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**Datasheet for the decision
of 28 June 2013**

Case Number: T 0594/11 - 3.2.04

Application Number: 00660161.1

Publication Number: 1086732

IPC: A63F13/12, H04L29/06

Language of the proceedings: EN

Title of invention:

System for profiling mobile station activity in a predictive
command wireless game system

Applicant:

Nokia Corporation

Headword:

Relevant legal provisions:

EPC Art. 123(2), 54, 56, 52(2)(c)

Keyword:

Amendments - added subject-matter (yes)

Novelty - (no)

Inventive step - (no) - mixture of technical and non-technical
features

Decisions cited:

T 1543/06, T 0641/00

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0594/11 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 28 June 2013

Appellant: Nokia Corporation
(Applicant) Keilalahdentie 4
02150 Espoo (FI)

Representative: Swindell & Pearson Limited
48 Friar Gate
Derby
DE1 1GY (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 10 November 2010 refusing European patent application No. 00660161.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: A. de Vries
Members: J. Wright
T. Bokor

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal, received on 10 January 2011, against the decision of the Examining Division, dispatched on 10 November 2010, on the refusal of the application No. 00660161.1 and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 04 March 2011.

The Examining Division held that the application did not meet the requirements of Articles 84 EPC, and 52(1) with 56 EPC, having regard to the following document D5: WO-A-97/26061.

- II. In a communication annexed to its summons to attend oral proceedings dated 28 March 2013, the Board raised issues of added subject matter Article 123(2) EPC, with respect to certain features of claims according to all requests on file, novelty of the independent claims according to the main and first auxiliary requests and inventive step of independent claims according to the second and third auxiliary requests. It considered the following documents, cited during the examination proceedings:

D3: WO-A-98/47295

D4: US-A-5544321

- III. In a letter received 14 June 2013, the appellant informed the Board that he would not appear at the oral proceedings. Oral proceedings were duly held in the absence of the appellant on 28 June 2013.
- IV. The appellant requests that the decision under appeal be set aside and a patented granted on the basis of

claims according to a main request, or alternatively according to any one of first to third auxiliary requests, all requests being filed on 4 March 2011.

- V. The wording of the independent claims of the current requests is as follows,

Main request

1. "A method for applying user profile data (1514) in a service (406-1300) for a mobile station (102) in communication with a network (306), comprising:
collecting user profile data, wherein the user profile data relates to at least one of: communication use of the mobile station in the network, location information, contact information, calendar information, and time information;
storing the user profile data;
executing a service;
communicating a service state;
receiving a command in response to the service state;
adapting the service state to reflect the user profile data; and
communicating the changed service state.",

15. "A mobile station (102) for communicating with a telecommunication network (305), said mobile station comprising a transceiver (1826) for communicating with said telecommunication network; wherein said mobile station is configured to:
collect user profile data, wherein the user profile data relates to at least one of: communication use of the mobile station in the network, location information, contact information, calendar information, and time information;
store the user profile data;

execute a service;
communicate a service state;
receive a command in response to the service state;
adapt the service state to reflect the user profile
data;
and communicate the changed service state."

27. "A system (312), comprising: a mobile station (102)
which includes a transceiver (1826);
a base station (26) which includes a transceiver
wherein said base station and said mobile station
communicate with each other using said transceivers;
and a server (1412) configured to run a game center
software application (1414) wherein said base station
is adapted to communicate with said game center
software application and said game center software
application is configured to execute an application
(1300); wherein said mobile station is configured to:
collect user profile data, wherein the user profile
data relates to at least one of: communication use of
the mobile station in the network, location
information, contact information, calendar information,
and time information;
store the user profile data;
execute a service;
communicate a service state;
receive a command in response to the service state;
adapt the service state to reflect the user profile
data; and communicate the changed service state."

First auxiliary request

In claims 1, 15 and 27 of the first auxiliary request,
the feature of the main request stating to what the
user profile data relates is substituted by the
following feature:

"wherein the user profile is based on at least one of: an attribute related to telephone call usage on the mobile station, a current location of the mobile station, a contact listing stored in the mobile station, a calendar listing stored in the mobile station, and a time information from a clock in the mobile station;"

Second auxiliary request

1. "A method for applying user profile data (1514) in a game (408,1300) for a mobile station (102) in communication with a network (306), comprising: collecting user profile data, wherein the user profile data is based on an attribute related to telephone call usage of the mobile station; storing the user profile data: executing a game; communicating a game state; receiving a command in response to the game state; adapting the game state to reflect the user profile data; and communicating the changed game state."

15. "A mobile station (102) for communicating with a telecommunication network (305), said mobile station comprising a transceiver (1826) for communicating with said telecommunication network; wherein said mobile station is configured to: collect user profile data, wherein the user profile data is based on an attribute related to telephone call usage of the mobile station; store the user profile data; execute a game; communicate a game state; receive a command in response to the game state;

adapt the game state to reflect the user profile data;
and communicate the changed game state."

27. "A system (312) comprising:
a mobile station (102) which includes a transceiver
(1826);
a base station (26) which includes a transceiver
wherein said base station and said mobile station
communicate with each other using said transceivers;
and a server (1412) configured to run a game center
software application (1414) wherein said base station
is adapted to communicate with said game center
software application (1414) and said game center
software application is configured to execute an
application (1300);
wherein said mobile station is configured to:
collect user profile data, wherein the user profile
data is based on an attribute related to telephone call
usage;
store the user profile data; execute a game;
communicate a game state;
receive a command in response to the game state; adapt
the game state to reflect the user profile data; and
communicate the changed game state."

Third auxiliary request

Claim 1 according to the third auxiliary request
corresponds to claim 1 of the second auxiliary request
except that the feature "mobile station (102)" is
replaced by "mobile phone (102)" and the user profile
data is defined by the following feature:

"wherein said user profile data (1514) comprises
information relating to:
a call frequency of said phone (102),

an average call duration of said phone,
most frequent local locations visited by said phone,
most frequent global locations visited by said phone,
local locations called most frequency by said phone, or
countries called most frequently by said phone;"

Independent claims 14 (to a mobile station) and 25 (to a system) of this request correspond to independent claims 15 and 27 of the second auxiliary request, but are amended in correspondence with claim 1.

VI. The appellant argued as follows:

Amendments are based on various cited passages of the description.

Regarding the main and first auxiliary requests, none of the cited prior art discloses, either alone or in combination, collecting user profile data and using it to adapt a service state as claimed, whereby the user profile data relates to at least one of: communication use of the mobile station in the network; location information; contact information; calendar information; or time information.

Regarding the second and third auxiliary requests, their claims refer to a "game" rather than a "service", and telephone call usage is specified as forming the basis for the profile data. The prior art does not disclose a mobile phone in which a game is configured based on, for example, a list of phone numbers the user has called.

Reasons for the Decision

1. The appeal is admissible.
2. Added subject matter, Article 123(2) EPC (all requests)
 - 2.1 According to established jurisprudence, see the Case Law of the Boards of Appeal, 6th edition, 2010 (herein CLBA), III.A.7, and the decisions cited therein, the relevant question for deciding whether an amendment adds subject matter extending beyond the content of the application as filed is whether the proposed amendment is directly and unambiguously derivable from the application as filed.

Furthermore, according to CLBA, III.A.2, and the decisions cited therein, it is normally not admissible under Article 123(2) EPC to extract isolated features from a set of features originally disclosed only in combination in a specific embodiment. An amendment of this nature would only be justified in the absence of any clearly recognisable functional or structural relationship between said features.

- 2.2 In its communication of 28 March 2013, the Board raised objections of added subject matter with respect to the feature: "an attribute related to telephone call usage" in claims 1, 15 and 27 of the first and second auxiliary requests, to which the appellant has not responded. The Board has not found any reason to change its opinion.
 - 2.2.1 Applying the approach outlined in point 2.1, the Board first notes that the feature itself is not literally disclosed. There is disclosure of generic call usage data being used to adjust parameters of a game, see for

example the application as filed, page 2, lines 10 to 12, which reads "*The game parameters can be adjusted based on for example...call usage on the mobile station...*". However, the Board considers "call usage" to be more specific than an "attribute related to call usage" as is claimed. Furthermore the adjustment of parameters on the basis of call usage data is only disclosed in the specific context of a "game" rather than that of a more general "service" as claimed in claim 1 of these requests. Since the call usage adjusts the game parameters the two features are functionally related.

The Board therefore holds that claims 1, 15 and 27 according to the appellant's first and second auxiliary requests contain subject matter extending beyond the application as filed.

2.3 In its communication of 28 March 2013, the Board also raised objections of added subject matter with respect to the feature of a mobile station/phone being configured to adapt a service/game state present in independent claims to a mobile station/phone and to a system according to all requests, see for example claims 15 and 27 of the main request. The appellant has not provided any counter arguments, nor has the Board found any reason to change its opinion.

2.3.1 The Board notes that, in the application as filed, the only entity disclosed as adapting a service or game state to a user profile is a server, separate from the mobile station/phone. See for example figure 14 and page 18, lines 7 to 25, where it is disclosed that a "virtual world" game played on a user mobile station 102 has different states which are updated by an interactive fiction engine 1414 running on a game

server 1412 connected to the mobile station via a mobile network 1408. Likewise on page 22, lines 20 to 23 it is stated that *"in order to incorporate user profile information in a game, user profile information retrieved from the memory 1504 in the mobile station 102 is sent to the the server 1412. The server 1412 incorporates this profile information into the game service 1414."* Similarly on page 23, lines 11 to 12, *"The game server 1412...updates the game state...then issues a command to the mobile station 102 to update the game context being presented on the mobile station 102"*.

The claims as originally filed, for example claim 29, likewise specifies that a server in communication with a mobile station, rather than the mobile station itself, is configured to change a [service] application state.

- 2.3.2 The Board does not dispute that the application as filed discloses that data relating to the mobile station, such as how the mobile station is used (page 21, lines 12 to 13) or the clock time of the mobile station (page 21, lines 15 to 16) can affect the game state. However the mobile station/phone itself is not disclosed as being configured to adapt the service or game state. This feature is, in the Board's estimation, not directly and unambiguously derivable from the application as filed. The Board concludes that claims 15 and 27 of the main request, first and second auxiliary requests and claims 14 and 25 of the third auxiliary request comprise subject matter extending beyond the application as filed.
3. Novelty, Article 54 EPC (main and first auxiliary requests)

3.1 In its communication of 28 March 2013, sections 2, 2.1 to 2.3, the Board stated its provisional opinion that "[section 2][the] basic idea of using user or usage profile data to customise services on a mobile station appears to be known from either D3, W098/47295 or D4, US5544321.

2.1. In the telecommunications system of D3, see abstract; page 23, Lines 11-18; page 24, line 5-12, a shortlist of information on a users terminal which may be a mobile phone (see Fig. 1) is updated based on its sensed location.

2.2. In D4, see abstract and figures 3 and 4 with col. 9, line 64 to col. 10, line 45, a user software on a possibly mobile device, col. 7, lines 36-40, manages user information and uses it to customise applications. As an example, col. 12, lines 45-54, the system issues reminder messages if a user is near another specified user, implying location tracking.

2.3. Both D3 and D4 appear to anticipate the general idea expressed in the independent claims of the main and first auxiliary requests."

3.2 More particularly, and by way of example, D3 discloses the idea of providing an information service to users of mobile devices communicating in a (telecommunication) network, see D3 abstract and additionally page 1, lines 1 to 5. Locations of the users in the system are tracked, corresponding to the collection of "user profile data [that] relates to... location information" as in claim 1, main request which (for tracking) is naturally current location (first auxiliary request). This data is stored and used to

generate a short list of information sources, which is transmitted to the user for selection, corresponding to the claimed features of "communicating a service state" and "receiving a command in response to the service state". This information is adapted to reflect the user's location, see page 24 lines 5 to 12 and additionally page 5, lines 12 to 15, corresponding to the final feature of claim 1. D3 thus discloses all the features of claim 1 according to the main and first auxiliary requests.

- 3.3 The appellant has provided no argument as to why the subject matter of these claims is new with respect to either document D3 or D4, nor has the Board found any reason to change its provisional opinion. It thus concludes that the subject matter of claim 1 of the main request and first auxiliary request lack novelty.

- 4. Inventive Step, Article 56 EPC (second and third auxiliary requests)
 - 4.1 In the communication of 28 March 2013, section 2.4, the Board stated its provisional opinion that "[the] second and third auxiliary requests apply the broad idea [of using user or usage profile data to customise services on a mobile station] to the narrower context of gaming on mobile stations. Mobile phones with gaming software were notoriously known at the priority date of the application. The idea of customising or adapting a game to phone usage specifics itself lies in the domain of methods and rules for playing games and is per se excluded from patentability under Art. 52(2) c EPC, and cannot therefore contribute to inventive step following established case law, as explained in T1543/06 in reference to T641/00. Decisive for inventive step in the technical sense of Art. 56 EPC is the question of

how the idea has been technically implemented in the mobile station/phone, its method of operation, or as part of a larger (cellular) network with a base station. The idea of using profile data for automation of services is known as discussed above, see also D5, WO97/26061, pages 54 and 55 for example."

4.2 The sole issue that remains to be decided in assessing inventive step thus concerns the particular manner of realisation of this game idea as defined in claim 1 of these requests, and in particular whether the claimed mode of realisation would be obvious to the skilled person. The appellant has not put forward any arguments in this regard and it is therefore incumbent on the Board to consider this question.

4.3 The Board observes that it is undisputed that user profile data, such as call destination data, was routinely collected by mobile phones at the relevant date of the application. In realising a mobile phone with gaming software in which the game is adapted to phone usage it would therefore be obvious for the skilled person, a game system developer, to use such routinely collected relevant profile data. Other than specifying the use of this data claim 1 of the second and third auxiliary requests offers no details as to how the above rule of adapting game play to phone usage is implemented. Indeed that feature is merely a statement that the rule is implemented by the method claimed. As stated above the rule itself cannot contribute to inventive step, nor the mere fact that it is implemented. The only concrete feature of its implementation - collecting and storing profile data - is well-known in mobile phones, and the skilled person would immediately consider such collection and storage when asked to implement a game on a mobile phone that

is adapted to phone usage. For this reason the Board concludes that the manner of implementation of this game rule or concept as claimed in claim 1 of the second auxiliary request does not involve an inventive step, so that the subject-matter of that claim fails to meet the requirement of Article 52(1) in combination with Article 56 EPC.

- 4.4 The fact that the user profile data includes information, such as call frequency, average call duration, countries called most frequently by the phone etc. (third auxiliary request), further defines the generic game rule identified above, rather than defining its technical implementation. However novel or ingenious the selection of these particular pieces of information may be, the Board considers that they form part of the non-technical aspects of the game which would be presented to the game system developer for technical implementation. Thus the Board holds that the subject matter of claim 1 according to the third auxiliary requests also lacks inventive step.
5. As none of the requests is allowable, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated