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**Datasheet for the decision
of 30 June 2020**

Case Number: T 2735/18 - 3.5.03

Application Number: 07841506.4

Publication Number: 2095617

IPC: H04M1/725

Language of the proceedings: EN

Title of invention:

Multimedia distribution using a near field communication capable wireless communication device

Applicant:

Sony Ericsson Mobile Communications AB

Headword:

NFC-based multimedia distribution/SONY ERICSSON

Relevant legal provisions:

RPBA Art. 12(4)

EPC Art. 123(2)

Keyword:

Admission into the appeal proceedings - main and first auxiliary request (no): "fresh case"
Added subject-matter - second and third auxiliary requests (yes)

Decisions cited:

T 0824/06



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2735/18 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 30 June 2020

Appellant: Sony Ericsson Mobile Communications AB
(Applicant) Nya Vattentornet
221 88 Lund (SE)

Representative: Banzer, Hans-Jörg
Kraus & Weisert
Patentanwälte PartGmbH
Thomas-Wimmer-Ring 15
80539 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 6 July 2018
refusing European patent application
No. 07841506.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: J. Eraso Helguera
J. Geschwind

Summary of Facts and Submissions

- I. The appeal was lodged against the decision of the examining division refusing the present European patent application for added subject-matter (Article 123(2) EPC) and for lack of novelty (Articles 52(1) and 54 EPC).
- II. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of either of a **main request** and a **first auxiliary request**, both filed with their statement of grounds of appeal, or, in the alternative, on the basis of the claims of either of the **second and third auxiliary requests** subject to the impugned decision. In addition, oral proceedings to be held by videoconference were requested as an auxiliary measure.
- III. In a preliminary opinion under Article 15(1) RPBA 2020 accompanying the summons to oral proceedings to be conducted by videoconference, the board indicated that the main request and the first auxiliary request were not admissible under Article 12(4) RPBA 2007 and that the second and third auxiliary requests were not allowable under Article 123(2) EPC.
- IV. In their submission dated 19 June 2020, the appellant stated that "the applicant and the representative will not attend the oral proceedings scheduled for 3 July 2020".
- V. The board then cancelled the oral proceedings arranged as a videoconference.
- VI. Claim 1 of the **main request** reads:

"A wireless communication device (10) comprising:
a Near Field Communication (NFC) interface (30)
configured to receive data related to multimedia
content from an external NFC tag (46) responsive to
establishing a first NFC link with the NFC
tag (46), the data comprising one or more Uniform
Resource Locators, URLs;
a transceiver (32, 34) configured to communicate with a
multimedia server (68, 110) via a communication
network; and
a controller (24) configured to establish a
communication link with the multimedia server (68,
110) based on the received data, and to control the
multimedia server (68, 110) to download information
associated with the multimedia content, the
multimedia content comprising an application
program."

Claim 1 of the **first auxiliary request** reads
(amendments vis-à-vis claim 1 of the main request
indicated by the board):

"A wireless communication device (10) comprising:
a long-range transceiver circuit connected to an
antenna,
a Near Field Communication (NFC) interface (30)
configured to receive data related to multimedia
content from an external NFC tag (46) of an active
NFC device responsive to establishing a first NFC
link with the NFC tag (46), the data comprising one
or more Uniform Resource Locators, URLs;
a transceiver (32, 34) configured to communicate with a
multimedia server (68, 110) via a communication
network; and
a controller (24) configured to establish a

communication link with the multimedia server (68, 110) based on the received data, and to control the multimedia server (68, 110) to download the multimedia content via a long-range cellular communications link, the multimedia content comprising an application program."

Claim 1 of the **second auxiliary request** reads:

"A wireless communication device (10) comprising:
a Near Field Communication (NFC) interface (30)
 configured to receive data related to multimedia content from an external NFC tag (46) responsive to establishing a first NFC link with the NFC tag (46);
a transceiver (32, 34) configured to communicate with a multimedia server (68, 110) via a communication network; and
a controller (24) configured to establish a communication link with the multimedia server (68, 110) based on the received data, and to control the multimedia server (68, 110) to download information associated with the multimedia content,
 wherein the controller (24) is configured to control the multimedia server (68, 110) to download the information associated with the multimedia content to a user-specified destination device,
 wherein the user-specified device comprises a home entertainment system (70) connected to the multimedia server (68, 110) via the Internet,
 wherein the controller (24) is further configured to automatically generate a control signal to send a user profile to the multimedia server, wherein the user profile comprises an IP address associated with a destination component in the home entertainment system (70)."

Claim 1 of the **third auxiliary request** reads
(amendments vis-à-vis claim 1 of the second auxiliary
request indicated by the board):

"A wireless communication device (10) comprising:
a Near Field Communication (NFC) interface (30)
configured to receive data related to multimedia
content from an external NFC tag (46) responsive to
establishing a first NFC link with the NFC
tag (46);
a transceiver (32, 34) configured to communicate with a
multimedia server (68, 110) via a communication
network; and
a controller (24) configured to establish a
communication link with the multimedia server (68,
110) based on the received data, and to control the
multimedia server (68, 110) to download information
associated with the multimedia content,
wherein the controller (24) is configured to control
the multimedia server (68, 110) to download the
information associated with the multimedia content
to a user-specified destination device,
wherein the user-specified device comprises a home
entertainment system (70) connected to the
multimedia server (68, 110) via the Internet,
wherein the controller (24) is further configured to
automatically generate a control signal to send a
user profile to the multimedia server and prompting
the multimedia server (68, 110) to directly send
the multimedia content to the home entertainment
system, wherein the user profile comprises an IP
address associated with a destination component in
the home entertainment system (70)."

Reasons for the Decision

1. MAIN REQUEST

Claim 1 of the **main request** comprises the following limiting features (board's outline):

- (a) A wireless communication device comprising:
- (b) an NFC interface configured to receive data related to multimedia content from an external NFC tag responsive to establishing a first NFC link with the NFC tag,
- (c) the data comprising one or more URLs;
- (d) a transceiver configured to communicate with a multimedia server via a communication network;
- (e) a controller configured to establish a communication link with the multimedia server based on the received data, and to control the multimedia server to download information associated with the multimedia content,
- (f) the multimedia content comprising an application program.

1.1 Admission into the appeal proceedings (Article 12(4) RPBA 2007)

1.1.1 Claim 1 of the present main request is allegedly based on claim 1 of the first auxiliary request underlying the impugned decision and further includes feature (f) specifying that the multimedia content comprises an application program.

1.1.2 In accordance with Article 12(4) RPBA 2007, the board has the power to hold inadmissible requests which could have been presented in the first-instance proceedings.

1.1.3 The board notes that the appellant's argumentation on novelty or inventive step is exclusively based on feature (f) as arguably distinguishing the subject-matter of claim 1 of the present main request from document **D1**. Instead of challenging the decision of the examining division with respect to the first auxiliary request underlying that decision, the appellant creates a "fresh case", thereby compelling the board to give a first ruling on this issue, contrary to the purpose of appeal proceedings which is to give a judicial review on the correctness of a decision of a first-instance department (Article 12(2) RPBA 2020). Such amendments could and should have been filed before the examining division, the latest opportunity being during the first-instance oral proceedings that the appellant refrained from attending.

1.2 In view of the above, the board decides not to admit the main request into the appeal proceedings (Article 12(4) RPBA 2007).

2. FIRST AUXILIARY REQUEST

Claim 1 of the **first auxiliary request** differs from claim 1 of the main request essentially in that it further specifies that (board's underlining):

- (g) the wireless device also comprises a long-range transceiver circuit connected to an antenna,
- (h) the external NFC tag is a tag of an active NFC device;
- (i) the multimedia content is downloaded via a long-range cellular communications link.

2.1 *Admission into the appeal proceedings (Article 12(4) RPBA 2007)*

2.1.1 Claim 1 of the first auxiliary request also includes feature (f).

2.1.2 Hence, at least for the reasons set out above for the main request, the first auxiliary request is not admitted into the appeal proceedings either (Article 12(4) RPBA 2007).

3. SECOND AUXILIARY REQUEST

Claim 1 of the **second auxiliary request** differs from claim 1 of the main request in that it no longer includes feature (c) and further specifies that (board's underlining):

(j) the information associated with the multimedia content is downloaded to a user-specified destination device;

(k) the user-specified device comprises a home entertainment system connected to the multimedia server via the Internet;

(l) the controller is further configured to automatically generate a control signal to send a user profile to the multimedia server;

(m) the user profile comprises an IP address associated with a destination component in the home entertainment system.

3.1 *Claim 1 - Added subject-matter (Article 123(2) EPC)*

3.1.1 The examining division held in the impugned decision that feature (m) was not directly and unambiguously disclosed in the application as filed. More

specifically, the examining division held that it was not disclosed on page 8, lines 10-32 of the application as filed, provided by the appellant as basis for this feature.

3.1.2 The appellant submitted that "user information" or "personal information" was explained as possibly including the IP address associated with a destination device in the home entertainment system. Whilst this explanation of the "user information" was placed in the same sentence as that describing the "manual provision", it was directly and unambiguously clear from the overall disclosure that this explanation of "user information" was also valid for the "automatic provisioning" scenario: the original description as filed then went on to indicate, in the next sentence, that the "user profile" containing information specific to the user might be sent as a control signal to the server – in which case it could also be stored in the memory. Hence, page 8, third paragraph, of the original description included an explicit teaching that the personal information might either be input by the user manually or be stored in the memory.

3.1.3 The board is not convinced. There is no unambiguous disclosure that would lead the skilled person to understand that the user profile, which might be stored in memory 28 or at a server 68 and contains "information specific to the user" must necessarily contain the same "personal information" that would be otherwise manually entered by the user in the alternative embodiment. The issue at stake is not whether it would be reasonably plausible to store in the user profile an IP address associated with a destination component in the home entertainment system, but rather whether this possibility is directly and

unambiguously disclosed (see e.g. T 824/06, Reasons, point 3.5). The board agrees with the examining division in that the IP address associated with a destination component in the home entertainment system, if needed, can be obtained by other means and has not to be stored in the user profile.

3.2 Hence, claim 1 of the second auxiliary request comprises subject-matter which extends beyond the content of the application as filed. Thus, the second auxiliary request is not allowable under Article 123(2) EPC.

4. THIRD AUXILIARY REQUEST

4.1 *Claim 1 - Added subject-matter (Article 123(2) EPC)*

4.1.1 Given that claim 1 of the **third auxiliary request** includes feature (m), this claim also comprises subject-matter which extends beyond the content of the application as filed for the same reasons as set out above for the second auxiliary request.

4.1.2 Hence, the third auxiliary request is likewise not allowable under Article 123(2) EPC.

5. As there is no allowable claim request, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated