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**Datasheet for the decision
of 21 February 2013**

Case Number: T 2198/10 - 3.5.03

Application Number: 97904465.8

Publication Number: 885532

IPC: H04Q 3/00, H04M 3/42,
H04M 15/00

Language of the proceedings: EN

Title of invention:
Method for call set-up and a telecommunication system

Patentee:
Papst Licensing GmbH & Co. KG

Opponent:
Vodafone Group Services Limited

Headword:
Call set-up/PAPST

Relevant legal provisions:
EPC Art. 56, 112(1)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step - no"
"Referral to the Enlarged Board - no"

Decisions cited:
T 1050/10

Catchword:
-



Case Number: T 2198/10 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 21 February 2013

Appellant: Vodafone Group Services Limited
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
17 August 2010 concerning maintenance of
European patent No. 885532 in amended form.

Composition of the Board:

Chairman: A. S. Clelland
Members: T. Snell
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. This appeal is against the interlocutory decision of the opposition division which found that European patent No. 0885532 in amended form, in accordance with the claims of an eighth auxiliary request, met the requirements of the EPC.

II. The opposition had been filed against the patent as a whole on the ground of, *inter alia*, Article 100(a) (novelty and inventive step).

III. In the impugned decision, the opposition division held that the subject-matter of claim 1 of the eighth auxiliary request was new and involved an inventive step having regard, *inter alia*, to the disclosure of the document

D1: WO-A-94/28683

IV. The opponent (appellant) lodged an appeal against the decision. The appellant requested that the decision of the opposition division be set aside and the patent revoked in its entirety.

The appellant filed a conditional request for oral proceedings.

V. In the statement of grounds of appeal, the appellant submitted, *inter alia*, that the subject-matter of claim 1 of the eighth auxiliary request allowed by the opposition division was not new with respect to the disclosure of document D1.

VI. In a response to the notice of appeal, the patent proprietor (respondent) requested that the patent be maintained in the form upheld by the opposition division in its interlocutory decision, ie that the appeal be dismissed.

Oral proceedings were also conditionally requested.

VII. Subsequently, together with a further letter, the respondent filed claims of first to seventh auxiliary requests.

VIII. In a communication accompanying a summons to attend oral proceedings, the board observed in a preliminary opinion that, in respect of claim 1 of the main request, D1 appeared to be relevant to inventive step rather than novelty.

IX. Both parties filed a written response to the board's communication:

The appellant requested that respondent's auxiliary requests not be admitted due to late filing.

The respondent filed claims of replacement fifth to seventh as well as new eighth to thirteenth auxiliary requests. The respondent also requested that the board consider various alternative wordings of the claims of the auxiliary requests if deemed necessary. The respondent also requested that questions concerning the right to amend be referred to the Enlarged Board of Appeal should the board not admit the auxiliary requests.

X. Oral proceedings took place on 21 February 2013.

At the oral proceedings the respondent filed claims of first to third auxiliary requests to replace those on file.

The appellant requested that the decision under appeal be set aside and the patent revoked.

The respondent requested that the appeal be dismissed or, alternatively, that the patent be maintained on the basis of one of the auxiliary requests 1 to 3 filed during the oral proceedings, or auxiliary request 4 filed with the letter of 25 June 2012, or auxiliary requests 5 to 13 filed with the letter of 21 January 2013.

At the conclusion of the oral proceedings, after due deliberation, the board gave its decision.

XI. Claim 1 of the respondent's **main request** reads as follows:

"A method of controlling call set-up from a subscriber terminal of a telecommunication system, the telecommunications system comprising a plurality of subscriber terminals (110), a plurality of service provider means (15 to 17, 25, 26, 35, 45, 46), at least one service database means (10, 20, 30 and 40) for storing service information received from said plurality of service provider means, and a telecommunications network via which calls are established in the system, wherein

a service database means (10, 20, 30 and 40) is in connection with the other service database means (10, 20, 30 and 40) and with the plurality of service provider means (15 to 17, 25, 26, 35, 45, 46), or the plurality of service provider means (15 to 17, 25, 26, 35, 45, 46) only, and stores the service information received via the connection, the service information stored in the service database means (10, 20, 30 and 40) is periodically transmitted over a radio path to a control means so that the service database means 10 establishes, either regularly or when service information is being updated, a connection to said control means (11, 12, 21 to 23, 31 to 33, 41 and 42) attached to the subscriber terminal (110), and the control means (11, 12, 21 to 23, 31 to 33, 41 and 42) is attached to the subscriber terminal (110) and stores the service information received from the service database means (10, 20, 30 and 40), and the service information stored in or by the control means (11, 12, 21 to 23, 31 to 33, 41 and 42) is used to direct a subscriber call through a selected one of said plurality of service provider means and thereby control, from said subscriber terminal (110), set-up of said subscriber call."

XII. Claim 1 of the **first auxiliary request** is the same as claim 1 of the main request except that the final clause reads:

"the control means (11, 12, 21 to 23, 31 to 33, 41 and 42) is attached to the subscriber terminal (110) and stores the service information received from the service database means (10, 20, 30 and 40), and the

service information relating to the plurality of service provider means and stored in or by the control means (11, 12, 21 to 23, 31 to 33, 41 and 42) is then used to select one of said plurality of service provider means based on the stored service information and then to direct a subscriber call through a selected one of said plurality of service provider means and thereby control, from said subscriber terminal (110), set-up of said subscriber call" (respondent's underlining indicating amendments).

XIII. Claim 1 of the **second auxiliary request** is the same as claim 1 of the main request except that the final clause reads:

"the control means (11, 12, 21 to 23, 31 to 33, 41 and 42) is attached to the subscriber terminal (110) and stores the service information, which has been received from the plurality of service provider means via the service database means (10, 20, 30 and 40), and the service information stored in or by the control means (11, 12, 21 to 23, 31 to 33, 41 and 42) is recalled to be used to direct a subscriber call through a selected one of said plurality of service provider means and thereby control, from said subscriber terminal (110), set-up of said subscriber call" (respondent's underlining indicating amendments).

XIV. Claim 1 of the **third auxiliary request** is the same as claim 1 of the main request except that following wording is added to the end of the claim:

"wherein information given by a user is stored in the control means (11, 12, 21 to 23, 31 to 33, 41 and 42)

and used together with information received from the service database means (10, 20, 30 and 40) in controlling call set-up."

XV. Claim 1 of the eleventh auxiliary request reads as follows:

"A method of controlling call set-up from a subscriber terminal of a telecommunication system, the telecommunications system comprising a plurality of subscriber terminals (110), a plurality of service provider means (15 to 17, 25, 26, 35, 45, 46) representing different operators, at least one service database means (10, 20, 30 and 40) for storing service information received from said plurality of service provider means, and a telecommunications network via which calls are established in the system, wherein a service database means (10, 20, 30 and 40) is in connection with the other service database means (10, 20, 30 and 40) and with the plurality of service provider means (15 to 17, 25, 26, 35, 45, 46), or the plurality of service provider means (15 to 17, 25, 26, 35, 45, 46) only, and said service database means (10, 20, 30, 40) storing service information, that is manually transmitted and received via the connection, the service database means (10, 20, 30 and 40) processes service information, which is statistical information, to a form more easily used by a plurality of control means (11, 12, 21 to 23, 31 to 33, 41 and 42).[sic]
the service information in said easier form in the service database means (10, 20, 30 and 40) is periodically transmitted over a radio path to the plurality of a control means so that the service

database means (10) establishes, either regularly or when service information is being updated, a connection to said control means (11, 12, 21 to 23, 31 to 33, 41 and 42) attached to the subscriber terminals (110), and one of the plurality of control means (11, 12, 21 to 23, 31 to 33, 41 and 42) is attached to each subscriber terminal (110) and stores the service information received from the service database means (10, 20, 30 and 40), and the service information stored in or by the plurality of control means (11, 12, 21 to 23, 31 to 33, 41 and 42) is used to direct a subscriber call through a selected one of said plurality of service provider means and thereby control, from said subscriber terminal (110), set-up of said subscriber call."

XVI. In view of the board's decision, it is not necessary to reproduce the wording of claim 1 of any of the remaining auxiliary requests.

Reasons for the Decision

1. *General*

1.1 The present patent relates to a method of call set-up in a telecommunications system. In general terms, the patent describes a method enabling subscribers to route calls via the service provider network offering the most favourable service, eg the one with the lowest price. This is achieved in essence by connecting a plurality of service providers to a service database, which stores service information (eg price data) received from the plurality of service providers. A control means attached to each subscriber terminal

receives and stores the service information from the service database, "either regularly or when service information is being updated". The service information stored by the control means is used to direct a subscriber call through a selected one of said plurality of service providers.

1.2 *Document D1*

1.3 The board considers that document D1 represents the closest prior art. This document discloses several embodiments of which the most similar to the presently claimed subject-matter is the "second embodiment" (cf. pages 11-14).

1.4 In accordance with the second embodiment, customer equipment, eg a mobile phone, is equipped with a selector circuit comprising "programme and data memories" (cf. page 12, lines 2-5). This selector circuit is regarded as a control means within the meaning of the present patent. A number of different radio communications network providers (Fig. 7: 304a, 304b and 304c) are connected to respective pricing devices (320a, 320b, 320c; cf. page 12, lines 7-18). The system operates in summary as follows (cf. page 12, line 38 to page 13, line 26): when a user inputs a telephone number, the selector circuit processor polls each of the pricing devices by transmitting a tender signal. Each pricing device calculates a price and sends a price level signal to the processor of the selector circuit. The processor then uses this information to select and store the provider offering the lowest price and the call is routed accordingly.

It is also stated in connection with this embodiment that the method can be performed at other times than on an attempt to make a call, eg at a time of registration within the cellular network or periodically within a call (cf. page 14, lines 1-7).

1.5 Two further embodiments of D1 are relevant, namely the "first embodiment" (cf. pages 5-11) and the "fifth embodiment" (cf. pages 20-23).

1.5.1 The first embodiment is similar to the second embodiment except that the selector circuits (also called "selection devices" or "selection circuits"), instead of being located at subscriber terminals, are located in local networks (Fig. 1: 1a, 1b and 1c; cf. page 5, lines 30-33 and page 6, lines 22-24), the "service providers" being operators of long distance networks (2a, 2b, 2c; cf. page 5, lines 33-34). As in the second embodiment, pricing devices in the long distance networks respond to tender signals (polling signals) from the selection devices (cf. page 7, lines 9-14). However, in connection with this embodiment, the following is also proposed (cf. page 10, lines 33-39):

"As well as, or instead of, the above described polling system in which the customer networks 1a-1c issue tender signals and the supplier networks 2a-2c reply with price level signals, the pricing devices 22 may be arranged to generate new price level signals on a change of market conditions without awaiting a tender signal, and the selection circuits 12 may be arranged to respond thereto."

1.5.2 The appellant argued, and the board agrees, that this paragraph proposes a non-polling method, commonly referred to as a "push"-method for transferring data to the selector circuits. The respondent disagreed with this interpretation, arguing that this passage instead refers to an alternative polling method in which prices are calculated on a change of market conditions rather than at the time of receiving the polling/tender signal. However the calculated price data is still transferred to the selection circuits following receipt of a polling signal. The board however finds this interpretation somewhat implausible. The passage refers to the generation of new price signals which the selection circuits may respond to, ie, logically, signals transmitted to the selection circuits. In the board's view, the skilled person reading this passage would conclude that new price signals are generated and transferred to the selection circuits without waiting for any kind of polling signal.

1.5.3 The fifth embodiment discloses a system for providing video-on-demand. A plurality of pricing stations periodically supply price level data to a single database station (Fig. 13: 905; cf. page 20, line 32 to page 21, line 5). Each customer equipment includes a selection circuit (cf. page 21, lines 10-12) which contacts the database station when a user wishes to view a video (cf. page 21, lines 25-33). The selection circuit receives price data from the database station and selects a provider based on a comparison of the received data, as in the previous embodiments (cf. page 21, lines 34-38). It is further stated (cf. page 22, lines 14-19) that:

"In the above described embodiment, a central database (or locally distributed, updated copies thereof) is accessed by the different pricing stations 920 to hold price data. This has some advantages, in that the user equipment 900 need only access a single point rather than communicating with multiple suppliers as in the above embodiments".

Further, it is stated (cf. page 23, lines 3-8) that:

"The arrangement of providing a separate database storing price data from a plurality of different suppliers, thus effectively interrupting the direct communication between the selection device and the pricing device, is also applicable to the earlier embodiments in which telecommunications services are provided".

2. *Claim 1 - main request*

2.1 *Claim interpretation*

2.1.1 In the view of the board, the skilled person would understand the feature of claim 1 "the service database means 10 establishes, either regularly or when service information is being updated, a connection to said control means" as meaning that the service database initiates the connection without being polled. This is also corroborated by the description, cf. paragraphs [0007], [0008] and col. 4, lines 18-23 of the description. The board therefore interprets claim 1 accordingly.

2.1.2 The feature of claim 1 "the control means ... stores the service information received from the service database means" in the board's view embraces holding the data, however transiently, in any kind of digital storage medium, eg registers or working RAM, for subsequent processing. The respondent disagreed with the board, arguing that the term "storage" as conventionally used meant long-term storage for subsequent recall and excluded transiently buffering data. The board however considers that the term "storage" does not imply any restriction on the length of time data should be held. Any distinction based on the length of storage time would be arbitrary rather than one well-understood in the art.

2.2 *Novelty*

2.2.1 The appellant argued that the subject-matter of claim 1 was not new with respect to the second embodiment of D1 when modified to incorporate the single database concept of the fifth embodiment, as suggested by D1. This would result in a method as claimed since (a) the feature "the service database means 10 establishes, either regularly or when service information is being updated, a connection to said control means" did not exclude polling and was therefore embraced by the second embodiment of D1, and (b) a control means as claimed which stores the service information was also present in the second embodiment of D1 as described on page 13, lines 17-26.

2.2.2 In view of the board's interpretation of the latter feature as excluding polling by the control means (see above point 2.1.1), the board concludes that the

subject-matter of claim 1 is new with respect to the second embodiment of D1. In this light, it is moot whether combining the second and fifth embodiments of D1 is a matter concerned with novelty or inventive step.

2.3 *Inventive step*

2.4 The respondent argued that the subject-matter of claim 1 differs from the second embodiment of D1 in the following respects:

(i) Claim 1 requires a service database means in connection with a plurality of service provider means, whereas in the second embodiment of D1, each service provider has its own service database.

(ii) The service database as claimed establishes (ie "initiates") a connection to the control means at the subscriber terminal whereas in the second embodiment of D1, the control means ("selector device") initiates communication by polling the provider means with a tender signal. In other words, claim 1 requires "pushing" data to the control means.

(iii) In accordance with claim 1, the control means stores the service information received from the service provider means and uses the stored information in call set-up, whereas in document D1, only transiently held data is used in call set-up, not stored data. In D1 only some data was stored after call set-up, namely that of the selected provider, whereas, in claim 1, due to the antecedent basis for the term "the service information" in the feature "the control means ... stores the service information", all service

information received is first stored, and then used ("recalled") in call set-up.

- 2.5 The board agrees that features (i) and (ii) are distinguishing features. However, feature (iii) is regarded as implicitly comprised in the second embodiment of D1 as will be explained below.
- 2.6 The problem to be solved is regarded by the board as being to overcome the disadvantages of sending polling messages at the time of making a call which both adds to network congestion and increases call set-up time. This is also the problem identified in the patent (cf. paragraphs [0006] and [0007] of the description of patent).
- 2.7 In order to solve this problem the board considers that the skilled person starting out from the second embodiment would find it obvious to add feature (ii) (ie the "pushing" of data to the subscriber terminal), as it is disclosed as part of the first embodiment of D1 (cf. point 1.5.1 above). The skilled person would naturally consider a combination of the first and the second embodiments as they are conceptually closely related. Moreover, the board can see no technical obstacle that would discourage the skilled person from such an approach. In particular, the board notes that there is no need in the second embodiment for price data to be transferred only when making a call (cf. page 14, lines 1-9).
- 2.8 The respondent argued that even if for the sake of argument D1 disclosed a non-polling ("push") variant of the first embodiment (which the respondent did not

accept), the skilled person would not have contemplated pushing data onto the mobile phone of the second embodiment at the priority date of the invention. For example, pushing emails to a mobile phone was used for the first time with Blackberry phones many years later.

The board however does not see that the skilled person would have had any technical difficulty at the priority date of the patent in setting up a connection to a mobile phone initiated by the network. For example, the board notes that this was done for incoming calls or text messages to a mobile phone.

2.9 The board considers that the second embodiment implicitly comprises feature (iii), ie the data storage feature. As mentioned above (see point 2.1.2 above), the board regards transiently held data as "stored" data falling within the scope of claim 1. It is implicit in the second embodiment of D1 that all the received service information is stored, at least temporarily, since the data must be held while the prices from each service provider are adjusted and the lowest one picked (cf. page 13, lines 17-22). This temporary storage occurs before the call is set up.

2.10 Feature (i), ie a single database means in contact with a plurality of service providers, is as mentioned above in point 1.5.3, disclosed as part of the fifth embodiment of D1. As it is explicitly stated that this approach is applicable to the earlier telecommunications embodiments, ie also the second embodiment, and the board can see no reason why this would not apply to a modified second embodiment in which data is pushed to the selection circuit, the

board concludes that the skilled person would additionally incorporate this feature without the need for inventive skill.

- 2.10.1 The respondent argued that the present case was not a "partial problems" situation where the "differences" with respect to the second embodiment of D1 could be analysed separately. Instead, the features co-operate.

The board agrees that claim 1 defines a combination. Consequently, the skilled person has to take two sequential steps (namely to add features (ii) and (i)) to arrive at the subject-matter of claim 1. The board however judges that this would not require inventive skill for the reasons given above, whereby it is to be noted that the addition of feature (i) hardly constitutes a step at all since it explicitly suggested in D1 that it can be applied to all the disclosed telecommunications embodiments.

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

3. *Auxiliary requests 1 to 3*

- 3.1 The respondent filed these requests at the oral proceedings having heard the board's opinion in respect of the main request, in particular with regard to the interpretation of the term "stores". As the requests were an attempt to overcome the objection of lack of inventive step, and did not introduce any procedural complexity, the board decided to admit the requests (Article 13(1) RPBA). However, the board finds that

none of these requests meet the requirement of inventive step for the following reasons (Articles 52(1) and 56 EPC).

3.1.1 Claim 1 of auxiliary request 1 has been amended to emphasise the sequence of first storing the information and then selecting a service provider and setting up a call. However, in the board's view this does not respond to the point made in connection with the main request that in the second embodiment of D1 the service information is stored transiently before a provider is selected and a call set up, which does not differ from what is now claimed.

3.1.2 Claim 1 of auxiliary request 2 further defines that the stored service information is "recalled" for use in call set-up. However, this is also the case for the transient storage of D1.

3.1.3 Claim 1 of auxiliary request 3 adds the feature "wherein information given by a user is stored in the control means ... and used together with information received from the service database means in controlling call set-up". An example of user-provided information is given by the description as "the required quality of the connection" (cf. paragraph [0021]). However, D1 discloses the following variant of the second embodiment (cf. page 13, lines 31-39):

"At the termination of the call, the processor 314 may generate a prompt on the display 305 inviting the user to confirm whether the quality of the just finished call has been acceptable by operating the input device (e.g. keypad) 306. In

the event that the user should indicate the call to have been unacceptable, an entry is made or updated in the memory 318; e.g. to add a significant uplift to the adjusted price received in future from the operator concerned, so as to make the future selection of that operator less likely."

It follows that D1 discloses that user-provided quality information may be stored and used together with price information received from the service providers for setting up subsequent calls. The feature added to claim 1 of auxiliary request 3 is therefore known from D1.

4. *Auxiliary request 11*

4.1 The respondent was asked which of the remaining requests, ie auxiliary requests 4 to 13, included subject-matter relevant for overcoming the objection of lack of inventive step. The respondent referred to auxiliary request 11. The board decided to exercise its discretion to admit this request as it did not give rise to any procedural complication (Article 13(1) RPBA).

4.2 The feature of claim 1 to which the respondent drew attention was "the service database means ... processes service information, which is statistical information, to a form more easily used by a plurality of control means".

The appellant argued that it was advantageous to convert complex statistical price data into a simpler form more easily processed by the control means.

However, the board notes that in the first embodiment of D1, statistical information, in the form of "long term averages representing the average level of availability at the time of day concerned" (cf. page 7, lines 37-38), and other information from the service providers, are transformed into a price which is sent to the selection circuit. Therefore, in D1 complex parameters including statistical ones are converted to a price signal, ie a form clearly simpler for processing by the selection circuit, ie the control means. The skilled person would realise, without requiring inventive skill, that this feature is equally applicable to the second embodiment of D1.

The board therefore concludes that the subject-matter of claim 1 of auxiliary request 11 does not involve an inventive step either (Articles 52(1) and 56 EPC).

5. *Auxiliary requests 4-10, 12 and 13*

These requests were late-filed since they were filed well after the respondent's reply to the statement of grounds of appeal, and indeed all but one of them after oral proceedings had been arranged. The respondent indicated that these requests largely responded to clarity objections raised in the board's communication and offered no argument that claim 1 of any of these requests included subject-matter which might overcome the objection of lack of inventive step raised in connection with the requests discussed above. This applies also to all the alternative wordings suggested in the letter accompanying the filing of auxiliary requests 5-13. The board therefore saw, *prima facie*, no

prospect that any of these requests might be allowable. The board accordingly used its discretion not to admit the requests (Article 13(1) RPBA).

6. *Request for referral of questions to the Enlarged Board*

6.1 In the letter of response to the summons to oral proceedings, the respondent requested that the following questions be referred to the Enlarged Board of Appeal, should the board not admit the auxiliary requests. The request was not withdrawn.

"a) Does the "right to be heard" (Art. 113 (1) EPC) imply that a patentee must be always given the chance to defend his/her patent in a limited form (i.e. to amend his requests or to file new auxiliary requests) as a reaction to the preliminary opinion of the Boards of appeal, when the patentee files the respective requests within a time limit set by the Board.

b) In case the answer to the first question is no, under which circumstances and until which time a patentee must be given the right to defend his/her patent in a limited form."

6.2 Article 112(1) (a) EPC stipulates that in order to ensure the uniform application of the law, or if a point of law of fundamental importance arises, the Board of Appeal shall, during the proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes.

- 6.3 The respondent argued that if the board did not admit its auxiliary requests due to late-filing, this would be in conflict with decision T 1050/10 (not published), because the respondent would be deprived of its right to be heard by being denied the opportunity to respond to the board's preliminary opinion indicating that the decision under appeal might not be upheld.
- 6.4 However, in the present case the board admitted some late-filed auxiliary requests (cf. points 3 and 4 above). Hence, the board did not deny the respondent the opportunity to file auxiliary requests following receipt of the board's preliminary opinion. Indeed, the board admitted those requests which the respondent said were relevant to overcoming the objection of lack of inventive step raised in connection with the main request. With regard to auxiliary requests 4-10, 12 and 13 not admitted to the proceedings, the board exercised its discretion (as indeed did the board in T 1050/10) by taking account of criteria commonly relied on by the boards of appeal, namely not only the late-filing of the requests but also their appropriateness with respect to overcoming the deficiencies that needed to be remedied. Hence, the board sees no conflict between its decision and the case law cited by the respondent, and has merely adhered to the procedural principles enshrined in Article 13 RPBA. In the absence of any conflict with the existing case law, and no fundamental point of law arising, the request for referral to the Enlarged Board is refused (cf. Article 112(1)(a) EPC).

7. *Conclusion*

As there is no allowable request, it follows that the patent must be revoked (Article 101(3)(b) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

G. Rauh

A. S. Clelland