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**Datasheet for the decision  
of 17 March 2017**

**Case Number:** T 0076/13 - 3.5.03

**Application Number:** 04770602.3

**Publication Number:** 1678911

**IPC:** H04L29/06, G06F17/30, G06F19/00

**Language of the proceedings:** EN

**Title of invention:**  
Service platform for cellular telephony

**Applicant:**  
Alcatel-Lucent USA Inc.

**Headword:**  
Service platform for cellular telephony/ALCATEL

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

**Keyword:**  
Claims - clarity (no)  
Amendments - added subject-matter (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0076/13 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 17 March 2017**

**Appellant:** Alcatel-Lucent USA Inc.  
(Applicant) 600-700 Mountain Avenue  
Murray Hill, NJ 07974 (US)

**Representative:** Dennemeyer & Associates S.A.  
55, rue des Bruyères  
1274 Howald (LU)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 16 July 2012  
refusing European patent application  
No. 04770602.3 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. 04770602.3, publication number EP 1 678 911, which was originally filed as international application PCT/IL2004/000932 (publication number WO 2005/032098).
- II. The refusal was based on the grounds that claims 16 and 27 extended beyond the content of the application as filed (Article 123(2) EPC) and that claims 1, 10, 16 and 27 were not clear (Article 84 EPC).
- III. In the statement of grounds of appeal, the appellant argued, inter alia, that the examining division had not given due consideration in its decision to the "arguments, authorities and evidence" submitted by the applicant, particularly with the applicant's letter dated 7 April 2011. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of a set of claims filed with the statement of grounds of appeal. Oral proceedings were conditionally requested.
- IV. In a communication accompanying a summons to oral proceedings, the board raised, without prejudice to its final decision, objections under Article 84 EPC against claims 1, 10, 16 and 27 as well as objections under Article 123(2) EPC against claims 16 and 27.
- V. With a letter dated 6 March 2017, the appellant informed the board that it would not be attending the oral proceedings. The request for oral proceedings was withdrawn and the appellant requested that a decision be taken according to the state of the file.

VI. Oral proceedings were held on 17 March 2017 in the absence of the appellant.

Based on the written submissions, the board understood the appellant to be requesting that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims as filed with the statement of grounds of appeal.

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

VII. Claim 1 reads as follows:

"Apparatus providing a platform (10) for the provision of services over a cellular telephone network, the apparatus comprising:

an infrastructure for supporting a generic (12, 30) definition of a cellular service, said generic definition incorporating common features of different services (16, 18, 20, 22, 24), said generic definition being able to accept specific service-defining parameters, wherein the infrastructure facilitates the delivery of multiple content types to different devices using different protocols; and

an external parameter setting mechanism (14) for inputting respective service defining parameters to said generic definition, to thereby implement a desired service through said generic definition, said generic definition includes consideration of resource constraints of the different devices."

VIII. Claim 27 reads as follows:

"A service delivery system for an interface between a content provider and a wireless communication device, comprising:

a content provider apparatus for providing a plurality of services (16, 18, 20, 22, 24) to the wireless communication device;

an infrastructure for supporting a generic (12, 30) definition of a cellular service, said generic (12, 30) definition incorporating common features of different services (16, 18, 20, 22, 24);

a service controller for receiving a request for a service from the wireless communication device and for activating said service according to a service logic and said generic (12, 30) definition, wherein said service logic comprises at least one rule for determining at least one of whether and how said service is to be provided; and

a service framework, configured to modify ones of said services."

### **Reasons for the Decision**

1. *Consideration of the applicant's arguments in the decision under appeal*
  - 1.1 The appellant argued that the decision under appeal did not give due consideration to the "arguments, authorities and evidence" submitted by the applicant, particularly in its letter dated 7 April 2011.
  - 1.2 The board notes that the examining division refused the application on the grounds of lack of clarity and of added subject-matter in respect of the feature that the

service controller is for activating a service according to the generic definition. With respect to these grounds, the appellant, in its letter dated 7 April 2011, referred to page 2, lines 11 to 15 and 19, and page 3, lines 9 and 22 to 29, of the description as filed. In the impugned decision, cf. point II.1.1, reference is made to these passages. The board judges that the applicant's submissions, to the extent that they were relevant to the reasons for the decision, were duly considered. The applicant's right to be heard was therefore duly respected. Hence, no procedural violation or fundamental deficiency in the first-instance proceedings is apparent to the board. Neither did the appellant explicitly argue otherwise.

2. *Claim 1 - clarity (Article 84 EPC)*

2.1 Claim 1 includes the feature that the infrastructure "facilitates the delivery of multiple content types".

2.2 The term "facilitates" is unclear, since it has no well-recognised meaning in the art. It may, for example, imply that the infrastructure is merely for assisting in or promoting, rather than executing, the delivery of the multiple content types. Whether or not this distinction between assisting or promoting, on the one hand, and executing, on the other hand, is to be made and, if so, what implications it has in terms of the constructional features of the infrastructure of the claimed apparatus, cannot be determined from the wording of the claim. The matter for which protection is sought is therefore unclear.

2.3 The board concludes that claim 1 lacks clarity (Article 84 EPC).

3. *Claim 27 - added subject-matter (Article 123(2) EPC)*
- 3.1 Claim 27 comprises the feature of "a service controller ... for activating said service according to a service logic and said generic (12, 30) definition" (board's underlining).
- 3.2 This feature is only partly based on claim 29 as originally filed, which refers to "a service controller ... for activating said service according to a service logic", i.e. not, in addition, according to the generic definition, as in present claim 27. Nor can a basis for an activation according to the generic definition as claimed be found in other parts of the application as filed.
- 3.3 As a basis for the above-cited feature, the appellant referred to page 6, line 20 ff., and page 9, line 13 ff.

The relevant passage on page 6 reads:

"a service controller ... for activating said service according to a service logic, wherein said service logic comprises at least one rule for determining at least one of whether and how said service is to be provided;"

This passage only provides a basis for an activation of the service according to a service logic. An activation of a service according to a generic definition is not mentioned.

The relevant passage on page 9 reads:

"The platform 10 comprises a generic definition 12 of a



cellular service. The generic definition is able to take specific service-defining parameters which turn it from a generic into an actual service."

This passage refers only to the transition from a generic to an actual service, which is different from an activation of a service.

The appellant further referred to passages on page 2, line 14 ff., and page 3, lines 22 to 29.

The relevant passage on page 2 reads:

"the platform comprising:

a generic definition of a cellular service, said generic definition being able to take specific service-defining parameters, and

a parameter setting mechanism for inputting respective service defining parameters to said generic definition, thereby to implement a desired service through said generic definition."

Again, no reference is made to an activation of a service according to the generic definition.

The relevant passage on page 3 reads:

"Preferably, said external parameter is location of a respective mobile telephone, and wherein said modifying comprises modifying said application in accordance with a respective location.

The platform may comprise a plurality of modules, each module carrying said generic definition together with a different arrangement of parameters, thereby to combine different services within said platform.

The platform may support additional services by the incorporation of additional modules."

This passage too merely refers to generic definitions, without disclosing an activation of a service according to the generic definition.

- 3.4 For the above reasons, the board concludes that claim 27 contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).
4. The board notes that appellant did not make any substantive comments in response to the objections raised by the board in its communication, which included the above-mentioned objections with respect to clarity and added subject-matter.
5. Since claims 1 and 27 contravene Articles 84 and 123(2) EPC, respectively, the request on file is not allowable.
6. As there is no allowable request, it follows that the appeal is to be dismissed.

## Order

### For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated