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**Datasheet for the decision
of 16 January 2019**

Case Number: T 1254/14 - 3.5.03

Application Number: 10180417.7

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Title of invention:
Mixed-Mode Interaction

Applicant:
Aeritas LLC

Headword:
Mixed-Mode Interaction/AERITAS

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments - allowable (no)



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Case Number: T 1254/14 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 16 January 2019

Appellant: Aeritas LLC
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 4 December 2013
refusing European patent application No.
10180417.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman F. van der Voort
Members: B. Noll
P. Guntz

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 10180417.7 on the grounds that, *inter alia*, amended claim 1 did not comply with Article 123(2) EPC.
- II. In a communication accompanying a summons to oral proceedings, the board gave a preliminary opinion on the compliance of amended claim 1 with Article 123(2) EPC.
- III. With a letter dated 11 December 2018, the appellant submitted further arguments in support of compliance with Article 123(2) EPC.
- IV. Oral proceedings before the board were held on 16 January 2019.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 13 as decided on by the examining division.

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

- V. Claim 1 reads as follows (feature numbering (F1-6) as used by the appellant added by the board):

"A method comprising:

(F1) determining the geographical location of a wireless communication device;

(F2) generating a purchase opportunity notification based, at least in part, on the determined geographical location;

(F3) providing at the wireless communication device an audible, visual or tactile alert to make a user aware that the purchase opportunity notification has been received at the wireless communication device;

(F4) receiving spoken input from the wireless communication device in response to the purchase opportunity notification;

(F5) retrieving information associated with the spoken input;

(F6) delivering, to the wireless communication device, a non-verbal response to the spoken input, the non-verbal response based on the retrieved information."

Reasons for the Decision

1. *Claim 1 - Article 123(2) EPC*

1.1 As regards compliance with Article 123(2) EPC, the appellant argued that amended claim 1 defined subject-matter which constituted a further limitation of the subject-matter of claim 1 as originally filed. The appellant further argued that the claimed method was directly and unambiguously derivable from the application as filed and specifically referred to page 10, line 23, to page 11, line 12, and page 12, lines 11 and 12, in conjunction with Figs 2 and 3 as regards feature (F1); to page 10, lines 20 to 30, and page 11, line 32 ff, as regards feature (F2); page 12, lines 3 to 5, and Fig. 3 as regards feature (F3); and Fig. 3 in

conjunction with page 2, lines 4 to 7, as regards features (F4) to (F6).

- 1.2 In the board's judgement, the subject-matter of claim 1 does not define a further limitation of the subject-matter of claim 1 as originally filed:

Claim 1 as filed reads as follows:

"A method comprising:

receiving spoken input from a wireless communication device;

determining the geographical location of the wireless communication device;

retrieving information associated with the spoken input and the determined geographical location; and

delivering, to the wireless communication device, a non-verbal response to the spoken input, the non-verbal response based on the retrieved information."

Hence, according to claim 1 as originally filed, the information being retrieved is associated with the spoken input and the determined geographical location. Present claim 1 (see point V above), however, merely requires that the retrieved information is associated with the spoken input and is therefore broader in this respect than claim 1 as originally filed. It follows that the latter claim cannot serve as a basis for present claim 1.

- 1.3 The board notes that in the summary of the invention on page 2, lines 2 to 9, of the description the retrieved information is not associated with a geographical location. Nevertheless, for the reasons set out below, the subject-matter of claim 1 is not directly and unambiguously derivable from Figs 2 and 3 and the

remaining passages of the description as referred to by the appellant (see point 1 above).

- 1.4 Fig. 2 and the corresponding description on page 7, line 22, to page 11, line 5, relate to a system for conducting mixed-mode electronic commerce transactions. The system includes input and output interfaces 155, 220, 230 for receiving verbal or non-verbal instructions from a user or for outputting to non-verbal or verbal responses to the user. The interfaces 155 and 220 and a data transformation service 220 are capable of receiving content input, either as separate content input 215 or from external commerce servers 260. The core area of the system is formed by services 250, which include a rules engine 254 and location services 259. The rules engine 254 "correlates consumer interests with inventory attributes such as price, location and quantity, and with dynamic attributes such as time and threshold" (page 9, lines 28 and 29). The rules engine "may use information from location services 259 to determine when a notification should be sent to a particular one of user devices 210" (page 10, lines 23 to 25).

The system shown in Fig. 2 thus includes a number of technical components which can be used in order to design one of various different types of mixed-mode commercial services to be offered to the user.

- 1.5 Fig. 3 relates to a specific mixed-mode method and shows a specific sequence of steps, which starts with the step of obtaining purchase notification criteria. In relation to Fig. 3, these criteria are defined as preferably including "specific circumstances or events identified by the user, the occurrence of which should trigger a notification" (page 11, lines 8 to 10). The

steps of Fig. 3 do not explicitly include a step of determining the geographical location of a wireless communication device. The board notes that with respect to locating mechanisms, an example is given on page 11, lines 10 to 12: "*For example, a collector may specify that he wants to be notified of any Elvis memorabilia being offered for sale in a set geographical area around the collectors home*". However, this location is not a geographical location of the wireless communication device, but rather the home location of the collector or user.

1.6 The appellant argued that within the context of the embodiment of Fig. 3, the skilled person would consider all of the possibilities offered by the system of Fig. 2, in order to determine the location of the collector's home. These possibilities included, for example, the use of GPS coordinates or location information available from cellular and PCS telephone systems (page 11, lines 1 to 5). Therefore, the skilled person would envisage determining, instead of the user's home as the geographical location, the geographical location of the user's wireless communication device as one of the user's purchase notification criteria. The skilled person would therefore directly and unambiguously consider the location of the wireless communication device of the user in the embodiment of Fig. 3. It was further evident from the "tailor" example described on page 10, line 32, to page 11, line 5, that the geographical location of the wireless device was determined and used as one of the purchase notification criteria.

1.7 The board is not convinced by these arguments. In the present case, although the system of Fig. 2 provides various possibilities of making use of location service

functions, the mere existence of such possibilities of the system does not directly and unambiguously disclose the inclusion of determining the geographical location of the wireless communication system as one of the steps in the method of claim 1 as defined by the steps (F1) to (F6). The "tailor" example shows that geographical information may be used in a method containing different steps. Thus, the mere existence of means for detecting geographical information does not teach the skilled person to include such information in the method and at the step as now claimed. At best, the possibility of such an inclusion might have been obvious to the skilled reader. However, in order to comply with Article 123(2) EPC, it is not sufficient that it would be obvious to include the feature, i.e. determining the geographical location of the wireless communication device, in the embodiment of Fig. 3.

1.8 The board did not find a basis in any of the other parts of the application as originally filed. Nor did the appellant argue otherwise.

1.9 For the above reasons, the method of claim 1 is not directly and unambiguously derivable from the application documents as originally filed. The claim does not therefore comply with Article 123(2) EPC.

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