of said terminals ... according to said pre-scanning conditions for verifying applicability of one or more of said pre-scanning conditions of said

rules". The appellant interpreted this (in the board's view unclear) feature to mean that the pre-scanning step determines the applicability of the rules. For the purposes of examining for inventive step, the board adopts the same interpretation.

2. *Claim 1 (main request) - inventive step*

2.1 The examining division considered that document D7 represents the closest prior art; the board agrees.

2.2 Document D7 discloses, using the wording of claim 1 of the main request, a method for delivering a plurality of service related pre-emptive advice of charge messages to a plurality of terminals in a communications system (see point 2.3 below), wherein delivery of said messages is controlled by rules (cf. col. 2, lines 53-55), each of said rules corresponding with one of said messages for controlling a contents, applicability, and delivery of said message (cf. col. 3, lines 59-67 and col. 6, lines 49-50), wherein administrative information for each of said plurality of terminals is available in said communications system (idem), said method comprising generating said messages, selecting terminals according to selection conditions for delivering said messages, and sending said messages to said terminals (col. 3, lines 18-31), wherein said rules each comprise said selection conditions and one or more pre-scanning conditions ("pre-evaluation", cf. col. 9, lines 60-66); wherein said selection conditions relate to aspects relating to historical usage of facilities and services (cf. col. 10, lines 25-27); wherein prior to selecting said terminals said

method comprises a step of pre-scanning of said terminals according to said pre-scanning conditions for verifying applicability of one or more of said pre-scanning conditions of said rules (see point 2.4 below).

2.3 As regards "pre-emptive" delivery of messages, the board notes that this is mentioned or hinted at in several passages of D7 in the context of "server-selected data", eg col. 1, lines 40-45, col. 2, lines 23-33, and col. 4, lines 21-30. In particular, it is stated in D7 that there is no need for a request from a browser ("push"-based implementation", cf. col. 6, lines 54-62). Further, the server-selected data messages may, implicitly, be advice of charge messages, cf. col. 6, lines 20-24 ("offer to purchase a flower arrangement"), since an offer to purchase implicitly relates to a charge. However, in any case, the board considers it irrelevant whether the message includes an advice of charge, as the message content has no apparent impact on any of the technical features of the method.

2.4 As regards the pre-scanning step, the board refers to the embodiment described in col. 9, line 60 to col. 10, line 6. This passage reads:

"In some implementations, the selection server 240 may fully or partially evaluate selection rules prior to the receipt of a trigger. This may reduce the time needed to process selection rules during a trigger event. For example, for each user, the selection server 240 may pre-evaluate the selection rules to identify the data flows that

can be presented to that user. In general, full pre-evaluation of a selection rule is possible if the selection rule does not require dynamic data that is only made available when an associated trigger occurs. For example, if a particular selection rule depends on the time at which the trigger occurs, that rule cannot be fully evaluated until the trigger occurs. A selection server 240 can store a pre-evaluated selection of data flows on a per-user basis."

In the board's view D7 proposes here that a rule can be divided into two parts, a first part based on non-dynamic data which can be pre-evaluated, and a second part based on dynamic data to be carried out at the time the trigger is received. As understood by the board, the pre-evaluation step pre-selects a number of candidate data flows (messages) for each user. When the trigger is received the second part of the rule is carried out to determine which data flow(s) is/are to be sent at that moment. In other words, the pre-evaluation (which the board considers to be another term for "pre-scanning") is a prerequisite for applying the second part of the rule, ie it determines the applicability of the second part of the rule. Therefore, taking into account the appellant's interpretation of claim 1, D7 discloses the feature "prior to selecting said terminals said method comprises a step of pre-scanning of said terminals according to said pre-scanning conditions for verifying applicability of one or more of said pre-scanning conditions of said rules".

2.5 The subject-matter of claim 1 therefore differs from the disclosure of D7 only in the feature:

"wherein said pre-scanning conditions relate to at least one of a group of status and availability of physical and functional access, and subscription information relating to services and facilities".

In this respect, as already stated, the pre-evaluation step of D7 applies to non-dynamic data. Examples of data in the selection server database 242 of D7 are "age, credit information, information services that the user subscribes to" (cf. col. 10, lines 27-29). It would be obvious to the skilled person that such data types, as they are non-dynamic, would be appropriate for being including in the pre-evaluation (pre-scanning) step. Hence, there is no inventive merit in the pre-scanning conditions relating to subscription information relating to services and facilities.

2.6 At the oral proceedings, the board understood the appellant's main arguments to be as follows:

(i) D7, and in particular the pre-evaluation embodiment referred to above, addresses a different problem than that solved by the presently claimed invention in that it is concerned with reducing the time to carry out a selection whereas according to the present invention the problem to be solved is to reduce the processing load in the context of messages being delivered to millions of users, whereby time is of no importance. To solve the problem of reducing the processing time, the pre-evaluation of D7 concerns a processing of the rule itself, whereas the presently claimed pre-scanning step

merely determines applicability of the rule. In the present invention, the rule itself is not processed during pre-scanning.

(ii) The present invention concerns only dynamic data whereas the pre-evaluation of D7 relates to the processing of non-dynamic data.

2.7 Re (i): Whether or not the aims of D7 and the method of the present application are different in the manner alleged by the appellant is in the board's view moot because the board cannot identify any essential difference between the method of D7 and the subject-matter as claimed. As the board has already noted, the "rule" in the sense understood by the appellant (ie the processing carried out after pre-scanning) is equivalent to the rule-based selection carried out after the pre-evaluation phase of D7. Furthermore, the board does not agree that in the present application the pre-scanning step does not involve the processing of a rule, since it involves testing compliance with "pre-conditions" (cf. page 14, line 1, which states: "If the administrative information complies with the pre-conditions ..."). In the board's view, testing compliance with pre-conditions is the same as processing a rule.

Re (ii): The claimed method is not limited to the use of dynamic data. The board also notes that the administrative information referred to in the present application may be (quasi-)non-dynamic information, eg subscription information (cf. page 9, line 1). Hence, there is no essential difference with D7.

2.8 In the statement of grounds, the appellant presented the following additional arguments:

(i) D7 is incompatible with claim 1 of the main request and thereby irrelevant prior art, mainly because the messages generated in D7 are produced in response to "triggers", eg from the user's browser (cf. D7, col. 5, lines 33-39), ie are not "pre-emptive".

(ii) Claim 1 of the main request states that "delivery of the messages is controlled by rules", whereas, in D7, not the delivery but the content of the message is controlled by rules.

(iii) Claim 1 of the main request requires selecting terminals according to selection conditions. No such selection takes place in D7.

2.9 Re (i): The system of the present application is also based on triggers (cf. page 7, line 28 ff.). This states:

"Triggering information (205) is provided by the various executing functions (14) in the communications system. The triggering information is sent by the executing functions to PACMAN [NB: the processing device for carrying out the method of the present application]. Triggering information comprises but is not limited to; Terminal switched on/off, access type (physical or functional) activation/deactivation, started/ended usage of facility or service ...".

In the board's judgement, at least "access type activation/deactivation" and "started/ended usage of facility" are the same type of triggers as the "login request trigger" (cf. D7, col. 4, line 36), "login granted trigger" (col. 4, line 52) and "logout request trigger" (col. 5, line 21) disclosed in D7.

Furthermore, as to whether in D7 the message delivery always has to be in response to a trigger in the form of a request from a browser, it has already been stated above that D7 describes server-selected message delivery where no such request is required.

Accordingly, the board concludes that D7 describes a very similar method to that claimed. The board therefore considers that D7 is far from irrelevant and an appropriate starting point for assessing inventive step.

Re (ii): In the board's view, in D7, "selecting content" implies selecting content for delivery to a particular user based on the rules. Hence, the delivery of the message is implicitly also based on the rules.

Re (iii): In D7, the system selects messages to be sent to specific users according to selection rules. As there are many users and it is implicit that different messages can be sent to different users, it follows that messages are selected for delivery to selected terminals. The selection server thus "selects terminals according to selecting conditions for delivering said messages".

The board therefore finds the appellant's arguments unconvincing.

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

3. *Claim 1 (first auxiliary request) - inventive step*

Claim 1 of the first auxiliary request differs from claim 1 of the main request essentially in that the following feature has been added:

"wherein a rule/terminal combination passing said pre-scanning is an active rule/terminal identifier pair for delivering pre-emptive advice of charge messages (609)".

The appellant stated that there was no significance to be attributed to the term "identifier", ie the term "active rule/terminal identifier pair" was to be understood in the same way as "active rule/terminal pair".

The appellant argued that since in D7 the rule has already been processed in the pre-evaluation step, there are only stored active data flow/terminal combinations, not rule/terminal combinations.

However, the board notes, as explained previously, that a second part of the rule is still to be carried out after the pre-evaluation step of D7. It follows that in the selection server this part-rule has to be associated with the terminal and the candidate data

flows (ie messages) so that on receipt of a trigger, the part-rule can be applied to the candidate data flows. As such a part-rule/terminal/data flow combination is the result of the pre-evaluation, it is implicit that it has "passed" the pre-evaluation (pre-scanning). Such a combination is also "active" in the sense of awaiting a trigger for final evaluation of the part-rule. The feature added to claim 1 of the auxiliary request is therefore disclosed in D7.

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

4. *Conclusion*

As neither request is allowable, it follows that the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

F. van der Voort