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Datasheet for the decision of 6 December 2022

Case Number: T 2879/18 - 3.5.01

Application Number: 07109405.6

Publication Number: 2000961

IPC: G06Q10/00

Language of the proceedings: EN

Title of invention:
Proximity-dependent events

Applicant:
BlackBerry Limited

Headword:
Proximity-dependent reminders/BLACKBERRY

Relevant legal provisions:
EPC Art. 56, 84
RPBA Art. 12(4)
RPBA 2020 Art. 13(2)

Keyword:
Inventive step - the automatic conversion of a proximity-dependent reminder into a time-dependent one (no - not technical) - detecting that two mobile devices are nearby using ultra wideband radio (no - obvious)

Decisions cited:
T 0641/00

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Case Number: T 2879/18 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 6 December 2022

Appellant: (Applicant)	BlackBerry Limited 2200 University Avenue East Waterloo, ON N2K 0A7 (CA)
Representative:	MERH-IP Matias Erny Reichl Hoffmann Patentanwälte PartG mbB Paul-Heyse-Strasse 29 80336 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 23 July 2018 refusing European patent application No. 07109405.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	W. Chandler
Members:	W. Zubrzycki
	L. Basterreix

Summary of Facts and Submissions

I. This is an appeal against the decision of the examining division to refuse European patent application No. 07109405.6 for lack of inventive step and added subject-matter (Articles 56 and 123(2) EPC).

II. The examining division held that the main request and first and second auxiliary requests contained added subject-matter and did not involve an inventive step over D1 (US 2005/0273493 A1), especially considering disclosures of D2 (WO 2006/108034 A2) and D4 (US 2007/073810 A1).

III. In the statement setting out the grounds of appeal, the appellant requested that the decision be set aside and a patent be granted on the basis of the refused main or first or second auxiliary request, or a new third or fourth or fifth auxiliary request, all submitted therewith.

IV. In the communication accompanying the summons to oral proceedings, the Board set out its preliminary opinion that all requests *inter alia* lacked inventive step over D1 (Article 56 EPC). Furthermore, the Board introduced the background document D5 (Wikipedia entry: "Bluetooth", published on 25 January 2007) into the proceedings under Article 114(1) EPC.

V. With a letter dated 26 October 2022, the appellant filed new sixth to eleventh auxiliary requests and provided arguments in favour of their allowability.

VI. The oral proceedings per videoconference took place on 6 December 2022. The appellant's final requests were

that the decision be set aside and a patent be granted on the basis of the main or the first to fifth auxiliary request filed with the statement setting out the grounds of appeal, or the sixth to eleventh auxiliary request filed with the letter dated 26 October 2022. At the end of the oral proceedings the Chairman announced the decision.

VII. Claim 1 of the main request reads:

"*A method for generating time-dependent events in a calendar application of a first portable electronic device (12), said method comprising:*

detecting at said first portable electronic device (12) that a second portable electronic device (14) is within range (16) of said first portable electronic device (12);

generating a reminder alert on said first portable electronic device (12); said reminder alert corresponding to a proximity-dependent event generated using said calendar application, said proximity-dependent event having a person field and a device ID field; said device ID field identifying said second portable electronic device (14); said reminder alert indicating that said second portable electronic device (14) is within said range (16);

in response to the generation of said reminder alert, prompting for input of a type of a new time-dependent event;

in response to user input identifying the type of the new time-dependent event, creating the new time-dependent event,

populating said new time-dependent event with information from the proximity-dependent event; and

deleting said proximity-dependent event once population of said corresponding fields in said new

time-dependent event has been successfully performed."

VIII. Claim 1 of the first auxiliary request replaces:

- the first feature by the following one:
"*detecting, using a short-range radio of the first portable electronic device (12), at said first portable electronic device (12) that a second portable electronic device (14) is within communication range (16) of said first portable electronic device (12);*"

- the term "*range*" at the end of the second feature with "*communication range*"

IX. Claim 1 of the second auxiliary request adds to claim 1 of the main request the following two features after the second feature:
" *receiving, at the first portable electronic device (12), a data record of a public calendar of said second portable electronic device (14);*
displaying said data record at said first portable electronic device (12);"

X. Claim 1 of the third, fourth and fifth auxiliary requests differ from claim 1 of the main, first and second auxiliary requests respectively, in that the third feature does not include the qualification "*in response to the generation of said reminder alert*".

XI. Claim 1 of the sixth auxiliary request adds to claim 1 of the main request that the first and second portable electronic devices are "*of a first/second user*", respectively, and qualifies the third feature by *"wherein said time-dependent event is a meeting to which the second user is invited or an appointment to*

which the second user is not invited".

XII. Claim 1 of the seventh to eleventh auxiliary requests differ from claim 1 of the sixth auxiliary request as follows:

(a) Claim 1 of the seventh auxiliary request replaces the wordings "*range of*" and "*range*" in the first and second features with "*a predefined distance from*" and "*predefined distance*" respectively.

(b) Claim 1 of the eighth auxiliary request replaces:

- the first feature with the following one: *"detecting, using a short-range radio frequency technology of the first portable electronic device (12), at said first portable electronic device (12) that a second portable electronic device (14) of a second user is within a short-range radio frequency communication range (16) of said first portable electronic device (12); (12), the short-range radio frequency technology being ultra wideband;*"

- the term "*range*" in the second feature with "*short-range radio frequency communication range*".

(c) Claim 1 of the ninth auxiliary request replaces:

- the first feature with the following one: "*detecting, using a short-range technology of the first portable electronic device (12), at said first portable electronic device (12) that a second portable electronic device (14) of a second user is within a line-of-sight communication range (16) of said first portable electronic device (12), the short-range technology being infrared wireless*".

- the term "*range*" in the second feature with "*line-of-sight communication range*".

(d) Claim 1 of the tenth auxiliary request adds the following features after the second feature:

" *receiving, at the first portable electronic device (12), a command to enable displaying a data record of a public calendar of said second portable electronic device (14);*

displaying said public calendar at said first portable electronic device (12);"

(e) Claim 1 of the eleventh auxiliary request additionally incorporates into claim 1 of the tenth auxiliary request the amendment from "*range*" to "*predefined distance*" as in (a).

XIII. The appellant argued as follows:

D1 did not disclose time-dependent reminders and proximity-dependent events involving two users. In D1, reminders were triggered by the user's presence at a location.

D1 disclosed at paragraphs [19], [23] and [24] that a central reminder management system determined the proximity of mobile devices and sent reminder messages to those devices. Furthermore, in D1, all communication went through the central reminder management system and there was no need for the direct communication link between the mobile devices. Accordingly, D1 taught away from the invention.

The automatic population of the time-dependent events reduced the required user input and, therefore, saved computing resources and battery power. It also cut down wear and tear of the user's portable device. These were technical effects.

The display of the second user's calendar to the first user provided the technical advantage that the first user did not disturb the second one unnecessarily.

Reasons for the Decision

1. The invention

Calendar applications normally store and remind a user about meetings and appointments at specific times, called "time-dependent events" in the application. The invention concerns a new feature for a mobile calendar application which enables the user to define an event that is triggered when a specified second user gets close enough to the first user to discuss some subject, called "proximity-dependent event". Various details entered about the proximity-dependent event can be subsequently automatically copied into a conventional time-based calendar event (original application, [29] to [31]).

Looking at Figure 7, the proximity-dependent event, created by the first user, includes an ID field indicating the unique signature of the second user's portable device ([26]) and a subject field indicating the issue to be discussed ([29], last sentence).

Once the proximity-dependent event has been created, the first user's portable device determines

automatically whether the second portable device is close to it, and if so, it notifies the user, see [27]. In an embodiment claimed by the eighth auxiliary request, the second portable device is detected using ultra wideband range radio technology ([16], [27] and [40]).

Having met with the second user, the calendar application enables the first user to create a time-based follow-up event if there is a need for further action or discussion on the subject ([30]). This can be a meeting with the second user or an appointment which does not require the presence of the second user ([31] and [33]). The calendar application automatically copies the proximity-dependent reminder's subject to the time-based reminder and, in the case of a meeting, it sets the second user as the attendee ([31] and [34]). Having populated the time-based reminder with all required information, the calendar application saves it and deletes the proximity-dependent reminder ([35]).

2. Admittance

2.1 The Board admits the third to fifth auxiliary requests into the proceedings under Article 12(4) RPBA 2007, because they are *a bona fide* attempt to overcome an objection under Article 84 EPC raised in the decision.

2.2 The Board admits the sixth to eighth and tenth to eleventh auxiliary requests into the proceedings under Article 13(2) RPBA 2020. These requests are a *bona fide* attempt to overcome clarity objections raised by the Board for the first time. These are exceptional circumstances in the sense of Article 13(2) RPBA 2020. Furthermore, the requests do not present the Board with

any new complex issues.

2.3 The Board does not admit the ninth auxiliary request into the proceedings under Article 13(2) RPBA 2020.

Like the above auxiliary requests, this request addresses the clarity objections raised by the Board. However, contrary to Article 13(1) RPBA 2020, it is not *prima facie* clear that amendments made comply with the requirements of Article 123(2) EPC.

More particularly, the disclosed embodiment of the claimed invention uses short-range radio technology only, see paragraphs [25], [27] and [40]. Although paragraph [16] of the published application mentions that portable electronic devices might use infrared technology, it does not indicate for what purpose this technology is used. Thus, it is not *prima facie* clear and would have to be carefully examined whether the use of infrared technology for proximity detection is directly and unambiguously derivable from the application.

3. The Board finds it convenient to analyse the eighth and eleventh auxiliary requests, which define the invention most narrowly, first.

4. Eighth auxiliary request, Article 56 EPC

4.1 It is common ground that D1 is the closest prior art.

The Board considers that claim 1 differs from D1 (lettering added by the Board):

A) By prompting for input of a type of a new time-dependent event in response to the generation of a

proximity-dependent reminder alert which is a meeting to which the second user is invited or an appointment to which the second user is not invited.
B) By creating, in response to this input, the new time-dependent event and populating it with information from the proximity-dependent event.
C) In that the proximity-dependent event is deleted automatically once the population has been successfully performed, as opposed to manual deletion of proximity-dependent reminders in D1.
D) By detecting, using a short-range radio frequency technology of the first portable electronic device (12), at said first portable electronic device (12) that a second portable electronic device (14) of a second user is within a short-range radio frequency communication range (16) of said first portable electronic device (12), the short-range radio frequency technology being ultra wideband (feature in point XII, (b), above).
E) In that the reminder alert indicates that said second portable electronic device (14) is within said short-range radio frequency communication range (16), whereas the system of D1 does not use short-range radio technology for proximity detection (feature in point XII, (b), above).

4.2 Features A to C were considered novel by the examining division (decision, point 12.2.3). The appellant argued that there were further distinguishing features which the examining division overlooked, namely (see Section XIII, above):
- Time-dependent events.
- Proximity-dependent reminders, especially involving two users, as opposed to location-dependent reminders.

4.3 The Board judges that D1 discloses the first feature. Paragraph [23] discloses a calendar application coupled to a personal calendar. It is implicit that such an application manages some kind of time-dependent events. What D1 does not disclose is the automatic creation and population of such time-dependent events, as stated by the examining division.

4.4 As regards the second feature, paragraph [22] discloses that mobile devices provide users' locations to the central reminder management system which detects that they are close to one another. According to paragraph [23] a proximity-dependent reminder message is provided to a mobile device when the system detects that the proximity condition in the reminder is fulfilled. The Board judges that taken together these paragraphs implicitly disclose that the provision of a proximity-dependent reminder message is triggered by the closeness between two users' mobile devices.

4.5 Like the examining division (decision, point 12.2.5), the Board judges that using a proximity-dependent reminder for populating a time-based appointment or meeting, and then deleting it is a business idea. Using the COMVIK approach (see decision T 641/00), this idea is given to the skilled person as a requirement specification to implement. The distinguishing features follow directly from this requirement specification.

4.6 Incidentally, providing a reminder upon establishing that the user is close to another user is also a non-technical feature. Thus, even if it were novel over D1, it would still have been obvious for the same reasons as features A to C. Furthermore, it does not really matter whether the calendar application of D1 supports time-dependent events or not. Since the

requirement specification dictates that the time-dependent events should be created, the skilled person would have arrived at the claimed invention either way.

Accordingly, even assuming, in line with the appellant's arguments, that the features mentioned in point 4.2 above are novel, the outcome of the inventive step assessment would still be negative.

4.7 Contrary to the appellant's argument, the reduction of user input does not seem to be achieved over D1. In fact, due to the creation of time-dependent reminders, the claimed calendar application uses more computing resources than the one according to D1 which does not create such reminders. Furthermore, even assuming that this effect were provided, it would not result from technical considerations, but rather from the above-mentioned non-technical requirement that is given to the skilled person to implement for non-technical reasons. Thus, it would be at most a bonus effect which does not confer technical character upon the business idea set out in point 4.5 above (see Case Law of the Boards of Appeal, 10th ed., 2022, 1.D.10.8).

4.8 As regards features D and E, in the written proceedings the problem solved by the use of a short-range radio was seen as how to detect the proximity of another mobile device in areas not covered by WLAN and mobile networks. At the oral proceedings, the appellant argued that in the system of D1 the reminders were provided to the mobile devices by the central reminder management system. This implied that there was no point in detecting another device when the connection to this system was not available, as in this situation, no reminder could be generated.

The Board accepts the appellant's reading of D1 and considers that the above problem is indeed incorrect. The correct technical problem is rather to find a suitable alternative for determining that two mobile devices are close to one another.

The Board judges that starting from D1 and faced with this problem, it would have been obvious to use a mobile device's ultra wideband radio to detect that another mobile device was in the vicinity. Mobile devices equipped with ultra wideband radios were common at the priority date, as shown by Wikipedia entry D5 for example (see D5, page 5, sixth and seventh paragraphs).

The mobile device would then indicate this to the central reminder management system. The latter could then respond with a reminder message, if a reminder concerning the two devices had been previously stored. This is covered by the claim which does not exclude that the reminder is provided to the first portable device by an external entity.

4.9 Hence, claim 1 lacks an inventive step (Article 56 EPC).

5. Eleventh auxiliary request, Article 56 EPC

5.1 Claim 1 of the eleventh auxiliary request, like claim 1 of the eighth auxiliary request is based on claim 1 of the sixth auxiliary request (see point XII, (d) and (e), above). However, the detecting features D and E, discussed above revert to those of the sixth auxiliary request and the main request, but with "range" replaced by "predefined distance" (see point XII, (e), above). It also adds the following feature:

F) receiving, at the first portable electronic device (12), a command to enable displaying a data record of a public calendar of said second portable electronic device (14) and displaying said data record at said first portable electronic device (12) (see point XII, (d), above).

In the Board's judgement, showing the first user the public calendar of the second user is a further part of the business requirement specification given to the skilled person to implement. Contrary to the appellant's view, the advantage that the first user does not disturb the second one unnecessarily is manifestly of a business nature. Although transmitting the calendar record to the first portable device upon request is part of the technical implementation, it is obvious.

5.2 Apart from the fact that it is not clear what technical means are used for detecting that the second portable device is within a predetermined distance from the first portable device, the Board considers that the detecting features are broader than features D and E, discussed above, because the expression "*predefined distance from said first electronic device*" includes the ultra wideband radio's range of this device. Hence, these features lack an inventive step for the reasons given in connection with the eighth auxiliary request.

5.3 Hence, claim 1 lacks an inventive step (Article 56 EPC).

6. Main request, first to seventh and tenth auxiliary requests

Apart from the fact that as in connection with the

"predetermined distance" in claim 1 of the eleventh auxiliary request, it is not clear in claim 1 of the lower ranking requests what technical means are used for detecting that a second portable device is within range of the first portable device, the main request and first to seventh and tenth auxiliary requests lack an inventive step (Article 56 EPC) for the following reasons:

- As mentioned above, claim 1 of the eleventh auxiliary request builds on claim 1 of the main, sixth and tenth auxiliary requests, which are therefore all broader. The expression "*range of said first portable device*" includes the ultra wideband radio's range. Thus, this feature is obvious for the reasons given in connection with the eighth auxiliary request.
- Claim 1 of the first and fourth auxiliary requests build on the main request and refer to "communication range of the said first portable device" (see points VIII and X, above). The claims are broader than claim 1 of the eighth auxiliary request.
- Claim 1 of the second and fifth auxiliary requests build on the main request and add the calendar feature of the eleventh auxiliary request (see points IX and X, above), but are broader.
- Claim 1 of the third auxiliary request is broader than claim 1 of the main request (see point X, above).
- Claim 1 of the seventh auxiliary request builds on the sixth auxiliary request (see point XII, (a), above), but is broader than claim 1 of the eleventh auxiliary request.

7. Since none of the appellant's requests are allowable, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek W. Chandler

Decision electronically authenticated