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Datasheet for the decision of 26 February 2018

Case Number: T 1067/12 - 3.5.06

Application Number: 07000273.8

Publication Number: 1808793

IPC: G06F21/20

Language of the proceedings: EN

Title of invention:
Communication device, communication method, program and recording medium

Applicant:
Sony Corporation

Headword:
Identification of an electronic device using user face images/ SONY CORPORATION

Relevant legal provisions:
EPC 1973 Art. 54(1), 111(1)

Keyword:
Novelty (main and first auxiliary requests) (no) (second auxiliary request) (yes)
Remittal to the department of first instance - (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
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Boards of Appeal

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Case Number: T 1067/12 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 26 February 2018

Appellant: (Applicant)	Sony Corporation 7-35, Kitashinagawa 6-chome Shinagawa-ku Tokyo 141-0001 (JP)
Representative:	Müller Hoffmann & Partner Patentanwälte mbB St.-Martin-Strasse 58 81541 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 22 December 2011 refusing European patent application No. 07000273.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	W. Sekretaruk
Members:	A. Teale
	S. Krischer

Summary of Facts and Submissions

I. This is an appeal against the decision, dispatched with reasons on 22 December 2011, to refuse European patent application No. 07 000 273.8 on the basis *inter alia* that claim 1 of the main request lacked novelty, Article 54 EPC, in view of the document

D1: EP 1 351 113 A2.

II. The following document was also mentioned in examination proceedings:

D2: US 2005/0229008 A1.

III. A notice of appeal and an appeal fee were received on 15 February 2012. The appellant requested that the decision be set aside, that the case be submitted to the board of appeal and, as an auxiliary request, that the examining division or board issue a summons to oral proceedings and a communication setting out the issues to be heard.

IV. With a statement of grounds of appeal, received on 23 April 2012, the appellant submitted claims according to new auxiliary requests. The appellant requested that the decision be set aside and that a patent be granted. The appellant also reiterated the auxiliary request for oral proceedings.

V. In an annex to a summons to oral proceedings the board set out its provisional opinion that the subject-matter of claim 1 of *inter alia* the main request lacked novelty, Article 54(1,2) EPC 1973, in view of D2.

VI. With a response received on 24 January 2018 the appellant filed amended claims according to *inter alia* a new first auxiliary request. The appellant requested that the decsion be set aside and that a patent be granted.

VII. In the oral proceedings, held on 26 February 2018, the appellant submitted amended claims according to a new second auxiliary request and 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, dated 17 October 2011, or on the basis of those of the first auxiliary request, dated 24 January 2018, or on the basis of those of the second auxiliary request, dated 26 February 2018. At the end of the oral proceedings the board announced its decision.

VIII. The remaining application documents on file are as follows.

Description (all requests):
pages 2 and 4 to 59, as originally filed, and
pages 1, 3, 3a and 3b, as received on 15 April 2008.

Drawings (all requests):
Pages 1/9 to 9/9, as originally filed.

IX. Claim 1 according to the main request reads as follows:

"A communication device (11) that communicates with an electronic device (13) via a network (15), the communication device (11) comprising: storage means (32) storing device identification information identifying the electronic device (13) and one or more face images of one or more registered users that use the electronic device (13) while associating the device

identification information with each of the face images of the registered users of the electronic device (13); image capturing means (31) capturing an image of the face of a target user of the electronic device (13); and identification means (75) identifying the electronic device (13) on the basis of the device identification information stored in association with the one of the stored face images that matches the captured image of the face of the target user of the electronic device (13)."

X. Claim 1 according to the first auxiliary request reads as follows:

"A communication device (11) that communicates with an electronic device (13) via a network (15), the communication device (11) comprising: storage means (32) storing device identification information identifying the electronic device (13) and one or more face images of one or more registered users that use the electronic device (13) while associating the device identification information with each of the face images of the registered users of the electronic device (13); image capturing means (31) is configured to capture an image of a face of a target user (14) currently using the electronic device (13); and identification means (75) configured to identify the electronic device (13) on the basis of the device identification information stored in association with one of the stored face images that matches the captured image of the face of the target user (14) currently using the electronic device (13)."

XI. Claim 1 according to the second auxiliary request reads as follows:

"A communication method for enabling communication with an electronic device (13) via a network (15), the method comprising the steps of: storing device identification information identifying the electronic device (13) and one or more face images of one or more users that use the electronic device (13) while associating the device identification information with each of the face images of the users of the electronic device (13), the device identification information being stored in a communication device (11); capturing, by the communication device (11), an image of a face of a target user of the electronic device (13), after storing the device identification information and one or more face images of one or more users that use the electronic device (13) to generate a captured image of the face of the target user (14); identifying the electronic device (13) on the basis of the device identification information stored in association with one of the stored face images that matches the captured image of the face of the target user (14) of the electronic device (13); and starting, by the communication device (11), communication with the electronic device (13) comprising transmitting data (52) stored by the communication device (11) to the electronic device (13) after identifying the electronic device (13) using the stored identification information."

The claims according to the second auxiliary request also comprise a claim 9 to a computer program, a claim 10 to a recording medium and a claim 11 to a communication device, all three claims referring either

directly or indirectly to the features of method claim 1.

Reasons for the Decision

1. The admissibility of the appeal

In view of the facts set out at points I, III and IV above, the appeal complies with the admissibility criteria under the EPC and is thus admissible.

2. Summary of the invention

2.1 The application relates to transmitting data, for instance an image or a video, stored on one communication device, such as a mobile phone or a digital camera, to another communication device via an *ad-hoc* network, for instance a WLAN. As shown in figure 1, images are transferred from a sending device (11) to a target (recipient) device (13) operated by a target user (14). Each communication device can be identified by its device ID, termed its "device identification information" in the claims. However it is not enough to establish that data is being sent to the correct target device, since the target device may be shared between several users. Hence users are identified by means of an image of their face, and data is only transmitted to a chosen communication device if that device is being used by the desired user, identified by comparing a current image of the user with an image associated with that device ID, previously stored in a registration phase.

2.2 In the registration phase the sending device collects the information, termed an "item", concerning the intended recipient of the data (the target user) and

their communication device, namely a face image of the user, a user ID, such as an email address, and a device ID; see figures, 4 and 5 and page 40, line 18, to page 42, line 5. The face image of the user is made using an image capturing section in the sending device; see figure 2; 31, figure 4; step S12 and page 22, line 23, to page 23, line 13. Each item is stored in the sending device in a registration list; see figure 2; 31, 51 and figure 6.

2.3 Figure 9 illustrates the steps of the subsequent use of the sending device; see also page 48, line 21, to page 55, line 11. In step S52 the user of the sending device captures a current face image of the target user, which is compared to stored face images in the registration list to find a match (steps S53 to S56) and, if only one communication device is associated with this target user (see step S58, "NO"), yields the identify of the target communication device. Data transmission then occurs from the storage section (52) of the sending device to that target device; see step S65.

3. The prior art on file

3.1 Document D1

3.1.1 The appealed decision is based on a lack of novelty in view of D1.

3.1.2 D1 relates to a network architecture for secure communication between users. A biometric identifier uniquely associated with each user, for instance an image of the user's face (see paragraph [0010]), is stored at a network node, the biometric identifier being used to authenticate a user at another node to establish a network of trust (termed a "biometric trust

infrastructure" (BTI)) between a group of users. As shown in figure 1, each node can comprise a biometric capture device (105) connected to a PC; see paragraph [0047]. The devices communicate via a computer running a business application requiring the authentication of the user (115) (see page 5, lines 10 and 11) with one of a plurality of authentication servers (110).

3.2 Document D2

3.2.1 As illustrated in figure 1, D2 relates to the problem confronting the user (10) of a device (20), such as a personal digital assistant (PDA), connected via a wireless network to numerous items of equipment, such as printers (30A-E), of electronically identifying the particular printer that the user has selected to use; see paragraph [0002].

3.2.2 This is achieved by the selected printer reading and storing (see figure 2; secure storage 37) a biometric characteristic of the user, for instance an image of the user's face; see paragraphs [0007 - 0009]. Contact is established (the board understands via the network) between the PDA and a printer, and the PDA determines whether the contacted printer is the selected printer by testing whether the printer can provide biometric data that matches biometric data stored in the PDA (see memory 24), known to correspond to the user and collected using a reader in the PDA; see paragraph [0037].

3.2.3 According to paragraph [0044], the PDA can "note" (which the board understands to mean "store") the details of all printers that it finds via the network which can provide biometric data corresponding

to the user, the user then selecting the printer based on its capabilities.

4. Novelty, Article 54(1,2) EPC 1973, in view of D2, main request

4.1 Claim 1 is the same as that of the main request in the decision.

4.2 In view of the above analysis, the board regards the PDA (20) and the printer (30) known from D2 as the communication device and electronic device, respectively, set out in claim 1. The image capturing means of claim 1 corresponds to the biometric characteristic reader in the PDA (20) of D1 ([0037]). Claim 1 covers the case of one face image of one user being stored in the communication device. In this situation a face image of the same person is captured and stored both at the PDA and the printer.

4.3 The appellant has questioned whether D2 discloses the storage means in the communication device set out in claim 1 for storing device identification information identifying the electronic device and a face image of a registered user of the electronic device and associating the device identification information with the face image of the registered user. The board takes the view that figure 2 discloses a control block (23) for comparing (28) biometric data received from a printer with that stored in the memory of the PDA; see paragraph [0037], first sentence, and paragraph [0042], lines 9 to 13. As stated in paragraph [0044], first sentence, the PDA stores the identity of every printer sending biometric data matching the reference biometric data stored in the PDA. The board finds that this storage operation implies the association of data

identifying the printer with the biometric data received from it.

4.4 Hence the subject-matter of claim 1 lacks novelty, Article 54(1,2) EPC 1973, in view of the disclosure of D2.

5. Novelty, Article 54(1,2) EPC 1973, in view of D2, first auxiliary request

5.1 Claim 1 differs from that of the main request in that the expression "image capturing means (31) capturing an image" has been amended to read "image capturing means (31) is configured to capture an image" and in that the two instances of the expression "target user of the electronic device (13)" have both been amended to read "target user (14) currently using the electronic device (13)".

5.2 The board finds that both amended expressions set out features which are known from D2 and consequently cannot lend novelty to the claim. The reader in the PDA disclosed in D2 (see paragraph [0037], lines 10 to 12) in conjunction with the statement in paragraph [0009] that the biometric data may relate to a human face constitutes image capturing means configured to capture an image of the current user of the printer, this being the same person as the current user of the PDA.

5.3 Hence the board finds that the subject-matter of claim 1 lacks novelty, Article 54(1,2) EPC 1973, in view of the disclosure of D2.

6. Remittal, Article 111(1) EPC 1973, second auxiliary request

6.1 In the oral proceedings before the board the appellant presented amended claims in which claim 1, based on original method claim 8, set out a communication method for enabling communication with an electronic device via a network. Claims 9, 10 and 11 set out a computer program, a recording medium and a communication device, respectively, by reference, directly or indirectly, to the features of claim 1.

6.2 The board is satisfied that claim 1 is clear, Article 84 EPC 1973, and based on the original disclosure, in particular original claim 8, steps S12 to S15 in figure 4 and steps S57 and S65 in figure 9.

6.3 Claim 1 now sets out that the image capturing means in the sending device (the "communication device" in claim 1) capture not only the reference user images stored in the registration list (see figure 5) but also the current image of the target user (see page 49, lines 23 to 25). This feature is not known from either D1 nor D2, so that claim 1 overcomes the reason for the appealed decision.

6.4 Until this features was introduced into the claims, the examining division and the board had always assumed that the target device (the "electronic device") captured the image of the target user. Hence the question arises whether the claims were understood as covering the possibility that the sending device captured the image of the target user when the invention was searched. Under the circumstances, the board uses its discretion to remit the case to the

first instance for further prosecution based on this request, Article 111(1) EPC 1973.

Order

For these reasons it is decided that:

The decision under appeal is set aside.
The case is remitted to the examining division for further prosecution on the basis of the second auxiliary request of 26 February 2018.

The Registrar: The Chairman:

B. Atienza Vivancos W. Sekretaruk

Decision electronically authenticated