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**Datasheet for the decision
of 28 April 2015**

Case Number: T 1771/11 - 3.5.03
Application Number: 04813847.3
Publication Number: 1697817
IPC: H04Q7/20, H04M3/42, H04L12/28
Language of the proceedings: EN

Title of invention:

Method and apparatus for independent and efficient delivery of services to wireless devices capable of supporting multiple radio interfaces and network infrastructure

Applicant:

InterDigital Technology Corporation

Headword:

Delivery of services/INTERDIGITAL

Relevant legal provisions:

EPC Art. 84

Keyword:

Clarity (all requests) - no

Decisions cited:

T 0728/98



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Chambres de recours**

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Case Number: T 1771/11 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 28 April 2015

Appellant: InterDigital Technology Corporation
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 14 March 2011 refusing European patent application No. 04813847.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman B. Noll
Members: T. Snell
R. Cramer

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 04813847.3 (publication No. WO 2005/059689 A2).

The refusal was based on the ground of lack of inventive step pursuant to Article 52(1) EPC in combination with Article 56 EPC.

II. The applicant filed a notice of appeal against the above decision. The appellant maintained as the main request the claims refused by the examining division. Further, claims of a single auxiliary request were subsequently filed with the statement of grounds of appeal.

Oral proceedings were conditionally requested.

III. In a communication accompanying a summons to oral proceedings, the board raised matters concerned with clarity (Article 84 EPC), added subject-matter (Article 123(2) EPC) and inventive step (Article 56 EPC).

IV. In response to the board's communication, the appellant filed new claims of a main request and of first to third auxiliary requests, and responded to the points raised by the board.

V. In a subsequent letter, the appellant indicated that it would not attend the oral proceedings and requested that the board decide on the basis of the written submissions.

VI. Oral proceedings took place on 28 April 2015 in the absence of the appellant.

On the basis of the written submissions, the appellant requested that the decision under appeal be set aside and a patent granted on the basis of the main request or, in the alternative, any of the first to third auxiliary requests, all requests as filed on 27 March 2015.

After due deliberation, the chairman announced the board's decision.

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

"A method implemented at a service management center, SMC, for providing supplemental services to a wireless transmit/receive unit, WTRU, (41-46) capable of communicating via a plurality of wireless networks (31-36), wherein a supplemental service is one of a SMS service, MMS service, IMS service, voice over IP information service, data retrieval service, and entertainment service, and wherein each of the wireless networks is based on a different radio access technology, RAT, the method comprising:
receiving a registration message (73, 74; 103, 104) from the WTRU (41-46) via a first wireless network (31-36) from the plurality of wireless networks;
sending a request for terminal capability to the WTRU (76, 77; 105, 106) via the first wireless network;
receiving a capability and service profile message from the WTRU (78, 79; 107, 108) via the first wireless network, wherein the capability and service profile message includes information about RAT capabilities of the WTRU and information about services associated with the WTRU;
determining a set of supplemental services to provide to the WTRU based on the capability and service profile

(81; 109), and determining whether to provide the set of supplemental services to the WTRU via the first wireless network or a second wireless network from the plurality of wireless networks based on the capability and service profile (81; 109); and establishing service with the WTRU via the first wireless network or the second wireless network based on the capability and service profile (91; 121)."

- VIII. Claim 1 of the **first auxiliary request** is the same as claim 1 of the main request except that the following text is added to the end of the claim:

"by activating a service center (85, 111) and conveying (87-88, 115) to the WTRU an acknowledgement received by the SMC (86, 115) from the service center".

- IX. Claim 1 of the **second auxiliary request** is the same as claim 1 of the first auxiliary request except that the following text is inserted following the step "sending a request;":

"retrieving a user profile stored at the SMC (75);".

- X. Claim 1 of the **third auxiliary request** is the same as claim 1 of the first auxiliary request except that the following text is inserted following the wording "wherein each of the wireless networks is based on a different radio access technology, RAT,":

"wherein the different RATs include a general radio packet service [sic], GPRS, network, a third generation partnership, 3GPP, network, a 3GPP2 network, an IEEE802.11 network, an IEEE802.16 network and a [sic] IEEE802.20 network,".

Reasons for the Decision

1. *General remarks*

The present application concerns the provision of "supplemental services" to a wireless terminal (WTRU) which can communicate over either a first or a second wireless network based on different radio access technology (RAT), e.g. GPRS and IEEE 802.11. Claim 1 of each request defines a supplemental service to be "one of a SMS service, MMS service, IMS service, voice over IP information service, data retrieval service, and entertainment service". In essence, a "service management center, SMC" determines a set of supplemental services based on a "capability and service profile message" received from the WTRU during a registration period, and determines via which network the services are provided based on the capability and service profile.

2. *Main request - claim 1 - clarity (Article 84 EPC)*

2.1 Claim 1 defines that "the capability and service profile message includes information about RAT capabilities of the WTRU and information about services associated with the WTRU" (board's underlining). The board considers that the term "information about services associated with the WTRU" is not clear for the reasons set out in the following paragraphs.

2.2 In accordance with case law, a claim is not clear within the meaning of Article 84 EPC if it comprises an unclear technical feature for which no unequivocal generally accepted meaning exists in the relevant art. This applies all the more if the unclear feature is

essential for delimiting the subject-matter from the prior art (cf. T 728/98, Headnote I, OJ 2001, 319).

2.3 In this respect, the expression "information about services associated with the WTRU" has no well-understood meaning in the art. In the board's view, the scope of protection conferred by this term is vague and ill-defined. In the first place, it is not clear what limits are to be placed on the meaning of the term "services". In particular, there is no limitation to the "supplemental services" mentioned earlier in the claim. Furthermore, the terms "about" and "associated with" are vague expressions introducing additional uncertainty with respect to the scope of protection sought.

2.4 The board notes further that the feature "information about services associated with the WTRU" is apparently fundamental to the appellant's case regarding inventive step (cf. e.g. page 4(11) of the appellant's letter dated 27 March 2015, first paragraph and page 9(11) second paragraph), i.e. is essential for delimiting the subject-matter from the prior art. It is therefore all the more important that the terms used in the claim are clear (cf. point 2.2 above). This is however not the case here.

2.5 In respect of clarity, in the letter dated 27 March 2015 (see page 2(11), first paragraph), the appellant referred to paragraphs [0009], [0021], [0024], [0025] and [0034] of the description. However, although it may be possible, exceptionally, to rely on the description to give an explicit special meaning to a feature appearing in the claim, none of the passages referred to by the appellant does so here.

2.6 In this respect, the only passage which uses similar language to the term "information about services associated with the WTRU" is paragraph [0025], which states: "Additionally, information regarding various services may be maintained in the profile. These service factors include costs for the services and quality of service (QoS) of the services". Such widely differing examples can in no way serve to place any clear limits on the scope of the feature "information about services associated with the WTRU" used in claim 1.

2.7 Furthermore, this passage actually refers to data maintained in the profile held in the SMC, and not explicitly to information contained in the message transmitted from the WTRU to the SMC, leading to doubt as to whether the passage is relevant at all in interpreting claim 1.

2.8 The appellant also refers to paragraph [0034], which uses the wording "depending upon the capability of the WTRU 45 and the required services". However, the wording "required services" is not the same as "information about services associated with the WTRU", and therefore not relevant to the clarity of that expression.

2.9 The board concludes that claim 1 does not meet the requirement of clarity pursuant to Article 84 EPC, and is consequently not allowable.

3. *Auxiliary requests - claim 1 - clarity*

The above objection of a lack of clarity applies, *mutatis mutandis*, to claim 1 of each of the first to third auxiliary requests (Article 84 EPC).

The first, second and third auxiliary requests are therefore also not allowable.

4. *Article 113(1) EPC*

The board drew attention to lack of clarity in the communication accompanying the summons. The appellant amended the claims in an attempt to deal with the board's objection, made comments in writing on the issue of clarity, and requested that the board decide on the basis of the written submissions. It is established case law that an appellant who submits amended claims shortly before the oral proceedings and subsequently does not attend these proceedings must expect a decision based on objections which might arise against such claims in his absence (Case Law of the Boards of Appeal, 7th edition 2013, IV.E. 4.2.3 c)). The board's decision announced at the oral proceedings therefore respects the appellant's right to be heard pursuant to Article 113(1) EPC.

5. *Conclusion*

5.1 None of the requests comply with Article 84 EPC. Consequently, there is no need to consider the issues of added subject-matter and inventive step, which were also raised in the communication accompanying the summons to oral proceedings.

5.2 As there is 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

B. Noll

Decision electronically authenticated