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Reference SJP/FP6724736	Application No./Patent No. 09731146.8 - 2225 / 2272259 PCT/US2009039754
Applicant/Proprietor Koss Corporation	

Communication

The extended European search report is enclosed.

The extended European search report includes, pursuant to Rule 62 EPC, the supplementary European search report (Art. 153(7) EPC) and the European search opinion.

Copies of documents cited in the European search report are attached.

0 additional set(s) of copies of such documents is (are) enclosed as well.

Refund of the search fee

If applicable under Article 9 Rules relating to fees, a separate communication from the Receiving Section on the refund of the search fee will be sent later.



Bose Exhibit 1011 Bose v. Koss

Datum
Date cf Form 1507
Date

Blatt
Sheet 1
Feuille

Anmelde-Nr:
Application No: 09 731 146.8
Demande n°:

The examination is being carried out on the **following application documents**

Description, Pages

1-21 as published

Claims, Numbers

1-23 filed with entry into the regional phase before the EPO

Drawings, Sheets

1/16-16/16 as published

1 Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure.

US 2007/165875 A1 (REZVANI BEHROOZ [US] ET AL) 19 July 2007 (2007-07-19)

WO 2007/139578 A1 (SONY ERICSSON MOBILE COMM AB [SE]; BLOEBAUM L SCOTT [US]; LIU CHARLES) 6 December 2007 (2007-12-06)

US 2007/049198 A1 (WALSH SCOTT [GB] ET AL) 1 March 2007 (2007-03-01)

Unallowable amendments. Article 123(2) EPC:

2 Claims 1-23 filed with the entry into the regional phase before the EPO introduces subject-matter which extends beyond the content of the application as originally filed, contrary to Article 123(2) EPC.

2.1 In claim 1, the data transmitted to the data source regarding the one or more detected infrastructure wireless network comprises **identification data** and **signal strength**. The corresponding originally filled description, see Pag. 12 Line 24 - Pag. 13 Line 6, appears indeed to teach that is transmitted **identification data** (ID) of the infrastructure wireless network, Pag. 12 Line 34. However no information regarding the **signal strength** is transmitted but only locally evaluated at the earphone side or at the data source side.

2.2 The dependencies of the claims filed with the entry into the regional phase before the EPO were dramatically changed with respect to the originally filed claims and the examiner did not find that the newly combination so achieved was disclosed into the originally filed application. Therefore the Applicant is requested to revert to the original dependencies, or if considers to maintain some of them in believing that the

EPO Form 1703 01.91TRI

newly achieved combination can be unambiguously derived from the originally filed application documents, if any, than is invited to file explanation in supporting any of the modified dependencies.

Some of the modified dependencies:

- claims 4, 5, 6, 11 were originally dependent only on claim 1,
- claims 7, 8 were originally dependent only on claim 6,
- claims 13, 14, 15 were originally dependent only on claim 12,
- claim 16 was originally dependent only on claim 13,
- claims 18, 19 were originally dependent only on claim 11.

2.3 As with respect to claims 14 and 15, beyond the fact that their dependencies were dramatically changed, now any of them is a "doubled" claim referring either to a system or to an earphone, thus giving rise to a clarity objection, Article 84 EPC.

Lack of Clarity, Article 84 EPC:

3 The application does not meet the requirements of Article 84 EPC, because claims 1-23 are not clear.

3.1 The earphone of claim 1 appears to receive digital audio data from the data source via an ad hoc wireless network without to establish in advance such a network, e.g. to "establish an ad hoc wireless network". For clarity such an extra feature should be added in claim 1.

Similarly, data regarding the infrastructure wireless network is transmitted to the data source without explicitly defining that such an existing infrastructure network is detected in advance, e.g. "detect existing infrastructure wireless networks".

3.2 The "pre-set infrastructure wireless network" of claim 5 was not defined in any of the preceding claims prior to be used.

This said "pre-set infrastructure wireless network" appears rather to refer to the said "infrastructure wireless network" of claim 1.

3.3 Independent method claim 20 should clearly correspond to the independent apparatus claim 1. Following the requirement of Article 84 EPC, taken in combination with Rule 43(1) and (3) EPC, any independent claim must contain all the technical features essential to the definition of the invention.

In the present case, since independent method claim 20 is not fully corresponding to the independent apparatus claim 1, is not clear which are those features which are considered to be essential for the definition of the invention, Article 84 EPC.

Lack of Novelty of the Independent Claims, Article 54 (1) and (2) EPC:

4 Document D1 discloses (Fig. 1,2,8,10; Par. 19, 33, 41) a headset which may be connected to a mobile phone or directly to the wi-fi access point or equivalent. The mobile phone (Fig. 8 Ref. 840) is the equivalent of a data source in the sense of claim 1. The data source may transmit audio data to the headset (see e.g. Par 33). Such audio data may be locally stored into the mobile phone, as widely known, or retransmitted from some any other entity.

Essentially, the headset of document D1 is designed to perform a **handoff** between the mobile phone connection and a wi-fi connection or the equivalent. Such a handoff is advantageously performed when the connectivity to one of the peers is becoming weak (e.g. the ad hoc connection with the mobile phone) but not only, the person skilled in the art is well aware of the need or the benefits of the handoffs. When such a handoff is performed, information (e.g. including the ID) regarding a possible used network is exchanged with the communication peer for performing the handoff.

Therefore, the subject-matter of independent apparatus claim 1 and of the corresponding independent method claim 20 is essentially covered by the system of D1 and therefore is considered not new, Article 54 (1) and (2) EPC.

Dependent Claims:

5 Dependent claims 2,3,6-19, 21-23 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the EPC in respect of novelty (claims 2, 3, 6-8, 10-15, 17, 18) or inventive step (claims 9, 16, 19, 21-23). The additional features of the dependent claims are either disclosed in the cited documents D1-D3 or represent straightforward design options when designing corresponding wireless devices.

Positive Opinion:

6 The system of D1 comprises the feature of performing a handoff between an ad hoc wireless connection with a mobile phone and an infrastructure wireless network. Data may be transferred to the earphone either from the mobile phone or from the infrastructure wireless network, e.g. when a handoff is performed during a data transfer via the mobile phone from another data source placed somewhere in the WEB. However, D1 does not teach that the audio data from the data source, i.e. the mobile phone, is redirected to the headphone via the infrastructure wireless network when the ad hoc network connection is lost, i.e. when the connection with the mobile phone is lost.

Therefore the subject-matter of claim 4 appears to be new when the above objections are remedied.

Also the subject-matter of claim 5 appears might be new, provided that the earphone is connected **automatically** (see also Pag. 12 Lines 18-21) to a host server via a second infrastructure wireless network when the data source is not in wireless communication range with the earphone via the ad hoc wireless network and the data source and the earphone are not in wireless communication via said the pre-set infrastructure wireless network.

Is to be mentioned that the apparatus of D1 is designed such that, under the (inter) action of a user, the earphone may be connected to a host server via another available infrastructure wireless network when the other two connections are broken. However, the fact that the earphone **automatically** connect to such a host server in such a case, appears not to be disclosed or suggested in the prior art.

Further aspects:

7.1 When filing amendments, the applicant should clearly identify the amendments made, irrespective of whether they concern amendments by addition, replacement or deletion, and indicate the passages of the application as filed on which these amendments are based (see Guidelines E-II, 1). Care should be taken, not to add subject-matter which extends beyond the content of the application as originally filed (Article 123 (2) EPC).

The applicant should at the same time bring the description into conformity with the amended claims.

7.2 Independent claims are not in the two-part form in accordance with Rule 43(1) EPC, which in the present case would be appropriate, with those features known in combination from the prior art being placed in the preamble (Rule 43(1)(a) EPC) and the remaining features being included in the characterising part (Rule 43(1)(b) EPC).

7.3 To meet the requirements of Rule 42(1)(b) EPC, D1-D4 should be identified in the description and the relevant background art disclosed therein should be briefly discussed.

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