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**Datasheet for the decision
of 22 January 2016**

Case Number: T 0850/12 - 3.5.03

Application Number: 05764591.3

Publication Number: 1832080

IPC: H04L29/06

Language of the proceedings: EN

Title of invention:
MEDIA CLIENT ARCHITECTURE FOR NETWORKED COMMUNICATION DEVICES

Applicant:
Sony Mobile Communications AB

Headword:
Media client/SONY

Relevant legal provisions:
EPC Art. 84
EPC R. 103(1)(a)

Keyword:
Clarity (all requests) - no
Reimbursement of appeal fee (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0850/12 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 22 January 2016

Appellant: Sony Mobile Communications AB
(Applicant) Nya Vattentorget
221 88 Lund (SE)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 12 October 2011
refusing European patent application
No. 05764591.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman F. van der Voort
Members: K. Schenkel
P. Guntz

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 05764591.3, publication number EP 1832080 A, which was originally filed as international application PCT/US2005/024404 (publication number WO 2006/073487 A).

II. The reasons given for the refusal were that the subject-matter of claims 1 and 26 of the main request was not novel (Articles 52(1) and 54 EPC) having regard to the disclosure of:

D2: WO 01/47248 A

and that the subject-matter of claim 1 of each of the first to fourth auxiliary requests extended beyond the content of the application as filed (Article 123(2) EPC).

III. With the statement of grounds of appeal the appellant essentially requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of one of a main request and first to third auxiliary requests, all requests as filed with the statement of grounds of appeal. Further, the appellant requested reimbursement of the appeal fee. Oral proceedings were conditionally requested.

IV. In a communication following a summons to oral proceedings, the board, without prejudice to its final decision, raised, *inter alia*, objections under Article 52(1) EPC in conjunction with Article 54 EPC (lack of novelty) and Article 56 EPC (lack of inventive step) in respect of the subject-matter of claims 1 and 27 of

each request and objections under Article 84 EPC (lack of clarity) and Article 123(2) EPC (added subject-matter) in respect of these claims.

The board based its objection regarding lack of novelty on document US 2002/0103898 A, which was cited in the international search report (hereinafter D1). The board's objection regarding lack of inventive step was based on D2 in combination with D1.

The appellant did not file arguments or new claims in response to the board's communication.

V. Oral proceedings were held on 22 January 2016.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, in the alternative, on the basis of the claims of one of the first to third auxiliary requests, all requests as filed with the statement of grounds of appeal. Further, it requested that the appeal fee be reimbursed.

At the end of the oral proceedings, after due deliberation, the chairman announced the board's decision.

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

"A media client (200) for a subscriber's networked communication device (100) executing on one or more host devices to enable communication between the networked communication device (100) and a remote device (300, 350, 400), said media client (200) comprising:

a user agent (202) to communicate with a multimedia application (150) in the networked communication device (100);

a first network interface (208) for communications between the user agent (202) and the multimedia application (150);

a signaling agent (204) under the control of the user agent (202) to perform signaling operations to establish and terminate media sessions between the multimedia application in the networked communication device (100) and the remote device (300, 350, 400); and

a media agent (206) under the control of the user agent (202) to send multimedia messages to and receive multimedia messages from the remote device as part of an established media session between the multimedia application in the networked communication device (100) and a remote device (300, 350, 400);

wherein at least one of the user agent (202), the signaling agent (204), and the media agent (206) resides in a network server of a communication network (10) controlled by a network operator."

VII. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the following feature is added:

"the network operator being different from the subscriber".

VIII. Claim 1 of the second auxiliary request differs from claim 1 of the main request in that the following feature is added:

"and wherein the subscriber's networked communication device (100) lacks IP Multimedia Subsystem, here abbreviated IMS, capabilities, and the media client

(200) is configured to provide IMS capabilities to the subscriber's networked communication device (100)".

- IX. Claim 1 of the third auxiliary request is a combination of the respective claims 1 of the first and second auxiliary requests.

Reasons for the Decision

1. *Clarity*

1.1 Claim 1 of each request includes the feature that "at least one of the user agent (202), the signaling agent (204), and the media agent (206) resides in a network server of a communication network (10) controlled by a network operator" (underlining added by the board).

1.2 The appellant argued that the wording "controlled by a network operator" is clear to a skilled reader, since it would simply mean that the network server was in the network of the network operator and, hence, not in the subscriber domain of the communication network.

1.3 The board is, however, not convinced by this argument for the following reasons.

Firstly, it is noted that, in accordance with the description, a "network operator" may be an organisation which runs the network. More specifically, see the application as published, page 1, lines 12 to 15 and 24 to 26, page 6, line 36 to page 7, line 2, the network operator may be attributed activities such as offering IP services, purchasing services, and investing in equipment. Consequently, there are many different ways in which such an organisation may

commercially control a communication network, for example by influencing the functioning of the network, by controlling the access to the network, or merely by possessing the network.

Furthermore, if a more technical meaning of the wording "controlled by a network operator" is considered, the board notes that a device in the subscriber's domain, for example a DSL modem, may be controlled by commands sent by the network operator via the communication network, for example for the purpose of remotely installing firmware or software updates. Another example of exerting remote control by a network operator would be by sending a so-called silent SMS (short text message) to the subscriber's mobile communication device, which may trigger a specific reaction in the subscriber's device.

It is thus unclear whether the aforementioned examples of influence exerted by a network operator are encompassed by the wording "controlled by a network operator".

- 1.4 Further, if the claim were to be understood as argued by the appellant (see point 1.2 above), this would imply that, merely on the basis of the wording "controlled by a network operator" in the claim, a clear line could be drawn between that part of the communication network which constitutes the network operator domain and that part which constitutes the subscriber domain. However, a network operator may still retain rights, for example property rights, to a subscriber's networked communication device placed at the subscriber's disposal and may still be able to remotely update its firmware, as explained above, and, hence, thereby exert more or less control over the

subscriber's device. It would therefore remain unclear whether the subscriber's networked communication device referred to in the claim is to be considered as not being controlled by the network operator.

It follows that, being aware of the various possibilities available to a network operator to exert commercial and/or technical control over devices in the subscriber domain, the skilled reader reading claim 1 would not be able to determine clearly what is meant by the wording "controlled by a network operator" or which part(s) of the communication network is(are) or is(are) not controlled by a network operator.

- 1.5 In view of the above, the wording "wherein at least one of the user agent (202), the signaling agent (204), and the media agent (206) resides in a network server of a communication network (10) controlled by a network operator" gives rise to a lack of clarity.
- 1.6 The board therefore concludes that claim 1 of each of the main request and the auxiliary requests is not clear (Article 84 EPC).
2. For the above reasons, none of the main request and the auxiliary requests is allowable.
3. *Request for reimbursement of the appeal fee*
 - 3.1 According to Rule 103(1)(a) EPC one of the conditions for reimbursement of the appeal fee is that the board deems the appeal to be allowable.
 - 3.2 Since this condition is not met, the request for reimbursement of the appeal fee is to be rejected.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated