

PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing (day/month/year) **See form PCT/ISA/210**

Applicant's or agent's file reference 2003P18104WO		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/EP2004/050678	International filing date (day/month/year) 03.05.2004	Priority date (day/month/year) 27.11.2003
International Patent Classification (IPC) or both national classification and IPC A45F5/02, H04M1/04		
Applicant SIEMENS AKTIENGESELLSCHAFT		

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I	Basis of this opinion
1.	With regard to the language , this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
<input type="checkbox"/>	This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2.	With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
a.	type of material
<input type="checkbox"/>	a sequence listing
<input type="checkbox"/>	table(s) related to the sequence listing
b.	format of material
<input type="checkbox"/>	in written format
<input type="checkbox"/>	in computer readable form
c.	time of filing/furnishing
<input type="checkbox"/>	contained in the international application as filed.
<input type="checkbox"/>	filed together with the international application in computer readable form.
<input type="checkbox"/>	furnished subsequently to this Authority for the purposes of search.
3.	<input type="checkbox"/> In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4.	Additional comments:

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Box No. II	Priority
1.	<input checked="" type="checkbox"/> The following document has not yet been furnished: <input checked="" type="checkbox"/> copy of the earlier application whose priority has been claimed (Rule 43 <i>bis</i> .1 and 66.7(a)). <input type="checkbox"/> translation of the earlier application whose priority has been claimed (Rule 43 <i>bis</i> .1 and 66.7(b)). Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the claimed priority date.
2.	<input type="checkbox"/> This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43 <i>bis</i> .1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3.	Additional observations, if necessary:

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement																											
<p>1. Statement</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; vertical-align: top;">Novelty (N)</td> <td style="width: 60%;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">Claims</td> <td style="border-bottom: 1px solid black;">1-11</td> <td style="width: 10%; text-align: right;">YES</td> </tr> <tr> <td>Claims</td> <td style="border-bottom: 1px solid black;"> </td> <td style="text-align: right;">NO</td> </tr> </table> </td> <td style="width: 10%;"></td> </tr> <tr> <td style="vertical-align: top;">Inventive step (IS)</td> <td> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">Claims</td> <td style="border-bottom: 1px solid black;"> </td> <td style="width: 10%; text-align: right;">YES</td> </tr> <tr> <td>Claims</td> <td style="border-bottom: 1px solid black;">1-11</td> <td style="text-align: right;">NO</td> </tr> </table> </td> <td></td> </tr> <tr> <td style="vertical-align: top;">Industrial applicability (IA)</td> <td> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">Claims</td> <td style="border-bottom: 1px solid black;">1-11</td> <td style="width: 10%; text-align: right;">YES</td> </tr> <tr> <td>Claims</td> <td style="border-bottom: 1px solid black;"> </td> <td style="text-align: right;">NO</td> </tr> </table> </td> <td></td> </tr> </table>		Novelty (N)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">Claims</td> <td style="border-bottom: 1px solid black;">1-11</td> <td style="width: 10%; text-align: right;">YES</td> </tr> <tr> <td>Claims</td> <td style="border-bottom: 1px solid black;"> </td> <td style="text-align: right;">NO</td> </tr> </table>	Claims	1-11	YES	Claims		NO		Inventive step (IS)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">Claims</td> <td style="border-bottom: 1px solid black;"> </td> <td style="width: 10%; text-align: right;">YES</td> </tr> <tr> <td>Claims</td> <td style="border-bottom: 1px solid black;">1-11</td> <td style="text-align: right;">NO</td> </tr> </table>	Claims		YES	Claims	1-11	NO		Industrial applicability (IA)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">Claims</td> <td style="border-bottom: 1px solid black;">1-11</td> <td style="width: 10%; text-align: right;">YES</td> </tr> <tr> <td>Claims</td> <td style="border-bottom: 1px solid black;"> </td> <td style="text-align: right;">NO</td> </tr> </table>	Claims	1-11	YES	Claims		NO	
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<p>2. Citations and explanations:</p> <p>Reference is made to the following documents:</p> <p style="margin-left: 40px;">D1: WO 00/78011 A (GHASSABIAN FIROOZ) 21 December 2000</p> <p style="margin-left: 40px;">D2: PATENT ABSTRACTS OF JAPAN Vol. 2000, No. 10, 17 November 2000 & JP 2000 209319 A (FUJII HIROSHI) 28 July 2000</p> <p style="margin-left: 40px;">D3: WO 02/19669 A (LEWIS M.; LIGHTWIRE COMM LTD (GB)) 7 March 2002</p> <p style="margin-left: 40px;">D4: WO 02/080503 A (SAYAG ALBAN; RACHEL PHILIPPE (FR); SAYAG ROLAND (FR)) 10 October 2002</p> <p style="margin-left: 40px;">D5: WO 01/15566 A (MANNIO JYRKI) 8 March 2001</p> <p>1. The solution proposed in claim 1 of the present application cannot be regarded as inventive for the following reasons (PCT Article 33(3)):</p> <p>1a. D1 (see, in particular, figures 21-23; page 34, line 8 to page 41, line 4) discloses a communication device (100) with a housing comprising two limbs (page 34, lines 9-12), said limbs (102a, 102b) forming an opening (figure 22) and being connected to one another in such a way</p>																												

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

that the opening can be enlarged by the action of a force on at least one limb.

The subject matter of claim 1 differs from the cordless telephone known from D1 only in that the force required to enlarge the opening increases with said opening.

This distinguishing feature is only one of several obvious possibilities from which a person skilled in the art would choose according to the circumstances without thereby being inventive.

Consequently, the subject matter of claim 1 does not involve an inventive step (PCT Article 33(1) and (3)).

- 1b. The subject matter of claim 1 can also be derived for the most part from the teaching of D2 (PCT Article 33(1) and (3)), which describes a similar device (see, in particular, figures 1 and 2; paragraphs 1, 7-17).
- 1c. D3 and D4 disclose headsets comprising two limbs (see D3: figures 1-2; D4: figures 4-13) in accordance with the majority of features of claim 1. Claim 1 is not inventive in the light of both of the aforesaid documents.
- 1d. The subject matter of claim 1 is very broadly worded. A cellphone with a belt clip (see D5, figure 1) is also a communication device with a

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	<p>housing that comprises two limbs, the limbs forming an opening and being connected to one another in such a way that the opening can be enlarged by the action of a force on at least one limb. Claim 1 is likewise not inventive over D5.</p> <p>2. Dependent claims 2-11 do not contain any additional features which, in combination with the features of claim 1, might lead to a subject matter that involves an inventive step, since the features contained in said claims are either known from or rendered obvious to a person skilled in the art by the citations (claims 2-4, 6-8: see, for example, D1, figures 21-25; claim 5: see D3, figure 1 or D4, figure 10) or concern features that are generally known in the prior art (4-7 and 9-12) and that a person skilled in the art would take into consideration as a matter of course. The features do not therefore contribute anything inventive (PCT Article 33(1) and (3)).</p>

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Box No. VI	Certain documents cited			
1. Certain published documents (Rule 43bis.1 and 70.10)				
	Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
	WO2004/14052	12.02.2004	06.08.2003	06.08.2002
See Supplemental Box No. VI				
2. Non-written disclosures (Rule 43bis.1 and 70.9)				
	Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)	

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Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

1. Independent claim 1 has not been drafted in the two-part form defined by PCT Rule 6.3(b). However, in the present case the two-part form would appear to be appropriate.

2. Contrary to PCT Rule 5.1(a)(ii), the description does not cite D1-D6 or indicate the relevant prior art disclosed therein.

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. Claim 1 attempts to define its subject matter in terms of the result which is to be achieved ("the force required to enlarge the opening increases with said opening"). Claim 1 should contain all the features that are necessary in order to achieve this result (PCT Article 6; see also PCT Examination Guidelines, paragraph III-4.7).
2. It would appear from the description on page 2 that the following features are **essential** to the definition of the invention:

the housing not only serves to accommodate electronic components, but also to secure the device safely to a belt or an item of clothing.

Since independent claim 1 does not contain these features, it does not meet the requirements of PCT Article 6 in conjunction with PCT Rule 6.3(b) that each independent claim must include all the technical features essential to the definition of the invention.

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of: Box No. VI

1. If, for any reason, it is established that the priority of the present application (27/10/03) is not valid, the document cited in Box VI shall additionally be taken into consideration due to its particular relevance to the question of novelty and inventive step.

2. Even in the event of there being no doubt about the priority of the present application, the document in question may be relevant to the assessment of novelty in the national/regional phase due to the particular requirements in many named states (for example, pursuant to EPC Article 54(3) before the European Patent Office and the corresponding states).