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**Datasheet for the decision  
of 16 July 2007**

**Case Number:** T 1266/05 - 3.5.03

**Application Number:** 00958280.0

**Publication Number:** 1192832

**IPC:** H04Q 7/38

**Language of the proceedings:** EN

**Title of invention:**

A method of selecting a new cell

**Patentee:**

Nokia Corporation

**Opponent:**

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**Headword:**

Handover/NOKIA

**Relevant legal provisions:**

EPC Art. 84

**Keyword:**

"Claim 2 - support by description - (yes) - after amendment"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1266/05 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 16 July 2007

**Appellant:** Nokia Corporation  
Keilalahdentie 4  
FIN- 02150 Espoo (FI)

**Representative:** Boakes, Jason Carrington  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 27 April 2005  
refusing European application No. 00958280.0  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** A. Ritzka  
M.-B. Tardo-Dino

## Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division dated 27 April 2005, refusing European patent application No. 00 958 280.0 for the reason that claim 2 lacked clarity, Article 84 EPC.
- II. Notice of appeal was filed on 18 June 2005 and the appeal fee paid. It was requested that the decision be cancelled in its entirety. With the statement of grounds of appeal filed on 29 August 2005 the appellant submitted a set of claims 1 to 23 according to a main request. As a first auxiliary request an amended claim 2 replacing claim 2 of the main request was proposed. A second auxiliary request based on claims 1, 3, 4 and 8 to 23 of the main request was also proposed. An auxiliary request for oral proceedings was made in the event that the main request were held not to be allowable.
- III. In a communication accompanying a summons to oral proceedings the board took the preliminary view that, as the appealed decision was only based on the ground that claim 2 lacked clarity and it did not appear that a full substantive examination had been carried out, it would be necessary to remit the case to the examining division should the decision under appeal be set aside. Moreover, the description did not appear to support claim 2 of the main request in its entire scope, contravening Article 84 EPC. Claim 2 of the proposed first auxiliary request appeared to be supported by the description in compliance with Article 84 EPC and, as the set of claims of the second auxiliary request did not include a claim corresponding to claim 2 of the

main request, the objection on which the appealed decision was based was not relevant to the second auxiliary request.

IV. With a letter dated 13 June 2007, in response to the communication, the appellant filed a set of amended claims replacing all the requests on file. The set of claims corresponds to the claims of the previous first auxiliary request. The appellant expressed its opinion that oral proceedings were not required and requested that the decision be set aside and the application be remitted to the department of first instance.

V. In view of the new request the oral proceedings were cancelled.

VI. Claim 1 reads as follows:

" A method for selecting a new cell (4b) for a terminal (10) in a cellular telecommunications system, said terminal (10) being associated with a current cell (4a), said method comprising the steps of:

measuring at the terminal (10) the strength of a communication (A) from said current cell (4a);

measuring at the terminal (10) the strength of a communication (A) from at least one other cell (4b);

decoding a communication from the current cell (4a) and/or the at least one other cell (4b) to obtain offset information;

modifying the measured strength of the communication from the at least one other cell and/or the current cell in dependence on any respective obtained offset information;

comparing the measured strength of the communication from the current cell and the measured strength of the communication from the at least one other cell, at least one of the measured strengths having been modified in the modifying step; and

depending of [sic] the results of the comparing step, changing the current cell with which the terminal is associated, characterised in that the current cell is changed only if for a predetermined time period the measured strength of the communication from the at least one other cell exceeds the measured strength of the communication from the current cell, at least one of the measured strengths having been modified in the modifying step."

Claim 2 reads as follows:

"A method as claimed in claim 1, wherein the measured strength of the communication from the current cell (4a) and/or the measured strength of the communication from at least one other cell (4b) satisfying [sic] a predetermined condition."

## **Reasons for the Decision**

### *1. Background of the invention*

In a method of soft handover between cells of a cellular telecommunications system a mobile station measures the strength of communication with its current cell and at least one neighbouring cell. By decoding a signal from the neighbouring cell information is obtained as to traffic conditions, in particular

whether the neighbouring cell is able to allocate further mobile stations. This information is considered in addition to the signal strengths in the current and the neighbouring cell when deciding as to whether to hand the mobile station over to that cell. As an additional requirement only signals exceeding a given threshold may be decoded.

2. *Article 84 EPC*

The description, page 5, last paragraph states that the mobile station uses a decoding range threshold to determine which of the received BCCH signals from neighbouring base stations are to be decoded. In the board's view, this passage implies that the decoding step takes place for at least one of the neighbouring cells and the threshold is used to select the cell for which it takes place.

Claim 2 refers to the measured strength of the communication from the current cell and/or the measured strength of the communication from at least one other cell satisfying a predetermined condition. The board understands that the method of claim 2 includes a decoding step applied to a communication satisfying the predetermined condition.

Thus, claim 2 fulfils the requirements of Article 84 EPC.

3. *Remittal*

As the appealed decision was only based on the ground that claim 2 lacked clarity and it does not appear that

a full substantive examination has been carried out, the decision under appeal is set aside and the case remitted to the department of first instance for further prosecution in order to preserve two instances.

The board observes that minor linguistic amendment to claims 1 and 2, e.g. replacing "depending of" by "depending on" in the final feature of claim 1 and "satisfying" by "satisfies" in claim 2, will be necessary.

**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland