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D E C I S I O N
of 5 May 2006

Case Number: T 1267/04 - 3.5.03

Application Number: 99400903.3

Publication Number: 1009117

IPC: H04J 13/00

Language of the proceedings: EN

Title of invention:

Method of matching resources required and resources allocated
in a mobile radio system

Applicant:

ALCATEL

Opponent:

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Headword:

Matching of resources/ALCATEL

Relevant legal provisions:

EPC Art. 84

Keyword:

"Clarity (no) "

Decisions cited:

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Catchword:

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Case Number: T 1267/04 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 5 May 2006

Appellant:

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Representative:

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Decision under appeal:

Decision of the examining division of the
European Patent Office posted 15 April 2004
refusing European application No. 99400903.3
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. 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 99 400 903.3, which was published as EP 1 009 117 A. The reason for the refusal was that the claims did not meet the requirements of Article 84 EPC.
- II. With the statement of grounds of appeal the appellant requested that the impugned decision be set aside and that a patent be granted on the basis of an amended set of claims. Arguments were filed in support and oral proceedings were conditionally requested.
- III. The appellant was summoned by the board to oral proceedings. In a communication accompanying the summons, the board gave a preliminary opinion, according to which, *inter alia*, the claims on file were considered to be unclear.
- IV. In response to the board's communication, the appellant filed new sets of claims of a main and three auxiliary requests and submitted arguments in support.
- V. Oral proceedings were held on 5 May 2006. The appellant requested that the impugned decision be set aside and that a patent be granted either on the basis of claim 1 as filed during the oral proceedings (main request) or on the basis of claims 1 to 3 of one of the requests filed in reply to the board's communication, renumbered as auxiliary requests 1 to 4. The board's decision was announced at the end of the oral proceedings.

VI. Claim 1 of the main request reads as follows:

"Method of matching resources required and resources allocated in a spreading code division multiple access mobile radio system, including allocation of one spreading code, the length of said spreading code being determined so that resources allocated are matched to resources required, wherein allocated resources do not exactly match resources required, characterized in that the length of said spreading code is chosen to be as low as possible to optimize transmission performance."

Claim 1 of the first auxiliary request reads as follows:

"Method of matching resources required and resources allocated in a spreading code division multiple access mobile radio system, including allocation of one or more spreading codes, the number and the length of said spreading codes being determined so that resources allocated are matched optimally to resources required, characterized in that additionally the length of said one or more spreading codes is chosen to be as low as possible, so as additionally to optimize transmission performance, within the limits of what is possible without allocating too great a proportion of the resources to a given user so as not to penalize other users."

Claim 1 of the second auxiliary request is identical to claim 1 of the first auxiliary request, except for the last feature ("within the limits") being deleted.

Claim 1 of the third auxiliary request reads as follows:

"Method of matching resources required and resources allocated in a spreading code division multiple access mobile radio system, including allocation of one spreading code, the length of said spreading code being determined so that resources allocated are matched optimally to resources required, characterized in that additionally the length of said spreading code is chosen to be as low as possible, so as additionally to optimize transmission performance, within the limits of what is possible without allocating too great a proportion of the resources to a given user so as not to penalize other users."

Claim 1 of the fourth auxiliary request reads as follows:

"Method of matching resources required and resources allocated in a spreading code division multiple access mobile radio system, including allocation of one spreading code, the number and the length of said spreading code being determined so that resources allocated are matched optimally to resources required, characterized in that additionally the length of said spreading code is chosen to be as low as possible, so as additionally to optimize transmission performance."

Reasons for the Decision

1. *Article 84 EPC - clarity*
 - 1.1 Claim 1 of each of the above requests includes the feature that the length of the spreading code(s) is determined so that "resources allocated are matched [optimally] to resources required" and that the length of the spreading code(s) "is chosen to be as low as possible".
 - 1.2 A definition of "resources required" and "resources allocated" is not given in claim 1 of any one of the requests. If, for the sake of argument, "resources allocated" were understood as corresponding to one or more spreading codes allocated to a given user (see col. 1, lines 5 to 7 and paragraphs [0003] and [0044] of the patent application as published) and "resources required" as corresponding to the symbol bit rate of the data to be transmitted (see col. 4, lines 39 to 43 and paragraph [0036] of the application as published), claim 1 of each request remains nevertheless unclear, since it does not define any criterion on the basis of which it can be determined whether or not a given spreading code has the lowest possible length.
 - 1.3 The board notes that claim 1 of each request adds that the spreading code length is chosen to be as low as possible "[so as additionally] to optimize transmission performance". This does not however provide a clear criterion, since the terms "optimize" and "transmission performance" do not have a well-defined meaning in the field of CDMA mobile radio systems and, hence, merely give rise to a further lack of clarity of the claimed

subject-matter. The same applies to the additional wording "within the limits of what is possible without allocating too great a proportion of the resources to a given user so as not to penalize other users" in claim 1 of the first and third auxiliary requests, due to the vague meaning of "so as not to penalize other users" and the unclear relative term "too great".

- 1.4 In the absence of evidence in support of the appellant's allegation that all the above-cited terms in claim 1 of any one of the requests are clear and that, consequently, it would at least be implicitly clear to a person skilled in the art what is meant by choosing one (or more) spreading code(s) having the lowest possible length so as to optimize transmission performance and, at the same time, to match resources allocated to resources required, the appellant's arguments could not persuade the board.
- 1.5 Claim 1 of each of the requests is therefore held to be unclear and thus to contravene the requirements of Article 84 EPC.
2. In view of the foregoing, it has not proved necessary to consider any of the further objections according to the preliminary opinion given by the board in the communication accompanying the summons to oral proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland