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**Datasheet for the decision
of 24 June 2014**

Case Number: T 0831/11 - 3.5.05

Application Number: 06805017.8

Publication Number: 1947806

IPC: H04L12/26

Language of the proceedings: EN

Title of invention:

A method and system for service trace and service trace terminal, network element

Applicant:

Huawei Technologies Co., Ltd.

Headword:

Service tracking/HUAWEI

Relevant legal provisions:

EPC Art. 123(2)
RPBA Art. 13(1), 13(3)

Keyword:

Admission of late-filed request - (yes)
Added subject-matter - (yes)

Decisions cited:

G 0002/10, T 0383/88

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0831/11 - 3.5.05

**D E C I S I O N
of Technical Board of Appeal 3.5.05
of 24 June 2014**

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 on 3 February 2011
refusing European patent application
No. 06805017.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair

A. Ritzka

Members:

K. Bengi-Akyuerek

G. Weiss

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, posted on 3 February 2011, to refuse European patent application No. 06805017.8 on the ground of lack of novelty (Article 54 EPC), having regard to the disclosure of

D1: WO-A-00/56029.

II. Notice of appeal, including the statement setting out the grounds of appeal, was received on 24 March 2011. The appeal fee was paid on the same day. With the notice of appeal the appellant filed a new set of claims alongside amended description pages. It requested that the decision of the examining division be set aside and that a patent be granted on the basis of the new claims. In addition, oral proceedings were requested as an auxiliary measure.

III. A summons to oral proceedings scheduled for 24 June 2014 was issued on 25 February 2014. In an annex to this summons, the board expressed its preliminary opinion on the appeal pursuant to Article 15(1) RPBA. In particular, objections were raised under Articles 54 and 56 EPC 1973, having regard to D1.

IV. With a letter of reply dated 26 May 2014, the appellant submitted amended claims according to a main request and an auxiliary request, and requested that a patent be granted on the basis of the main request or the auxiliary request.

V. Oral proceedings were held as scheduled on 24 June 2014, during which the appellant filed a new main request and withdrew the former main and auxiliary

requests in response to objections raised by the board during the oral proceedings.

The appellant's final request was that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 9 submitted as main request at the oral proceedings.

At the end of the oral proceedings, the decision of the board was announced.

VI. Claim 1 of the main (and sole) request reads as follows:

"A method for service tracking, characterized by comprising:

initiating, by a first service entity, a download service request via a service request message carrying a service tracking identity, ID, for download services, to a second service entity during a service interaction process, wherein the first service entity is a terminal;

identifying, by the second service entity, the service tracking ID and starting service tracking, recording service processing log during a download service processing;

wherein the second service entity delivers a service message carrying the service tracking ID to the service entity n participating in the service interaction process, and the service entity n identifies the service tracking ID, starts service tracking, and records service processing log, wherein the second service entity and the service entity n are network elements."

Reasons for the Decision

1. The appeal is admissible.
2. MAIN (SOLE) REQUEST

Although this request was submitted during the oral proceedings before the board, i.e. at a very late stage of the procedure, the board admitted it into the appeal proceedings under Article 13(1) and (3) RPBA, since it was regarded as a serious - though unsuccessful (cf. point 2.1 below) - attempt to overcome the objections raised by the board in its communication annexed to the summons to oral proceedings and during the oral proceedings before the board, and since the board could deal with it without adjournment of the oral proceedings.

Claim 1 of the main request differs from claim 1 of the claim set underlying the appealed decision basically in that claim 1 as amended (emphasis added) now specifies that

- A) a download service request is initiated by a first service entity via a service request message to a second service entity during a service interaction process;
- B) the service request message carries a service tracking ID for download services;
- C) the first service entity is a terminal;
- D) the second service entity starts service tracking and records service processing log during a download service processing;
- E) the second service entity delivers a service message carrying the service tracking ID to the service entity n participating in the service interaction process, and the service entity n

identifies the service tracking ID, starts service tracking, and records service processing log;
F) the second service entity and the service entity *n* are network elements.

2.1 Article 123(2) EPC

2.1.1 First, it is worth noting that it is established case law that any amendment to the parts of a European patent application relating to its disclosure can, irrespective of the context of the amendment made, only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the documents as filed, and that after the amendment the skilled person may not be presented with new technical information (cf. G 2/10, OJ EPO 2012, 376, point 4.3, first paragraph and point 4.5.1, second paragraph of the Reasons). Moreover, the slightest doubt as to the derivability of an amendment from the unamended document rules out that amendment (see e.g. T 383/88 of 1 December 1992, point 2.2.2 of the Reasons).

2.1.2 Features B) and C) are based on page 11, lines 9-10 in conjunction with page 9, lines 8-10 of the application as filed. Feature D) is supported by page 12, lines 1-2 or page 12, lines 14-15 in combination with page 9, lines 8-10, while features E) and F) are based e.g. on page 12, line 22 to page 13, line 1 of the original application.

Hence, the board is satisfied that features B) to F) comply with Article 123(2) EPC.

2.1.3 As to feature A), however, it is at first sight apparent to the board that nowhere in the entire application as filed is the term "download service request" explicitly mentioned. Only an initiation of a "service request" by a terminal is expressly disclosed (cf. paragraphs [0039] and [0050] of the application as filed). The only basis for the technical term "download" is to be found in paragraph [0038], second sentence of the original application stating that a "service tracking ID" for "one kind of services" such as a "download service" is generated, delivered, and set on a terminal. From this passage the skilled reader would however deduce solely that the service tracking ID may refer to tracking of a download service. Having established that there is no *explicit* disclosure of initiating a "download service request", as a next step the board has to assess whether the insertion of "download" into the expression "service request" is justified by *implicit* disclosure.

The appellant introduced the amendments according to feature A) in reaction to extensive discussions on the matter of inventive step during the oral proceedings before the board. The purpose of that amendment was to clarify that the terminal initiates both the request for a download service *and* the tracking of the requested download service by way of a "service request message" at the same time, in order to render the subject-matter of claim 1 inventive over the disclosure of D1. In this respect, the appellant argued that based on the disclosure of paragraph [0039]:

"1) A terminal initiates a service request to the network element 1 via a service request message carrying a service tracking ID."

together with paragraph [0038], second sentence:

"A network O&M server generates a service tracking ID for one kind of services (for example, download service), delivers and sets the service tracking ID on a terminal."

and paragraph [0038], last sentence:

"It is assumed that the processing of a certain service needs the participation of a network element 1 and a network element 2."

of the application as filed, "service" meant downloading and thus "service request" automatically corresponded to a request for downloading, such that parallel processing in terms of initiation of both the download service and service tracking was performed by the terminal. Thus, the service request message sent from the terminal to the second service entity ("network terminal 1") not only initiated tracking of a download service to be performed by that service entity via the service tracking ID but also indicated that the terminal requested a download service from that service entity at the same time. Consequently, the initiation of the downloading service and its tracking by the terminal was at least implicitly disclosed by the application as filed.

However, the board finds that a "download service" is only mentioned, as an example of services to be tracked, in the context of the service tracking ID, which is initially generated by the O&M server and then set on the terminal according to the original description (cf. paragraph [0038], second sentence). But there is no information whatsoever, in the whole

application, about possible services to be requested by the terminal itself. In other words, the application is completely silent as to which service a "service request" refers to according to the original teaching. The only more detailed information on such "service request" is to be found in paragraph [0061], last sentence of the original application:

"After the service tracking ID is cancelled, no service tracking ID is included in a service request when the terminal initiates the service request next time, thus the network element processes the service request according to the normal procedure."

No information is provided however as to the "normal procedure" and in particular with which service the "service request" is associated in the event that a downloading service is not tracked any more. Furthermore, for an implicit disclosure of the feature of initiating a "download service request" by a terminal to be acknowledged, a conclusive link should be discernible, from the application as filed, between the kind of services to be tracked according to the service tracking ID and the services which may be requested by the terminal via a service request message. However, the board cannot discern any explicit or implicit teaching as to such a link in the application, let alone that the services to be tracked according to the service tracking ID and the services which may be requested by the terminal are necessarily the same. Accordingly, the board is not convinced that feature A) is implicitly disclosed by the application as filed. For the above reasons alone, there are severe doubts as to the compliance of the amendments according to feature A) with Article 123(2) EPC.

Nevertheless, even if, for the sake of argument and completeness, the board assumed, in the appellant's favour, that the skilled reader would indeed derive from the disclosure of paragraph [0038], second sentence and paragraph [0039] of the application as filed that

(i) the service to be tracked by the participating network entities automatically corresponds to the service to be requested by the terminal, and that

(ii) the "service request" corresponds to a request for obtaining a download service from the second service entity (i.e. "network element 1" according to the terminology of the description as filed),

the skilled reader using his common general knowledge would immediately recognise, when reading the whole application, that those assumptions would be at odds with the remaining teaching of the application as filed, for several reasons:

- Firstly, the application as filed teaches that the service tracking ID for a certain service is set by the "O&M server" on a respective network entity prior to sending any service request from the terminal to "network element 1" (cf. paragraph [0038], second sentence as well as paragraphs [0064] and [0072] in conjunction with Figs. 4 and 5). If assumption (i) was true, the skilled person would reasonably expect that the "O&M server" knows in advance which service the terminal is going to request from "network terminal 1" or that the terminal may only request services which are supposed to be tracked. However, this is neither

disclosed anywhere in the application as filed, nor would it make technical sense in the context of service tracking in wireless communication systems.

- Secondly, the application as filed teaches that the terminal may initiatively start service tracking "before, or at the same time or after sending a service request" (cf. paragraph [0045]). If assumption (i) was true, the terminal could not start tracking of the download service before sending a "download service request", since the download service requested by the terminal would self-evidently not exist at the time of starting service tracking.

- Thirdly, the application as filed obviously shows all kinds of message transfers between the respective network entities by way of Figs. 4 and 5. If assumption (ii) was true, the skilled person would reasonably expect that those figures would depict at least one message representing the actual download, such as a download response, sent to the terminal from one of the network elements involved. There is, however, no such message displayed.

- Finally, the application as filed teaches that "the processing of a certain service needs the participation of a network element 1 and a network element 2" (cf. paragraph [0038], last sentence). If assumption (ii) was true, the skilled person would expect that a "download service request" would be sent from the terminal not only to "network element 1" but also to "network element 2". However, neither the description nor the figures exhibit any such second "download service request" sent to a network entity other than "network element 1".

2.1.4 In view of the above, the board holds that feature A) presents the skilled person with new technical information in the sense of G 2/10 (see point 2.1.1 above) and thus claim 1 contains subject-matter which extends beyond the content of the application as filed.

2.2 In conclusion, the main and sole request is not allowable under Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated