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Datasheet for the decision of 4 May 2012

Case Number: T 0504/11 - 3.5.04

Application Number: 06120003.6

Publication Number: 1895765

IPC: H04N5/232, H04M1/725

Language of the proceedings: EN

Title of invention:
Method for monitoring and controlling photographs taken in a proprietary area

Applicant:
Research In Motion Limited

Headword:

Relevant legal provisions:
EPC 1973 Art. 56

Keyword:
inventive step (all requests - no)

Decisions cited:

Catchword:

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T0504/11 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 4 May 2012

Appellant: (Applicant)
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Representative:
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 15 October 2010 refusing European patent application No. 06120003.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. Edlinger
Members: R. Gerdes
C. Vallet

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse European patent application No. 06 120 003.6.

II. In the decision under appeal the examining division held that the application did not comply with Article 54 EPC because the subject-matter of the independent claims according to the sole request were not new in view of

D1: US 2006/0028558 A1.

The examining division also referred to

D2: WO 2004/084537 A1.

III. In the statement setting out the grounds of appeal the appellant maintained the claims underlying the decision under appeal and argued in favour of novelty and inventive step over D1. By letter of 23 November 2011 in reply to a communication of the board, the appellant submitted a set of claims according to a first auxiliary request. According to the appellant, these claims were reworded to emphasise the distinction between the claimed invention and D1.

IV. In a communication annexed to the summons to oral proceedings the board *inter alia* expressed doubts that the subject-matter of the independent claims of the main request involved an inventive step (Article 56 EPC 1973) in view of either D1 or D2. The board added that this opinion likewise applied to the independent claims of the auxiliary request because they contained no further substantive features.

V. The appellant confirmed its previous requests by letter of 3 April 2012 and submitted claims according to a second auxiliary request.

VI. By letter of 30 April 2012, the appellant announced that it would not be represented at the oral proceedings and requested "a decision on the papers".

VII. With facsimile dated 2 May 2012, the board drew attention to Article 15(3) RPBA and indicated further passages of D2 which would have to be considered by the board in the oral proceedings for the discussion of inventive step of the claimed subject-matter according to the second auxiliary request.

VIII. Oral proceedings were held by the board on 4 May 2012. As announced beforehand, the appellant was not represented at the oral proceedings. The board noted that, according to the state of the file, the appellant had requested that the decision under appeal be set aside and a patent be granted according to one of the main request, first auxiliary request or second auxiliary request.

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

"A method for avoiding unauthorized images of a proprietor's information being transmitted outside the proprietor's control, said method comprising: wirelessly transmitting a photographic image captured with a camera (550) incorporated upon a wireless handheld communication device (300) to a proprietor's server (585) and storing the image on the server (585) when the image has been captured while the device is in a photography-restricted geographical area (530) under

the control of the proprietor of the server;
analyzing at the server (585) said photographic image and determining whether the image is authorized for dissemination outside the proprietor's control;
preventing local storage of said photographic image on the device (300) if the image is unauthorized for dissemination outside the proprietor's control, and thereby assuring that said transmission and storage of said photographic image on the proprietor's server (585) is exclusive;
allowing local storage of said photographic image on the device (300) and transmission of said photographic image by the device (300) if the image is authorized for dissemination outside the proprietor's control;
matching said stored photographic image with information identifying the device (300) with which the image was captured;
matching said stored photographic image with information identifying a probable operator of the identified device (300) with which the image was captured; and
determining release conditions of said stored photographic image based upon the identity of the probable operator."

X. Claim 1 of the first auxiliary request is worded as follows:

"A method for monitoring images captured by wireless communication device (300) in a photography-restricted geographical area (530) under the control of a proprietor, said method comprising:
wirelessly transmitting a photographic image captured with a camera (550) incorporated upon a wireless communication device to a proprietor's server (585) when the image has been captured while the wireless

communication device is in a photography-restricted geographical area (530) under the control of the proprietor;
storing the image on the server (585);
matching the stored photographic image with information identifying the device (300) with which the image was captured and a probable operator of the identified device (300) with which the image was captured;
determining release conditions of the stored photographic image based upon the identity of the probable operator;
preventing local storage of the photographic image on the device (300) if the image is unauthorized for dissemination outside of the proprietor's control, and thereby assuring that transmission and storage of the photographic image on the proprietor's server (585) is exclusive; and
allowing local storage of the photographic image on the wireless communication device (300) and transmission of the photographic image by the wireless communication device (300) if the image is authorized for dissemination outside the proprietor's control."

XI. Claim 1 of the second auxiliary request is identical to claim 1 of the main request except for the feature "wirelessly transmitting ... under the control of the proprietor of the server" which is replaced by the following features:

"storing, at a wireless handheld communication device (300) incorporating a camera (550) data defining geographical boundaries of a photography-restricted geographical area (530) under the control of the proprietor of a server;
ascertaining a present geographical position of the device;

determining whether the device is presently located in the photography-restricted geographical area based on a comparison of the present position and the stored boundaries;
wirelessly transmitting a photographic image captured with the camera (550) to the server (585) and storing the image on the server (585) when the image has been captured while the device is in the photography-restricted geographical area (530)".

XII. The appellant's arguments concerning D2 may be summarised as follows:

According to claim 1 of the second auxiliary request, the position of the camera is compared with stored parameters in the wireless communication device itself. In contrast, D2 discloses that the comparison is made at the server, rather than by the device itself, based on location data established by the telecommunications operator by triangulation. Due to this difference, fewer interactions between the device and the proprietor's server are required, which results in a more reliable and efficient system. The invention thus simplified the control of transmission of unauthorised images (see letter of 3 April 2012, page 2).

Reasons for the Decision

1. The appeal is admissible.

2. Main Request

2.1 D2 discloses a method for avoiding unauthorised images of a proprietor's information being transmitted outside the proprietor's control (see Abstract and page 3,

lines 6 to 22). The capture, storage and transmission of digital photos is controlled in places where access to images is subject to restrictions to prevent a violation of rights (see also page 1, lines 27 to 30; page 6, lines 19 to 31 and page 7, lines 13 to 17).

The method involves a wireless handheld communication device (henceforth: a handheld device) which communicates with a server to obtain authorisation for the dissemination of images (page 1, lines 22 to 26; page 3, line 9). An image captured by the handheld device is transmitted to the server when the image was captured while the handheld device was in a photography-restricted geographical area. The image is stored on the server to determine whether or not the image is authorised for dissemination outside the proprietor's control. If authorisation is granted the image may be stored locally on the handheld device or transmitted to further devices. In the opposite case local storage of the image at the handheld device is prevented (see page 1, lines 27 to 30; page 2, lines 15 to 24; page 3, lines 6 to 19; page 4, lines 14 to 22; page 5, lines 3 to 27; page 6, lines 14 to 31 and figure 1).

D2 thus also discloses an analysis of the photographic image, in particular of metadata associated with the image content such as localisation or temporal data imparting "the place and time of the shot" (see page 5, lines 6 to 8).

According to D2, the data transmitted from the handheld device "can also identify the user". The subsequent analysis at the server includes "a verification for establishing if the transmitting user has or not settled the image rights for the captured images at the

place corresponding to the localization data". For this verification the transmitted data from the handheld device are compared "with a previously recorded list or database" which lists inter alia "data indicating image rights payments" (see page 5, lines 8 to 20).

Hence, the analysis at the server may involve matching the image with information identifying a probable operator of the device as well as determining the release conditions of the image based on the operator's identity.

2.2 Claim 1 recites an additional step of "matching said stored photographic image with information identifying the device (300) with which the image was captured", which is not unambiguously disclosed in D2. It is, however, common practice to utilise information identifying a wireless handheld communication device (telephone number, SIM card identifier) in order to identify a probable operator of the device. Hence, the board considers that it was obvious for the skilled person to include a step of using information identifying the device to identify a probable operator.

2.3 The board concludes that the subject-matter of claim 1 lacks an inventive step having regard to the state of the art in D2 (Article 56 EPC 1973).

3. First Auxiliary Request

3.1 According to the appellant, claim 1 of the first auxiliary request has been reworded with respect to claim 1 of the main request to emphasise the distinction between the claimed invention and D1. The board informed the appellant of its opinion that it could not detect any further substantive features in

claim 1 that could serve to make a difference in the board's judgment on inventive step over that of claim 1 of the main request (see point IV above). The appellant has not challenged this opinion.

3.2 The board sees no reason to deviate from its provisional opinion in this respect. Hence, the subject-matter of claim 1 lacks an inventive step for the reasons already given, see point 2 above (Article 56 EPC 1973).

4. Second Auxiliary Request

4.1 Claim 1 of the second auxiliary request contains the following additional steps with respect to claim 1 of the main request:

(a) storing, at a wireless handheld communication device (300) incorporating a camera (550) data defining geographical boundaries of a photography-restricted geographical area (530) under the control of the proprietor of a server;

(b) ascertaining a present geographical position of the device;

(c) determining whether the device is presently located in the photography-restricted geographical area based on a comparison of the present position and the stored boundaries.

4.2 Feature (b) is disclosed in D2 (see e.g. page 5, lines 3 to 8). Features (a) and (c) are not disclosed in D2.

4.3 Features (a) and (c) provide the further effect that the image only needs to be sent to the server if the

device is within the geographical boundaries of a photography-restricted geographical area. On the other hand, the handheld device is charged with the additional task of storing geographical boundaries associated with one or more pertinent photography-restricted geographical areas and to check whether it is within one of these areas.

4.4 The board therefore agrees with the appellant that, starting from D2, the objective technical problem may be seen to simplify the control of transmission, in particular as to how to reduce interactions between the handheld device and the server.

4.5 According to D2, localisation data for the handheld device are compared with "a given geographic zone" (see page 6, lines 29 to 31) at the server. However, D2 also discloses the possibility that the "prohibition of a processing step can take place on the service provider side, or on the user side" (see page 3, lines 6 and 7). Hence, D2 hints at a flexible separation of tasks between the handheld device and the server which may be adapted according to the circumstances, such as available computing power, memory, bandwidth between the server and the handheld devices, etc. Therefore, the skilled person would have considered implementing such a comparison at the handheld device. The storing and determining steps as specified in features (a) and (c) above constitute well-known solutions for the implementation of a comparison at the handheld device in order to reduce interactions with a server.

4.6 The appellant's arguments did not convince the board. D2 discloses that the "localization data may come from a global positioning system (GPS) built into the mobile imaging equipment", see page 3, lines 26 and 27. Hence,

localisation of the handheld device using a triangulation method and further communication with a telecommunications operator is not necessary.

4.7 It follows from the above that the subject-matter of claim 1 lacks an inventive step (Article 56 EPC 1973).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

K. Boelicke F. Edlinger

Decision electronically authenticated