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Datasheet for the decision of 17 January 2017

Case Number: T 0905/12 - 3.5.05

Application Number: 08156992.3

Publication Number: 2129061

IPC: H04L12/56

Language of the proceedings: EN

Title of invention:
A system and a method for providing improved quality of a communication service

Applicant:
Deutsche Telekom AG

Headword:
Selection of access node/DEUTSCHE TELEKOM

Relevant legal provisions:
EPC Art. 56, 84, 123(2)

Keyword:
Claims - clarity (yes)
Amendments - added subject-matter (no)
Inventive step - after amendment

Decisions cited:

Catchword:

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Case Number: T 0905/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 17 January 2017

Appellant: (Applicant)	Deutsche Telekom AG Friedrich-Ebert-Allee 140 53113 Bonn (DE)
Representative:	Vossius & Partner Patentanwälte Rechtsanwälte mbB Siebertstrasse 3 81675 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 29 November 2011 refusing European patent application No. 08156992.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	P. Cretaine
	D. Prietzel-Funk

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, posted 29 November 2011, to refuse European patent application No. 08156992.3 on the grounds of lack of inventive step (Article 56 EPC), having regard to the disclosure of

D1: US 2006/193295,

with respect to a Main Request and an Auxiliary Request 2,

of lack of clarity (Article 84 EPC) with respect to Auxiliary Request 2,

and of non-compliance with the requirements of Article 123(2) EPC with respect to an Auxiliary Request 1.

II. Notice of appeal was received on 12 January 2012 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 10 April 2012. The appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of a Main Request or an Auxiliary Request, both requests filed with the statement setting out the grounds of appeal. The claims of the Main Request were identical to the claims of the Main Request on which the impugned decision was based. In addition, oral proceedings were requested if the Main Request was not allowed.

III. A summons to oral proceedings was issued on 21 September 2016. In an annex to this summons, the board gave its preliminary opinion on the appeal

pursuant to Article 15(1) RPBA. The board raised a clarity objection (Article 84 EPC) against the Main Request but indicated that, in its opinion, the Auxiliary Request met the requirements of Article 84 EPC and of Article 56 EPC, having regard to the disclosure of D1.

The board further indicated that it would be minded to remit the case to the department of first instance with the order to grant a patent on the basis of the Auxiliary Request, provided that the appellant withdrew the Main Request.

IV. With a letter dated 29 September 2016, the appellant withdrew the then Main Request and made the then Auxiliary Request its new (and sole) Main Request.

V. By communication dated 29 November 2016, the board announced that the oral proceedings had been cancelled.

VI. Claim 1 of the **Main Request** reads as follows :

"A system for managing a communication service within communication networks using multiple access technologies, the communication service being used by a user equipment comprising at least one network interface, wherein the system comprises:
at least a first and a second access node and one resource management function being adapted to monitor a network resource information of one or more access nodes, wherein the user equipment is connected with and has access to the first access node;

characterized by further comprising
a user profile management and authorisation authentication accounting function being adapted for

storing information about a user profile and a connectivity parameter of the network interface of the user equipment,
an application control function being adapted for providing a service requirement information,
a resource and admission control function being adapted for receiving the service requirement information from the application control function, and for inquiring the network resource information from the resource management function;
wherein the resource management function, the user profile management and authorisation authentication accounting function, the application control function, and the resource and admission control function being provided on the access network side;
wherein the resource and admission control function is adapted to communicate with the user profile management and authorisation authentication accounting function before the user equipment contacts the second access node, to select an access node for the network connection of the user equipment from the first access node and the second access node based on the service requirement information and the network resource information, and to reserve a transport resource available for the user equipment on the selected access node."

The Main Request comprises a further independent claim for a corresponding method (claim 15).

Reasons for the Decision

1. The appeal is admissible.

2. Articles 84 EPC and 123(2) EPC

2.1 Claim 1 is based in part on claim 1 of Auxiliary Request 2 on which the decision is based. In particular, claim 1 comprises the wording "wherein the user equipment is connected with and has access to the first access node". The examining division had objected that there was no clear technical difference between the features "is connected with" and "has access to", thus rendering the whole wording unclear (Article 84 EPC).

The appellant argued that, in the context of network access protocols, "is connected with" has a different meaning from "has access to". The appellant relied on the well-known AAA concept, referred to in the description, which is used by RADIUS servers to manage network access. Within this context, network access is generally managed in two steps: the user first connects to an access server which, after identification of the user, grants access to the network.

The board agrees with the appellant that it is common practice to perform an AAA check for a user in advance before allowing him to access a network. Connecting with an access node therefore does not mean allowing the user to access the network. This is also explicitly referred to in the description (see paragraph [0041] of the published application), which indicates that to get access to any service, the user must first connect to the access network. The difference between "is connected with" and "has access to" is thus clear in the context of the application and from the description itself.

The board therefore judges that the technical meaning of the wording "wherein the user equipment is connected

with and has access to the first access node" is unambiguous and represents the feature of having the user equipment accessing the functionalities of the network provided by the first access node.

As a consequence the board judges that claim 1 is clear in that respect (Article 84 EPC).

2.2 Claim 1 is also based in part on claim 1 of Auxiliary Request 1 on which the impugned decision is based. In particular it comprises the wording "wherein the resource and admission control function is adapted to communicate with the user profile management and authorisation authentication accounting function before the user equipment contacts the second access node". The examining division objected that this feature, in particular the term "contacts", was not supported by the application documents as originally filed (Article 123(2) EPC).

The board however agrees with the appellant that the verb "contact" present in this feature, although not used explicitly in the description, clearly defines the act of the user equipment connecting to the access node in the sense given in paragraph 2.1 above, namely the first step of the two-step AAA procedure. The board therefore judges that claim 1 meets the requirements of Article 123(2) EPC in that respect.

3. Article 56 EPC

3.1 The impugned decision relied on D1 as closest prior art.

D1 discloses a mobile terminal able to have multiple heterogeneous network connections and to distribute

segments of traffic over several of these networks, e.g. over wired and wireless networks (see paragraph [0025]). The terminal may also hand over from one network to another (see paragraph [0026]). A monitoring daemon implemented in the mobile unit (see Figure 4, 138) gathers measurements for all its network interfaces, such as connection availability, congestion, signal quality, etc. (see paragraphs [0053] and [0056]). A decision unit implemented in the mobile unit (see Figure 4, 124) decides an optimal hand-off strategy for transferring communications from one communication path to another (see paragraphs [0052] and [0054]).

3.2 As stated in the impugned decision (see Reasons 3.2), the subject-matter of claim 1 differs from the disclosure of D1 by the features of the characterising part. In substance, these features define functions provided in the communication system on the network access side which enable selection by the system of a second access node for the user equipment before the user equipment contacting the second access node.

The selection of the access technologies is thus not performed by the user equipment, i.e. the mobile unit, contrary to the system of D1. A connection of the mobile unit with a new access node is not required in order to select the new access node. The network resource information is gathered without establishing network access by the mobile unit to the second access node, whereas the system of D1 requires permanent connections and steady monitoring of all the access nodes by the mobile unit.

The objective technical problem can thus be formulated as how to manage the selection of a particular access

node from a plurality of access nodes in a more efficient, resource-saving manner.

The board may agree with the impugned decision that functions managing user profiles, authorisation, authentication, accounting, application control, and resource and admission control are standard features of telecommunication networks (see Reasons 3.4). These features could thus be considered as "mandatory prerequisites on the network side" [sic], i.e. as implicitly disclosed in D1. The skilled person would however have no incentive to depart from the teaching of D1 in respect of the steady monitoring of the access nodes by the mobile unit. It would rather focus on optimising the internal functions of the mobile unit dedicated to the multi-access capabilities.

For these reasons, the board judges that the subject-matter of claim 1 involves an inventive step, having regard to the prior art on file (Article 56 EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the examining division with the order to grant a patent on the basis of the following documents:

   - Claims 1 to 24 of the Main Request, filed as Auxiliary Request with the statement setting out the grounds of appeal;
   - Description pages 1 to 17 as originally filed;
   - Drawings sheets 1/5 to 5/5 as originally filed.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated