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D E C I S I O N
of 19 July 2005

Case Number: T 0998/02 - 3.5.3

Application Number: 96940818.6

Publication Number: 0873594

IPC: H04B 1/00

Language of the proceedings: EN

Title of invention:
Local multipoint distribution system

Applicant:
STANFORD TELECOMMUNICATIONS, INC.

Opponent:

-

Headword:
Local multipoint distribution system/STANFORD
TELECOMMUNICATIONS

Relevant legal provisions:

EPC Art. 123(2), 113(1)
EPC R. 71(2)

Keyword:

"Oral proceedings held in absence of appellant"
"Opportunity to present comments (yes)"
"Amendments - added subject-matter (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0998/02 - 3.5.3

D E C I S I O N
of the Technical Board of Appeal 3.5.3
of 19 July 2005

Appellant: STANFORD TELECOMMUNICATIONS, INC.
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Sunnyvale
CA 94088-3733 (US)

Representative: Jones, Graham H.
Graham Jones & Company
77 Beaconsfield Road
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 27 March 2002
refusing European application No. 96940818.6
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
R. Menapace

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application 96 940 818.6, which was published as international application WO 97/21276 A pursuant to Article 158(1) EPC. The reason given for the refusal was that the subject-matter of claim 1 did not involve an inventive step (Article 56 EPC).
- II. The applicant filed an appeal against this decision and implicitly requested that the decision be set aside and a patent be granted on the basis of a set of claims as filed with the statement of grounds of appeal. Both with the statement of grounds of appeal and a subsequently filed letter, the appellant submitted arguments in support of the request. Oral proceedings were conditionally requested.
- III. In a communication accompanying summons to oral proceedings, the board expressed its opinion that it would be necessary to discuss at the oral proceedings *inter alia* the question of whether claim 1 met the requirements of Article 123(2) EPC. Reasons were given as to why claim 1 did not appear to comply with these requirements.
- IV. In response to the board's communication, the appellant's representative informed the board that he had not been instructed to attend the oral proceedings.
- V. By fax letter of 14 July 2005 the registrar informed the representative that the date fixed for the oral proceedings was maintained.

VI. Oral proceedings were held on 19 July 2005 in the absence of the appellant. After deliberation by the board, the chairman announced the board's decision.

VII. Claim 1 as filed with the statement of grounds of appeal reads as follows:

"A local multipoint distribution system comprising:
a head end coupled to a plurality of base stations,
each base station constituting a cell,
each base station having a plurality of sector beam antennas,
each sector beam antenna illuminating a predetermined sector of said cell with RF communication signals,
a plurality of RF subscriber stations for each sector of a cell,
each subscriber station having an antenna with a narrow beam width oriented toward the sector beam antenna oriented toward its assigned sector,
time division multiple access control means at each subscriber station operated such that each subscriber transmits at a time different from the other subscribers in its sector so the subscribers in a given sector do not interfere with each others transmissions, respectively, and
wherein each said subscriber station includes means to measure the power level from the base station, and means for comparing the power level from the base station with a reference and adjusting the power at which said subscriber station transmits in accordance therewith such that all subscriber signals arrive at their respective base stations at the same power level,
and

wherein each subscriber station first, in order to initiate operation, is operated in the receive mode only to detect a downstream frequency from a head end signal, and detect any received frequency error and adjust its initial frequency of operation in accordance therewith."

Reasons for the Decision

1. *Amendments*

- 1.1 Claim 1 includes the following feature relating to a power level adjustment at the subscriber stations (underlining by the board):

"wherein each said subscriber station includes means to measure the power level from the base station, and means for comparing the power level from the base station with a reference and adjusting the power at which said subscriber station transmits in accordance therewith such that all subscriber signals arrive at their respective base stations at the same power level".

- 1.2 In the application as originally filed reference is made to a power level control or power level adjustment only in the following passages: page 3, penultimate line to page 4, line 4 (reference being made to the application as published), page 8, lines 17, 18 and 24 to 26, page 13, lines 3 to 13, page 28, lines 7 to 23, page 30, lines 3 to 15, page 31, lines 5 and 6, page 36, lines 8 to 10, and page 37, line 13 to page 38, line 16, Fig. 15 (see the right-hand column, 2nd, 7th and 8th

row of the table), Figs 16d, 18 and 21, claim 1, lines 10 to 12, and claim 2, lines 11 to 13.

- 1.3 The passages at page 8, lines 24 to 26, page 28, lines 7 to 14, and page 37, line 13 to page 38, line 5 as well as Fig. 21 (erroneously referred to as "18" at page 37, penultimate line) relate to a specific embodiment in which, at the subscriber station, there is provided open loop power control in the form of a range estimator for estimating the range to the base station on the basis of a measurement of the received power level and a means for computing a transmit power level on the basis of the estimated range.

However, present claim 1 does not define a range estimator and a computation means. The above passages thus do not provide a basis for the above-mentioned feature of claim 1, according to which the subscriber station includes means for comparing the power level from the base station with a reference, which is more general and covers embodiments other than the above-mentioned specific embodiment.

- 1.4 The remaining references cited at point 1.2 above do not specifically relate to means at the subscriber station, as in the above-mentioned feature of present claim 1, but either are indeterminate as to how and where power level control is effected (page 3, penultimate line to page 4, line 4, page 13, lines 3 to 13, and page 31, lines 5 and 6), or merely concern means defined as part of the local multipoint distribution system as a whole (claim 1, lines 10 to 12, claim 2, lines 11 to 13, both as published), or relate to power adjustment means at the base stations or the

head end (page 8, lines 17 and 18, page 28, lines 14 to 23, page 30, lines 3 to 15, page 36, lines 8 to 10 and page 38, lines 6 to 16 as well as Fig. 15 (in which reference is erroneously made to Fig. 14(d) instead of Fig. 16d), Fig. 16d and Fig. 18 (erroneously referred to as "21" at page 38, line 7)).

- 1.5 The application as originally filed therefore does not provide a basis for the above-mentioned feature of claim 1. Claim 1 has thereby been amended in such a way that it contains subject-matter which extends beyond the content of the application as originally filed, Article 123(2) EPC.

2. *Procedural matters*

The appellant was duly summoned to the oral proceedings, but did not attend; the board had decided to continue the oral proceedings in the appellant's absence pursuant to Rule 71(2) EPC. The board is satisfied that Article 113(1) EPC has been complied with, since in the communication accompanying the summons to oral proceedings, the above objection under Article 123(2) EPC in respect of present claim 1 was already raised, so that the appellant had an opportunity to present his comments on it.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland