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D E C I S I O N
of 3 May 2002

Case Number: T 0906/00 - 3.5.1

Application Number: 89909886.7

Publication Number: 0432198

IPC: H04B 7/26

Language of the proceedings: EN

Title of invention:

Method and system in a wide area radio communication network

Patentee:

INVENTAHL AB

Opponent:

Siemens AG

Headword:

Radio communication network/INVENTAHL

Relevant legal provisions:

EPC Art. 100(c)

Keyword:

"Added subject-matter (yes)"

Decisions cited:

-

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0906/00 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 3 May 2002

Appellant: Siemens AG
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D-80506 München (DE)

Representative: -

Respondent: INVENTAHL AB
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 19 June 2000
concerning maintenance of European patent
No. 0 432 198 in amended form.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. S. Wibergh
E. Lachacinski

Summary of Facts and Submissions

I. This is an appeal by the opponent against the decision of the Opposition Division to maintain European Patent No. 0 432 198 (based on patent application WO-A-90/03071) as amended.

II. Claim 1 as amended reads as follows:

"Method of communication in a wide area radio communication network, said network comprising at least two Central stations (10), each Central Station (10) being assigned to at least one Peripheral Station (11), each Central Station (10) and each Peripheral Station (11) having means for transmitting radio energy and receiving radio energy arranged in said Central Stations (10) for communicating to and from said Central Stations (10) by transferring radio signals in predetermined transmission directions during predetermined time intervals, said means for communicating including a directed antenna system (41); each Central Station (10) transmitting and receiving radio signals to cover a service area;

a total service area coverage of each Central Station (10) being divided into different geographical sub service area segments covered during selected time segments, each Central Station operating in different sub-areas by controlling said directed antenna system (41) to operate in said sub-service area segment during predetermined time intervals;

characterised in that each Peripheral Station (11) is stationary;

that each of said Central Stations (10) stores information about distance and transmitting and receiving direction to each assigned Peripheral Station (11), that each Central Station (10) coordinates each assigned Peripheral Station (11) by distributing signal information to each Peripheral Station (11) assigned thereto;

that said information includes timing compensation with respect to the distance between said Central Station (10) and said Peripheral Station (11) assigned thereto, and includes actual time intervals selected by said Central station (10) for sending information to said Central Station (10) from said Peripheral Station (11);

and that each Central Station (10) coordinates the reception of information transmitted from each assigned Peripheral Station (11) at said time intervals by directing during said time intervals the antenna of said Central Station (10) towards said Peripheral Station (11)".

Independent claim 16, based on claim 17 as granted, is directed to a corresponding system for communicating in a wide area radio communication network.

III. The opponent had opposed the patent on the grounds that the invention was not new or did not involve an inventive step (Article 100(a) EPC), that the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC), and that the subject-matter of the patent extended beyond the content of the application as filed (Article 100(c)

- EPC).
- IV. The Opposition Division held *inter alia* that the subject-matter of the patent as maintained did not extend beyond the content of the application as filed and the ground for opposition under Article 100(c) did not prejudice the maintenance of the patent in amended form.
- V. The opponent lodged an appeal against this decision. The appeal was based solely on the ground that certain features in the independent claims of the amended patent had no proper basis in the patent application as filed. This was contested by the respondent proprietor.
- VI. In a communication pursuant to Article 11(2) of the Rules of Procedure of the Boards of Appeal, the preliminary opinion was given that at least some of the grounds for the appeal appeared convincing.
- VII. Oral proceedings before the Board were held on 3 May 2002. In accordance with its previous announcement the respondent was not represented at the hearing.
- VIII. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.
- IX. The respondent (patent proprietor) had requested with letter dated 2 May 2002 that the appeal be dismissed and the patent be maintained.
- X. At the end of the oral proceedings the Chairman announced the Board's decision.

Reasons for the Decision

1. The only issue for the Board to decide under the circumstances of the present case is whether the patent contains subject-matter which was not included in the patent application as originally filed.
2. The appellant argues that a number of features in the present independent claims 1 and 16 were not contained in the original application. One such feature concerns the signal information distributed from each central station to each peripheral station assigned to it. According to claim 1, this information "includes timing compensation with respect to the distance between said Central Station (10) and said Peripheral Station (11) assigned thereto". In the appellant's view there was no indication in the patent application that such information was transmitted to the peripheral stations. Only the slot time for use by the peripheral station was communicated. Timing compensation was disclosed exclusively in connection with the communication between different central stations, not between a central station and its assigned peripheral stations.
3. This feature was also contained in claim 1 as granted (see column 9, l. 4 to 7). The issue is therefore under Article 100(c) EPC.
4. The appellant has pointed to the following passages of the published patent application (WO-A-90/03071; all page references in the present decision are to this publication) as being particularly relevant for the feature in question:

"/A/ central station of the system has three basic states or modes: (A) identifying stations and compensating for distance variations, for correct timing and power control..." (page 6, l. 3 to 8);

"A central station controls each of the peripheral stations associated therewith with respect to the time intervals during which the peripheral station is allowed to transmit information" (page 10, l. 14 to 18).

The respondent held that the feature was disclosed in original claim 1, line 25 (see the letter dated 22 June 2001). This reference is however erroneous since claim 1 as filed ends at line 10 (see the WO-A publication) and does not include this feature.

5. The first of the appellant's quotations implies that the *central station* is capable of compensating for distance variations to peripheral stations. It is observed that, whereas claim 1 is limited to *stationary* peripheral stations, the description concerns both *stationary and mobile* stations (cf. page 5, l. 20 to 23). In case of mobile peripheral stations the distance to the central station will naturally vary. In case of stationary peripheral stations the meaning of "distance variations" appears less clear. For the purpose of the present decision it is however assumed - in the respondent's favour - that the skilled person would understand it as a reference to the different distances between a central station and its assigned peripheral stations. But even in that case the cited passage cannot be understood in the way that information about timing compensation is *transmitted* to the peripheral stations. Nor would such a transmission

be inevitable in the circumstances since, as the appellant has pointed out, the time slots during which the peripheral stations are permitted to transmit could be wide enough to accommodate any slight time variations. Therefore, even if this feature might be more or less obvious in the light of the information provided in the description, it is not clearly and unambiguously derivable from it.

6. The second quotation does not necessarily mean anything more than that the central station determines the time slots to be used by the peripheral stations. It is not apparent that it refers to variations in the timing of the slots, and even less to a transmission of timing compensation information to peripheral stations.
7. Finally, for the sake of completeness, it is observed that the "compensation for and control of time reference differences" (cf. reference sign 34 in Figure 19 and 20) concerns the synchronisation of the central stations. This is explicitly stated at page 10, last three lines: "The relative time difference between geographically separated central stations is referenced by 34". This compensation has thus nothing to do with distance variations between a central station and its assigned peripheral stations.
8. The Board concludes that the patent application as originally filed did not disclose the feature contained in the present independent claims 1 and 16 to the effect that the information distributed from each central station to each peripheral station includes timing compensation with respect to the distance between the central station and the peripheral station. There is no request for maintenance of the patent on

the basis of other claims. It follows that the patent-in-suit must be revoked (Article 102(1) EPC).

There is thus no need to consider whether it would have been possible to replace the feature in question in the claims without extending the scope of protection conferred by the patent. Nor need it be examined whether the other features discussed by the appellant in the statement setting out the grounds of appeal are properly based on the original disclosure.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

M. Kiehl

S. Steinbrener