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**Datasheet for the decision
of 13 June 2017**

Case Number: T 1089/13 - 3.5.03

Application Number: 02745702.7

Publication Number: 1440547

IPC: H04L29/06, H04Q7/38, H04L9/08

Language of the proceedings: EN

Title of invention:
CIPHERING AS A PART OF THE MULTICAST CONCEPT

Applicant:
Nokia Solutions and Networks Oy

Headword:
Encrypting a multicast message/NOKIA

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

Keyword:
Added subject-matter (yes)
Clarity (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 1089/13 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 13 June 2017

Appellant: Nokia Solutions and Networks Oy
(Applicant) Karaportti 3
02610 Espoo (FI)

Representative: Jaatinen, Jussi Imari
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 10 December
2012 refusing European patent application No.
02745702.7 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman F. van der Voort
Members: T. Snell
O. Loizou

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 02745702.7, with international publication number WO 03/036907 A.

The refusal was based on the ground that the subject-matter of claims 1, 7 and 10 did not involve an inventive step (cf. Articles 52(1) and 56 EPC).

- II. The appellant filed an appeal against the above decision. In the notice of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims filed on 18 October 2012 (i.e. the claims refused by the examining division). Alternatively, it was requested "that a patent be granted with the claims filed later in the Grounds of Appeal". The appellant also conditionally requested oral proceedings (cf. Article 116 EPC).

- III. With the statement of grounds of appeal, the appellant did not file any new auxiliary request. With respect, inter alia, to "the original disclosure of the claims" and clarity, the appellant commented that these issues were not objected to in the impugned decision, but referred to remarks concerning these points contained in a submission filed on 18 October 2012.

- IV. In a communication accompanying a summons to oral proceedings, the board gave a preliminary view that claim 1 did not comply with Articles 123(2) and 84 EPC. The board also made comments with respect to inventive step.

V. With a letter dated 27 February 2017, the appellant informed the board that it would not be attending the oral proceedings. No substantive comments were made in response to the objections set out in the board's communication.

VI. Oral proceedings were held on 13 June 2017 in the absence of the appellant. On the basis of the written submissions, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 18 filed during the examination procedure with the letter dated 18 October 2012.

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

VII. Claim 1 of the only request reads as follows:

"A method for transmitting a message to a plurality of user entities in a network by using a multicast service, comprising the steps of
encrypting a multicast message by using ciphering in a multicast service control device, and
sending the encrypted multicast message from the multicast service control device to the plurality of user entities,
wherein ciphering is performed by using a ciphering key and at least one input parameter,

characterized in that

the input parameter comprises a multicast group identity value and a service related value, and
the plurality of user entities are defined by the at least one input parameter, wherein the plurality of

user entities comprises user entities that are able to decrypt the multicast message using the input parameter and the ciphering key,
wherein the multicast group identity value comprises a group identification for identifying a group of subscribers which are allowed to receive the message,
and
wherein the service related value comprises a service identification for identifying a service type, and/or a sub-service identification for identifying a particular service."

Reasons for the Decision

1. *Claim 1: added subject-matter (Article 123(2) EPC) and clarity (Article 84 EPC)*

1.1 In the board's communication accompanying the summons to oral proceedings, the board raised the following preliminary objections pursuant to Articles 123(2) and 84 EPC (cf. point 6 of the communication):

"6.1 The following features appear to give rise to objection on the grounds of lack of clarity (Article 84 EPC) and added subject-matter (Article 123(2) EPC):

"when [*sic*] ciphering is performed by using a ciphering key and at least one input parameter";
and

"the input parameter comprises a multicast group identity value and a service related value".

- 6.2 In respect of added subject-matter, the claim apparently defines that the input parameter is a single parameter comprising both a multicast identity value and a service related value. The disclosure as filed however rather discloses that the multicast identity value and a service related value are two separate parameters (cf. page 16 ff. of the application as published). Consequently, in the preliminary opinion of the board, claim 1 does not comply with Article 123(2) EPC.
- 6.3 In respect of clarity, it appears to be unclear whether the input parameter(s) is/are encryption parameters used in the same encryption algorithm together with the key (which is what is disclosed in the description, cf. e.g. page 16, line 21 ff. and Fig. 2), or whether the claim also embraces embodiments in which the parameters merely aid encryption/decryption in some undefined way, e.g. in order to select the key, but are not used in the encryption algorithm itself (cf. page 24, line 26 - page 25, line 2), or embodiments in which the parameters may be involved in a separate encryption process, e.g. at a higher communication layer. Consequently, in the preliminary opinion of the board, claim 1 is not clear, contrary to Article 84 EPC.
- 6.4 Claim 1 further lacks clarity as it is not clear whether protection is sought only for a method of transmitting a message, or whether the method also includes the steps of receiving and decrypting the message by the plurality of user entities. In this respect, the feature "wherein the plurality of entities comprises user entities that are able to decrypt the multicast message using the input

parameter and the ciphering key" is not a method step."

1.2 As mentioned above, the appellant has not replied to the above objections. In the statement of grounds of appeal, the appellant referred generally to its submission filed on 18 October 2012 during the examining procedure. However, as well as noting that vague references to submissions in the examination procedure are generally not taken into consideration in appeal proceedings, since it should not be incumbent on the board to construct the appellant's case, the board cannot find, *prima facie*, any relevant comments in the said letter on the issues raised by the board.

1.3 The board has reviewed the objections raised in its communication and sees no reason to change its preliminary opinion, especially as regards the objections set out in points 6.2 and 6.4 of the communication. It follows that claim 1 of the only request on file is not allowable.

2. *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:



G. Rauh

F. van der Voort

Decision electronically authenticated