

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 28 May 2008**

Case Number: T 1386/05 - 3.5.05

Application Number: 03255055.0

Publication Number: 1422887

IPC: H04L 12/56

Language of the proceedings: EN

Title of invention:
Distributed call control

Applicant:
Lucent Technologies Inc.

Opponent:
-

Headword:
Shared Channel Allocation/LUCENT

Relevant legal provisions:
EPC Art. 54, 123(2)

Relevant legal provisions (EPC 1973):
EPC Art. 113(1)
EPC R. 29(2)

Keyword:
"Novelty - no"
"Basis of decisions - right to be heard"

Decisions cited:
-

Catchword:
-



Case Number: T 1386/05 - 3.5.05

DECISION
of the Technical Board of Appeal 3.5.05
of 28 May 2008

Appellant: Lucent Technologies Inc.
600 Mountain Avenue
Murray Hill
New Jersey 07974-0636 (US)

Representative: Sarup, David Alexander
Alcatel-Lucent Telecom Limited
Unit 18, Core 3,
Workzone
Innova Business Park
Electric Avenue
Enfield EN3 7XU (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 30 June 2005
refusing European application No. 03255055.0
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: D. H. Rees
Members: A. Ritzka
G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division dispatched 30 June 2005, refusing European patent application No. 03 255 055.0 for the reasons that the application did not comply with the provisions of Rule 29(2) EPC 1973, that the subject-matter of independent claims 1 and 5 lacked novelty having regard to the disclosure of

D1: EP 1 237 296 A2

and that claims 5 and 11 did not comply with the provisions of Article 123(2) EPC.

II. Notice of appeal was filed and the appeal fee paid on 24 August 2005. The statement setting out the grounds of appeal was submitted on 14 October 2005. The appellant requested that the appealed decision be set aside and that a patent be granted based on claims 1 to 15 filed with the statement setting out the grounds of appeal and replacing the set of claims on file.

III. Claim 1 reads as follows:

"A method of communication with a base station, the method comprising:

transmitting a status signal for selectively varying an allocation of at least one resource of the base station to a data transmission service and at least one other service in response to fluctuations in demand for at least one of the data transmission service and the at least one other service."

In view of the decision it is unnecessary to give details of further claims.

Reasons for the Decision

1. *Claim 1*

1.1 Lack of novelty

D1 discloses a mobile communication system in which a large amount of data may be transmitted from a base station to a mobile station, see column 1, lines 3 to 13 and 24 to 33. Thus, D1 discloses a method of communication with a base station.

A transmission power control device is provided in the base station, see column 4, lines 26 and 27. The base station comprises a controller which reports a transmission power information to the radio network controller, see column 4, lines 27 to 37 and column 8, line 21. This reporting implies that a message comprising the transmission power information, i.e. a status signal, is transmitted.

The radio network controller determines the transmission power based on the transmission power information and notifies the controller in the base station of it, see figure 7 and column 8, lines 16 to 29. D1 states that, because it is not necessary to statically reserve a transmission power for the dedicated physical channel to be set, it is possible to increase the transmission power of the high speed packet downlink shared channel when the usage of the

dedicated physical channels is low, see column 4, lines 8 to 17, and column 8, lines 43 to 47.

This implies, that, based on the message comprising the transmission power information, i.e. the status signal, an allocation of the transmission power, i.e. at least one resource, of the base station to a service using the high speed packet downlink shared channel, i.e. a data transmission service, and at least one other service in response to fluctuations in demand for at least one other service is selectively varied. The variation occurs in response to the current usage of the dedicated physical channels, i.e. to fluctuations in demand for at least one of the data transmission service and the at least one other service.

Thus, the subject-matter of claim 1 lacks novelty.

1.2 Appellant's arguments

With respect to the novelty of claim 1 the appellant firstly argued that in the invention, in contrast to D1, the base station determines whether a variation in allocation is desirable. This argument had already been presented in the proceedings of the department of first instance and had been, in the view of the board, correctly rebutted. The wording of claim 1 does not require such a determination in the base station and indeed the description includes embodiments where no such determination is necessary.

Additionally, the appellant stated that according to the teaching of D1 increasing the transmission power allocated to a shared channel did not necessarily imply

that the power allocated to the individual channels had to be decreased and vice versa for keeping the sum of the transmission powers of the individual channels and the shared channel at a constant level.

Specifically, the appellant argued that according to D1 the transmission power for the shared channel can increase when the number of individual channels in use is low, implying the use of a smaller portion of the available transmission power for all the individual channels. Thus, in the method of D1 the transmission power of the shared channel alone was always controlled by changing the transmission power of the shared channel, whereas increasing or decreasing the transmission power of any other channel, such as one of the particular individual channels, was not shown in D1.

This argument simply does not apply to claim 1, since claim 1 does not mention any individual channel to which an allocation of at least one resource might be varied. Moreover, the board observes that the application as a whole does not provide for a clear basis for allocating resources to particular individual channels.

Claim 1 rather specifies that the allocation of at least one resource of the base station to a data transmission service and at least one other service is varied in response to fluctuations in demand for at least one of the data transmission service and the at least one other service.

The board understands the shared channel of D1 as the data transmission service and the totality of individual channels of D1 as the at least one other service of claim 1. If the number of individual channels in use varies, the demand of the totality of individual channels, i.e. the at least one other service, will vary, i.e. fluctuate. In response to this fluctuation the allocation of the transmission power, i.e. the at least one resource of the base station, is selectively varied based on the reported transmission power information, i.e. the transmitted status signal, see point 1.1 above.

Thus, the arguments presented by the appellant with respect to the objection made in point 2.b of the decision under appeal clearly do not overcome this objection.

2. *Procedural matters*

Present claim 1 is identical to claim 1 of the set of claims on which the decision under appeal was based. The decision under appeal states in point 2.b that the subject-matter of claim 1 was not novel having regard to the disclosure of D1.

Thus, the appellant has had the opportunity to present its comments on this objection. In fact, it did so in the statement setting out the grounds of appeal. However, the comments are not deemed to be persuasive, see point 1.2 above.

As the appellant has had the opportunity to present its comments on the objection concerning claim 1 made by

the examining division and did not amend claim 1 nor request oral proceedings and as the board maintains this objection as being correct for the same reasons as given by the examining division (see point 1.1 above), a decision can be based on this ground without any further communication, complying with the provisions of Article 113(1) EPC 1973.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

K. Götz

D. H. Rees