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**Datasheet for the decision
of 30 March 2007**

Case Number: T 1139/04 - 3.5.03

Application Number: 02253598.3

Publication Number: 1309120

IPC: H04L 1/00

Language of the proceedings: EN

Title of invention:

A method for allocating wireless communication resources

Applicant:

LUCENT TECHNOLOGIES INC.

Opponent:

-

Headword:

Wireless communication resources/LUCENT

Relevant legal provisions:

EPC Art. 84, 113(1)

Keyword:

"Clarity - no"

Decisions cited:

T 1129/97

Catchword:

-



Case Number: T 1139/04 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 30 March 2007

Appellant: LUCENT TECHNOLOGIES INC.
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 21 April 2004
refusing European application No. 02253598.3
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 02253598.3 (publication number EP 1 309 120 A). The reason given for the refusal was that the independent claims were not clear (Article 84 EPC).
- II. In the notice of appeal the appellant requested that "the decision be cancelled in its entirety and a patent granted".
- III. With the statement of grounds of appeal the appellant filed two new sets of claims, i.e. a "main set of claims" and an "auxiliary set of claims", and submitted arguments in support of these sets of claims. By way of a main request, the appellant requested that "the Board overturn the decision and finding of lack of clarity and remit the application to the Examining Division for examination of patentability and other requirements of the EPC, based on the main set of claims, subject to such further amendments as may be necessary in the light of such examination". An auxiliary request was formulated similarly.
- IV. In a communication the board raised objections under Article 84 EPC in respect of claims of both requests.
- More specifically, *inter alia* the following objections were raised in respect of the claims of the main request:

regarding claim 1:

"... it is unclear what the expressions "*time span*", "*bandwidth*" and "*duty cycle*" mean in relation to "*information*", since the information has not been further defined and can not be equated with, e.g., a transmission signal which is modulated with the information.",

regarding claim 2:

"In the context of the claim the expressions "*transmission format*" and "*associated with*" are vague.",

and regarding claim 5:

"It is ... unclear of what entity the time span, the bandwidth or the duty cycle is (or has been) varied.".

Further, the above-quoted objection regarding claim 1 was held to apply to claim 5 *mutatis mutandis*.

In the communication the board also drew the appellant's attention to the following:

"In the statement of grounds the appellant effectively requests that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of a main set of claims (main request) or, alternatively, on the basis of an auxiliary set of claims (auxiliary request), both sets as filed with the statement of grounds of appeal. The board assumes that these

requests replace the request for grant of a patent as made in the notice of appeal. The appellant is requested to confirm this."

V. In response to the board's communication, the appellant submitted an amended set of claims replacing the set of claims of the main request. Further, the appellant wrote: "Kindly cancel claims 1-10 associated with the auxiliary request.". No arguments in support of the amended set of claims were filed. Nor did the appellant confirm or reject the board's assumption that the main and auxiliary requests filed with the statement of grounds replaced the request for grant of a patent as made in the notice of appeal. Oral proceedings were not requested.

VI. Claim 1 of the amended set of claims reads as follows:

"A method of communicating over a wireless channel shared by a plurality of wireless units, the method comprising:

receiving a channel quality signal from at least one wireless unit at a wireless base station; and

transmitting information by the base station over the wireless channel to the at least one wireless unit, the method

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varying, in response to the channel quality signal received from the at least one wireless unit, a time span and at least one of a bandwidth and/or a duty cycle for transmission of the information by the base station."

Claim 2 of the amended set of claims reads as follows:

"The method of claim 1, further comprising the step of applying a transmission format to the information prior to transmitting the information, the transmission format being based on the varied time span and/or the varied bandwidth."

Claim 5 of the amended set of claims reads as follows:

"A method of communicating with a base station over a wireless channel shared by a plurality of wireless units, the method comprising:

receiving a channel quality signal from a wireless unit at the base station; and

receiving information at the wireless unit from the base station over the wireless channel,
the method

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in response to the received channel quality signal and prior to the wireless unit receiving the information, transmitting the information from the base station, the information being varied based on a time span and at least one of a bandwidth and/or a duty cycle."

Reasons for the Decision

1. *Procedural matters*

1.1 From the appellant's submissions the board understands that the appellant requests that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of the amended set of claims as filed in reply to the board's communication. Further, since all the claims of the auxiliary request, i.e. claims 1 to 10, were cancelled, the appellant has effectively withdrawn the auxiliary request.

1.2 The present decision is based on objections under Article 84 EPC which had already been raised in the board's communication. The appellant had the opportunity to present its comments on these objections and filed a reply without discussing the issues raised in the communication and without making a request for oral proceedings. Under these circumstances, the board is in a position to give a decision in accordance with Article 113(1) EPC.

2. *Article 84 EPC*

2.1 The objection concerning the term "transmission format" as raised in respect of claim 2 of the main request as filed with the statement of grounds of appeal, see point IV above, applies equally to present claim 2, since it includes the same term, which has no well-recognised meaning in the relevant art and which is not defined in the claim in any meaningful manner.

- 2.2 Claim 5 includes the feature "the information being varied based on a time span and at least one of a bandwidth and/or a duty cycle."

The objections raised in respect of claim 5 as filed with the statement of grounds of appeal, see point IV above, apply equally to present claim 5 in that it includes the step of varying a time span and a bandwidth and/or a duty cycle without it being clear of what entity these attributes are varied. In the board's view, in the absence of any further definition as to what is meant by "information", this term as used in the claim cannot be equated with, for example, a specific transmission signal which is modulated with the information in a specific way.

- 2.3 The appellant did not submit any arguments specifically in support of the amended set of claims. In the statement of grounds of appeal, however, the appellant referred to passages in the description for a definition of the terms "time span", "bandwidth", "duty cycle" and "transmission format".

- 2.4 In the board's view, in order to comply with the requirements of Article 84 EPC, the claims should be clear in themselves, i.e. an addressee should be able to understand the claims without a need for him to refer to the description, since in accordance with Article 84 EPC the claims, rather than the combination of the claims and the description, shall define the matter for which protection is sought (see also T 1129/97, points 2.1 and 2.1.2, OJ EPO 2001, 273).

2.5 Even if, as argued by the appellant, the description should be taken into account, this would, in any case, introduce further uncertainty as to the matter for which protection is sought, since, in particular, the vague term "transmission format" is given various different meanings; according to col. 3, lines 42 to 46, the transmission format refers to the bandwidth allocated for a particular time in the transmission of information to a given wireless unit, whilst according to col. 4, lines 38 to 42, the transmission format comprises "contiguous or parsed, time duration and/or bandwidth allocated to the downlink data, voice or the like to the particular user requesting the shared channel to downlink data, voice or the like". Yet again, according to col. 6, lines 9 to 11, each scheduled transmission should be capable of being formatted in code, power and time domains, whereas according to col. 8, lines 37 to 39, the initial transmission format comprises, for example, information block size, time span, coding and modulation details.

Hence, even if the description were taken into account, the claim in question, here claim 2, would remain unclear.

2.6 In view of the above, the board concludes that at least claims 2 and 5 do not comply with the requirements pursuant to Article 84 EPC due to a lack of clarity. Consequently, the appellant's request is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland