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**Datasheet for the decision
of 26 October 2007**

Case Number: T 0887/05 - 3.5.03

Application Number: 99122898.2

Publication Number: 0979018

IPC: H04Q 7/38

Language of the proceedings: EN

Title of invention:

Autonomous registration overload control for cellular mobile radio systems

Applicant:

AT&T Corp.

Opponent:

-

Headword:

Registration control/AT&T

Relevant legal provisions:

EPC Art. 84

Keyword:

"Clarity and support (no)"

Decisions cited:

G 0010/93

Catchword:

-



Case Number: T 0887/05 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 26 October 2007

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 February 2005
refusing European application No. 99122898.2
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland

Members: D. H. Rees

R. Menapace

Summary of Facts and Submissions

I. This is an appeal against the decision of the examining division posted on 15 February 2005 to refuse European patent application number 99 122 898.2, publication number 0 979 018, a divisional of application number 91 307 474.6, publication number 0 472 349. The reason given for the refusal was that the subject-matter of claim 1 did not involve an inventive step with respect to the document

D1: C.J. Hughes et al., "Definition of a cellular mobile radio system," IEE Proceedings, Vol. 132, Pt. F, No. 5, August 1985, pages 416 to 424.

The decision also mentioned document

D2: B. Stavenow, "A Characterization of the Reverse Control Channel in the Cellular System and the TACS," 37th Vehicular Technology Conference, June 1987, San Francisco, US, IEEE, pages 412 to 420.

II. Notice of appeal was filed in a letter dated 29 March and received 5 April 2005. The fee was paid on 26 March 2005. A statement of grounds of appeal was submitted on 7 June 2005. It included a set of claims 1 to 11 for an auxiliary request.

III. The board issued, of its own motion, a summons to attend oral proceedings to be held on 26 October 2007. The accompanying communication raised potential objections under Article 84 EPC, and gave its preliminary opinion that the subject-matter of the independent claims of both the main and the auxiliary

request appeared not to involve an inventive step with respect to the disclosure of D1 or D2. The additional features of various dependent claims also appeared not to involve an inventive step. It was mentioned that if these objections were overcome it might be necessary to discuss whether the application met the requirements of Articles 76(1) and 123(2) EPC and whether it would involve "double patenting".

IV. The appellant stated, in a submission on 26 September 2007, that it would not attend the oral proceedings. A new set of eight claims was submitted for the main request and the auxiliary request claim set was withdrawn.

V. The independent claims of the sole request are reproduced verbatim below. They include a number of grammatical errors which have not been marked individually for the sake of readability.

"1. A method of registration for mobile radiotelephones in a wireless telephone system in which mobile radiotelephones in a system identified area communicate over radio channels with a base station providing coverage of the system identified area and the wireless telephone system is coupled in turn to a land switched telephone network;

comprising the steps of:

instructing mobile radiotelephones to register over a designated overhead radio channel;

monitoring (703, 803) registration requests over the overhead radio channel by counting (717, 809) the

number of autonomous registration messages in a fixed

time interval subsequent to an initial fixed time interval;
identifying (705, 805) the attainment of an impending overload condition in autonomous registration requests by counting the number of registration requests within a initial fixed time interval;
inhibiting (709, 807) registration requests from mobile radiotelephones when the impending overload condition is identified, wherein
allowing registrations (817) roamer mobile radiotelephones and inhibiting registrations (817) homer mobile radiotelephones if the number of autonomous registration messages exceeds a threshold count,
subsequently counting (819) the number of autonomous registration messages in a sequence of fixed time intervals, and
alternately enabling and disabling (811, 821) allowance of registrations of homer mobile radiotelephones and roamer mobile radiotelephones as long as the number of autonomous registration messages exceeds a threshold count."

"7. Apparatus for controlling registrations of mobile radiotelephones of a cellular telephone system, comprising:
a radio communication station (102) for coupling homer and roamer mobile radiotelephones (202) with a land switched telephone network (106);
means for maintaining (201) a list of mobile radio telephones served by the radio communication station;
means for broadcasting instructions (201) to the homer and roamer mobile radiotelephones (202) to cause available homer and roamer mobile radiotelephones

within coverage area of the radio communication station (102) to request registration permitting an update of the means for maintaining (201);

means for monitoring registration request (201) and determining if an overload condition occurs, the means for monitoring and determining including means for counting registration requests (201) by counting the number of autonomous registration messages in a fixed time interval subsequent to an initial fixed time interval; and means for comparing (201) the count with a preset threshold count;

means for selectively preventing registration requests (201) of the homer and roamer mobile radiotelephones if the means for monitoring determines an overload condition,

wherein

allowing registrations (817) the roamer mobile radiotelephones and inhibiting registrations (817) the homer mobile radiotelephones if the number of autonomous registration messages exceeds a threshold count,

subsequently counting (819) the number of autonomous registration messages in a sequence of fixed time intervals, and

alternately enabling and disabling (811, 821) allowance of registrations of the homer mobile radiotelephones and the roamer mobile radiotelephones as long as the number of autonomous registration messages exceeds a threshold count."

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

claims 1 to 8 submitted on 26 September 2007;

description pages:

3 to 9 as originally filed;

1, 1A, 2 filed with the letter dated 10 and received
13 May 2002;

1B filed on 4 September 2003;

drawings sheets:

1 to 6, 8 and 9 as originally filed;

7 filed on 4 September 2003.

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. 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.

2. *Article 84 EPC*

- 2.1 Claim 1 is unclear, in violation of Article 84 EPC, in that it appears (in the light of the board's understanding of the description) to be specifying the same step twice, namely "monitoring (703, 803) registration requests over the overhead radio channel by counting (717, 809) the number of autonomous registration messages in a fixed time interval subsequent to an initial fixed time interval," and "subsequently counting (819) the number of autonomous registration messages in a sequence of fixed time intervals". The lack of clarity is compounded by the fact that the steps of claim 1 appear to be intended to be presented as sequential in time ("within a initial fixed time interval", "subsequently ... in a sequence of fixed time intervals", "alternately enabling ... as long as ..."), but the former of the two features clearly does not fit into the sequence at the point where it has been inserted.

2.2 The feature "alternately enabling and disabling (811, 821) allowance of registrations of the homer mobile radiotelephones and the roamer mobile radiotelephones as long as the number of autonomous registration messages exceeds a threshold count," is also unclear. It permits inconsistent interpretations, namely that the enablement of registrations of the homer mobile radiotelephones and of the roamer mobile radiotelephones takes place at the same time, or alternatively that when the registrations of the homer mobile radiotelephones are enabled the registrations of the roamer mobile radiotelephones disabled and vice versa (which is what is described in the application).

2.3 Claim 1 contains the step of "allowing registrations (817) the roamer mobile radiotelephones and inhibiting registrations (817) the homer mobile radiotelephones if the number of autonomous registration messages exceeds a threshold count," as the first inhibiting step, the next claimed step starting with "subsequently". Thus according to this claim the first inhibition is of registrations of the "homer" mobile radiotelephones, whereas the description and drawings consistently show the first inhibition step being of "roamer" mobile radiotelephones (see e.g. Fig. 8). Hence claim 1 is not supported by the description, in further violation of Article 84 EPC.

2.4 The same objections apply *mutatis mutandis* to independent claim 7.

3. Since the only request is not allowable the appeal must be dismissed. However the board notes in addition that the claims submitted in preparation for the oral

proceedings also do not satisfy the requirements of Article 123(2) EPC, i.e. they contain subject-matter which extends beyond the content of the application as filed. Thus in claim 1 the step of "allowing registrations (817) the roamer mobile radiotelephones and inhibiting registrations (817) the homer mobile radiotelephones if the number of autonomous registration messages exceeds a threshold count," as the first inhibiting step is not to be found in the whole of the application as filed (see point 2.3).

4. Moreover, in the communication accompanying the summons to oral proceedings the board gave its preliminary opinion that the subject-matter of then claims 1 to 3 (*inter alia*) of the auxiliary request as it was lacked an inventive step with respect to either of the documents D1 or D2. To the extent that it is understood and ignoring the added subject-matter, the present claim 1 appears to correspond substantively to a combination of those claims. The board sees no reason to deviate from its preliminary opinion with respect to inventive step. The counter-arguments put forward in the appellant's final submission are not convincing.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland