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**Datasheet for the decision
of 15 March 2007**

Case Number: T 1352/05 - 3.5.03

Application Number: 99400538.7

Publication Number: 1033849

IPC: H04L 12/56

Language of the proceedings: EN

Title of invention:

Process for controlling access to radio resource for uplink packet transmission in a wireless communication network

Applicant:

Alcatel Lucent

Opponent:

-

Headword:

Process for controlling access to radio resource/ALCATEL LUCENT

Relevant legal provisions:

EPC Art. 54
EPC R. 71(2)

Keyword:

"Novelty (no)"
"Oral proceedings held in absence of appellant"

Decisions cited:

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Catchword:

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Case Number: T 1352/05 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 15 March 2007

Appellant: Alcatel Lucent
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Representative: El Manouni, Josiane
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 2 May 2005
refusing European application No. 99400538.7
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. 99 400 538.7 (publication number EP 1 033 849 A).

The reason for the refusal was that the subject-matter of claims 1, 6, 7 and 11 was not new in the sense of Article 54(1), (2) EPC having regard to the disclosure of:

D1: WO 98/45966 A.

II. With the statement of grounds of appeal the appellant filed a new set of claims 1 to 12, of which claim 1 was identical to claim 1 of the set of claims on which the impugned decision was based. The appellant submitted arguments in support of novelty and inventive step of the subject-matter of *inter alia* claim 1 and requested that the impugned decision be set aside and a patent be granted on the basis of the new set of claims.

Oral proceedings were conditionally requested.

III. The appellant was summoned to oral proceedings. In a communication accompanying the summons, the board raised, without prejudice to the board's final decision, objections under Articles 54, 84 and 123(2) EPC.

IV. In response to the summons, the appellant informed the board that it would not attend the scheduled oral proceedings and requested that the board decide on the basis of the documents on file.

V. Oral proceedings were held on 15 March 2007 in the absence of the appellant. At the end of the oral proceedings the board's decision was announced.

VI. Claim 1 reads as follows:

"A process controlling access to radio resource on the uplink of a packet service wireless communication system, comprising:

- in a user equipment, starting transmitting at a first transmission rate (SF_{init});
- in the network, computing a transmission rate (SF_{min}) allowed for a user equipment, and sending said allowed transmission rate to the user equipment;
- in the user equipment, continuing transmitting at transmission rate (SF) lower than said allowed transmission rate after said transmission rate is received."

Reasons for the Decision

1. *Procedural matters*

1.1 The board considered it to be expedient to hold oral proceedings for reasons of procedural economy (Article 116(1) EPC). The appellant, which was duly summoned, had informed the board that it would not attend the oral proceedings. The oral proceedings were thus held in the absence of the appellant (Rule 71(2) EPC).

1.2 In the communication accompanying the summons, objections under Articles 54, 84 and 123(2) EPC were raised in respect of claim 1. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment at the oral proceedings on any of these objections but, instead, chose to rely on the arguments as set out in the written submissions, which the board duly considered below.

Under these circumstances the board was in a position to give a decision in accordance with Article 113(1) EPC.

2. *Interpretation of claim 1*

In the board's communication it was *inter alia* pointed out that it was unclear whether or not "a user equipment" in claim 1, line 6, referred to the same user equipment as referred to in claim 1, line 5 (see above, point VI, claim 1, second and third paragraphs: "a user equipment") and that, consequently, it was unclear to which user equipment "the user equipment" as referred to in claim 1, lines 7 and 8 (see above, point VI, claim 1, third and fourth paragraphs) related.

In the board's view, these ambiguities do not however completely deprive the claim of a technical meaning as understood by a person skilled in the art and do not render a novelty assessment impossible. For this assessment, the board will hereinafter interpret "a user equipment" in claim 1, line 6 (see above, point VI, claim 1, third paragraph) as meaning "the

user equipment", which is also in accordance with the description, paragraphs [0020], [0021] and [0027] of the application as published.

3. *Novelty*

3.1 D1 discloses a process of controlling access to a radio resource on the reverse link, i.e. the uplink, of a packet service wireless communication system, see, in particular, page 6, lines 3 to 18, page 8, line 39 to page 9, line 5, and Fig. 2.

The controlling process includes the steps of:

- in a remote station 6, i.e. a user equipment, after having received a large amount of data to be transmitted, starting transmitting at a first transmission rate (see page 44, lines 14, 15 and 25 to 27 and Fig. 11 (starting at frame 8 at rate 1));
- in a channel scheduler 12 of a base station controller 10 in a cellular network (see Figs 1 and 2) computing a transmission rate allowed for the user equipment (page 44, lines 17 to 24 and Fig. 8) and sending the allowed transmission rate (i.e. rate 4) to the user equipment (page 44, lines 24 and 25); and
- in the user equipment, continuing transmitting at a transmission rate at or below the allowed transmission rate after the allowed transmission rate is received (see page 6, lines 24 to 30 and Fig. 11 (frames 14 to 19 at rate 4 and frame 20 at rate 2)).

- 3.2 In the statement of grounds of appeal the appellant argued that the subject-matter of claim 1 was new having regard to the disclosure of D1, because D1 did not disclose that "for given data to be transmitted" the transmission was started at a first transmission rate and thereafter continued at another transmission rate.
- 3.3 The board notes however that claim 1 does not require that the initial transmission and the continuation of the transmission are "for given data to be transmitted". Even if this were the case, it is noted that the dynamic transmission rate control as disclosed in D1 also relates to given data to be transmitted, namely the "large amount of data" which is received by the remote station during frame 7 and which is subsequently transmitted to the base station of the cell (see page 44, lines 14 and 15, and Fig. 11 (frames 8 to 20)).
- 3.4 The board therefore concludes that the subject-matter of claim 1 is not new having regard to the disclosure of D1, Articles 52(1) and 54 EPC.
4. In view of the foregoing, it has not proved necessary to consider any of the further objections set out 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