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Datasheet for the decision of 9 June 2015

Case Number: T 0730/11 - 3.5.03

Application Number: 03026872.6

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Title of invention:
Mobile communication system and method for receiving intelligent roaming information

Applicant:
AT&T WIRELESS SERVICES, INC.

Headword:
Intelligent roaming/AT&T

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments - extension beyond the content of the application as filed (yes)

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Case Number: T 0730/11 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 9 June 2015

Appellant: (Applicant)	AT&T WIRELESS SERVICES, INC. 5400 Carillon Point Kirkland, WA 98033 (US)
Representative:	Modiano, Micaela Nadia Modiano Josif Pisanty & Staub Ltd Thierschstrasse 11 80538 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 10 November 2010 refusing European patent application No. 03026872.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	F. van der Voort
Members:	B. Noll
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The present appeal is against the decision of the examining division refusing European patent application No. 03026872.6, which was filed as a divisional application of the earlier European patent application No. 97117320.8.

II. With the statement of grounds of appeal the appellant filed sets of amended claims of a main request and an auxiliary request. Oral proceedings were conditionally requested.

III. In a communication accompanying a summons to oral proceedings, the board gave a preliminary opinion and considered that claim 1 of each request lacked clarity (Article 84 EPC) and that the claimed subject-matter extended beyond the content of the application as filed or the earlier application as filed (Articles 76(1) and 123(2) EPC).

IV. With a letter dated 8 May 2015 the appellant filed, by way of replacement, revised sets of claims of a main request and first to third auxiliary requests. Counter-arguments against the board's preliminary opinion were also presented.

V. With a further letter dated 8 June 2015, the appellant informed the board that it would not attend the oral proceedings. The request for oral proceedings was however explicitly maintained.

VI. Oral proceedings were held on 9 June 2015 in the absence of the appellant.

The board understood the appellant to be requesting that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 and 2 of a main request or, in the alternative, on the basis of claims 1 and 2 of a first or a second auxiliary request, or on the basis of claim 1 of a third auxiliary request, all requests as filed with the letter dated 8 May 2015.

At the end of the oral proceedings the chairman announced the board's decision.

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

"A mobile communication system comprising at least one Over-the-Air Activation Processor OTAP (312), a mobile switching center MSC (31) and a plurality of mobile stations (30), the system having current service information stored in a database (313) which changes over time, said current service information being used to update information stored in at least some of said mobile stations (30), the system further comprising:

a customer service center (310) wherein the customer service center (310) generates information regarding relationships between system operators, that is included in the current service information that is supplied to the database (313);

a home location register (314) that identifies one or more of the mobile stations (30) that can receive the current service information;

said at least one Over-the-Air Activation Processor OTAP (312) having the database (313) which maintains the current service information;

said Over-the-Air Activation Processor OTAP (312) coupled to the mobile switching center MSC (31) which transfers said current service information, via the mobile switching center MSC (31), to the one or more of said mobile stations (30) by said Over-the-Air Activation Processor OTAP (312) first determining if said one or more mobile stations (30) is activated; and

(1) if said one or more mobile stations (30) is activated, transferring the current service information to said one or more mobile stations (30) for storage therein; and

(2) if said one or more mobile stations (30) is not activated, designating that said current service information should be transferred to said one or more mobile stations (30) when said one or more mobile stations (30) is activated."

VIII. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that:

the second paragraph includes the further feature:

"wherein the information is updated by an external terminal via the customer service center (310) and supplied to the database (313) after the update is completed";

the third paragraph includes the further feature:

"wherein the one or more of the mobile stations (30) are updated with the current service information in response to receiving a command after the database (313) is updated with the current service information";

and

in the fifth paragraph, the wording "first determining if said one or more mobile stations (30) is activated" is replaced by:

"first receiving an indication from said mobile switching center MSC (31) and indicating to the home location register (314) that said one or more mobile stations (30) is activated".

IX. Claim 1 of the second auxiliary request reads as follows:

"A method for updating intelligent roaming information in a mobile communication system, the mobile communication system comprising; a customer service center CSC (310), an external terminal, an Over-the-Air Activation Processor OTAP (312), a mobile switching center MSC (31), a home location register/ authentication center HLR/AC (314) coupled to the mobile switching center MSC (31) and a plurality of mobile stations (30) communicating via the Over-the-Air Activation Processor OTAP (312) with the mobile switching center MSC (31), the Over-the-Air Activation Processor OTAP (312) including an intelligent roaming database IRDB (313) which holds intelligent roaming information, the method further comprising the steps of:

providing updated information regarding agreements between system operators to the customer service center CSC (310) via the external terminal,

supplying the updated information regarding agreements between system operators from the customer service

center CSC (310) to the intelligent roaming database IRDB (313) so as to update the intelligent roaming database IRDB (313),

identifying by the home location register/ authentication center HLR/AC (314) the mobile stations (30) that are programmable to receive the update from the updated intelligent roaming database IRDB (313),

signaling by the home location register/authentication center HLR/AC (314) to the Over-the-Air Activation Processor OTAP (312) to create a message for transmission to the identified mobile stations (30), the message containing the update from the updated intelligent roaming database IRDB (313) to be transferred from the Over-the-Air Activation Processor OTAP (312) to the identified mobile stations (30),

indicating by the home location register/authentication center HLR/AC (314) that an update of the contents of the intelligent roaming database IRDB (313) should be performed,

if the mobile switching center MSC (31) indicates that the identified mobile station (30) is active, then transferring the update from the updated intelligent roaming database IRDB (313) via the mobile switching center MSC (31) to the identified active mobile stations (30), and

if the mobile switching center MSC (31) indicates that the identified mobile station (30) is inactive, then indicating by the Over-the-Air Activation Processor OTAP (312) to the home location register/authentication center HLR/AC (314) that the identified mobile station (30) is inactive, whereby the home location register/

authentication center HLR/AC (314) in turn sets a delivery pending indicator DPI therein for the respective inactive identified mobile station (30)."

X. Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that the last paragraph includes the further feature:

"wherein when at a later time the identified inactive mobile station (30) is activated and registers, the home location register/authentication center HLR/AC (314) prompts the Over-the-Air Activation Processor OTAP (312) to create the message including the update from the updated intelligent roaming database IRDB (313) to be sent via the mobile switching center MSC (31) to the mobile station (30)".

Reasons for the Decision

1. *Claim 1 of the main request - added subject-matter (Article 123(2) EPC)*

1.1 As regards the basis for the subject-matter of claim 1, the applicant argued that Fig. 3 and the corresponding description in paragraphs [0024] and [0025] (reference being made to the application as published, i.e. EP 1 406 463 A2) provided a basis for the claimed system, i.e. the first to fifth paragraphs of claim 1 (see point VII above), since these parts of the application disclosed a system which included an over-the-air processor (OTAP) 312, a plurality of mobile stations (MS) 30, a database (IRDB) 313, a customer service center (CSC) 310, a mobile switching center (MSC) 31, and a home location register (HLR) 314. The appellant further argued that the features of the last two paragraphs of claim 1 were part of the general

teachings of the application as described in, for instance, paragraph [0016] and were equally applicable to all embodiments of the invention, including the embodiment of Fig. 3.

1.2 The board does not contest that the application as filed refers to each of the individual components of the claimed system. However, this is not sufficient in order to comply with the requirement of Article 123(2) EPC. Rather, the combination of the claimed features has to be clearly and unambiguously derivable from the application documents as filed. This is not the case here for the reasons given below.

1.3 Paragraphs [0024] and [0025] describe a specific sequence of functional interactions between the various components of the system of Fig. 3, in order to determine whether or not the mobile terminal is active and in order to transfer service information to the mobile terminal; cf. paragraph [0025], column 7, lines 4 to 23:

"*After the initiation of the update process, the HLR 314 identifies the subscribers that have programmable mobile stations that can receive updated IRDB information. Upon identification of these mobile stations, the HLR 314 signals the OTAP 312 to create a message for transmission to the identified mobile station in which the updated contents of the IRDB 313 are transferred from the OTAP 312 to the mobile station 30. The transfer occurs via the mobile switching center (MSC) 31. If, after the HLR 314 has indicated that an update should be performed, the MSC 31 indicates that the identified mobile station is inactive, then the OTAP 312 will indicate that fact to the HLR 314 which in turn will set a delivery pending indicator (DPI) in*

the HLR 314 with respect to that mobile station. At a later time when that mobile station is activated and registers, the HLR 314 will again prompt the OTAP 312 to create the appropriate message including the update of the IRDB 313 which will then be sent via the MSC 31 to the mobile station.".

1.4 This sequence of functional interactions between the system components thus requires, inter alia, that the identification operation carried out by the HLR is carried out "after the initiation of the update process". Hence, these parts of the application do not provide a basis for a home location register which is implemented such that it (unconditionally) identifies those mobile stations which can receive current service information, as claimed in present claim 1. The board also notes that the remaining parts of the application as filed do not provide a basis for this generalisation. Nor did the appellant argue otherwise.

1.5 Further, the system described in paragraphs [0024] and [0025] requires a specific interaction to be followed between the MSC, the OTAP, and the HLR in the case of the mobile being inactive, according to which the OTAP indicates the fact that the mobile station is indicated by the MSC as being inactive to the HLR which, in turn, sets a delivery pending indicator (DPI). Claim 1 does not require this specific interaction. There is however no basis in the application as filed that the system shown in Fig. 3 may identify a mobile station as being inactive in any other way.

1.6 Claim 1 does not include the functional interactions referred to in points 1.4 and 1.5 above as limiting features of the claimed system, and therefore relates to a system which is a generalisation of the system

described in paragraphs [0024] and [0025]. However, there is no basis in the application as filed for such a generalized system.

1.7 For the above reasons, the subject-matter of claim 1 of the main request does not meet the requirement of Article 123(2) EPC. The main request is therefore not allowable.

2. *Claim 1 of the first auxiliary request - added subject-matter (Article 123(2) EPC)*

The above considerations apply *mutatis mutandis* to claim 1 of the first auxiliary request. The first auxiliary request is therefore not allowable either.

3. *Claim 1 of the second auxiliary request - added subject-matter (Article 123(2) EPC)*

3.1 Claim 1 of the second auxiliary request relates to a method defined by steps corresponding to the functional interactions between the components of the mobile communication system as described in paragraphs [0024] and [0025]. However, the method as claimed is generalized in respect of the operation of the system as regards the initiation of the update process for updating the service information in mobile stations for the following reasons. According to the description (cf. paragraph [0025], column 6, last line, to column 7, line 7), the update process is initiated, either manually or automatically, and the process for identifying those subscribers which can be updated by the HLR is carried out after the initiation. Claim 1 does not specify that the identifying step (fourth paragraph in claim 1) follows an initiation of the update process. Therefore, claim 1 also covers an

embodiment in which a mobile station is updated at the initiative of the HLR itself, without an initiation of the update process as described in paragraph [0025] being required. There is, however, no basis in the application documents as filed for such an embodiment.

3.2 For these reasons, claim 1 of the second auxiliary request does not meet the requirement of Article 123(2) EPC. The second auxiliary request is therefore not allowable.

4. *Claim 1 of the third auxiliary request - added subject-matter (Article 123(2) EPC)*

The reasons given at point 3 above apply *mutatis mutandis* to claim 1 of the third auxiliary request. The third auxiliary request is therefore not allowable either.

5. There being no allowable request, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Rauh F. van der Voort

Decision electronically authenticated