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**D E C I S I O N**  
**of 26 June 2006**

**Case Number:** T 0575/04 - 3.5.03

**Application Number:** 01304724.6

**Publication Number:** 1207635

**IPC:** H04B 7/26

**Language of the proceedings:** EN

**Title of invention:**

Downlink and uplink channel structures for downlink shared channel system

**Applicant:**

LUCENT TECHNOLOGIES INC.

**Opponent:**

-

**Headword:**

Downlink shared channel system/LUCENT

**Relevant legal provisions:**

EPC Art. 84

RPBA Art. 11(3)

**Keyword:**

"Reasons for rejecting appellant's request to cancel oral proceedings"

"Clarity - no"

**Decisions cited:**

G 0010/93

**Catchword:**

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Case Number: T 0575/04 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 26 June 2006

**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 11 December 2003  
refusing European application No. 01304724.6  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** D. H. Rees  
R. Moufang

## Summary of Facts and Submissions

- I. This is an appeal from the decision of the examining division, announced in oral proceedings held on 21 October 2003, with written reasons dispatched on 11 December 2003, to refuse patent application number 01 304 724.6, publication number 1 207 635. The reason given for the refusal was that the claimed subject-matter was not clear, in violation of Article 84 EPC.
  
- II. Notice of appeal was filed and the fee paid with a letter dated 5 February and received on 9 February 2004. A statement setting out the grounds of the appeal and containing a new set of claims was submitted on 31 March 2004.
  
- III. The board issued, of its own motion, a summons to attend oral proceedings to be held on 26 June 2006. In the accompanying communication the board gave its preliminary opinion that the new claims added subject-matter to the application as filed, thus violating Article 123(2) EPC, and also violated Article 84 EPC in that the claimed subject-matter was not supported by the description. It further gave the view that remedying these problems would apparently lead to claims which were unclear, in violation of Article 84 EPC, and a claimed invention which would not be disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, in violation of Article 83 EPC. The appellant was also informed that in the event of the objections being overcome, the board would probably remit the case to the examining division for further prosecution.

IV. In a submission on 16 May 2006 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 claim set was submitted, together with arguments in its favour.

V. Independent claim 1 of the only request reads as follows:

"1. A method to support a downlink shared data channel characterized by the steps of:  
transmitting at a rate on a downlink shared channel having slots with each slot including a preamble locally identifying a wireless data unit and data;  
transmitting on a dedicated control channel associated with the downlink shared channel including power control bits enabling control of transmission power and pilot bits representing a pilot signal; and  
transmitting on a beacon channel associated with the shared downlink channel a power fraction information indicating the downlink power available to the downlink shared channel users, downlink activity information indicating a future data activity on the downlink shared channel and code space information indicating available channels."

Independent claim 3 is identical except in that the word "transmitting" is replaced by "receiving" on all three occasions of its occurrence.

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

claims 1 to 4 submitted on 16 May 2006;

description pages

4 to 9 as originally filed, and

1, 2, 2a, 3, 10, 11 received on 18 July 2002 with a letter dated 15 July 2002; and

drawing sheets 1 and 2 as originally filed.

- VII. The board informed the appellant that the oral proceedings would take place as scheduled. 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).

According to Article 116(1) EPC, oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. Oral proceedings are an effective way to discuss cases mature for decision, since the appellant is given the opportunity to present its concluding comments on the outstanding issues (Article 113(1) EPC), and a decision can be made at the end of the oral proceedings (Rule 68(1) EPC).

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 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. In accordance with Article 11(3) of the Rules of Procedure of the Boards of Appeal the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying on its written case. 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 request to cancel the scheduled oral proceedings was therefore refused.

The board interprets the appellant's request to continue the procedure in writing as being a request not to reach a final decision in oral proceedings, but rather to issue a further communication. However, the mere choice by the appellant not to attend is not sufficient reason to delay the board's decision. If the appellant had attended the oral proceedings, it would have had an opportunity to present its comments. The board considers that Article 113(1) EPC has been satisfied. This request is therefore also refused.

2. *Clarity, Article 84 EPC*

2.1 In the board's communication accompanying the summons to oral proceedings the opinion was given that it was not clear from the wording of the claims that all the steps were carried out by the same transmitter (for claim 1) or receiver (for claim 3). In its final submission the appellant responded, "One skilled in the art considering the entire claim will clearly understand that the transmitter responsible for all three transmitting steps in claim 1 is the same. Each of the transmitting steps refer to transmitting on a downlink shared channel, dedicated control channel associated with the downlink shared channel and a beacon channel associated with the downlink shared channel, respectively. It is well known in the art that transmissions in a downlink direction are transmissions towards a wireless or mobile unit. Given that, it is clear to one skilled in the art what the source of the transmissions of each step in claim 1 would be."

The board agrees that it is clear to the skilled person what the downlink direction is. However it does not follow that all channels "associated with" a downlink shared channel are necessarily also downlink channels. The claimed "dedicated control channel associated with the downlink shared channel" in particular could be uplink or downlink. Indeed the application discloses examples of both, namely DPCCH (uplink) and DACCH (downlink) - see Paragraphs 007, 0010, 0017 and 0018, and Figs. 1 and 2 of the published application. According to Paragraph 0010 the uplink channel DPCCH "supports" the downlink shared channel. It must therefore equally be "associated" with the shared

channel. The downlink channel DACCH is explicitly stated to be associated with the downlink shared channel - see Paragraph 0007. Moreover it is clear from the description that the two channels are elements of the same embodiment rather than being alternatives. Since claim 1 does not specify the direction of the dedicated control channel, it is not clear which of these two channels of the embodiment corresponds to the claimed feature.

Thus the subject-matter for which protection is sought is unclear, in violation of Article 84 EPC. It is noted that this lack of clarity is unresolved even if the description is taken into account; both DPCCH and DACCH contain power control bits and pilot bits (Paragraphs 0011 and 0017).

2.2 While the appeal must be dismissed for this reason alone, the board notes that at least one other clarity issue remains unresolved. In its communication accompanying the summons to oral proceedings the board expressed its doubts as to the clarity of the expression "downlink activity indicator". This feature remains in the present independent claims, qualified by a brief definition from the description, thus: "downlink activity information indicating a future data activity on the downlink shared channel."

However it is not clear from the application as a whole what aspect or measure of the future data activity on the downlink shared channel the "downlink activity information" represents nor how it is calculated or estimated. Thus for example it is not clear whether it would relate to average or peak activity. Nor is it



clear from "indicating a future data activity" whether a known future activity is intended or whether an estimated future activity is also contemplated. The relevant field in the BEACCH channel is defined in the description only as an indication of "the future (RAI [Rate and Antenna Information] round-trip delay) data activity on the HS-DSCH" (Paragraph 0020). The reader is left to speculate as to what this might mean.

The appellant has provided no evidence that this is a term of the art but instead argues in its final submission that the reference to the "RIA round-trip delay" is merely an indication of the amount of time involved when the term "future" is used, and argues that the activity indicator has to do with "cell loading or how busy the dedicated shared channel is anticipated to be based upon current cell load, for example." The argument goes on, "The future data activity is related to, for example, 'predicted neighbor cell loading' as stated in paragraph [0012], lines 9 to 10 [sic] of the published application. Paragraph [0009] also indicates that a wireless unit is aware of current and future data activity of all active connections or channels with which the wireless unit is in soft handoff. A skilled artisan will understand how to develop such information without requiring further explanation beyond that provided in Applicant's written description." However, leaving aside the board's doubts as to whether the skilled person would know what precisely was meant by "predicted neighbor cell loading" and how to calculate it, it is noted that there is no indication in Paragraph 0012 that this parameter is used in any way for the "downlink activity information." It is mentioned in the context of another

field, the "Rate and Antenna Information", RAI. The other passage cited, Paragraph 0009, merely puts forward (at lines 9 to 13) an alleged advantage of sending the downlink activity information to the wireless unit, without explaining further what it represents or how it is calculated. The board therefore finds the appellant's arguments with respect to this feature unpersuasive.

3. The board thus finds that the claims do not clearly define the matter for which protection is sought, in violation of Article 84 EPC. The appeal must therefore be dismissed.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland