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**Datasheet for the decision  
of 9 September 2021**

**Case Number:** T 2309/17 - 3.5.03

**Application Number:** 07839411.1

**Publication Number:** 2198595

**IPC:** H04M3/58

**Language of the proceedings:** EN

**Title of invention:**

Method and system for device switching through a server

**Applicant:**

BlackBerry Limited

**Headword:**

Device switching during a call/BLACKBERRY

**Relevant legal provisions:**

EPC Art. 84, 56

RPBA 2020 Art. 11, 13(1)

**Keyword:**

Clarity and support by the description - main request (no)  
Admittance of requests filed after the summons - auxiliary  
requests (no): not clearly allowable under Arts. 84, 123(2)  
and 56 EPC

Remittal - (no): no special reasons

**Decisions cited:**

T 0119/82



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Case Number: T 2309/17 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 9 September 2021**

**Appellant:**  
(Applicant)

BlackBerry Limited  
2200 University Avenue East  
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**Representative:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 18 May 2017  
refusing European patent application  
No. 07839411.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** T. Snell  
W. Sekretaruk

## Summary of Facts and Submissions

I. This case concerns the appeal of the applicant (henceforth, "appellant") against the decision of the examining division refusing the European patent application on the ground of lack of inventive step (Article 56 EPC) in the light of the disclosure of the following document:

**D2:** US 2003/0185375.

II. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a **main request** as filed with the statement of grounds of appeal, or, alternatively, of one of **auxiliary requests 1 and 2**, both as filed with the submission dated 14 July 2021.

As an auxiliary measure, the appellant requests that the case be remitted to the examining division for further prosecution.

III. Oral proceedings were held via videoconference on 9 September 2021. The chair announced the board's decision at the end of the oral proceedings.

IV. Claim 1 of the **main request** reads as follows:

"A method (100, 110, 120, 130) of switching from a first telephony device (70) to a second telephony device during a first call between the first telephony device (70) and a third telephony device, said method (100, 110, 120, 130) comprising:

receiving (100d, 110c, 120c, 130c) a device switch request from the first telephony device (70) at a server (30);

retrieving, at the server (30), a number associated with the second telephony device from a user profile associated with the first telephony device (70), the number associated with the second telephony device specified in the user profile for device switch requests received from the first telephony device (70), wherein the number associated with the second telephony device includes a contact number of the second telephony device;

initiating (110e, 120d), at the server (30), a second call to the second telephony device using the number associated with the second telephony device, wherein initiating the second call to the second telephony device comprises:

    sending (110d, 130d) a data signal to the second telephony device inquiring whether the second telephony device will accept the second call; and

    dialing (110f, 130f) the contact number of the second telephony device and establishing a voice communication between the second telephony device and the server (30) if it is determined that the second telephony device will accept the second call;

conferencing (100g, 110g, 120f, 130g), at the server (30), the second call to the second telephony device to the first call between the first telephony device (70) and the third telephony device; and

disconnecting (100h, 110h, 120g, 130h), at the server (30), the first telephony device (70) from the conferenced calls."

V. Claim 1 of **auxiliary request 1** reads as follows:

"A method (100, 110, 120, 130) of switching from a first telephony device (70) to a second telephony device during a first call between the first telephony device (70) and a third telephony device, said method (100, 110, 120, 130) comprising:

receiving (130c), at a server (30) and from the first telephony device (70), a data signal corresponding to a device switch request initiated by the user of the first telephony device (70) according to a predefined manner associated with requesting a device switch;

retrieving, at the server (30), a number associated with the second telephony device from a user profile associated with the first telephony device (70), wherein the user profile comprises a device switch number set by the user of the first telephony device (70) for device switch requests received from the first telephony device (70), wherein the number associated with the second telephony device is specified by the device switch number in the user profile;

initiating (110e, 120d), at the server (30), a second call to the second telephony device using the number associated with the second telephony device, wherein initiating the second call to the second telephony device comprises:

sending (110d, 130d) a call setup request data signal to the second telephony device inquiring whether the second telephony device will accept the second call; and

upon receiving (110e, 130e) a call setup response data signal from the second telephony device, establishing a voice communication between the second telephony device and the server (30);

conferencing (100g, 110g, 120f, 130g), at the server (30), the second call to the second telephony device to the first call between the first telephony device (70) and the third telephony device; and

disconnecting (100h, 110h, 120g, 130h), at the server (30), the first telephony device (70) from the conferenced calls."

VI. Claim 1 of **auxiliary request 2** reads as follows:

"A method (100, 110, 120, 130) of switching from a first telephony device (70) to a second telephony device during a first call between the first telephony device (70) and a third telephony device, said method (100, 110, 120, 130) comprising:

receiving (130c), at a server (30) and from the first telephony device (70), a data signal/message corresponding to a device switch request initiated by the user of the first telephony device (70) according to a predefined manner associated with requesting a device switch, the device switch request being the data signal/message caused by the user of the first telephony device (70) selecting a device swap menu

option provided on a user interface of the first telephony device (70);

retrieving, at the server (30), a number associated with the second telephony device from a user profile associated with the first telephony device (70), wherein the user profile comprises a device switch number set by the user of the first telephony device (70) for device switch requests received from the first telephony device (70), wherein the number associated with the second telephony device is specified by the device switch number in the user profile;

initiating (110e, 120d), at the server (30), a second call to the second telephony device using the number associated with the second telephony device, wherein initiating the second call to the second telephony device comprises:

sending (110d, 130d) a call setup request data signal/message to the second telephony device inquiring whether the second telephony device will accept the second call;

receiving (110e, 130e) a call setup response data signal/message from the second telephony device if it is determined that the second telephony device will accept the second call; and

establishing a voice communication between the second telephony device and the server (30) once the call setup response data signal/message from the second telephony device is received;



conferencing (100g, 110g, 120f, 130g), at the server (30), the second call to the second telephony device to the first call between the first telephony device (70) and the third telephony device; and

disconnecting (100h, 110h, 120g, 130h), at the server (30), the first telephony device (70) from the conferenced calls."

## **Reasons for the Decision**

### *1. Technical context*

1.1 The present application concerns a method of switching from a *first* telephony device to a *second* telephony device during a call between the first telephony device and a *third* telephony device. For example, a user may wish to transfer a call to another device due to a low-battery condition of a first device, or may wish to transfer from a fixed telephone to a mobile device. As stated in the present description, "the switching of devices should be done seamlessly, without interrupting or dropping the conversation, etc. and without the other party or parties being aware of the switch" (cf. paragraph [0004] as filed).

1.2 Claim 1 comprises the following limiting features (board's labelling):

(a) A method of switching from a first telephony device to a second telephony device during a first call between the first telephony device and a third telephony device, said method comprising:

- (b) receiving a device switch request from the first telephony device at a server;
- (c1) retrieving, at the server, a number associated with the second telephony device from a user profile associated with the first telephony device,
- (c2) the number associated with the second telephony device specified in the user profile for device switch requests received from the first telephony device,
- (c3) wherein the number associated with the second telephony device includes a contact number of the second telephony device;
- (d1) initiating, at the server, a second call to the second telephony device using the number associated with the second telephony device,
- (d2) wherein initiating the second call to the second telephony device comprises:
  - sending a data signal to the second telephony device inquiring whether the second telephony device will accept the second call;
- (d3) dialing the contact number of the second telephony device and establishing a voice communication between the second telephony device and the server if it is determined that the second telephony device will accept the second call;
- (e) conferencing, at the server, the second call to the second telephony device to the first call

between the first telephony device and the third telephony device;

(f) disconnecting, at the server, the first telephony device from the conferenced calls.

1.3 The claimed solution comprises two main aspects: (i) "call setup signalling" for transferring the call from a *first* user device to a *second* user device using a server (cf. *inter alia* features d1 to d3), and (ii) the server obtaining the number of the *second* user device from a "user profile" held in the server for device switch requests (cf. features c1 to c3).

2. **Main request** - claim 1 - clarity and support by the description (Article 84 EPC)

2.1 **Features d2 and d3**, which are based on dependent claim 5 as originally filed, are neither clear nor supported by the description for the following reasons.

2.2 These features require two separate steps, namely (i) first "transmitting a data signal inquiring whether the second telephony device will accept the second call", and (ii) then "dialling the contact number of the second telephony device", i.e. sending call signalling messages associated with conventional dialling. However, there is no clear support for a *two-step* process in either the description or drawings, leading also to unclarity in construing the matter for which protection is sought.

2.3 In this respect, where **feature d2** is mentioned in the description (cf. e.g. paragraphs [0051]/[0052], [0066]/[0067] and [0075]/[0076] as filed), the call setup request messages directly results in "ringing"

the second device, which the device can directly answer with a call setup response message, following which voice communication is established. No subsequent "dialling" step (i.e. **feature d3**) is specifically mentioned here. Where "dialling" is mentioned (cf. e.g. paragraph [0071]), there is no mention of any preceding "inquiring" step.

2.4 **Feature d2** furthermore lacks clarity with respect to the sub-feature "inquiring whether the second telephony device will accept the second call". It is unclear whether this expression should be understood narrowly in the sense that there is actually a data message specifically "inquiring whether the second telephony device will accept the second call", which goes beyond a normal call setup signalling message for "ringing" the device. In accordance with the description, this message results in either "a ringing tone, a vibration, or the display of a message" (cf. paragraph [0052]). At least the first two possibilities suggest a normal call setup signalling procedure and a normal response, and the third possibility, i.e. a display of a message asking whether the user wishes to accept the call, is also conventional, e.g. when receiving a call on a mobile device. Similar considerations apply to the condition of **feature d3**, i.e. "if it is determined that the second telephony device will accept the second call", since it is not clear if this embraces the second telephony device merely answering the call, or whether "accepting" and "answering" are different phases.

2.5 The appellant argued that features d2 and d3 were clear. They had been taken from original claim 5 and had been extensively discussed during the examination proceedings, although no clarity objection had been

raised. The appellant explained that present claim 1 specifically embraced the embodiments of Figs. 6B and 6D where the second telephony device is a dual-mode device capable of simultaneous voice and data communications, enabling the data messages of steps d2 and d3 to be transmitted via the indicated data channel of Figs. 6B and 6D.

The appellant further argued that it was clear from paragraphs [0051] and [0052] that "sending the call setup request data signal according to the present application is performed before the server sets up a voice call to (i.e. dials) the remote device. That is, the server is NOT yet dialing the remote device when performing the inquiring step as defined in the MR [NB: Main Request] claim, which is completely different from conventionally ringing a device after dialing" (cf. the letter dated 14 July 2021, page 7, 2nd paragraph; appellant's underlining).

2.6 These arguments are however unconvincing. Although the examining division did not formally raise an objection under Article 84 EPC, it is clear from the discussion with respect to inventive step that they had difficulty in construing the meaning of these features and therefore assessed inventive step on the basis of alternative meanings (cf. points 1.3 and 5 of the impugned decision).

Further, with respect to Figs. 6B and 6D and the associated parts of the description (cf. paragraphs [0064] to [0067] and [0073] to [0076]), even if there is arguably support here for sending a call setup request message and a response message via a standard data channel rather than a signalling channel, neither of these passages or figures mentions a

subsequent "dialling" step. Instead of dialling, it is merely stated that voice communication is established. In any case, claim 1 does not place any limitations on the nature of the data signal. Finally, whilst the appellant apparently equates "dialling" only with setting up a voice channel, i.e. the last part of a call establishment process, the skilled reader normally would understand dialling to include call signalling steps for "ringing" the called device. The term "dialling" as used here is thus in any event unclear.

2.7 Consequently, claim 1 is neither clear nor supported by the description, contrary to Article 84 EPC.

3. **Main request** - claim 1 - inventive step (Articles 52(1) and 56 EPC)

3.1 In view of the relevance of this issue to admittance of the auxiliary requests (see points 4 and 5 below), the board also makes comments with respect to inventive step.

3.2 As regards inventive step, the appellant argues that features c1 to c3, d2 and d3 are not disclosed or rendered obvious by the disclosure of **D2**.

3.3 Re **features d2 and d3**:

3.3.1 In view of the objections under Article 84 EPC (see point 2 above), these features are interpreted broadly as embracing a conventional call signalling process, i.e. a second "dialling" step is not taken into account and step d3 is interpreted as meaning that a voice channel is established once the call has been answered. With respect to feature d2, a conventional call setup

message, e.g. to a mobile phone, is also a digital message, and a call is accepted using digital messages. This is also the case with common SS7 signalling messages. Features d2 and d3 therefore do not contribute to inventive step.

- 3.3.2 The appellant argued that the advantage of features d2 and d3 with respect to the method disclosed in D2 was that during call setup via digital messages as claimed, no voice channel was established and thus no dialling tone was audible to the call participants.

This argument is however unconvincing because conventional call signalling in the context of D2 would not lead to a dialling tone heard by either of the call participants, since when the second device (in D2, the "third" device) is called, it is not yet connected to the original call (cf. page 2, right-hand column, last five lines and page 3, left-hand column, lines 1-3).

#### 3.4 Re **features c1 to c3**

- 3.4.1 For the sake of argument, features c1 to c3 are interpreted to mean that the "user profile" contains a single dedicated number for "device switch requests". D2 discloses only an "address book" with a plurality of numbers, whereby the user has to indicate either a name or a number to be used for a device switch request.

- 3.4.2 The appellant argued that the technical effects of features c1 to c3 as compared with D2 was that it was not necessary to speak a name or number and that mixing up of numbers or names could thus be avoided. Moreover, the instruction to switch devices was not audible.

3.4.3 However it is noted that in D2, the instruction to transfer the call (cf. feature b of present claim 1) may be sent by means of *out-of-band signalling* (cf. paragraph [0023]), and thus by means of a non-audible digital signal. Possible instructions sent as voice commands are "transfer the call to my mobile phone" (*idem*) or "call Susan on mobile phone" (cf. page 3, left-hand column, lines 8-12), neither of which includes the number as part of the instruction. Hence, a digital instruction would not need to include a specific number either.

3.5 Consequently, the objective technical problem to be solved by claim 1 on the basis of features c1 to c3 can be considered as *how to improve the process for initiating a device switch request in order to avoid mix-ups when identifying the second device.*

3.6 It is firstly self-evident that mix-ups would be less likely if always the same second device is used for device switch requests, at the cost of a loss of flexibility. However, in accordance with case law (cf. e.g. T 119/82, Reasons 16), a change to a simpler solution accepting a foreseeable disadvantage does not involve an inventive step. A further well-known solution to the problem of avoiding mix-ups resulting from entering the wrong number commonly known at the priority date of the application was the use of a dedicated "speed-dialling" key to initiate a call.

Thus, the skilled person would have implemented this solution without requiring inventive skill since a speed-dialling key is faster and much simpler to use than entering a name or a number. It would be further obvious that the speed-dialling key signal can be mapped to the called number either in the calling



terminal or in the server, the latter being all the more obvious given that in D2 the server ("communication node 56") is already adapted to perform call-number lookup using the address book of the user. This obviously requires the number of the second device to be pre-stored in the communication node for device switch requests emanating from the speed-dialling key, i.e. a user profile as claimed. Features c1 to c3 therefore do not contribute to inventive step either.

3.7 Consequently, insofar as claim 1 can be meaningfully interpreted, its subject-matter does not involve an inventive step (Articles 52(1) and 56 EPC).

4. **Auxiliary request 1 - admittance (Article 13(1) and (2) RPBA 2020)**

4.1 Auxiliary request 1 was filed after notification of the summons to the oral proceedings before the board. Irrespective of whether the conditions of Article 13(2) RPBA 2020 are fulfilled in the present case, amendments to a party's case can normally only be admitted after it has filed its statement of grounds of appeal if the amendments *prima facie* overcome objections raised by the board and do not give rise to new objections (Article 13(1) RPBA 2020).

4.2 Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that some features have been deleted and some added. The number of amendments, including changes of terminology, introduce new problems in that all amendments have to be checked for compliance with the requirements of Articles 84 and 123(2) EPC, whereby at least one amendment, *prima facie*, does not comply with Article 123(2) EPC. In this respect, the initiation of the device switch request

"according to a predefined manner associated with requesting a device switch" is said to be disclosed in paragraphs [0061], [0069] and [0074] of the published application. However, there the "predefined manner" is limited to operation of a keypad rather than to a "device switch request". An unallowable intermediate generalisation has therefore resulted.

- 4.3 The appellant considered that auxiliary request 1 should be admitted as it overcame the objections pursuant to Article 84 EPC raised by the board above.

The board however does not agree. In this respect, the nature of the "call setup request data signal inquiring whether the second telephony device will accept the call" is still unclear given that the appellant argues that this is completely different from a conventional call setup signal "ringing" a device, although claim 1 as amended apparently still embraces conventional call signalling (see following point 4.4).

- 4.4 The board also held that claim 1 of the main request did not comply with the requirement for an inventive step when interpreting this claim broadly to embrace conventional call setup signalling, i.e. without there being a second "dialling" step (see above point 3.3). Since claim 1 of auxiliary request 1 essentially differs from claim 1 of the main request in that this dialling step has now been deleted, there was also no prospect that the objection of lack of inventive step would be overcome.

- 4.5 For the above reasons, auxiliary request 1 was not admitted into the proceedings (Article 13(1) RPBA 2020).

5. **Auxiliary request 2** - admittance (Article 13(1) and (2) RPBA 2020)

5.1 Auxiliary request 2 likewise was filed after notification of the summons to the oral proceedings before the board. Points 4.1 to 4.3 and 4.5 above apply, *mutatis mutandis*, to auxiliary request 2.

5.2 In addition, the feature relating to the "device swap menu option" introduced into claim 1 is claimed for the first time and is taken from paragraph [0070] of the description and Fig. 7B. Thus, arguably a *fresh case* as regards inventive step has arisen. If the applicant had wished to base a claim on this aspect, then such a claim could and should have been submitted during the examination proceedings. That notwithstanding, communication devices with menu-driven call selection were commonly known at the filing date of the application (2007) and thus the amendments, *prima facie*, could not apparently overcome the objection of lack of inventive step.

5.3 For the above reasons, auxiliary request 2 was not admitted into the proceedings either (Article 13(1) RPBA 2020).

6. *Remittal (Article 111(1) EPC)*

As there is no allowable claim request on file, or any request which might form a basis for an allowable claim, there are no "special reasons" for remitting the case to the examining division for further prosecution under Article 111(1) EPC and Article 11 RPBA 2020. The appellant moreover provided no reasons as to why the case should be remitted. The auxiliary request for remittal of the case is therefore refused.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated