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**Datasheet for the decision
of 11 March 2020**

Case Number: T 1727/15 - 3.5.03

Application Number: 09153698.7

Publication Number: 2224719

IPC: H04M3/58

Language of the proceedings: EN

Title of invention:

PBX mobility system with multiple call legs

Applicant:

BlackBerry Limited

Headword:

PBX mobility system with multiple call legs/BLACKBERRY

Relevant legal provisions:

EPC Art. 56

RPBA Art. 12(4), 13(1)

Keyword:

Inventive step - main request (no)

Admissibility - auxiliary requests (no): should have been
filed before the first instance or not clearly allowable



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Case Number: T 1727/15 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 11 March 2020

Appellant: BlackBerry Limited
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 26 January 2015
refusing European patent application
No. 09153698.7 pursuant to Article 97(2) EPC.

Composition of the Board:

Chair K. Bengi-Akyürek
Members: T. Snell
J. Geschwind

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the applicant against the decision of the examining division refusing the patent application on the ground of lack of novelty of the subject-matter of claim 1 with respect to the disclosure of
- D9** = US 2004/0072593.
- II. The appellant requests that the decision under appeal be set aside and a patent granted on the basis of the claims of the main request, or alternatively, either the first or second auxiliary requests, all requests as filed with the statement of grounds of appeal (although the claims of the main request are unchanged), or one of the third to fifth auxiliary requests, all as filed with the submission dated 4 February 2020 in response to the board's communication under Article 15(1) RPBA 2007.
- III. This decision was taken without holding oral proceedings after the appellant indicated that it would not attend the scheduled oral proceedings.
- IV. Claim 1 of the **main request** reads as follows:
- "A method for re-using of call legs in an enterprise system, the enterprise system including a session management platform (SMP) (18) having control communications to one or more private branch exchanges (PBXs) (16) using third-party call control over a session control interface (60) to each PBX (16), the PBXs (16) being in communication with one or more media servers (76), the method being implemented by control communications from the SMP (18) to the PBXs

(16) over the session control interface (60), the method comprising:

creating a first call leg (110) to a wireless device (11) over a wireless network wherein media terminates on one of the media servers (76) and call control signaling terminates on the SMP (18);

creating a second call leg (112) to a first destination (101a) wherein media terminates on one of the media servers and call control signaling terminates on the SMP, the SMP utilizing third-party call control of the media servers (76) to connect the respective media of the first call leg (110) and second call leg (112) together thereby establishing a first call session; and

creating a third call leg (114) to a second destination (101b) wherein media terminates on one of the media servers and call control signaling terminates on the SMP, the SMP (18) utilizing third-party call control of the media servers to connect the respective media of the first call leg (110) and third call leg (114) together thereby establishing a second call session."

V. Claim 1 of the **first auxiliary request** differs from claim 1 of the main request in that the following wording is added to the end of the claim:

"wherein:

the media of the first call leg and second call leg are connected as a result of SDP shuffling;

the media of the first call leg and third call leg are connected due to SDP shuffling; and the established first and second call session provide a conference call between the wireless device (11), the first destination (101a) and the second destination (101b)."

VI. Claim 1 of the **second auxiliary request** differs from claim 1 of the first auxiliary request in that the beginning of the claim reads as follows (amendments underlined):

"A method for re-using of call legs in an enterprise system, the enterprise system including a session management platform (SMP) (18) having control communications to a plurality of private branch exchanges (PBXs) (16) using third-party call control over a session control interface (60) to each PBX (16), the PBXs (16) being in communication with a plurality of media servers (76), the method being implemented by control communications from the SMP (18) to the PBXs (16) over the session control interface (60), the method comprising: ..."

VII. Claim 1 of respectively the **third, fourth and fifth auxiliary requests** differs from claim 1 of respectively the main and the first and second auxiliary requests in that the wording:

"A method for re-using of call legs"

is replaced by:

"A method for controlling and managing communications made across multiple call legs".

Reasons for the Decision

1. *Background and claim interpretation*

1.1 The present application concerns an enterprise network including one or more PBXs and one or more media servers. The enterprise network comprises essentially three components of interest (cf. Fig. 1 of the application): a PBX or IP-PBX 16 (assuming a network with one PBX), a "service management platform (SMP)", and a media server 76 (assuming a network with one media server). The SMP is tasked with terminating call signalling (e.g. using session initiation protocol, SIP) and has an interface to the PBX. The media server terminates media flows, e.g. using the real-time transport protocol, RTP.

1.2 Claim 1 of the main request is directed to a "method for re-using of call legs", by which is understood that the same call leg may be involved in more than one call, e.g. when a user is involved in a call with two different destinations. The method further uses "third-party call control", by which is understood that the SMP, as a third-party, controls call signalling.

2. *Main request - claim 1 - inventive step*

2.1 The closest prior art is considered to be **D9**. D9 essentially includes all of the aspects mentioned in point 1.1 above. In this respect, D9 (cf. Fig. 5) describes a "soft switch" which includes modules providing the functionality of a PBX ("media gateway controller module", cf. paragraph [0081], lines 1-5), a "connection session management module" (cf. paragraph [0081], lines 12-16), which can be equated with an SMP, and a "trunking gateway" (cf. paragraph

[0078]), which provides the functionality of terminating media. The modules are coupled together using a standard signalling protocol such as SIP, SIGTRAN or MGCP (cf. paragraph [0082]).

2.2 D9 further discloses re-using a call-leg when a user wishes to place a call on hold and speak to another party (cf. page 12, left-hand column, lines 4-52 and right-hand column, lines 7-13). It is also not in dispute that the "soft switch" of D9 uses third-party control.

2.3 The examining division came to the conclusion that the subject-matter of claim 1 lacked novelty with respect to the disclosure of D9 (cf. point 12.1 of the reasons), which reads as follows:

"Document D9 discloses (the references in parentheses applying to this document):

A method for re-using of call legs in an enterprise system, the enterprise system including a session management platform (D9, paragraph 81, connection session manager) having control communications to one or more private branch exchanges (D9, paragraph 76, the soft switch can be deployed as an IP-based PBX) using third-party call control over a session control interface to each PBX (D9, paragraph 81), the PBXs being in communication with one or more media servers (D9, paragraph 81), the method being implemented by control communications from the SMP to the PBXs over the session control interface, the method comprising:

creating a first call leg to a wireless device over a wireless network wherein media terminates from

the wireless device onto one of the media servers and call control signaling terminates from the wireless device onto the SMP (D9, paragraphs 105-110 for inbound communications from a VoIP device to the wireless device; paragraphs 111-118 describe the method for inbound communications from a PSTN terminal to the wireless device. Paragraphs 119-125 describe the method for outbound connection setup from the wireless device, when the mobile device initiates the call, the "MOMI" sequence according to the current invention. Paragraph 161 discloses the situation when the PBX initiates the call leg to the wireless device, or the "MOPI" sequence according to the current invention);

creating a third call leg to a second destination wherein media terminates from the second destination onto one of the media servers and call control signaling terminates from the second destination onto the SMP, the SMP utilizing third-party call control of the media servers to connect the respective media of the first call leg and third call leg together thereby establishing a second call session (D9, paragraphs 126-129)."

- 2.4 In the statement of grounds of appeal, the appellant argues mainly that the subject-matter of claim 1 is new with respect to D9 because the architecture defined in the first clause of claim 1 is not the same as that disclosed in paragraph [0081] of D9, in that a *single* feature in D9 is equated by the examining division with two *separate* features of claim 1.
- 2.5 The board agrees that the architecture in D9 is not identical to the subject-matter claimed in claim 1,

since the "media gateway controller module 164" of D9, which provides PBX services, includes the element which could be regarded as a "session management platform" (i.e. the "connection session manager module 172"), whereas in accordance with claim 1 the session management platform has "control communications with one or more private branch exchanges ... using third party control over a session control interface to each PBX", i.e. is external to the PBX(s). In addition, there is no explicit disclosure in paragraph [0081] or Fig. 5 of one or more media servers.

2.6 However, these differences do not contribute to inventive step. As pointed out in document D9 (paragraph [0077]), the various processing modules may be enacted on different platforms, including servers, and may be separated into additional components. The person skilled in the field of mobile communications, on the basis of common general knowledge, knows that a server may be a stand-alone component or be implemented as a software and/or hardware module within a common platform (cf. also paragraph [0035] of the application as filed). Furthermore, in some embodiments of D9, there is an entirely separate media server. Finally, claim 1 embraces an embodiment with one PBX and one media server. In this case, functionally, it does not matter whether the components 164 and 172 of D9 are physically and/or logically located together within the media gateway controller and/or soft switch, or external thereto.

2.7 The appellant argued in its submission dated 4 February 2020 that the technical effect and advantage of this difference was to provide greater system design flexibility in that the PBX and/or media server could be substituted with minimal or no reconfiguration of

the session control interface of the SMP. The board however finds this alleged technical effect to be speculative, and in any case, it is not seen why in D9 a particular module cannot be substituted with minimal or no re-configuration of the other modules. The board therefore finds this argument unconvincing.

2.8 In the statement of grounds of appeal, the appellant further argued (i) that D9 did not teach or suggest a suitable architecture for efficiently mixing media from multiple parties, and (ii) that the arguments provided in its submissions of 8 June 2010 and 25 November 2014 established novelty and inventive step.

2.9 Re (i): Claim 1 concerns an embodiment with three parties with a first call session between a wireless device and a first destination and a second call session between the wireless device and a second destination. The same is true for D9 (cf. paragraphs [0127] and [0128]). Furthermore, claim 1 does not require "mixing" of calls from multiple parties (e.g. a conference call).

Re (ii): General references to prior submissions made during the first-instance proceedings are not normally taken into consideration by the board (cf. Article 12(2) RPBA). That notwithstanding, if the appellant is arguing that D9 does not disclose the feature of re-using a call leg, the board does not agree (cf. point 2.2 above and page 4 of the impugned decision, first paragraph).

2.10 Consequently, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

3. *First and second auxiliary requests - admissibility*

3.1 In accordance with Article 12(4) RPBA 2007, the admitting of requests which were not but could have been filed during the first-instance proceedings are at the discretion of the board.

3.2 In this respect, the board remarks as follows:

(i) The applicant did not attend oral proceedings before the examining division and requested "Please reach a final decision after reviewing in detail all written submissions filed to date" (cf. the submission dated 10 December 2014). Therefore, apparently, at the close of the examination proceedings, the applicant had no wish to file further claim requests. Appeal proceedings are mainly aimed at giving the losing party an opportunity to have the correctness of the decision reviewed, rather than being an opportunity to re-open the examination proceedings by filing hitherto unclaimed subject-matter.

(ii) Claim 1 of each claim request includes a feature taken from the description which has plausibly not been searched (namely, "SDP shuffling").

(iii) The inclusion of the feature "SDP shuffling", which in the view of the appellant is based on paragraphs [0057], [0062] and [0063] of the description as filed, *prima facie*, does not appear to comply with Article 123(2) EPC, as claim 1 of each claim request now appears to concern an unallowable intermediate generalisation of a detailed embodiment described in the description as filed.

(iv) If the board were to admit either or both of these claim requests, it would likely have to remit the case

to the examining division as a "fresh case", which would however be contrary to procedural efficiency.

3.3 The appellant did not provide any counter-arguments addressing these points raised by the board in its written communication under Article 15(1) RPBA 2007.

3.4 Consequently, the board decides to not admit the first and second auxiliary requests into these appeal proceedings.

4. *Third to fifth auxiliary requests - admissibility*

4.1 Claim 1 of the third auxiliary request consists of an amended version of claim 1 of the main request. This amendment has no impact on the issue of lack of inventive step discussed above in connection with claim 1 of the main request, and neither has the appellant argued otherwise. There is therefore no point in admitting the request as it is not clearly allowable under Article 56 EPC (cf. Article 13(1) RPBA 2007).

4.2 Claim 1 of the fourth and fifth auxiliary requests respectively consists of a correspondingly amended version of claim 1 of respectively the second and third auxiliary requests. The amendment has no impact on the reasons given for not admitting the second and third auxiliary requests, and neither has the appellant argued otherwise. The reasons given for not admitting those claim requests into the appeal proceedings therefore apply, *mutatis mutandis*, to the fourth and fifth auxiliary requests (cf. Article 12(4) RPBA 2007).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated