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Datasheet for the decision of 14 January 2014

Case Number: T 2506/10 - 3.5.05

Application Number: 06123423.3

Publication Number: 1783972

IPC: H04L12/58, H04L29/06

Language of the proceedings: EN

Title of invention:
A method and system for a secure connection

Applicant:
Emoze Ltd.

Headword:
E-mail transmission to mobile devices/EMOZE

Relevant legal provisions:
EPC Art. 56, 123(2)

Keyword:
Added subject-matter - main and first auxiliary requests (yes)
Inventive step - second and third auxiliary requests (no)

Decisions cited:

Catchword:

Europäisches Patentamt
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Boards of Appeal
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Case Number: T 2506/10 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 14 January 2014

Appellant: (Applicant)	Emoze Ltd. 22 Zarchin Street Ra'anana 43662 (IL)
Representative:	Lane, Cathal Michael Tomkins & Co. 5 Dartmouth Road Dublin 6 (IE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 4 May 2010 refusing European patent application No. 06123423.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair: A. Ritzka
Members: P. Cretaine
G. Weiss

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, posted on 4 May 2010, to refuse European patent application No. 06 123 423.3. The decision was based on the ground that the independent claims of the sole request did not meet the requirements of Article 84 EPC. In comments appended to the decision, the examining division raised further objections against the independent claims under Articles 84 and 123(2) EPC and under Article 54 EPC having regard to the disclosure of

D1: WO 2005/020503.

II. Notice of appeal was submitted on 2 July 2010 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was submitted on 6 September 2010.

III. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of a set of claims 1 to 10 according to a main request or on the basis of a set of claims 1 to 10 according to a first auxiliary request, both filed with the statement setting out the grounds of appeal. Alternatively, the appellant requested that the case be remitted to the examining division for further examination on the basis of the claims according to the main or first auxiliary request. As a precaution, the appellant requested oral proceedings in the event that the above-mentioned requests were not allowed. As a further precaution, the appellant requested the right to present evidence in the form of oral or written testimony by experts or witnesses should such evidence prove to be necessary.

IV. A summons to oral proceedings was issued on 16 May 2013. In an annex to this summons, the board expressed its preliminary opinion on the appeal pursuant to Article 15(1) RPBA. An objection was raised under Article 123(2) EPC against the claims of the main and first auxiliary requests. At the same time, the board expressed the opinion that, notwithstanding this Article 123(2) EPC objection, the subject-matter of the claims according to the main and auxiliary requests did not involve an inventive step (Article 56 EPC 1973), having regard to the disclosure of D1.

V. With a letter of reply dated 9 August 2013, the appellant filed two sets of claims 1 to 8 according to a second and a third auxiliary request and provided arguments in favour of the allowability of the claims of these requests.

VI. By letter dated 12 December 2013, the board was informed that neither the appellant nor its representative would attend the oral proceedings scheduled for 14 January 2014.

VII. Oral proceedings were held as scheduled on 14 January 2014 in the absence of the appellant. After due deliberation on the basis of the written submissions, the decision of the board was announced at the end of the oral proceedings.

VIII. Independent claim 1 of the main request reads as follows:

"A method of transmitting data between mobile devices (230) and a client computer or network of client computers, characterized by:

installing an internal monitor (220) to serve as a representative application or device that communicates with the client computer to determine if there is data available for transmission to mobile devices (230);
determining that a client computer is interested in sending data to a mobile device (230) or a mobile device (230) is interested in sending data to a client computer, the client computer and mobile device (230) serving as a pair device to each other;
checking with a wireless gateway (210) that is provided to communicate with the mobile devices (230) and with said internal monitor (220), to find out if the pair device is connected and available to communicate via the wireless gateway (210);
responsive to said checking if both sides are available to communicate, the wireless gateway (210) enables pushing data on the fly from the client computer to the mobile device or from the mobile device (230) to the client computer without storing the data on the wireless gateway; otherwise if either side is unavailable to communicate the client computer or mobile device (230) keep the data on hold."

Independent claim 1 of the first auxiliary request reads as follows:

"A method of sending data between at least one computing device, located at a user location, and a mobile device (230), the data routed through a wireless gateway (210), the computing device and the mobile device (230) serving as a pair device to each other, characterized by:
the device which wishes to send data to its pair device connecting to the wireless gateway (210) and
checking with the wireless gateway (210) that is provided to communicate with the mobile device (230)

and with an internal system monitor (220) associated with the computing device which monitors data of the computing device, to determine whether the pair device is connected to the wireless gateway (210);
responsive to said checking if both the computing device and the mobile device (230) to which it is paired are connected to the wireless gateway (210), the wireless gateway (210) enabling the pushing of data on the fly from the computing device to the mobile device (230) or from the mobile device (230) to the computing device without storing the data on the wireless gateway (210); otherwise if either the computing device or the mobile device (230) are not connected to the wireless gateway (210) the wireless gateway (210) indicating to the internal system monitor (220) or to the mobile device (230) to hold the data."

Independent claim 1 of the second auxiliary request reads as follows:

"A method of transmitting data between mobile devices (230) and a client computer or network of client computers, characterized by:
installing an internal monitor (220) to serve as a representative application or device that communicates with the client computer to determine if there is data available at a client computer for transmission to mobile devices (230);
checking with a wireless gateway (210) that is provided to communicate with the mobile devices (230) to find out if the mobile device (230) is connected and available to communicate via the wireless gateway (210);
responsive to said checking if the mobile device is available to communicate, the wireless gateway (210) enables pushing data on the fly from die client

computer to the mobile device without storing the data on the wireless gateway; otherwise if the mobile device (230) is unavailable to communicate the client computer keeps the data on hold."

Independent claim 1 of the third auxiliary request reads as follows:

"A method of sending data between at least one computing device, located at a user location, and a mobile device (230), the data routed through a wireless gateway (210), characterized by:
the computing device, which wishes to send data to the mobile device, connecting to the wireless gateway (210) and
checking with the wireless gateway (210) that is provided to communicate with the mobile device (230) to determine whether the mobile device is connected to the wireless gateway (210);
responsive to said checking if the mobile device (230) is connected to the wireless gateway (210), the wireless gateway (210) enabling the pushing of data on the fly from the computing device to the mobile device (230) without storing the data on the wireless gateway (210); otherwise if die mobile device (230) is not connected to the wireless gateway (210) the wireless gateway (210) indicating to the internal system monitor (220) to hold the data."

Each request further comprises an independent claim directed towards a corresponding system.

Reasons for the Decision

1. Admissibility of the appeal

The appeal complies with Articles 106 to 108 EPC (cf. point II above) and is therefore admissible.

2. Non-attendance at oral proceedings

The appellant decided not to attend the scheduled oral proceedings. Pursuant to Article 15(3) RPBA, the board is not obliged to delay any step in the appeal proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Hence, the board was in a position to announce a decision at the end of the oral proceedings.

3. Admissibility of the appellant's requests

The main and first auxiliary requests were filed with the written statement setting out the grounds of appeal and aim at overcoming the clarity objections under Article 84 EPC 1973 which were the reason for the refusal of the application. Thus the board, exercising its discretion under Article 12(4) RPBA, decided to admit them into the proceedings.

The second and third auxiliary requests were filed with the letter of 9 August 2013 in response to the board's communication under Article 15(1) RPBA sent on 16 May 2013, and aim at overcoming, inter alia, the objections under Article 123(2) EPC raised in this communication against the claims of the main and first auxiliary requests. In view of the foregoing, the

board, exercising its discretion under Article 13(1) RPBA, decided to admit them into the proceedings.

4. Main request - Article 123(2) EPC

4.1 The claims relate to a method (claim 1) and system (claim 10) for transmitting data **between** mobile devices and a client computer or network of clients computers, i.e. they define that transmission of data may occur either from client computers to mobile devices or from mobile devices to client computers. The claims as originally filed and the claims on which the decision was based were however directed to a method and system for transmitting data **from** computing devices **to** mobile devices.

The only part of the application documents as originally filed which unambiguously discloses a transmission of data from a mobile device to a client computer, as defined in claims 1 and 10, is to be found on page 6, lines 32 to 33 of the description as originally filed (see paragraph [0035], lines 23-24 of the published application) and reads as follows: "For transmission from the wireless device to the PC all the processing is the same, but in the opposite direction". The process of transmitting data from a client computer to a mobile device described in paragraph [0035], to which this sentence belongs, relies on the provision of an internal system monitor (220, Figure 2) associated with the client computer and providing application connectors at the user (i.e. the client computer) location (see paragraphs [0018] and [0024]). In particular, the step of checking if the mobile device is connected (see paragraph [0035], lines 12-13), and the step of starting to transmit (see paragraph [0035],

lines 15-16) are based on functionalities of the internal system monitor.

There is however no disclosure, in the application documents as originally filed, of an internal system monitor associated with the mobile device. Therefore, in the board's judgement, even if transmission of data from the mobile device to the client computer is not excluded by the teaching of the application, it is not directly and unambiguously derivable, from the whole content of the application as filed, that such a transmission would be initiated and performed in the manner it is defined in claims 1 and 10 according to the main request.

The appellant, in the statement setting out the grounds of appeal, has cited passages and figures of the originally filed application as the basis for the substantial amendments made in the claims according to the main request compared with the claims on which the impugned decision was based. The appellant however has neither addressed the technical teaching of these passages and figures nor explained their relationship to the amendments made, in particular with respect to the differing wordings. In response to the board's communication accompanying the summons, the appellant has not provided any argument with respect to support in the application for transmissions from the mobile device to the client device.

4.2 Furthermore, the feature in claims 1 and 10 of the main request of "determining that a client computer is **interested in sending data** to a mobile device" does not have support in the application documents as originally filed. The appellant has argued that this feature finds support in paragraphs [0024] and [0025]. The board

however notes that these passages plausibly recite that organisation connectors deployed at customer organisations may wish to send information over, i.e. be interested in doing so, but do not unambiguously describe that it is determined if a client computer itself is interested in sending data to a mobile device, as defined in claims 1 and 10.

4.3 For these reasons, the board judges that the amendments introduced by claims 1 and 10 of the main request do not comply with the requirements of Article 123(2) EPC.

5. First auxiliary request - Article 123(2) EPC

As indicated by the appellant (see the statement setting out the grounds of appeal, paragraph 2), the claims of the first auxiliary request include the same technical features as the claims of the main request, but use a slightly different wording. Claims 1 and 10 thus define that transmission of data may occur either from client computers to mobile devices or from mobile devices to client computers.

Thus, for the reasons detailed in point 4.1 above, the claims according to the first auxiliary request do not meet the requirements of Article 123(2) EPC.

6. Second auxiliary request - Article 56 EPC 1973

6.1 Claims 1 and 8 correspond in substance to claims 1 and 10 of the main request but refer only to the transmissions from the client device to the mobile device; moreover, the phrase objected to by the board (see point 4.2 above) has been removed. The requirements of Article 123(2) EPC are thus satisfied.

6.2 The board however judges that the subject-matter of claims 1 and 8 does not involve an inventive step.

In that respect, document D1 discloses (see Figures 1 and 2 and the related passages) a method and system of transmitting data between mobile devices ("Mobile communication device 100") and a client computer or network of client computers ("Host or Desktop System 35"). The system disclosed in D1 comprises a message server 40 at the host location for receiving e-mails from an e-mail sender 10 and sending e-mails through the internet 20 to a mobile device 100. A message that arrives at the message server is first stored in a message store (page 3, lines 36 to 37). A redirection software enables the transmission of e-mails from the server 40 to a mobile communication device 100, so that e-mails addressed to an e-mail account associated with a computer which belongs to the user of the mobile device 100 are redirected from the message server 40 to the mobile device 100 through a wireless gateway 85. This transmission may be initiated upon request from the mobile device (see from page 3, line 37 to page 4, line 3) or may be automatic, i.e. e-mails are pushed to the mobile device when they arrive at the message server (see page 4, lines 3 to 4; page 5, lines 7 to 9). D1 further discloses (see page 3, lines 26 to 31) that the wireless infrastructure tracks the user of a mobile device as it roams between networks and that a message is **then** delivered to the mobile device via wireless transmission. This implies that the wireless infrastructure checks the reachability of the mobile device before a message is delivered to the mobile device through the wireless infrastructure.

However, D1 does not explicitly disclose that the reachability of the mobile device is checked before the message leaves the message store of the message server.

The appellant therefore argued that the difference between the subject-matter of claim 1 and the system disclosed in D1 was that **the message was kept in the client computer until the wireless gateway had checked that the mobile device was reachable.**

The technical effect of this sole distinguishing feature was, as stated by the appellant, that no message had to be returned to the client computer or to be stored at an intermediate location between client computer and mobile device if the mobile device was not reachable.

The objective technical problem underlying this technical effect could thus be formulated as how to improve the transmission of data from the client computer to the mobile device so that resources are saved and security is increased.

Starting from D1 and trying to solve this problem, the skilled person would realise that in D1 the message is stored in the message store of the message server, i.e. at the client computer, and that the reachability of the mobile device is checked by the wireless infrastructure. The skilled person would therefore consider keeping the message in the message store until the mobile becomes reachable as an obvious solution to the above-mentioned problem.

The appellant made submissions to the effect that D1 contained a disclosure of the message leaving the client (10 or 35) in any case and being stored at

message server 40 regardless of the status of the mobile device 100 and without checking for availability of the mobile device 100. D1 therefore related to a method of "store and forward" or "fire and forget" according to which the client sent the message to the message server 40 and left it up to the message server 40 to deliver the message. The implementation of a check before sending would thus require non-obvious amendments to the transmission protocol of D1.

The board is not convinced by this argument since, in the above-mentioned inventive step analysis, the desktop system 35 with its attached message server 40 corresponds to a client computer in the sense of claim 1, rather than the desktop system 35 alone or, even less, the computer 10. The wording of the claims is such that they only define three interacting entities, a message originating device (the client computer and its associated internal monitor), a transmission gateway (the wireless gateway) and a recipient device (the mobile device). These three entities can be read in D1, Figure 2, onto the desktop system 35 and its attached message server 40, the wireless gateway 85, and the mobile device 100, respectively. The mere fact that the message is stored at the originating device implies that D1 does not simply rely on a "store and forward" scheme, wherein a message may be stored only at an intermediate location between sender and recipient.

For these reasons, the subject-matter of claims 1 and 8 does not involve an inventive step (Article 56 EPC 1973), having regard to the disclosure of D1.

7. Third auxiliary request - Article 56 EPC 1973

The claims of the third auxiliary request include the same technical features as the claims of the second auxiliary request, but use a slightly different wording.

Thus, for the reasons detailed in point 6.2 above, claims 1 and 8 according to the third auxiliary request do not meet the requirements of Article 56 EPC 1973.

8. Conclusions

In the absence of an allowable request the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Götz A. Ritzka

Decision electronically authenticated