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**Datasheet for the decision  
of 26 January 2016**

**Case Number:** T 0620/11 - 3.5.04  
**Application Number:** 05026765.7  
**Publication Number:** 1672902  
**IPC:** H04N1/00, H04N1/32, H04N1/333,  
H04N1/40, H04N7/24  
**Language of the proceedings:** EN  
**Title of invention:**  
Transmitting image using mobile terminal  
**Applicant:**  
LG Electronics Inc.  
**Headword:**  
  
**Relevant legal provisions:**  
EPC Art. 123(2)  
**Keyword:**  
Amendments - added subject-matter (yes)  
**Decisions cited:**  
  
**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

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Case Number: T 0620/11 - 3.5.04

**D E C I S I O N  
of Technical Board of Appeal 3.5.04  
of 26 January 2016**

**Appellant:** LG Electronics Inc.  
(Applicant) 20, Yoido-Dong  
Youngdungpo-gu  
Seoul (KR)

**Representative:** Katérle, Axel  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 26 October 2010  
refusing European patent application  
No. 05026765.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** B. Müller  
**Members:** C. Kunzelmann  
M. Paci

## **Summary of Facts and Submissions**

- I. The appeal is against the decision of the examining division to refuse European patent application No. 05 026 765.7 under Article 97(2) of the European Patent Convention (EPC).
- II. The application was refused on the grounds that the subject-matter of the independent claims of the main request then on file extended beyond the content of the application as filed (Article 123(2) EPC) and that the subject-matter of independent claims 1 and 9 of the auxiliary request then on file lacked inventive step. The examining division also stated that the dependent claims did not appear to contain any additional features which, in combination with the features of any claim to which they referred, met the requirements of the EPC with respect to inventive step.
- III. The applicant appealed against this decision and requested that the decision be set aside. With the statement of grounds of appeal, it filed amended claims 1 to 12 of a main request, amended claims 1 to 16 of a first auxiliary request, and amended claims 1 to 10 of a second auxiliary request. It also indicated the description pages and drawings on which the appeal proceedings should be based. It requested the grant of a patent on the basis of the claims of the main request or the first or second auxiliary requests.
- IV. Claim 9 of the main request ("Main Request") reads as follows:
- "A mobile terminal (100) performing a method for sending multimedia data, the mobile terminal comprising:

a display (115) and a keypad (120) configured to receive user inputted contents of a message to be sent via a multimedia messaging service (MMS);  
a storage unit (130) configured to store a plurality of images to be added to said message upon user selection, wherein the user selection is a selection of one or more images of the plurality of images stored in the storage unit to be added to said message and each of the one or more images has a predetermined resolution;  
a radio frequency (RF) module (135) configured to transmit said message having said images added thereto via said multimedia messaging service (MMS); and  
a processor (110) cooperating with the display (115), the keypad (120), the storage unit (130), and the radio frequency (RF) module (135) to perform image resolution adjustment on at least one of said one or more images if a transmittable size is exceeded, to display a notification message related to said image resolution adjustment, and to add said images to said message, wherein the processor comprises:  
means for determining the total size of the one or more images;  
means for comparing the total size of the one or more images to be transmitted with the transmittable size;  
means for adjusting the resolution level of the image with the largest memory size by one or more levels, if the total size of the one or more images is greater than the transmittable size; and  
means for repeatedly performing the steps of comparing the total size and adjusting the resolution level until the total size of the one or more images does not exceed the transmittable size."

Claim 10 of the main request reads as follows:

"The mobile terminal of claim 9, wherein the processor performs the image resolution adjustment by lowering a current image resolution to a particular resolution level among a plurality of resolution levels that are user selectable."

- V. Claim 1 of the first auxiliary request ("Auxiliary Request I") reads as follows:

"A method for sending multimedia data using a mobile terminal, the method comprising:  
receiving user inputted contents of a message to be sent via a multimedia messaging service (MMS) that supports sending and receiving of text, audio, and video messages;  
obtaining, from a storage unit, a plurality of images selected by the user to be added to said message;  
performing, in the mobile terminal, image resolution adjustment on at least one of said images if a transmittable size is exceeded and displaying a notification message related to said image resolution adjustment via a file attachment menu screen that allows the user to select an image resolution among at least three different image resolution levels;  
adding said images to said message; and  
transmitting said message having said images added thereto via said multimedia messaging service (MMS)."

- VI. Claim 1 of the second auxiliary request ("Auxiliary Request II") reads as follows:

"A method for sending multimedia data using a mobile terminal, the method comprising:  
receiving user inputted contents of a message to be sent via a multimedia messaging service (MMS) that

supports sending and receiving of text, audio, and video messages;  
selecting, by the user, a plurality of images stored in a storage unit;  
obtaining, from the storage unit, the images selected by the user to be added to said message, wherein each of the images has a predetermined resolution;  
determining the total size of the images;  
performing, in the mobile terminal via a file attachment menu screen that allows the user to select an image resolution among at least three different image resolution levels, image resolution adjustment on at least one of said plurality of images if the total size exceeds a transmittable size and displaying a notification message related to said image resolution adjustment,  
wherein the step of performing image resolution adjustment comprises:  
comparing the total size of the images to be transmitted with the transmittable size;  
adjusting the resolution level of all of the images by one or more levels, if the total size of the images is greater than the transmittable size; and  
repeatedly performing the steps of comparing the total size and adjusting the resolution level until the total size of the images does not exceed the transmittable size;  
adding said images to said message; and  
transmitting said message having said images added thereto via said multimedia messaging service (MMS)."

VII. The board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to a summons to oral proceedings dated 27 August 2015. In this communication the board raised objections under Article 123(2) EPC

against claims 6, 7 and 10 of the main request, claims 1, 6, 7, 10 and 15 of the first auxiliary request and claims 1, 5, 6, 8 and 9 of the second auxiliary request.

- VIII. With a letter dated 28 December 2015 the appellant's representative informed the board that the appellant would not be filing any written submissions or attending the oral proceedings.
- IX. The board held oral proceedings on 26 January 2016 in the appellant's absence, in accordance with Rule 71(2) EPC 1973 and Article 15(3) RPBA. The Chairman noted that, with the statement setting out the grounds of appeal, the appellant had requested that the decision under appeal be set aside and a European patent be granted on the basis of the application documents according to a Main Request and Auxiliary Requests I and II, all requests filed with the statement of grounds of appeal. At the end of the oral proceedings the Chairman announced the board's decision.
- X. The appellant's arguments given in the statement of grounds of appeal, as far as they are relevant to the present decision, may be summarised as follows:

The feature of a file attachment menu screen that allowed the user to select an image resolution among at least three different image-resolution levels was disclosed on page 7, fourth paragraph, page 8, first paragraph, and page 9, first paragraph.

## Reasons for the Decision

1. The appeal is admissible
2. *Added subject-matter (Article 123(2) EPC)*
  - 2.1 Independent claim 9 of the main request specifies a user selection of images to be added to a message to be transmitted via a multimedia messaging service MMS. Dependent claim 10 of the main request then specifies that the resolution levels are user-selectable. This is not disclosed in the application as filed. The consistent original disclosure in this context is that the user may select the photos to be transmitted (see figure 2, page 7, lines 11 to 13, page 9, lines 7 to 10), whereas their resolution is converted automatically (page 7, lines 25 to 27, page 9, lines 13 to 16). If the total size of the selected photos exceeds the allowable size, the user may only choose whether an automatic resolution change takes place ("Yes" or "No" in step S30, see page 7, lines 20 to 23). In particular, figure 1, which illustrates the file attachment menu screen (and in particular the photo list) allowing the user to select the photos to be transmitted, does not disclose that one of the user-selectable photos on the photo list is a lower-resolution version of another photo on the list.
  - 2.2 Also, the paragraphs indicated by the appellant in the statement of grounds are in line with the disclosure discussed above (see page 7, fourth paragraph: "the mobile terminal ... lowers the resolution of an image", and page 9, first paragraph: "...so that the subscriber may change the selection of the photos"). In particular page 8, first paragraph, concerns the resolutions of photos, but not how a resolution is selected.



2.3 In view of the above, the board finds that the subject-matter of claim 10 of the main request extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

2.4 Also, claim 1 of the first and second auxiliary requests specifies that the resolution levels are user-selectable. In particular, these claims refer to "a file attachment menu screen that allows the user to select an image resolution among at least three different image resolution levels".

2.4.1 Although it is true that a file attachment menu screen *per se* is disclosed on page 7, lines 4 to 9 and in figure 1, it only allows the selection of a submenu, in particular a "photo attachment" submenu, which ultimately allows the user to select the photo(s) to be transmitted (page 7, lines 11 to 13). However, it does not allow the user to select an image resolution among at least three different image-resolution levels.

2.5 Thus the considerations in points 2.1 to 2.3 above apply to claim 1 of the first and second auxiliary requests, too.

3. Hence, none of the appellant's requests is allowable. Therefore, the appeal is to be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

B. Müller

Decision electronically authenticated