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Datasheet for the decision of 26 November 2009

Case Number: T 1266/07 - 3.5.03

Application Number: 96946386.8

Publication Number: 0935893

IPC: H04Q 7/22

Language of the proceedings: EN

Title of invention:
Wireless communication system

Applicant:
AT&T WIRELESS SERVICES, INC.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 56, 116

Relevant legal provisions (EPC 1973):
-

Keyword:
"Request for oral proceedings be held by video conference (refused)"
"Inventive step (all requests - no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 1266/07 **-** 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 26 November 2009

Appellant: AT&T WIRELESS SERVICES, INC.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 19 February 2007 refusing European application No. 96946386.8 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

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

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division posted on 19 February 2007 refusing European application no. 96946386.8 on the ground that the subject-matter of claims 1 and 4 then on file lacked an inventive step (Article 56 EPC).

II. The applicant filed an appeal against this decision. Regarding the requests it was stated in the paragraph of the statement of grounds following the headline "Status of Claims" that "***Claims 1-10, as amended, are currently pending in this application***". Together with the statement of grounds two alternative sets of claims, referred to as "***Contingent Claim Set A***" and "***Contingent Claim Set B***" were filed.

III. In a communication accompanying the summons to oral proceedings the board gave a preliminary opinion on the status of the requests on file, on clarity (Article 84 EPC) and on inventive step (Article 56 EPC). The following documents were referred to in the communication:

D3: US-A-5 191 593 and
D7: US-A-5 504 803.

IV. The appellant filed on 26 October 2009, together with a response to the board's communication, sets of claims of a main and three auxiliary requests. In the response it was further stated that "***As a fourth auxiliary request we request that each occurrence of "cellular network" be replaced by "multi-cell cellular network"***

in each of the 1st, 2nd and 3rd auxiliary requests filed herewith".

V. Claim 1 according to the main request reads as follows:

"A wireless communication system, comprising:

a cordless cellular base station having a transceiver, said transceiver capable of establishing first and second channels;

a first mobile station adapted to communicate with said cordless cellular base station on said first channel which carries a first audio signal in accordance with a cellular telephone protocol; and

a second mobile station adapted to communicate with said cordless cellular base station on said second channel which carries a second audio signal in accordance with a cellular telephone protocol, wherein said cordless cellular base station is capable of relaying the first audio signal from the first mobile station to the second mobile station and the second audio signal from the second mobile station to the first mobile station."

Claim 1 according to the first auxiliary request differs from claim 1 according to the main request in that in the second feature the expression "a first mobile station" is replaced by "a first cellular network compatible mobile station registered to communicate with a cellular network" and in the third feature "a second mobile station" is replaced by "a second cellular network compatible mobile station registered to communicate with a cellular network".

Claim 1 according to the second auxiliary request adds to claim 1 of the first auxiliary request that the cordless cellular base station is "connected to a landline of a public switched telephone network" and at the end of the claim the feature "without using said landline or said cellular network, and without a call in progress on said landline or said cellular network".

Claim 1 according to the third auxiliary request differs from claim 1 of the second auxiliary request in that the feature "without using … network" is replaced by stating that each audio signal from the first or the second mobile station is "directly" relayed to the other mobile station.

VI. With a further submission on 11 November 2009 the appellant requested that the oral proceedings be conducted by video conference.

VII. In a telephone conversation between the appellant's representative and the Chairman of the board on 19 November 2009 the representative was informed that the board would not hold the oral proceedings as a video conference.

VIII. Oral proceedings were held on 26 November 2009 in the absence of the appellant. At the end of the oral proceedings the decision of the board was announced.

Reasons for the Decision

1. *The request to hold oral proceedings by video conference*

1.1 The request for the oral proceedings to be held by video conference was received some two weeks before the appointed date. This was too short a time for the board to deal with the legal and practical issues arising from the request, which was accordingly refused.

1.2 This board accepts that in future it is conceivable that such a request might be allowed. For this to happen however it will be necessary that a general framework exist. ***Inter alia*** the following issues will require to be resolved:-

(a) Firstly, video conferencing before an examining division is explicitly regulated by the statement in the OJ EPO 2006, 585ff. There is however at present no corresponding provision for the boards of appeal; in particular, it is not mentioned in the Rules of Procedure of the Boards of Appeal (RPBA).

(b) Secondly, oral proceedings held before the examining division are, in accordance with Article 116(3) EPC, not public, whereas those before the boards of appeal are public, Article 116(4) EPC. It will be necessary to ensure that the use of video conferencing is reconciled with the requirement that oral proceedings before the boards be public.

1.3 The legal certainty required of appeal proceedings would not be guaranteed if the present board set a precedent by permitting oral proceedings by video conference before these issues are resolved.

2. *The appellant's absence at the oral proceedings and the right to be heard*

2.1 The board considered it to be expedient to hold oral proceedings for reasons of procedural economy (Article 116(1) EPC). Having verified that the appellant was duly summoned the board decided to continue the oral proceedings in the absence of the appellant (Rule 115(2) EPC and Article 15(3) RPBA).

2.2 In the communication accompanying the summons, observations under Article 84 EPC and Article 56 EPC were given in respect of claim 1 of each request as pending at the time and the appellant was informed that at the oral proceedings these objections would be discussed. 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.

2.3 In view of the above and for the reasons set out below, the board was in a position to give at the oral proceedings a decision which complied with the requirements of Article 113(1) EPC.

3. *Clarity (Article 84 EPC)*

In the communication accompanying the summons to oral proceedings the board expressed doubts whether the expression "cellular telephone protocol" had a clear limitative effect on the claimed system and questioned

whether the claims were rendered unclear by the expression "cordless cellular base station".

From the third paragraph on page 2 of the appellant's letter of 26 October 2009 the board understands a "cellular telephone protocol" as providing the ability to transfer a telephone call on a travelling mobile station from cell to cell, thus maintaining contact between the mobile station and the network. The board accordingly understands a "cordless cellular base station" as a base station connected via a landline to the conventional wired telephone network and capable of transferring a call to another base station.

Thus, the board is satisfied that claim 1 of each request is clear to the extent that the board is in the position to interpret claim 1 of each request in order to permit an assessment of the claimed subject-matter as to novelty and inventive step.

4. *Claim 1 of the main request - inventive step (Article 56 EPC)*

4.1 D3 describes a cordless telephone system relaying a voice signal between a mobile handset and a party line of a PSTN. The cordless telephone system is provided with a full duplex intercom function which permits direct communication between two mobile handsets, without transferring the call to the PSTN.

D7 is a post-published family member of the Chinese patent application CN 1107269 published on 23 August 1995, i.e. before the priority date of the application. The board cited D7 as a correct English translation of

the pre-published Chinese application, and this was not contested by the appellant. D7 describes a cordless telephone system formed of a plurality of microcells, each microcell being served by a base station with which a mobile telephone may register as a cordless telephone upon entering the range of the base station.

The board considers D7 as the single most relevant prior art document and the correct starting-point for assessing inventive step, given that in D7, as in the application, the object is to permit a mobile telephone to additionally establish contact with a cordless telephone system.

4.2 In detail, the D7 system includes a plurality of base stations 20 forming a network of a plurality of microcells. The base stations are organized in groups (BSG) 22 and connected, via a control unit (CU) 2 and a PBX 4, to telephone landlines, see figure 1. The system further includes plural mobile stations 50, each operable as a portable cellular telephone or a wireless extension telephone (column 7, lines 6 to 11). Each base station has a radio transceiver for establishing a voice channel with a mobile station (column 6, lines 22 to 37). The channels served by the wireless base stations share the frequency band allotted to a coexisting wide-area cellular mobile telephone system (column 4, lines 26 to 35). Regarding the communication between a handset and the wireless telephone system it is stated at column 9, lines 43 to 47 that *"A handoff is initiated by the conversation base station, but the CU 2 implements all BSG 22 handoff measurements, selects the best BSG 22 for handoff and completes the handoff by coordinating the new voice channel*

assignment". The board understands this passage as indicating that the wireless telephone system is capable of transferring a call between groups of base stations and, thus, communicating with the mobile station according to a cellular telephone protocol.

4.3 The system according to claim 1 is distinguished from the D7 system in that according to the claim a cordless cellular base station is capable of establishing a second channel and that a second mobile station is adapted to communicate with the base station on the second channel, and that the base station is capable of relaying the audio signal from each of the first and second mobile stations to the respective other station.

This direct connection between two stations without involving a switched telephone network is known in the art as an intercom function. Thus, the objective technical problem to be solved can be formulated as adding an intercom function to the wireless telephone system known from D7.

4.4 An implementation of an intercom function in a cordless telephone system is as noted at point 4.1 above disclosed in D3; the cordless base station 10 includes a conference call circuit (figure 3) i.e. the signal received from one of two mobile stations is added to an incoming telephone signal, if present, from a landline and transmitted to the other mobile station so that, in effect, the audio signal from one mobile station is directly relayed to the other mobile station, without involving the remainder of the telephone system. In the absence of an incoming telephone signal this constitutes an intercom arrangement and is indeed

described as such in one embodiment (cf. column 6 lines 45-54 of D3). It would be obvious for a person skilled in the art to add to the D7 wireless telephone system an intercom circuit such as that shown in figure 3 of D3 in order to provide an intercom function to the users of the wireless telephone system. By adding the intercom function to the D7 wireless telephone system the skilled person would arrive at the system as claimed in claim 1 of the main request. Thus, the system according to claim 1 of the main request lacks an inventive step (Article 56 EPC).

4.5 In the statement of grounds and in the response to the summons to oral proceedings the appellant argued that the problem of the present invention was how to use a cordless base station to enable communication between two mobile stations. The prior art did not reveal any cordless base station that allowed the connection of two cellular mobile stations. D3 did not show cellular compatible mobile stations, and the D7 wireless telephone system was only capable of operating in two modes which required the mobile station to be either in a cellular mode using a cellular protocol, or in a wireless mode using a wireless protocol.

4.6 The appellant's arguments are not convincing since they rely on the assumption that the particular communication modes require the use of mutually exclusive communication protocols. In the board's view selecting an operation mode in D7 implies that the mobile station is in communication with either a wireless or a wide area cellular network but does not prescribe the protocol to be used. Be that as it may, the communication between a mobile station and the

wireless network in D7 is according to a cellular protocol since, as pointed out at point 4.2 above, the wireless network is capable of initiating a hand-off of a call. Thus, even when operating in a wireless communication mode the mobile device uses a cellular communication protocol for communicating with the wireless telephone system.

5. *Claim 1 of the first auxiliary request - inventive step (Article 56 EPC)*

As stated at points 4.2 and 4.6 above the mobile station of D7 can be operated in a wireless or in a cellular mode so that the mobile station is inherently compatible with a cellular network. Furthermore, the D7 wireless telephone system uses the mobile identification number of the mobile station in the cellular system to distinguish between authorized and non authorized users (cf. column 10 lines 29 to 35). Thus, in order for a mobile station to communicate with the wireless telephone system it is necessary that the mobile station is registered to communicate with the cellular network. Accordingly, the subject-matter of claim 1 of the first auxiliary request does not involve an inventive step (Article 56 EPC) for the same reasons as claim 1 of the main request.

6. *Claim 1 of the second and the third auxiliary request - inventive step (Article 56 EPC)*

The further feature that the cordless cellular base station is connected to a landline of a public switched network does not serve to distinguish the claimed system from the prior art since the D7 system is

configured to enable communication between the cordless telephone system and a wired telephone system. Furthermore, the indication that the base station is capable of relaying the audio signals between the mobile stations "directly" or "without using said landline or said cellular network, and without a call in progress on said landline or said cellular network" is merely a restatement of the intercom function described in D3. Thus, claim 1 according to each of the second and third auxiliary requests does not differ in substance from claim 1 of the first auxiliary request, so that the subject-matter of each of these claims does not involve an inventive step for the reasons set out above at point 4.

7. *The appellant's "fourth auxiliary request"*

The appellant further requests that each occurrence of "cellular network" be replaced by "multi-cell cellular network" in each of the first, second and third auxiliary requests. However, in the board's view this change is merely linguistic and does impose any further limitation on the claimed subject-matter since a cellular network by definition has multiple cells and is inherently a "multi-cell" cellular network. Thus, each claim 1 of the first, second and third auxiliary request accordingly modified must fail for the same reasons as set out above at point 4.

8. Since the subject-matter of claim 1 of each request fails to meet the requirements of the EPC the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano A. S. Clelland