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Datasheet for the decision of 8 January 2019

Case Number: T 1794/15 - 3.5.07

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Title of invention:
A data communication method

Applicant:
Blutro Pty Ltd

Headword:
Data communication/BLUTRO

Relevant legal provisions:
EPC Art. 56
RPBA Art. 13(1), 13(3)

Keyword:
Late-filed request - third auxiliary request (admitted)
Inventive step - all requests (no)

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Case Number: T 1794/15 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 8 January 2019

Appellant: (Applicant)	Blutro Pty Ltd 10 Granite Way Delahey, VIC 3037 (AU)
Representative:	Zimmermann, Tankred Klaus Schoppe, Zimmermann, Stöckeler Zinkler, Schenk & Partner mbB Patentanwälte Radlkoferstrasse 2 81373 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 16 April 2015 refusing European patent application No. 09797279.8 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman	R. Moufang
Members:	R. de Man
	M. Jaedicke

Summary of Facts and Submissions

I. The applicant (appellant) appealed against the decision of the Examining Division refusing European patent application No. 09797279.8, published as international application WO 2010/006381 A1.

II. The contested decision cited, *inter alia*, the following documents:

D1: US 2004/0243517 A1, published on 2 December 2004;

D6: "Specification of the Bluetooth System, Version 1.1", part K:1, 22 February 2001, pp. 13-62.

The Examining Division decided that the subject-matter of claim 1 of both the main request and the auxiliary request lacked inventive step in view of a combination of documents D1 and D6.

III. In the statement of grounds of appeal, the appellant resubmitted copies of the claims of the main request and the auxiliary request considered in the contested decision as main request and first auxiliary request. It also filed a second auxiliary request.

IV. In a communication accompanying a summons to oral proceedings, the Board expressed the preliminary view that the subject-matter of claim 1 of each request lacked inventive step in view of document D1.

V. In its written submissions in preparation for the oral proceedings, the appellant maintained its requests and filed a third auxiliary request. It also gave arguments in support of inventive step.

VI. Oral proceedings were held on 8 January 2019 and were attended by the appellant. At the end of the oral proceedings, the chairman pronounced the Board's decision.

VII. 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, of one of the first to third auxiliary requests.

VIII. Claim 1 of the main request reads as follows:

"A data communication method, comprising:

receiving from a first computing device (20, 23) first user data and a Bluetooth Medium Access Control (MAC) address of a portable user device (50, 53), the Bluetooth MAC address being previously detected from the portable user device (50, 53) by a first Bluetooth MAC address detector of the first computing device (20, 23) using Bluetooth;

storing the first user data in association with the Bluetooth MAC address received from the first computing device (20, 23) in a data storage (40, 43);

detecting from the portable user device (50, 53) the Bluetooth MAC address of the portable user device (50, 53) by a second Bluetooth MAC address detector (62, 80) of a second computing device (60, 63) using Bluetooth, the second computing device (60, 63) in data communication with the data storage (40, 43); and

at the second computing device (60, 63), making a request in respect of the first user data stored in the data storage (40, 43) based on the Bluetooth MAC address detected by the second Bluetooth MAC address detector (62, 80) of the second computing device (60, 63)."

IX. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that "receiving ... using Bluetooth" has been replaced with

"detecting from a portable user device (50, 53) a Bluetooth Medium Access Control (MAC) address of the portable user device (50, 53) by a first Bluetooth MAC address detector of a first computing device (20, 23) using Bluetooth;

receiving from the first computing device (20, 23) first user data and the Bluetooth MAC address of the portable user device (50, 53) detected from the portable user device (50, 53) by the first Bluetooth MAC address detector of the first computing device (20, 23);"

X. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that "receiving from the first computing device (20, 23)" has been replaced with

"receiving from the first computing device (20, 23) via a first communications network (22)",

in that "the second computing device (60, 63) in data communication with the data storage (40, 43)" has been replaced with

"the second computing device (60, 63) being in data communication with the data storage (40, 43) via a second communications network"

and in that "at the second computing device ... of the second computing device (60, 63)" has been replaced with

"making, by the second computing device (60, 63), a request for communication of the first user data stored in the data storage (40, 43) from the data storage (40, 43) to the second computing device (60, 63) via the second communications network (42) based on the Bluetooth MAC address detected by the second Bluetooth MAC address detector (62, 80) of the second computing device (60, 63)."

XI. Claim 1 of the third auxiliary request differs from claim 1 of the main request in that the following text has been added at the end of the claim:

"wherein the data communication method further comprises:

associating the Bluetooth MAC address received from the first computing device (20, 23) with a first image of a user;

displaying the first image on a display of the second computing device (60, 63) to a user of the second computing device (60, 63); and

receiving a user input authenticating the Bluetooth MAC address detected by the second Bluetooth MAC address detector (62, 80) of the second computing device (60, 63) based on the first image from the user of the second computing device (60, 63)."

XII. The appellant's arguments, where relevant to the decision, are discussed in detail below.

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

2. *The invention*

2.1 The application is concerned with allowing a user to communicate data in a convenient manner. Initially, the data is on a first computing device. The user uploads this data via a network to a data storage while associating the data with an identifier of the user's portable user device. The user then allows a second computing device to download the data by communicating to that second computing device the identifier of his portable user device.

2.2 In an exemplary embodiment described in the published application on page 16, line 13, to page 19, line 14, with reference to Figures 5 to 9, the first computing device is a registration kiosk 23, the second computing device is a point-of-sale (POS) terminal 63, and the user's portable user device is a mobile phone 53.

At the registration kiosk 23, the user creates a user ID and PIN and uploads data to a central database 43 constituting his "Bluetooth Virtual Wallet" (page 17, line 9, to page 18, lines 8). As shown in Figure 7, this wallet includes his ID, PIN and photograph and loyalty programme information. This data is associated with the Bluetooth MAC address of the user's mobile phone.

When a user commences a transaction at the POS terminal 63, any Bluetooth MAC addresses in the vicinity of the POS terminal are detected and used to query the central database. If more than one of the detected addresses is associated with registered users, the corresponding photographs are presented to an operator of the POS terminal, which allows the operator

to identify the correct user. The user then enters his PIN, and his loyalty program information is downloaded to the POS terminal (page 18, line 28, to page 19, line 14).

Main request

3. *Interpretation of "the Bluetooth MAC address being previously detected"*

3.1 In its decision, the Examining Division argued that the feature of claim 1 "the Bluetooth MAC address being previously detected from the portable user device by a first Bluetooth MAC address detector of the first computing device using Bluetooth" did not limit the claimed subject-matter because it referred to a step that was not part of the claimed method but preceded it.

3.2 At the oral proceedings, the appellant explained that it had intended claim 1 to be limited to methods that include a preliminary step of detecting the Bluetooth MAC address from the portable user device by a first Bluetooth MAC address detector of the first computing device using Bluetooth.

3.3 The Board considers that there is at least room for discussion as to whether the feature has any limiting effect on method claim 1, which already specifies that the Bluetooth MAC address is "of [the] portable user device". If claim 1 were intended to include a preliminary step of detecting the Bluetooth MAC address, it appears to be at least arguable - also in view of Article 84 EPC - that the claim should have included the feature as an explicit step (resulting in claim 1 of the first auxiliary request).

3.4 However, since this issue is not decisive for the present case, the Board will adopt the appellant's narrower interpretation of the claim for the purpose of assessing inventive step.

4. *Inventive step*

4.1 Document D1, in paragraph [0087] and Figure 1a, discloses a transaction system 100 comprising a POS system 101 connected to a server computer 104 for managing transactions. The server computer 104 is connected to a Bluetooth transceiver 102, which constantly or periodically attempts to discover and identify customer devices - also referred to as personal trusted devices (PTDs) (see paragraph [0009]) - in the proximity of the transceiver in order to establish connections.

When a customer approaches the POS system 101 to pay for an item with his PTD, a shop assistant enters the price of the item into the system and identifies the customer's PTD from the list of PTDs currently connected to the POS system 101 (paragraph [0088]).

4.2 In the embodiment described in paragraphs [0096] and [0097], a customer wishing to pay initiates the identification and payment process, for example by pressing a button on his PTD. The PTD then sends a corresponding request to the server computer, causing the server computer to create a data record for the transaction in a database. When it is the customer's turn to pay, the shop assistant lets the POS system retrieve the data records for the currently open transactions from the database, each record including a unique ID of the corresponding PTD. The database also

contains information about registered customers, such as the customer's name and picture together with the IDs of the PTDs owned by the customer. The list of transactions together with names or pictures is shown to the shop assistant, who identifies the correct customer by name or picture. The transaction information of the identified customer is then retrieved and an electronic contract generated.

Paragraph [0126] discloses that the database may be physically located on a different computer from the server computer.

4.3 Paragraph [0097] explains that the PTD's ID is received from the PTD during the establishment of the communications link and that the information about a customer is acquired and stored "in connection with an initial registration of the customer".

The detailed description of document D1 does not give further details on the nature of the "ID". But paragraph [0034] of the document's "summary of invention" section states that "customer data, such as name, address, phone number, a password, a picture, or the like, may be stored by the transaction system together with an identification, e.g. a phone number, a Bluetooth device address, or the like, of one or more customer devices related to the customer". The Board therefore considers - and at the oral proceedings the appellant no longer disputed this - that document D1 discloses that the PTD's Bluetooth MAC address may be used as the PTD's ID.

4.4 Hence, document D1 discloses a step of detecting, at the POS system 101 as "second computing device", the Bluetooth MAC address of a portable user device by the

Bluetooth transceiver 102 operating as "second Bluetooth MAC address detector". This second computing device is "in data communication" with the database and requests first user data from the database on the basis of the detected Bluetooth MAC address.

Furthermore, in the preceding "initial registration" step, the first user data was stored in association with the Bluetooth MAC address in the database.

4.5 The subject-matter of claim 1 therefore differs from what is disclosed in document D1 in that

- the second Bluetooth MAC address detector is "of the second computing device";
- the "initial registration" takes place at a "first computing device"; and
- during the initial registration, the first computing device detects the Bluetooth MAC address of the portable user device by means of a first Bluetooth MAC address detector.

4.6 The Board considers the first difference to be an obvious detail. Since Bluetooth operates over short distances, in document D1 the Bluetooth transceiver 102 is necessarily located close to the POS system 101. Indeed, paragraph [0087] confirms that the customers whose PTDs are detected by the transceiver 102 are in the proximity of the POS system 101. It is therefore an obvious possibility to connect the Bluetooth transceiver 102 directly to the POS system 101 instead of via the server computer 104.

4.7 As to the second difference, although document D1 is silent on where the initial registration takes place, it is an obvious possibility to let it take place at a

"first computing device" different from the POS system 101 and the server computer 104 (corresponding to the "second computing device").

4.8 Since it is obvious to obtain the Bluetooth MAC address of a device by scanning for Bluetooth MAC addresses using a Bluetooth receiver (which is how the second computing device obtains the Bluetooth MAC addresses in document D1), the third difference cannot support an inventive step, either.

4.9 The appellant argued that according to paragraph [0097] of document D1, the shop assistant at the "second computing device" still had to manually identify the correct customer from a list of the detected customers "who are currently ready to pay using their PTD". This was not necessary in the claimed invention, which therefore possessed a higher degree of automation.

The Board however notes that, both in the claimed invention and in document D1, the portable user devices of customers in the neighbourhood of the POS terminal are detected by means of Bluetooth. Since a typical operating range of Bluetooth is about 10 metres, it is inevitable that the portable user devices of multiple customers may be detected without it being clear which of those portable user devices belongs to the customer who is currently attempting to pay. Paragraph [0097] of document D1 recognises this where it explains that the shop assistant can select the correct customer by comparing the customer in front of him with pictures of the owners of the detected portable user devices. And the present application likewise recognises this where it explains, on page 18, line 31, to page 19, line 10, of the description, that the operator of the POS terminal can select the correct customer by matching

the customer with photographs of the detected registered users. The Board concludes that the difference between the claimed invention and the method of document D1 alleged by the appellant does not exist.

4.10 In sum, the subject-matter of claim 1 lacks inventive step (Article 56 EPC).

First auxiliary request

5. Since the amendment made in claim 1 of the first auxiliary request does not further limit the claimed subject-matter relative to the Board's interpretation of claim 1 of the main request (see point 3 above), the subject-matter of claim 1 of the first auxiliary request likewise lacks inventive step (Article 56 EPC).

Second auxiliary request

6. Claim 1 of the second auxiliary request adds to claim 1 of the main request and of the first auxiliary request that the first and second computing devices are connected to the data storage via respective first and second communications networks. At the oral proceedings, the appellant explained that "communications network" had to be understood in this context as "communications link" (in Figure 5 both the first computing device 23 and the second computing device 73 are connected to the data storage 43 via the internet 22).

7. Since it is an obvious possibility to use separate communications links or communications networks to link separate first and second computing devices to a data storage, the subject-matter of claim 1 of the second

auxiliary request, too, lacks inventive step (Article 56 EPC).

Third auxiliary request

8. The third auxiliary request was filed after oral proceedings had been arranged and adds a number of features to independent claim 1 which had not been present in the independent claims filed with the statement of grounds of appeal. Nevertheless, since the Board has no difficulty deciding on the request in substance, it exercises its discretion under Article 13(1) and (3) RPBA to admit the third auxiliary request into the appeal proceedings.

9. As already explained in point 4.2 above, document D1, in paragraph [0097], discloses that the database contains information about each registered customer, including the customer's picture, together with the IDs, i.e. the Bluetooth MAC addresses, of the PTDs owned by the customer. The shop assistant is presented with a list of customers who are currently ready to pay using their PTD and is to use the list to identify the customer in front of him. If the list contains pictures, the assistant identifies the customer in front of him by comparing that customer with the pictures in the list and selecting the appropriate picture.

Hence, document D1 discloses that the Bluetooth MAC address received from a first computing device is associated with an image of the owner of the corresponding PTD and that this image is displayed, as part of a list of all detected registered customers, to the user of the second computing device, i.e. the shop assistant. The user of the second computing device

authenticates the Bluetooth MAC address detected at the second computing device on the basis of these images.

It follows that the features added to claim 1 of the third auxiliary request are disclosed in document D1. The subject-matter of claim 1 of the third auxiliary request therefore lacks inventive step (Article 56 EPC).

Conclusion

10. Since none of the requests on file is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

I. Aperribay R. Moufang

Decision electronically authenticated