Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 10 August 2017

Case Number: T 1569/13 - 3.5.03

Application Number: 06738288.7

Publication Number: 1917783

IPC: H04L29/08

Language of the proceedings: EN

Title of invention:
PROVIDING BROADCAST MEDIA TUNING INFORMATION TO A REMOTE DEVICE FROM A MOBILE TERMINAL

Applicant:
Sony Ericsson Mobile Communications AB

Headword:
Providing broadcast media tuning information/SONY

Relevant legal provisions:
EPC Art. 56, 84
RPBA Art. 12(4)

Keyword:
Inventive step - (no) - main and first auxiliary requests
Admissibility - (no) - second to fourth auxiliary requests

Decisions cited:
G 0010/93

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

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 1569/13 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 10 August 2017

Appellant: (Applicant)	Sony Ericsson Mobile Communications AB Nya Vattentornet 221 88 Lund (SE)
Representative:	Williams, Lisa Estelle Haseltine Lake LLP Redcliff Quay 120 Redcliff Street Bristol BS1 6HU (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 4 March 2013 refusing European patent application No. 06738288.7 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. 06738288.7, with international publication number WO 2007/021316 A.

The refusal was based on the ground inter alia that the subject-matter of claim 1 respectively of the main request and the auxiliary request did not involve an inventive step having regard to the disclosures of documents D1 and D2:

D1: US 2005/0120305 A1
D2: EP 1255383 A2

II. The appellant filed an appeal against the above decision. In the statement of grounds 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 of a main request or one of first to fourth auxiliary requests, all requests as filed with the statement of grounds of appeal. The main request and the first auxiliary request were the same as the main and auxiliary requests refused by the examining division.

The appellant also conditionally requested oral proceedings.

III. In a communication accompanying a summons to oral proceedings, the board gave a preliminary view inter alia that the subject-matter of claim 1 of the main request and the first auxiliary request did not involve an inventive step, that claim 1 of the first auxiliary

request was additionally not clear, and that the second to fourth auxiliary requests should not be admitted.

IV. With a letter dated 25 July 2017, the appellant informed the board that it would not be attending the oral proceedings. It requested that a decision be issued on the basis of the grounds of appeal and the accompanying requests. No substantive comments were made in response to the board's communication.

V. Oral proceedings were held on 10 August 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 the claims of the main request or, in the alternative, on the basis of the claims of one of the first to fourth auxiliary requests, all requests as filed with the statement of grounds of appeal.

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 method for automatically tuning a remote device (55) from a mobile terminal (22) having a local user interface (26, 28), comprising:

detecting an audio and/or video player device in the vicinity of the mobile terminal (22);

receiving a user request to transmit tuning information for a selected broadcast media source (25) from a user interface (26, 28) of the mobile terminal (22);

receiving an identification of the detected audio and/or video device as the remote device (55) that is to receive the tuning information from the user interface (26, 28) of the mobile terminal (22);

formatting the tuning information based on a protocol for tuning type information providing for automatic tuning of the receiving remote device (55) to the selected broadcast media source (25);

transmitting the tuning information to the identified remote device (55) responsive to the user request, wherein transmitting the tuning information comprises transmitting the tuning information using a localized ad hoc protocol wireless network and wherein detecting the audio and/or video device comprises detecting the audio and/or video device using the ad hoc wireless network; and

automatically tuning the remote device (55) to the selected broadcast media source when the remote device (55) receives the tuning information."

VII. Claim 1 of the first auxiliary request is the same as claim 1 of the main request except that the following wording is added to the end of the claim:

"wherein the audio and/or video player device is a home stereo or TV and comprises a higher quality player device than the mobile terminal providing the broadcast media source tuning information."

VIII. Claim 1 of the **second auxiliary request** is the same as claim 1 of the main request except that the feature "receiving a user request .... of the mobile terminal (22);" reads as follows:

"receiving a user request to transmit tuning information for a selected broadcast media source (25) from a user interface (26, 28) of the mobile terminal (22) by:

receiving a request to share tuning information for the currently received broadcast media source (25);

displaying optional message formats for sharing the tuning information on a display (28) of the mobile terminal (22); and

receiving a selection of one of the displayed message formats for use in transmitting the tuning information from the user interface of the mobile terminal (22);".

IX. Claim 1 of the **third auxiliary request** is the same as claim 1 of the second auxiliary request except that the feature "formatting the tuning information .... to the selected broadcast media source (25);" reads as follows:

"formatting the tuning information based on a protocol for tuning type information providing for automatic tuning of the receiving remote device (55) to the selected broadcast media source (25), wherein formatting the tuning information further comprises formatting the tuning information as a text message based on the selected message format and wherein the protocol comprises a text message format including American Standard Code for Information Interchange (ASCII) alphanumeric characters for the tuning information and an ASCII non-alpha-numeric character for identifying the text message as containing tuning information;".

X. Claim 1 of the **fourth auxiliary request** reads as follows:

"A method for automatically tuning a remote device (55) from a mobile terminal (22) having a local user interface (26, 28), comprising:

detecting an audio and/or video player device in the vicinity of the mobile terminal (22);

receiving a user request to transmit tuning information for a selected broadcast media source (25) from a user interface (26, 28) of the mobile terminal (22) by:

receiving a request to share tuning information for the currently received broadcast media source (25);

displaying optional message formats for sharing the tuning information on a display (28) of the mobile terminal (22); and

receiving a selection of one of the displayed message formats for use in transmitting the tuning information from the user interface of the mobile terminal (22);

receiving an identification of the detected audio and/or video device as the remote device (55) that is to receive the tuning information from the user interface (26, 28) of the mobile terminal (22);

formatting the tuning information based on a protocol for tuning type information providing for automatic tuning of the receiving remote device (55) to the selected broadcast media source (25), wherein

formatting the tuning information further comprises formatting the tuning information as a text message based on the selected message format and wherein the protocol comprises a text message format including American Standard Code for Information Interchange (ASCII) alphanumeric characters for the tuning information and an ASCII non-alpha-numeric character for identifying the text message as containing tuning information;

receiving additional text for inclusion in the text message from the user interface (26, 28) of the mobile terminal (22), wherein formatting the tuning information includes including the received additional text in the text message;

transmitting the tuning information to the identified remote device (55) responsive to the user request, wherein transmitting the tuning information comprises transmitting the tuning information using a localized ad hoc protocol wireless network and wherein detecting the audio and/or video device comprises detecting the audio and/or video device using the ad hoc wireless network;

receiving the text message including the tuning information at the detected audio and/or video device;

displaying the additional text and/or the tuning information on a display of the detected audio and/or video device;

receiving a confirmation of acceptance of the received tuning information from a user interface of the detected audio and/or video device responsive to the

displayed additional text and/or tuning information; and

automatically tuning the detected audio and/or video device (55) to the broadcast media source based on the received tuning information responsive to receipt of the confirmation."

Reasons for the Decision

1. Main request - claim 1 - inventive step

1.1 The examining division's reasons for concluding that the subject-matter of claim does not involve an inventive step read as follows:

"Document D1 discloses, in accordance with the main features of claim 1, a method (see D1: paragraphs [0006] to [0013]) for automatically (see D1: abstract, paragraph [0031] and [0092]: "automatically") tuning (see D1: paragraph [0006]: "hot link", "the hot link may instruct the receiving device to tune a receiver to a particular broadcast") a remote device (see D1: paragraph [0007]: "receiving device") from a mobile terminal (see D1: paragraph [0007]: "mobile device"; paragraphs [0050] to [0059]: "mobile device"; figure 4: "400") having a local user interface (see D1: paragraph [0008]: "user interface"; paragraph [0056]: "input/ output interface"; figure 4: "424"), comprising:

- receiving a user request to transmit tuning information for a selected broadcast media source from a user interface of the mobile terminal (see D1: paragraph [0012]: "the hot link may be ... selected manually");

- receiving an identification of the remote device that is to receive the tuning information from the user interface of the mobile terminal (see D1: paragraph [0013]: "selection of devices that are to receive the hot link may be manually ... generated");

- formatting the tuning information based on a protocol for tuning type information providing for automatic tuning of the receiving remote device to the selected broadcast media source (see D1: paragraph [0009]: "the message is sent using an appropriate message protocol for the receiving device");

- transmitting the tuning information to the identified remote device responsive to the user request (see D1: paragraph [0009]: "a message that includes the hot link is generated and sent to the device"; paragraph [0013]: "selection of devices that are to receive the hot link may be manually ... generated"); and

- automatically tuning the remote device to the selected broadcast media source when the remote device receives the tuning information (see D1: abstract, paragraph [0031] and [0092]: "the action can be performed by the device receiving the hot link either automatically or when a user interface is activated. For example, the action may be to tune a tuner within the device to a particular station").

Furthermore, in accordance with claim 1, the remote device of document D1 is an audio and/or video player device (see e.g. D1: paragraph [0005]: "radio or television broadcast"; paragraph [0059]; paragraphs [0077] and [0078]; figure 8: "812", "813").

Document D1 does not explicitly disclose the first step of claim 1 of "detecting an audio and/or video player device in the vicinity of the mobile terminal".

However, it is noted that this step is part of the normal connection establishment process of wireless communication protocols such as Bluetooth. In this context, reference is made, for example, to document D2 (see D2: paragraphs [0002] to [0012]: "pairing").

It follows from document D1 that the type of connection for providing the tuning information may be selected in accordance with circumstances (see e.g. D1: paragraph [0096]). Selection of the Bluetooth protocol would lead the skilled person to incorporate the step of "detecting an audio and/or video player device in the vicinity of the mobile terminal" in the method of document D1. Therefore, it is considered that said step does not add an inventive step to the subject-matter of claim 1.

In addition, it is noted that Bluetooth is a "localized ad hoc protocol". Thus, by selecting the Bluetooth protocol, the skilled person would, without the use of inventive skill, arrive at the feature of the last part of claim 1 that "transmitting the tuning information comprises transmitting the tuning information using a localized ad hoc protocol wireless network and wherein detecting the audio and/or video device comprises detecting the audio and/or video device using the ad hoc wireless network".

As a consequence, claim 1 of the Main Request is not allowable (see Articles 52(1) and 56 EPC)."

1.2 In the statement of grounds of appeal the appellant submitted numerous arguments as to why it disagreed with the reasoning of the examining division. The arguments as understood by the board are considered below.

1.3 Firstly the appellant contests that the following features deemed by the examining division to be disclosed in D1 are not in fact disclosed:

(i) "receiving an identification of the detected audio and/or video device as the remote device that is to receive the tuning information" (cf. point 9.4.1.4 ff. of the statement of grounds of appeal);

(ii) "formatting the tuning information based on a protocol for tuning type information providing for automatic tuning of the receiving remote device to the selected broadcast media source" (cf. point 9.4.1.9 ff. of the statement of grounds of appeal).

1.4 Re (i): The board points out that the examining division did not argue that the step of "receiving an identification of the detected audio and/or video device ..." (board's underlining) was fully disclosed in D1. Indeed, there is no preceding detection step, so that the audio and/or video device is not "detected". The board however considers that they were correct in concluding that all other aspects of this feature are disclosed in D1, e.g. in paragraph [0013].

Re (ii): Contrary to the view of the appellant, the board considers that formatting the tuning information based on a protocol for tuning type information providing for automatic tuning is indeed disclosed in D1, cf. e.g. paragraphs [0087] and [0089]. The special

characters are interpreted by the receiving device, as is clear from the statement that they are not displayed to the user (cf. paragraph [0087], last sentence). The instructions are in a format understood by the device and converted to appropriate codes to perform the actions (cf. paragraph [0089]). As regards "automatic tuning", if not already implicit from this passage, it follows e.g. from paragraph [0031] that retuning of the remote device may occur automatically.

1.5 The appellant argues that the objective technical problem to be solved can be expressed as: "How to provide an improved experience for a user rendering a broadcast media source on their mobile terminal without placing a burden on the user and without interruption of the broadcast media" (cf. point 9.4.3.4).

The board does not agree with this formulation of the problem, since it is irrelevant to claim 1 whether or not there is an interruption of the broadcast media or what level of burden is placed on at least the user "rendering" the information concerning the broadcast media source.

1.6 The board considers instead that the problem to be solved starting out from D1 is how to provide an improved user experience with regard to transmitting the "hot link" information to other devices.

1.7 The appellant argues that the skilled person would not look to or find a solution in D1. The board however disagrees, since it considers that D1 is both relevant to the problem as formulated and also contains pointers to the claimed solution. As regards the relevance of D1 to the above problem, D1 is generally concerned with providing a wide variety of options for transmitting

hot links, including using mobile phone networks and the Internet. In particular, D1 discloses several solutions for transmitting the hot link to another device in the vicinity of the transmitting device. In this respect, the devices may be connected wirelessly, or via an infrared connection, a cable connection according to RS-232, USB, or FIREWIRE (cf. paragraph [0096]). One obvious way of enhancing the user experience that would occur to the skilled person would be to provide further connectivity options for connecting devices which are located in proximity to each other. As regards the claimed solution, at the priority date, Bluetooth (an ad-hoc wireless network) was a well-known alternative for linking devices in proximity to each other to improve the user experience regarding connectivity. The board there considers that the skilled person based on common knowledge would have considered its use in the method disclosed in D1 (see D2 for implementation details of setting up a Bluetooth connection). As pointed out by the examining division, by using a Bluetooth connection, inherently the presence of the second device has to be detected and identification of the second device has to be received. The board notes that the setup aspects inherent to Bluetooth, which are considered to belong to the skilled person's common general knowledge at the priority date, are mentioned in the description of the present application in paragraph [0038]. If Bluetooth replaced one of the connection types mentioned in D1, the problem formulated by the appellant would be solved in an obvious way.

1.8 A further argument offered by the appellant is that the claimed solution eliminates the need for manual activity by the user of the sending mobile device and the user of the other device (cf. point 9.4.3.1).

However, the board points out that, as claimed, the term "automatically" applies only to the receiving device, this also being the case in D1, as already discussed (see above point 1.4). This is also consistent with the description of the present application, according to which manual activity at the sending device is required (cf. paragraphs [0071] and [0072] and Figs. 7a-7c).

1.9 The appellant further argues that in accordance with the invention, playing the media on a higher quality device is possible (cf. point 9.4.3.3). However, the board points out that this is not claimed. In any case, D1 envisages transfer of hot links to/from different types of device (cf. paragraph [0066] and page 6, right-hand col., lines 5-7), so that one of the devices may inherently have a higher quality player (e.g. a portable CD/DVD player as compared to a mobile phone).

1.10 The appellant further argues that D1 deals with a different problem, namely participating with friends in a desired activity (cf. point 9.4.4.1). However, the board notes that claim 1 also embraces transferring tuning information to an audio and/or video player device of a friend.

1.11 The appellant further argues that D1 is concerned with sharing activities on mobile terminals with others and is not related to improving the experience of the user for their own enjoyment (cf. point 9.4.4.2). The board however points out that claim 1 is not limited to devices belonging to one user. In any case, the board sees no reason why the different types of devices referred to in D1, paragraph [0066], would not belong to the same user, especially for embodiments where the

devices are connected via e.g. a USB connection (cf. paragraph [0096]), or indeed, Bluetooth.

1.12 Finally, the appellant argues that the skilled person would not sensibly combine D1 with D2 since D2 is not even concerned with addressing such a problem. If D1 were combined with D2, this would at most result in simplifying the future connection between two users. The user would however still be burdened with generating and sending the messages containing the hot links and would still need to interrupt their viewing/ listening experience to do so (cf. point 9.4.4.11 ff.).

The board however disagrees. The skilled person has every reason to combine D1 and D2, as explained above. In so doing, he would arrive without inventive skill at a method as claimed in claim 1.

1.13 Consequently, the board concludes that the subject-matter of claim 1 of the main request does not involve an inventive step (Articles 52(1) and 56 EPC).

2. First auxiliary request - claim 1 - clarity

2.1 Claim 1 of the first auxiliary request includes the additional feature that the audio and/or video player device is a home stereo or TV and comprises a higher quality player device than the mobile terminal providing the broadcast media source tuning information.

2.2 In the board's view, the limitations implied by the features "home stereo or TV" are not clear within the meaning of Article 84 EPC. In this respect, it is not clear whether a portable CD/DVD player with a radio and/or TV tuner, which is common in the art, fall

within the scope of these terms. The same is true of a personal computer.

2.3 It is also unclear what is to be understood by the term "higher quality". In this respect, the appellant argues that a screen of a personal computer, being larger, might be perceived as producing a lower quality image than the image on a mobile phone due to "stretching" of the image. However, equally, a larger image with acceptable quality might be perceived as a higher quality image. Furthermore, it is not clear whether quality of the player includes also the quality of the output device, e.g. loudspeakers or displays, or whether it refers only to signal processing components producing an electric output signal, such as amplifiers and audio/video codecs.

2.4 Consequently, claim 1 does not comply with Article 84 EPC.

3. First auxiliary request - claim 1 - inventive step

3.1 Notwithstanding the objection with regard to clarity, the board judges that the additional feature as compared to claim 1 of the main request in any case does not contribute to inventive step. In this respect, the board notes that D1 discloses that one of the portable devices involved in the hot link application may be either a portable CD/DVD player or a laptop computer (cf. paragraph [0066]). These devices are clearly capable of producing a higher quality audio or video output than a mobile phone. If for the sake of argument the term "home" were not to embrace portable devices, the board cannot see that it makes any difference to inventive step whether a device is portable or not.

3.2 The appellant argues that D1 would only work with a mobile phone or a computer because a home stereo or TV cannot receive SMS messages. The board however points out that D1 is also applicable to other types of devices (CD/DVD player) which do not normally receive SMS messages. Furthermore, devices can be connected via USB cables etc. (cf. paragraph [0096]), which do not require SMS messages. In fact, the hot link message is formatted in accordance with the specifics of the device and the connection (idem).

3.3 The appellant also argues that the selection of another device in D1 has nothing to do with the type of device or the quality of audio and/or video that can be rendered by that device. However, claim 1 contains no features concerned with selection. Furthermore, in D1, different types of device may be selected, whereby the selection may be made manually by the user operating the device which sends the hot link (cf. paragraph [0092], last sentence). This corresponds essentially to the description of the present application (cf. paragraphs [0071] and [0072]). Furthermore, in the present application, quality is assessed apparently based only on the user's own knowledge of the devices and is not assessed by the system, as implied by the appellant.

3.4 The appellant further argues that D1 teaches the skilled person away from detecting a home stereo or TV with a higher quality audio and/or video player because the system would then not be able to provide a hot link to friends with players with same or lower quality. The board does not accept this argument, since the method of D1 can be operated with different devices implicitly

having different quality players, as already pointed out.

3.5 The board hence concludes that the subject-matter of claim 1 of the first auxiliary request does not involve and inventive step (Articles 52(1) and 56 EPC).

4. Second auxiliary request - admissibility

4.1 In accordance with Article 12(4) of the Rules of Procedure of the Boards of Appeal, the admissibility of requests which could have been filed before the first instance is at the discretion of the board.

4.2 Claim 1 of the second auxiliary request has been filed for the first time in these appeal proceedings. It has been amended by including subject-matter originally contained in dependent claim 11.

4.3 The board notes that in the first instance proceedings, the applicant chose not to attend oral proceedings and requested a decision based on the file "as it currently stands". It was therefore clear that the applicant did not wish to submit any further amendments or requests in the examination procedure, in particular no request based on the subject-matter of original claim 11.

4.4 If the request were admitted now, the board would be forced either to examine claim 1 itself with respect to D1 (and other documents), or remit the case for further prosecution. The first option would run contrary to the purpose of appeal proceedings (cf. G 10/93, OJ EPO 1995, 172, point 4 of the reasons), which is essentially to examine the correctness of the first instance decision rather than to give a ruling on substantive matters which have not previously been

examined (this indeed being essentially the reason why the boards are empowered under Article 12(4) RPBA to not admit requests not presented before the first instance). The second option would run entirely contrary to the requirement for procedural efficiency.

4.5 The appellant made no submissions regarding the admissibility of the second auxiliary request.

4.6 Consequently, the board decided to not admit the second auxiliary request (Article 12(4) RPBA).

5. Third and fourth auxiliary requests – admissibility

5.1 As claim 1 of each of these requests also include the feature of original claim 11, the reasons given in respect of the second auxiliary request apply, mutatis mutandis.

5.2 Consequently, the board decided to not admit the third and fourth auxiliary requests either (Article 12(4) RPBA).

6. 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