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Datasheet for the decision of 17 January 2018

Case Number: T 2394/13 - 3.5.03

Application Number: 03729066.5

Publication Number: 1508250

IPC: H04Q7/22, H04Q7/32, H04L12/28

Language of the proceedings: EN

Title of invention:
METHOD AND APPARATUS FOR ROUTING MESSAGES OF DIFFERENT MESSAGE SERVICES IN A WIRELESS DEVICE

Applicant:
Qualcomm, Incorporated

Headword:
Message routing/QUALCOMM

Relevant legal provisions:
EPC Art. 54
RPBA Art. 12(4)

Keyword:
Novelty - (no)
Auxiliary requests - admitted (no)

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Case Number: T 2394/13 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 17 January 2018

Appellant: (Applicant)	Qualcomm, Incorporated 5775 Morehouse Drive San Diego, CA 92121 (US)
Representative:	Tomkins & Co 5 Dartmouth Road Dublin 6 (IE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 19 July 2013 refusing European patent application No. 03729066.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	F. van der Voort
Members:	B. Noll
	O. Loizou

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 03729066.5 (international publication No. WO 03/103309 A1).

II. The refusal was based on the ground that the subject-matter of claims 1 and 9 of a main request lacked novelty (Article 54 EPC) having regard to the disclosure of D2 (= GB 2 348 083 A). Regarding an auxiliary request which had been filed after the final date set according to Rule 116(1) EPC, the examining division held that the claims did not *prima facie* comply with the requirements of Articles 84 and 123(2) EPC and that the claimed subject-matter did not appear to involve an inventive step having regard to the disclosure of D2. For these reasons, it did not admit the auxiliary request (Rule 137(3) EPC).

III. With the statement of grounds of appeal, the appellant filed claims of first and second auxiliary requests. Oral proceedings were conditionally requested.

IV. In a communication accompanying a summons to oral proceedings, the board gave a preliminary opinion on the novelty of the subject-matter of claim 1 of the main request. The board further indicated that the meaning of the word "message" and the difference between a "message" as used in the application and "content" within the meaning of D2 needed to be discussed in view of the requirement that the claims must be clear (Article 84 EPC). As regards the auxiliary requests, the board noted that, if these requests were to be admitted, issues under Articles 84

and 123(2) EPC as well as concerning inventive step, would have to be discussed.

V. Oral proceedings before the board were held on 17 January 2018.

In the course of the oral proceedings, the appellant submitted a further set of claims as a third auxiliary request.

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 which the decision under appeal was based or, in the alternative, on the basis of the claims of a first or a second auxiliary request, both filed with the statement of grounds of appeal, or the third auxiliary request as filed during the oral proceedings before the board.

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 routing messages of different message services, characterised by comprising:

receiving (204) routing preferences from one or more applications operating with a wireless device, the one or more applications being resident on the wireless device and the routing preferences identifying application specific preferences for routing messages received at the wireless device from a wireless network to an identified one of the one or more applications;

receiving (214) a message on said wireless device from

a wireless network;

analysing and parsing the content of the message to determine (216) at least one routing parameter from the message;

comparing the at least one routing parameter with the received routing preferences; and

routing (218) the message for the one or more applications according to the routing preferences."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that in the third paragraph, after "wireless network", the following wording has been added:

", wherein the message is formatted according to a communication mode type or an acknowledgement message received in response to a previously sent message".

Claim 1 of the second auxiliary request reads as follows:

"A method for routing messages of different message services, characterised by comprising:

receiving (204) routing preferences from one or more applications operating with a wireless device, the one or more applications being resident on the wireless device and the routing preferences identifying application specific preferences of message types received at the wireless device from an external messaging entity, wherein the message types include a short message service (SMS), an enhanced messaging service (EMS), and a multi-media messaging service

(MMS), wherein each message type includes a wireless communication mode of a corresponding message;

receiving (214) a message on said wireless device from the external messaging entity;

analysing and parsing the content of the message to determine (216) the message type;

comparing the message type with the received routing preferences; and

routing (218) the message for the one or more applications according to the routing preferences."

Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request essentially in that the wording "wherein each message type includes a wireless communication mode of a corresponding message" in the second paragraph has been deleted.

Reasons for the Decision

1. *Claim 1 of the main request - novelty (Article 54 EPC)*

1.1 Claim 1 seeks protection for a method for routing messages emanating from different message services. A "message" in the context of the present application "*can be any data structure compliant with SMS, EMS, MMS or any similar or derivative message structure which can be transmitted over a wireless network using a message service*" (cf. paragraph [1009] of the description).

A clear definition of "message service" is, however, not given in the application. Although SMS, EMS and MMS

are mentioned as examples of message services (paragraphs [1002] and [1003]), the application sets a message service in close relation to a particular wireless network technology (cf. paragraph [1007]: "*Some message services which use a particular communication mode lack certain feature parameters. For example, GSM/UMTS SMS messages have no priority or privacy feature parameters. As a further example, CDMA SMS messages lack an indication of which messages may be intended for an external terminal.*").

Therefore, in the context of the present application, the skilled reader would understand a "message service" as being the transmission of a message (see above) via a particular network technology. For example, SMS transmitted via a CDMA network is one particular message service, whilst SMS transmitted via GSM is another message service in the context of the present application.

1.2 D2 discloses a radio handset (cf. 2 in Fig. 2) provided to enable a user to browse the internet, by sending and receiving radio packets from an internet gateway (page 2, lines 17 to 21). The packets are communicated using the Wireless Application Protocol (WAP, see page 6, line 28, to page 7, line 3). Inside the radio handset, received packets are routed to different applications (as will be explained in more detail below). It is further stated in D2 that "WAP can work across differing wireless network technologies and bearer types (GSM, CDMA, SMS)", see page 7, lines 3 and 4.

It is evident that the language used in the present application differs substantially from the language used in D2. However, the skilled reader would appreciate that, at least in substance, a "radio

packet", as referred to in D2, constitutes a "message" within the meaning of the present application, i.e. a data structure which can be transmitted over a wireless network using a message service (see above, point 1.1). Further, the transmission of radio packets using WAP via GSM or CDMA as disclosed in D2 constitutes a "message service" within the meaning of the present application (see above, point 1.1).

Hence, D2 discloses a method for routing messages emanating from different message services.

1.3 D2 further discloses that applications usable by the terminal are registered in a routing table (see the left-hand column of the table in Fig. 5, and page 9, line 16). The table further stores types of content (represented by letters "A", "B", etc., see the right-hand column in Fig. 5). The types of content are associated with applications upon registering an application (page 9, lines 16 to 18).

D2 therefore discloses, using the wording of claim 1, a step of receiving routing preferences, i.e. the content type in the table of Fig. 5, from one or more applications operating with a wireless device being resident on the wireless device, i.e. upon registering the application with the handset.

1.4 D2 further discloses that a content type serves to designate the address of the application to which dedicated content is routed (cf. page 2, lines 21 to 24). The content has an identifier for identifying the type of application.

Therefore, using the wording of claim 1, D2 further discloses that routing preferences (i.e. the set of

available content types) identify application-specific preferences for routing messages received at the wireless device from a wireless network to an identified one of the one or more applications (i.e. an associated application to which content of a specific type is to be routed and by which it is to be processed).

1.5 D2 further discloses that a device is capable of receiving packets of information (cf. page 7, lines 15 and 16). Devices in this context include wireless terminals 64, which are said to be radio handsets (page 6, lines 25 to 28). It is further stated in D2 that "All WAP content is given a specific type ... which allows a wireless terminal to correctly process the content based on type" (cf. page 8, lines 7 to 9), and that "The final destination of the received content will however depend upon the content type of the received content" (cf. page 9, lines 9 to 11). The skilled person infers from these passages that during normal operation the radio handset receives a radio packet from the wireless network, that the radio packet contains information including a content identifier specifying the content of the packet and that one of the content types as defined in the right-hand column of the table in Fig. 5 corresponds to the content identifier. The skilled person further infers from these passages that the radio handset is configured to analyse a data packet for acquiring the content identifier, to compare the content identifier with content types stored in the table of Fig. 5 in order to obtain the address of the application which is intended to process this content, and to route the radio packet to this address.

Hence, D2 discloses, albeit in different words, that during normal handset operation a message is received on the radio handset from the wireless network, that the content of the message is analysed and parsed to determine at least one routing parameter from the message, that at least one routing parameter is compared with the received routing preferences, and that the message for the one or more applications is routed according to the routing preferences.

1.6 The board therefore concludes that D2 discloses all the features of the method as claimed in claim 1.

1.7 At the oral proceedings, the appellant argued that the claimed method differed from the known method in that messages were routed, whereas D2 disclosed the routing of content. Therefore, D2 disclosed a way of routing which would lead to different results. For example, a message having more than a single type of content would be routed differently according to the claimed method than in D2: according to the claimed method the entire message would be routed to those applications associated with the routing parameter, whereas in D2 each type of content would be separately routed to the relevant application.

1.8 The board does not agree. The appellant's distinction between a "message" and "content" disregards the technical meaning of each of these terms as they would be understood by the skilled person in the context of present claim 1 and D2 respectively. Further, it is the content identifier, not the content itself, which is used in D2 in order to determine how the radio packet is to be routed. Therefore, the appellant's example of what may happen when a radio packet contains several

types of content is irrelevant for assessing novelty of the method as claimed.

1.9 Since the subject-matter of claim 1 lacks novelty (Articles 52(1) and 54 EPC), the main request is not allowable.

2. *The auxiliary requests - admission into the proceedings (Article 12(4) RPBA)*

2.1 The board notes that a novelty objection in view of D2 (which later became the ground for the refusal) was already raised by the examining division in its communication dated 2 February 2012. In this communication, the examining division made it clear that a radio packet as referred to in D2 was a message within the wording of the present application (cf. point 1.2 of this communication).

The applicant responded by filing an amended set of claims and provided arguments in support. However, the amendments did not further specify the meaning of the term "message" and did not relate to the format or type of message. Nor did the arguments address the meaning of "message".

The novelty objection was reiterated by the examining division in its subsequent communication which accompanied the summons to oral proceedings (see the communication, point 1).

The applicant responded by (late-)filing an auxiliary request (which the examining division ultimately did not admit, see point II above) and informed the examining division that it would not be attending the oral proceedings before the examining division. The

board notes that the appellant did not contest the inadmissibility of this auxiliary request at any stage.

2.2 In view of the above, the board concludes that the essential reasoning concerning the lack of novelty of the subject-matter of claim 1 of the main request, on the basis of which the examining division ultimately refused the application, was known to the applicant at an early stage in the first-instance proceedings. Hence, amendments to the claims aimed at overcoming this novelty objection could - and should - have been filed already during the first-instance proceedings. The board thus sees no reason which would justify the filing of amended claims at the appeal stage in an attempt to overcome the novelty objection.

2.3 For this reason, the board, exercising its discretion pursuant to Article 12(4) of the Rules of Procedure of the Boards of Appeal, admitted neither the first and second auxiliary requests filed with the statement of grounds of appeal nor the third auxiliary request filed during the oral proceedings before the board.

3. There being 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