

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

D E C I S I O N
of 21 December 2005

Case Number: T 0881/03 - 3.5.03

Application Number: 01302477.3

Publication Number: 1189375

IPC: H04J 11/00

Language of the proceedings: EN

Title of invention:

Dynamic reassignment of code space among multiple modes of operation

Applicant:

LUCENT TECHNOLOGIES INC.

Opponent:

-

Headword:

Code space reassignment/LUCENT

Relevant legal provisions:

EPC Art. 123(2), 84

RPBA R. 11(3)

Keyword:

Claims - support in the description - (no)"

Decisions cited:

G 0010/93

Catchword:

-



Case Number: T 0881/03 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 21 December 2005

Appellant: LUCENT TECHNOLOGIES INC.
600 Mountain Avenue
Murray Hill
New Jersey 07974-0636 (US)

Representative: Sarup, David Alexander
Lucent Technologies NS UK Limited
5 Mornington Road
Woodford Green
Essex IG8 0TU (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 17 February 2003
refusing European application No. 01302477.3
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: D. H. Rees
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. This is an appeal from the decision of the examining division, dispatched on 17 February 2003, to refuse the European patent application number 01 302 477.3, publication number 1 189 375. The reason given for the refusal was that the subject-matter of all claims either lacked novelty with regard to the disclosure of document

D1: WO 98 35514 A

or did not involve an inventive step with regard to the teaching of document

D4: WO 00 24146 A

applied to the disclosure of D1.

II. Notice of appeal was filed and the fee paid on 17 April 2003. A statement setting out the grounds of the appeal was filed on 16 June 2003.

III. The board issued, of its own motion, a summons to attend oral proceedings to be held on 21 December 2005. In the accompanying communication the board gave its preliminary opinion that the application failed to satisfy the requirements of Article 84, the claims lacking clarity and support, and Articles 52(1), 54 and 56, the subject-matter of various claims apparently lacking novelty and/or an inventive step, citing documents D1 and D4.

IV. In a submission on 17 November 2005 the appellant's representative informed the board that he would not attend the oral proceedings. It was requested that the oral proceedings be cancelled and that the procedure be continued in writing. A new set of claims 1 to 5 was submitted to replace the previous set of claims.

V. The single independent claim 1 of the only request reads as follows:

"A method for assigning codes from a code space in a communication system, characterized by the steps of: dividing a code space into at least two subspaces, where each code in the first subspace is assigned to a user for the duration of a communication session associated with the user and where each code in the second subspace is shared by a plurality of users on a time-shared basis during a plurality of concurrent communication sessions associated with the plurality of users;
assigning a first code from one of said at least two subspaces to a user currently using a second code in a different one of said at least two subspaces; and performing an in-sector handoff of the user from the second code to the first code."

VI. The appellant implicitly requests that the decision under appeal be set aside and that a patent be granted on the basis of

claims 1 to 5 submitted on 17 November 2005.

VII. Oral proceedings took place as scheduled on 21 December 2005, the board having informed the appellant that the

request to cancel oral proceedings could not be granted. The appellant was not represented at the oral proceedings, during which the board deliberated and the chairman announced the decision taken.

Reasons for the Decision

1. The function of a board of appeal is to reach a decision on the issues presented to it, not to act as an alternative examining division (G 10/93 OJ 1995, 172, in particular point 4). The need for procedural economy dictates that the board should reach its decision as quickly as possible while giving the appellant a fair chance to argue its case. In the present appeal the holding of oral proceedings was considered by the board to meet both of these requirements. A summons was therefore issued. The appellant gave no reasons to support the request to cancel the oral proceedings scheduled by the board and to continue the procedure in writing. The board considered that, despite the appellant's announced intention not to attend, the twin requirements of fairness and procedural economy were still best served by holding the oral proceedings as scheduled. The mere choice by the appellant not to attend was not sufficient reason to delay the board's decision. As made clear in the Rules of Procedure of the Boards of Appeal, Article 11(3), a party duly summoned to oral proceedings and not attending may be treated as relying only on its written case. The board considered that Article 113(1) EPC had been satisfied. The requests that the oral proceedings be cancelled and that the procedure be continued in writing were therefore refused.

2. The newly formulated feature of claim 1, "assigning a first code from one of said at least two subspaces to a user currently using a second code in a different one of said at least two subspaces," is not originally disclosed. In the application as filed, although a **code** may be reassigned to a different subspace (e.g. it may be recategorised as belonging to the data subspace rather than to the voice call subspace) there is no disclosure of a **user** being assigned a new code in a different subspace to that of the code currently assigned to the user. The only example in the description or drawings of the user being assigned a new code, at paragraph 0013, is where a voice ("mode-1") call is handed off to another code in the voice call subspace, i.e. the user is assigned a first code in the **same** subspace as the second code currently being used, not in a **different** subspace as now claimed. The originally filed claims also do not disclose the feature now claimed, since they do not specify anywhere the subspace to which the code which is the target of the hand off, the "first code", belongs. Thus this claimed feature violates Article 123(2) EPC.
3. For this reason alone the appellant's only request is not allowable and the appeal must be dismissed. It is not necessary for the board to decide on the variety of other potential objections mentioned in the communication accompanying the summons to oral proceedings.
4. However for the sake of completeness the board notes that the claimed subject-matter embraces for example the cases where a user of a voice code is handed off to

a data subspace code or vice versa, or a user of a member of either of these groups is handed off to a code belonging to some other subspace entirely. Such alternatives are not supported by the description, in violation of Article 84 EPC. This objection also applied to the previous set of claims which allowed, but did not require, the subspaces to be different, and was raised in the communication accompanying the summons to oral proceedings (point 5.5). It has not been overcome by the amendments submitted. The appellant argued (in the submission of 17 November 2005) that restricting the claim to the case where the two subspaces were different was sufficient to overcome the objection. Ignoring for the sake of argument the objection under Article 123(2) EPC, this is clearly not the case, since the claim still allows the alternatives given above, of which there are no indications in the description.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland