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**Datasheet for the decision  
of 26 January 2017**

**Case Number:** T 0434/13 - 3.5.03

**Application Number:** 08102751.8

**Publication Number:** 2071816

**IPC:** H04M3/42, H04L29/08

**Language of the proceedings:** EN

**Title of invention:**

Method and system for generating prospective availability data  
of a called party

**Applicant:**

Mitel Networks Corporation

**Headword:**

Generating availability data of a called party/MITEL

**Relevant legal provisions:**

EPC Art. 56  
RPBA Art. 13(1)

**Keyword:**

Inventive step (main request) - no  
Admissibility (auxiliary request) - no

**Decisions cited:**

T 0641/00

**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 0434/13 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 26 January 2017**

**Appellant:** Mitel Networks Corporation  
(Applicant) 350 Legget Drive  
Ottawa, ON K2K 2W7 (CA)

**Representative:** Derry, Paul Stefan  
Venner Shipley LLP  
200 Aldersgate  
London EC1A 4HD (GB)

**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 29 October 2012 refusing European patent application No. 08102751.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** F. van der Voort  
**Members:** T. Snell  
P. Guntz

## **Summary of Facts and Submissions**

I. This appeal is against the decision of the examining division refusing European patent application No. 08102751.8, with publication number EP 2 071 816 A.

The refusal was based on the ground that the subject-matter of claim 1 of the only request lacked an inventive step having regard to the disclosure of the document:

D1: EP 1 768 369 A.

II. The appellant filed an appeal against the above decision. The appellant stated in the statement of grounds of appeal that "This Appeal comprises a main request and no auxiliary requests.". The main request comprised claims 1 to 16 filed during the examination procedure and refused by the examining division.

III. In a communication accompanying a summons to oral proceedings, the board raised issues concerned with clarity and inventive step, the latter in particular having regard to document D1.

IV. Together with a letter of response filed six days before the oral proceedings, the appellant submitted claims of an auxiliary request.

V. Oral proceedings were held on 26 January 2017.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request as decided on by the Examining Division or, in the alternative, on the basis of the

claims of the auxiliary request as filed with the letter dated 20 January 2017.

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

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

"A computer-implemented method comprising:

receiving a query (865) regarding availability of a user (815) for a future communication from a calling party;

generating prospective availability data regarding the user (815), including estimating the availability of the user (815) for at least one future temporal block by applying availability rules to temporal block data for the user associated with said at least one future temporal block;

generating a response (868) regarding the prospective availability of the user in response to estimating that the user (815) is available in said at least one future temporal block; and

transmitting said response (868),

wherein said estimating availability for said at least one future temporal block comprises a hardware or software confidence agent (840) querying a calendar of the user associated with said temporal block data and a calendar of at least one other user associated with said user to determine meetings in which said user may be involved, estimating confidence of said queried calendars by querying an estimator that monitors actual

meeting information of a user associated with said queried calendar, comparing said actual meeting information with meeting information recorded in said queried calendar, determining the proportion of accurately recorded meeting information with respect to a total amount of meeting information recorded, and giving preference to meetings associated with the queried calendar having the highest confidence when applying said availability rules."

VII. Claim 1 of the auxiliary request differs from claim 1 of the main request in that the feature introduced by the term "wherein ..." is replaced by the following wording:

"wherein said estimating availability for said at least one future temporal block comprises a hardware or software confidence agent (840) transmitting a request for availability information to a computer-implemented calendar of the user, the request associated with said temporal block data, and to a calendar of at least one other user associated with said user, to determine meetings in which said user may be involved, estimating confidence of said calendars to which the requests are transmitted by transmitting a request to a computer-implemented monitor of context information of users, comparing said context information with scheduled meeting information recorded in the calendars to which the requests are transmitted, determining the proportion of accurately recorded meeting information with respect to a total amount of meeting information recorded, and giving preference to meetings associated with the calendar having the highest confidence when applying said availability rules;

the method further comprising processing a future communication from a calling party in accordance with the generated prospective availability data."

## **Reasons for the Decision**

### *1. Main request - claim 1 - inventive step*

1.1 The present application concerns call-handling in communication systems, and in particular a method for improving the estimation as to the likely availability of a user to which a call may be made in the future from a calling party.

1.2 The closest prior art document is held to be D1. In accordance with the wording of claim 1, D1 discloses:

A computer-implemented method comprising:

receiving a query regarding availability of a user for a future communication from a calling party (cf. paragraph [0009]);

generating prospective availability data regarding the user, including estimating the availability of the user for at least one future temporal block by applying availability rules to temporal block data for the user associated with said at least one future temporal block (cf. paragraph [0020], esp. col. 7, lines 8-10);

generating a response ("customized voice message") regarding the prospective availability of the user in response to estimating that the user is available in said at least one future temporal block (*idem*); and transmitting said response (*idem*).

With respect to the "wherein .." clause of claim 1, D1 further discloses the feature:

said estimating availability for said at least one future temporal block comprises a hardware or software confidence agent querying a calendar of the user associated with said temporal block data (idem).

- 1.3 The subject-matter of claim 1 therefore differs from the disclosure of D1 in that claim 1 includes the following features:

said estimating availability for said at least one future temporal block comprises a hardware or software confidence agent querying a calendar of at least one other user associated with said user to determine meetings in which said user may be involved,

estimating confidence of said queried calendars by querying an estimator that monitors actual meeting information of a user associated with said queried calendar,

comparing said actual meeting information with meeting information recorded in said queried calendar, determining the proportion of accurately recorded meeting information with respect to a total amount of meeting information recorded, and

giving preference to meetings associated with the queried calendar having the highest confidence when applying said availability rules.

- 1.4 The examining division considered that claim 1 essentially related to a computer-implementation of a non-technical method, and that its subject-matter,



although having technical character by dint of being carried out on a computer, did not involve an inventive step as it merely involved the conversion of non-technical features into computer-implemented equivalents. The board essentially concurs with the examining division.

1.5 In the board's view, the main (non-technical) problem to be solved starting out from D1 is to provide a more reliable estimate of availability in order to overcome the drawback that not all users provide accurate updated information in their calendars. This problem is essentially solved by consulting calendar information (data entered by the user as well as "actual" meeting information) with regard to meetings of a user and at least one other user associated with the user, and giving preference to meeting information determined to have a higher likelihood of accuracy based on comparing actual meeting information with recorded calendar information. This concept is essentially non-technical (although this was disputed by the appellant, see below), since neither calendar data, nor "actual" meeting data, nor availability estimate data have any technical character, and the manipulation of the data to determine the estimate concerns essentially a mathematical method, which is also regarded as non-technical (cf. Article 52(2)(a) EPC).

1.6 The appellant argued that, in the context of a future communication from a calling party, the provision of improved availability data resulted in technical effects, since improved availability data reduced the use of communication resources between a calling party and a called party and enhanced the call processing options available. As the improved availability assessment was responsible for these effects, all

features of claim 1 contributed to inventive step. In other words, the appellant contended that the wording in claim 1 "for a future communication from a calling party" conferred technical character on the entire method.

1.7 The board however considers that the presence of the wording "for a future communication from a calling party" makes no contribution to inventive step. In this respect, consider that a caller in a conventional manner wished to place a call to a called party. When deciding whether to place the call at a certain time, it is obvious that it would be possible to obtain information regarding the called party's likely availability during a particular period of time, for example by consulting the person's diary or calendar, as well as other calendars indicating meetings which the person is scheduled to attend. Determining a person's availability in this way is essentially non-technical. The mere fact that the improved result might potentially be used to influence when to place a future conventional call to that person does not in itself give the method a technical character. It is further noted that the wording "for a future communication" does not even require in claim 1 that a future communication be made. Consequently, this hypothetical step does not meaningfully limit the claim.

1.8 In accordance with case law of the Boards of Appeal, non-technical features which do not contribute to the solution of a technical problem do not contribute to inventive step (cf. e.g. T 641/00, COMVIK (OJ 2003, 352)). In the present case, it follows that the non-technical aspects of the method for estimating availability do not contribute to inventive step. It has to be assessed however whether the claimed

computer-implementation involves non-obvious further technical considerations. In the present case, the appellant argued that the computer-implemented solution using a confidence agent and an estimator for monitoring actual meeting information went beyond merely carrying out non-technical steps on a computer.

- 1.9 The board however disagrees. In this respect, the board considers that the skilled person wishing to solve the problem of implementing the availability estimation (cf. point 1.5 above) would, without requiring inventive skill, provide the "normal" hardware and/or software entities necessary for (i) obtaining the required data from calendars (e.g. by querying on-line calendars), (ii) obtaining data concerning actual meeting information (e.g. by querying a store of such information), and (iii) estimating availability by comparing the data in the manner claimed. With regard to the features "confidence agent" and "estimator" in claim 1, the board considers that "confidence agent" is merely an arbitrary term for a software entity which carries out steps (i) to (iii), and the term "estimator", while obscure, since this component does not appear to estimate anything, but merely "monitors" actual meeting information, is understood as a hardware and/or software entity programmed to be supplied with actual meeting information data, and which can be queried by the confidence agent. The board considers that it makes no difference to the assessment of inventive step whether the confidence agent itself "monitors" the actual meeting information data (see point (ii) above), or whether this task is performed by a separate hardware and/or software module which has to be queried by the confidence agent. The functional and/or physical separation of such programming tasks is a routine measure for the skilled person, as illustrated

by D1, in which different entities are involved in collecting presence information ("presence server 114"), collecting calendar information ("calendar server 118a"), and analysing the information ("rules engine 112").

1.10 The board therefore concludes that the subject-matter of claim 1 does not involve an inventive step (Articles 52(1) and 56 EPC).

2. *Auxiliary request - admissibility*

2.1 This request was submitted at a late stage of the appeal proceedings (i.e. approximately one week before the oral proceedings). Amendments to a party's case after filing the statement of grounds of appeal are governed by Article 13 of the Rules of Procedure of the Boards of Appeal.

2.2 In accordance with Article 13(1) RPBA, "Any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy."

2.3 A well-established criterion used by the boards of appeal for deciding whether to admit late-filed requests under Article 13(1) RPBA is whether the new claims are prima facie allowable.

2.4 In the present case, the board considers the amendments made to claim 1 give rise, prima facie, to several objections under Article 84 EPC, inter alia:

(i) The term "context information", which has replaced the term "actual meeting information", is not considered to have a clear meaning. The appellant argued that the skilled person would, in accordance with paragraph [0118] of the description, understand this to mean "what the user is *actually* doing (activity, location etc.)" (cf. the letter of 20 January 2017, page 3, third paragraph). The board however notes that a claim should be clear without having to refer to the description. Further, even if the description were taken into account, there is no reference to "context" in paragraph [0118]. Instead, paragraph [0054] states that "The user's current contexts are the user's location, the current time with the user's schedule, and the user's activity". It is not clear however whether these examples are exhaustive, or whether the term "context" could embrace further examples.

(ii) The final feature of claim 1 reads: "processing a future communication from a calling party in accordance with the generated prospective availability data". In respect of this feature, it is not clear whether the calling party and the communication are the same as those mentioned in connection with the step "receiving a query ...". Further, the expression "in accordance with" in this feature is not clear, since it is unclear whether the prospective availability data are actually used in call processing, e.g. to generate call options, or whether a user's decision alone whether or not to place a call in accordance with the availability data is also embraced.

2.5 Bearing in mind that the proceedings had reached an advanced stage and considering that claim 1 of the auxiliary request, *prima facie*, did not comply with

Article 84 EPC, the board held the request to be inadmissible (Article 13(1) RPBA).

3. *Conclusion*

As there is no allowable request, it follows that the appeal must be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



L. Malécot-Grob

F. van der Voort

Decision electronically authenticated