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**Datasheet for the decision
of 24 September 2013**

Case Number: T 0242/12 - 3.5.05

Application Number: 04731387.9

Publication Number: 1625716

IPC: H04L12/58

Language of the proceedings: EN

Title of invention:
Messaging system and service

Patent Proprietor:
Apple Inc.

Opponent:
Gimmix AB

Headword:
Store-and-forward system/APPLE

Relevant legal provisions:
EPC R. 80

Keyword:
Amendments occasioned by ground of opposition - (not decided)
Patent as maintained in amended form - not challenged due to
prohibition of reformatio in peius

Decisions cited:
G 0009/92, G 0004/93

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0242/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 24 September 2013

Appellant: Apple Inc.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 November 2011 concerning maintenance of
European Patent No. 1625716 in amended form.**

Composition of the Board:

Chair: A. Ritzka
Members: K. Bengi-Akyuerek
F. Blumer

Summary of Facts and Submissions

- I. The appeal of the patent proprietor is against the interlocutory decision of the opposition division, taken at the first-instance oral proceedings in the absence of the opponent and posted on 24 November 2011, to maintain European patent No. 1625716 as amended based on the claims of a first auxiliary request. According to the decision under appeal, the combined introduction of new and amended independent claims 1, 19, 21, and 39 of a main request (claims 1 to 40 as amended) was not occasioned by a ground of opposition, contrary to Rule 80 EPC.

- II. Notice of appeal was received on 6 February 2012. The appeal fee was paid on the same day. With the statement setting out the grounds of appeal, received on 4 April 2012, the appellant (patent proprietor) requested that the decision to refuse the main request be set aside, but did not appeal the decision on the first auxiliary request as maintained. The appellant also asked that the main request be remitted back to the opposition division for any consideration under Article 56 EPC. Furthermore, arguments and references to the relevant case law in support of compliance with Rule 80 EPC were provided. In addition, oral proceedings were requested as an auxiliary measure.

- III. The respondent (opponent) did not respond to the present appeal.

- IV. A summons to oral proceedings scheduled for 24 September 2013 was issued on 13 June 2013. In an annex to this summons, the board gave its preliminary opinion on the appeal pursuant to Article 15(1) RPBA. More specifically, the board expressed reservations as

to whether the pending main request was admissible under Rule 80 EPC, in particular, having regard to decision T 993/07.

- V. By letter dated 11 September 2013, the appellant informed the board that the former main request had been replaced by the first auxiliary request as maintained and that, due to the prohibition of *reformatio in peius*, a final decision to maintain the patent in an amended form according to the claims, description pages, and drawings of the maintained first auxiliary request, which were re-filed with that letter as a new main request, "should therefore be due from the Opposition Division". In addition, the appellant advised that it would withdraw its request for oral proceedings if the board were to "agree with the above".
- VI. With a communication dated 23 September 2013 and sent in advance by telefax on 18 September 2013, the parties were informed that the oral proceedings appointed for 24 September 2013 had been cancelled.
- VII. Claim 1 of the main request reads as follows:

"A method of modifying a message (500) sent by a sending party through a data communications network (6, 10, 14), the message (500) being a short message service message or a multimedia message service message and including transmission data (504) identifying one or more destinations of said message (500) and a message body (510) identifying content thereof which is specified by the sending party, the method including:
receiving said message (500) at a proxy message server (MMSC_1), other than a default message server (MMSC_OP) of an operator of the data

communications network;

identifying (801) a recipient (508) of said message (500) on the basis of the transmission data (504);

selecting (805) data (916), in response to receiving said message (500), on the basis of the identified recipient, wherein the selected data are not directly related to the content of the message;

appending (206) the selected data to the message content such that the message body is modified;

transmitting a modified message, comprising said modified message body, to said default message server (MMSC_OP); and

transmitting the modified message from said default message server (MMSC_OP) to said one or more destinations in accordance with the transmission data."

The further independent claim 19 of the main request reads as follows:

"A store-and-forward network system in a communications network, the store-and-forward network system arranged to store a data message (500), the data message (500) being a short message service message or a multimedia message service message, the message comprising transmission data (504) identifying at least one recipient of said data message and a message body (510) identifying content thereof which is specified by a sending party, the store-and-forward network system being arranged to forward the data message to the identified recipient in dependence on status data corresponding to a terminal (T2) associated therewith, the store-and-forward network system comprising:

a proxy message server (MMSC_1) comprising:

selection means (401) arranged to select data on the basis of the identified recipient, wherein the

data selected are not directly related to the content of the message;

a message modifier (403), arranged, in response to receiving a[sic] said data message, to append the selected data to the message content such that the message body is modified; and

a message transmitter (405) arranged to transmit a modified data message, comprising said modified message body, to a default message server (MMSC_OP) of an operator of the communications network; and

a default message server (MMSC_OP) comprising:

a signal monitor (410) arranged to monitor for a signal indicative of the status of the terminal associated with the recipient of said modified data message; and

a message transmitter (405) arranged to transmit said stored message in the form of said modified data message in response to receipt of a transmission trigger signal."

Reasons for the Decision

1. MAIN REQUEST (SOLE REQUEST)
 - 1.1 The documents of this request (i.e. the claims, description pages, and drawings) are identical to those of the first auxiliary request on the basis of which the patent was maintained by the opposition division in amended form (cf. point V above).
 - 1.2 Since the patent proprietor is the sole appellant in this case (cf. point I above), this request is not open to any further examination due to the prohibition of *reformatio in peius* according to the case law of the

Enlarged Board of Appeal (cf. G 9/92 and G 4/93, headnote I).

2. Moreover, as there is no longer any difference between the appellant's final request and the outcome of the first-instance proceedings, the board concludes that the present appeal has been deprived of its subject-matter. Under these circumstances, the board cancelled the oral proceedings, and the appeal proceedings can be terminated, which has the effect that the decision under appeal becomes final.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chair:



I. Aperribay

A. Ritzka

Decision electronically authenticated