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**Datasheet for the decision  
of 25 October 2017**

**Case Number:** T 2019/13 - 3.5.03

**Application Number:** 09722393.7

**Publication Number:** 2262322

**IPC:** H04W36/34, H04L29/06

**Language of the proceedings:** EN

**Title of invention:**

METHOD, SYSTEM AND EQUIPMENT FOR SHIFTING CALL BASED ON A  
MOBILE TERMINAL WITH THE SAME NUMBER AND A SOFT TERMINAL

**Applicant:**

Huawei Technologies Co., Ltd.

**Headword:**

Shifting call between mobile terminal and soft terminal/HUAWEI

**Relevant legal provisions:**

EPC Art. 84

**Keyword:**

Clarity - main and auxiliary request - (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2019/13 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 25 October 2017**

**Appellant:**  
(Applicant)

Huawei Technologies Co., Ltd.  
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**Representative:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 19 February  
2013 refusing European patent application No.  
09722393.7 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. 09722393.7, with publication number EP 2 262 322 A.

The refusal was based on the ground of lack of compliance with Articles 83 and 84 EPC (main request and auxiliary request) and lack of compliance with Article 123(2) EPC (auxiliary request). As an obiter dictum, the examination division also indicated that the independent claims [implicitly, of at least the main request] were objectionable on the grounds of lack of novelty.

- 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 the main request on file or on the basis of an auxiliary request as filed with the statement of grounds of appeal. The appellant also conditionally requested oral proceedings (cf. Article 116 EPC).

- III. In a communication accompanying a summons to oral proceedings, the board gave a preliminary view that claim 1 of each request did not comply with either Article 83 EPC or Article 84 EPC. The board also indicated that the subject-matter of claim 1 of both requests did not appear to involve an inventive step (cf. Articles 52(1) and 56 EPC).

- IV. With a letter of reply dated 6 September 2017, the appellant submitted claims of a new main request and a new auxiliary request, which requests, if admitted, would replace the requests on file. The appellant also

submitted automated translations of two Chinese patent documents.

- V. Oral proceedings were held on 25 October 2017. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of either the claims of the main request, or alternatively, of the auxiliary request, both requests as filed with the letter dated 6 September 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 method for call switching between a mobile terminal with a number and a soft terminal with the same number, comprising:

receiving, by a Call Application Server, Call AS, (300), switching instruction information sent from the soft terminal (100) during a call between the soft terminal (100) and an opposite user, or during a call between the mobile terminal (200) and the opposite user,

characterized by

the switching instruction information being carried in an extended operation identifier of a Command contained in a body of a Session Initiation Protocol, SIP, INFO message; and

determining, by the Call AS (300), a type of the switching instruction information according to the extended operation identifier of the Command, and

performing a switching between the mobile terminal (200) and the soft terminal (100) according to the type of the switching instruction information."

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

"A method for call switching between a mobile terminal (200) with a number and a soft terminal (100) with the same number, comprising:

sending, by the soft terminal (100), an INFO message of switching to a Call Application Server, Call AS (300) during a call between the soft terminal (100) and an opposite user;

receiving, by the Call AS (300), the INFO message of switching, and parsing an operation identifier of a Command contained in a body of the INFO message of switching;

determining, by the Call AS (300), the operation identifier represents a call forwarding request;

switching, by the Call AS (300), the call from the soft terminal (100) to the mobile terminal (200) if the operation identifier represents a call forwarding request."

## **Reasons for the Decision**

### *1. Main request - claim 1 - clarity*

1.1 Claim 1 requires that the mobile terminal and the soft terminal have the "same number". In the view of board, this feature lacks clarity for the reasons set out below.

- 1.2 As pointed out by the examining division in the communication dated 24 October 2012 (cf. point 3.2), a telecommunications terminal may be assigned various numbers, "e.g. serial numbers, IP addresses, mac addresses, version numbers, IMEI (International Mobile Equipment Identity) numbers, MSISDN (Mobile Station Integrated Services Digital Network Number) numbers, version numbers, PUI (Public User ID) numbers, a user number etc.. Some of these numbers (such as IMEI, Mac address or MSISDN) are even unique and may only be assigned to one instance of a terminal". Thus, with regard to claim 1, it is not clear at a basic technical level what "number" is here intended, and consequently not clear what should be understood by the term "same number".
- 1.3 The appellant explained that the "same number" here means a number which when called results in both the soft terminal and the mobile terminal of the called subscriber vibrating [or ringing] simultaneously, as set out in the description, paragraph [0003]. The "same number" was to be understood in the sense that both terminals have an association to a single called number. This concept was well-known to the person skilled in the art and the claim was therefore understandable and clear. The appellant added that this feature in any case was not per se something new but represented the prior art situation and thus the starting point for the invention.
- 1.4 With regard to whether this concept belonged to the common general knowledge of the skilled person at the filing date (here, priority date) of the application, the board points out that the appellant has failed to provide any clear evidence. With the statement of

grounds of appeal, the appellant submitted two documents in Chinese which allegedly disclose a soft terminal which uses the same number as the mobile number of a mobile terminal. The board is not in a position to evaluate Chinese documents. However, it appears from the appellant's comments in the statement of grounds that none of this evidence concerns common general knowledge of the skilled person at the priority date. Instead, the documents seem to concern proprietary systems ("eSPACE service provided by HUAWEI" and "Zhejiang Mobile Enterprise Communications Assistant") which were made available after the priority date. In reply to the board's preliminary opinion stating the above, the appellant then provided as further evidence two Chinese patent documents together with automated English translations. Two passages of these documents are specifically quoted in the appellant's letter. Due to the alleged importance of these passages, they are said to have been more accurately translated, which the board assumes to mean a non-machine translation.

1.5 The board points out that the content of patent documents cannot, *prima facie*, be considered as representing common general knowledge. That notwithstanding, although the cited passages use the term "same number", this does not serve to demonstrate that this term has a clear and specific meaning to the person skilled in the art. In the board's view, the expression "same number" as used in these documents has the same ambiguity inherent in the term as used in the present application.

1.6 Furthermore, claim 1 would still not be clear even if the appellant's interpretation of the "same number" in claim 1 as an association of both terminals with a



called number were accepted. In order to comply with Article 84 EPC, a claim must be sufficiently clearly worded such that the skilled person is left in no doubt as to the matter for which protection is sought, which is not the case here. As one illustration of the ambiguity of claim 1, the board notes that in paragraph [0020] of the description, it is described that after receiving the SIP INFO message including the called mobile terminal number 13812345678, which is referred to as an IMEI number (paragraphs [0016], [0019] and [0030]), the call application server AS searches for the "physical number" of the called mobile terminal A, suggesting that embodiments including a further number translation are contemplated, akin to conventional call forwarding. In call forwarding, a call to one terminal automatically results in a different terminal being called. It follows that the number of the forwarded-to terminal has an association with the originally called number. Given the appellant's broad interpretation of the "same number", it is not clear whether the claim would embrace such embodiments.

1.7 The board also points out that in the description, an embodiment is described (cf. the "second embodiment", cf. paragraph [0033] ff.) in which a number 13812345678 is used for the mobile terminal and the number 50012345678 is used for the soft terminal. These numbers are manifestly not the same, even if both numbers partially include the same number sequence.

1.8 It follows that the skilled person interpreting claim 1 would be in doubt as to whether term the "same number" should be interpreted broadly so as to mean an association to a called number (including number translation and/or call forwarding), narrowly so as to mean exactly the same number, or a closer form of

association as in the second embodiment, where the mobile and the soft terminal respectively include the same number sequence as part of a longer number.

1.9 The board concludes that claim 1 of the main request is not clear and consequently does not comply with Article 84 EPC.

2. *Auxiliary request - claim 1 - clarity*

2.1 The same objection applies, *mutatis mutandis*, to claim 1 of the auxiliary request. This was not contested by the appellant.

2.2 The board concludes that claim 1 of the auxiliary request is not clear and consequently does not comply with Article 84 EPC either.

3. *Conclusion*

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

## Order

### For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



L. Stridde

F. van der Voort

Decision electronically authenticated