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**Datasheet for the decision
of 9 December 2008**

Case Number: T 1308/07 - 3.5.03

Application Number: 95933968.0

Publication Number: 0783827

IPC: H04Q 7/38

Language of the proceedings: EN

Title of invention:

Apparatus for providing broadcast messages in a communications network

Patentee:

QUALCOMM INCORPORATED

Opponent:

Nokia Corporation

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56, 111(1)

Keyword:

"Added subject-matter (no)"
"Novelty (yes)"
"Remittal (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 1308/07 - 3.5.03

DECISION
of the Technical Board of Appeal 3.5.03
of 9 December 2008

Appellant: QUALCOMM INCORPORATED
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Decision under appeal: Decision of the opposition division of the
European Patent Office posted 18 April 2007
revoking European patent No. 0783827 pursuant
to Article 102(1) EPC 1973.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
R. Moufang

Summary of Facts and Submissions

- I. This appeal is against the decision of the opposition division revoking European patent No. 0 783 827 which is based on European patent application No. 95933968.0, originally filed as international application No. PCT/US95/12389 (publication No. WO 96/10895 A).
- II. The opposition was filed against the patent as a whole and on the grounds that the subject-matter of the patent was not new, did not involve an inventive step, and extended beyond the content of the application as filed, Article 100(a) and (c) EPC.
- III. In the decision the opposition division held that the subject-matter of claims 1 and 9 as granted extended beyond the content of the application as filed (Articles 100(c) and 123(2) EPC) and that the subject-matter of claims 1 and 9 of an auxiliary request lacked novelty (Articles 52(1), 54 and 100(a) EPC) having regard to the disclosure of:

D2: GSM 05.02 Version 4.4.0, European Digital Cellular Telecommunications System (Phase 2); Multiplexing and Multiple Access on the Radio Path; European Telecommunications Standards Institute (ETSI), 21 January 1994.

In the reasons for the decision the opposition division also referred to the following documents:

D3: "The GSM System for Mobile Communications", M. Mouly *et al*, Cell & Sys, Palaiseau, France, 1992, pages 206 to 216 and 424 to 430; and

D3a: *ibid.*, pages 228 to 231.

- IV. The proprietor (appellant) lodged an appeal against the decision. A statement of the grounds of appeal was subsequently filed together with a set of claims of an auxiliary request (Auxiliary Request I). The appellant requested that the opposition be rejected (main request) or that the patent be maintained in amended form according to Auxiliary Request I. Oral proceedings were conditionally requested.
- V. In response to the notice of appeal and the statement of grounds of appeal the respondent (opponent) questioned the admissibility of the appeal by noting that the notice of appeal did not explicitly mention the name and address of the appellant, and filed observations on substantive issues, to which the appellant filed replies. The respondent requested that the decision of the opposition division be maintained. Oral proceedings were conditionally requested.
- VI. The parties were summoned by the board to oral proceedings. In a communication accompanying the summons the board drew attention to issues to be discussed at the oral proceedings and gave a preliminary opinion on the admissibility of the appeal and the issue of whether or not the subject-matter of claims 1 and 9 of the main and auxiliary requests extended beyond the content of the application as filed (Articles 100(c) and 123(2) EPC).
- VII. By a letter received 2 October 2008 the respondent withdrew the opposition.

VIII. In preparation for the oral proceedings the appellant filed claims and amended description pages of an amended Auxiliary Request I as well as of two additional auxiliary requests, i.e. Auxiliary Requests II and III.

IX. Oral proceedings were held on 9 December 2008 during which the appellant replaced all pending requests by a new main request including amended independent claims 1 and 9. The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of independent claims 1 and 9 of the new main request as filed at the oral proceedings.

At the end of the oral proceedings the board's decision was announced.

X. Claim 1 of the new main request reads as follows:

"An apparatus for transmitting a broadcast message over a network comprising a plurality of receivers for reception thereby, in which network data is transmitted in a plurality of paging channels during slot positions in a predetermined slot cycle, the apparatus comprising:

a broadcast message buffer (24) for buffering data defining a message to be broadcast;

a transmit controller (34) for providing a timing signal indicative of a slot position in the predetermined slot cycle;

a modulator (26) for modulating data from the broadcast message buffer into one of the paging channels during the slot position defined by the timing signal from the transmit controller;

a transmitter (28) for broadcasting a paging signal

indicative of the slot position and the one paging channel in which the message will be broadcast, and for broadcasting the modulated message data in the slot position and the one paging channel; and a broadcast page buffer (22) for buffering data defining the paging signal to be broadcast, and wherein the modulator (26) is arranged to modulate data from the broadcast page buffer (22) onto one of the paging channels during one or more slot positions defined by a signal from the transmit controller (34), whereby the paging signal is broadcast in the one or more slot positions in the one paging channel of the network."

Claim 9 of the new main request reads as follows:

"An apparatus for receiving a broadcast message transmitted as a signal over a network comprising a plurality of such apparatus, in which network data signals are transmitted in a plurality of paging channels during slot positions in a predetermined slot cycle, the apparatus comprising:

a receiver (52) for receiving a signal transmitted in a designated slot position in a designated paging channel;
a demodulator (54) for demodulating the signal received by the receiver;

a decoder (56) for decoding the demodulated signal;
a page receive controller (62) for providing to the receiver a message timing signal indicative of a slot position in the predetermined slot cycle, wherein the page receive controller (62) is adapted to respond to reception of a paging signal indicative of a slot position in one paging channel in which a data signal will be broadcast, to control the receiver to receive

the broadcast message in the slot position in a paging channel indicated by the paging signal; and wherein the page receive controller (62) is arranged to provide a page timing control signal indicative of a slot position in the predetermined slot cycle, the demodulator (54) is arranged to demodulate the received paging signal from the one paging channel during the slot position defined by the page timing signal from the receive controller (62), and the decoder (56) is arranged to decode the demodulated signal to obtain a broadcast page, and to provide the broadcast page to the page receive controller (62), and the receive controller (62) is arranged to provide the message timing signal depending on the broadcast page."

Reasons for the Decision

1. *Admissibility*

The appeal complies with Articles 106 to 108 EPC 1973 and Rules 1(1) and 64(b) EPC 1973. Further, the board sees no reason for rejecting the appeal as inadmissible under Rule 65(2) EPC 1973, since in a letter dated 17 October 2007 the appellant provided, with reference to a letter filed by the respondent, the full name and address of the appellant. The appeal is therefore admissible.

2. *Interpretation of claims 1 and 9 as granted*

2.1 According to claim 1 as granted the apparatus comprises "a modulator (26) for modulating data from the broadcast message buffer into one or more of the paging

channels ..." (underlining by the board).

2.2 In the context of the present patent, the board interprets this feature as defining two alternatives, namely that the claimed apparatus either includes a modulator which is suitable for modulating data from the broadcast message buffer into one paging channel (as in the third embodiment, see paragraphs [0059] and [0065] of the patent specification as published) or, alternatively, a modulator which is suitable for modulating data from the broadcast message buffer into more paging channels (as in the first embodiment, see paragraphs [0038] and [0045], and the second embodiment, see paragraphs [0050] and [0055], for the specific case of a modulation into all paging channels).

2.3 Claim 9 is interpreted in a corresponding manner.

3. *Amendments*

3.1 The previous main request was rejected by the opposition division for the reason that the subject-matter of claims 1 and 9 as granted extended beyond the content of the application as filed (Article 123(2) EPC) in that there was no basis for one of the embodiments covered by these claims according to which a plurality of paging channels were provided and the modulator was for modulating the data on some but not all of the paging channels (see, e.g., claim 1 as granted: "one or more paging channels").

3.2 Present claims 1 and 9 are essentially a combination of claims 1 and 2 as granted and claims 9 and 10 as granted, respectively, in which the wording "one or more of the paging channels" is replaced by "one of the paging

channels" and the wording "one or more paging channels" and "the one or more paging channels", by either "one paging channel" or "the one paging channel".

- 3.3 The application as originally filed discloses an apparatus for transmitting a broadcast message over a network in which network data is transmitted in a plurality of paging channels, see Fig. 2. According to a fourth embodiment, the application discloses an apparatus, in which the modulator 26 (see Fig. 3) is for modulating data from the broadcast message buffer into one paging channel (see the application as published, page 12, lines 26 to 31 and page 13, lines 25 to 27). Further, the description as filed (see page 3, line 35 to page 4, line 6 ("The broadcast message paging channel can be provided explicitly in the broadcast page or determined in accordance with a predetermined convention.")) provides a basis for the feature that in the fourth embodiment the paging channel used for the broadcast message need not be the same as the paging channel used for the broadcast page which is referred as the paging signal in the claims.

Since claim 1 of the new main request is based on this embodiment, the above-mentioned objection raised by the opposition division is therefore overcome.

- 3.4 The above considerations apply, *mutatis mutandis*, to claim 9 of the new main request.
- 3.5 The board is also otherwise satisfied that claims 1 and 9 of the new main request do not contain subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC). Further, the claims as granted have not thereby been amended in such a way as

to extend the protection conferred (Article 123(3) EPC).

4. *Novelty - Articles 52(1) and 54 EPC*

4.1 D2, see the title and page 22, section 6.5.4, discloses an apparatus for transmitting a short message service cell broadcast (SMSCB) message in a digital cellular telecommunications GSM system. The message is broadcast on the cell broadcast channel (CBCH). When SMSCB is in use, this is indicated within the broadcast control channel (BCCH). The radio subsystem supports a plurality of logical channels which include common control type channels, including a paging channel (PCH), i.e. a downlink channel used to page mobiles (page 10, section 3.3.3), dedicated control channels (page 10, section 3.3.4), and the cell broadcast channel (CBCH) (page 10, section 3.3.5).

4.2 The subject-matter of claim 1 of the new main request differs from the apparatus disclosed in D2 at least in that D2 does not disclose that the transmitter is for broadcasting the message on a paging channel. Further, even if it were implicit in D2 that the indication that SMSCB is in use is broadcast as a paging signal on a paging channel, D2 would not disclose that the paging signal is indicative of the slot position and the paging channel in which the message would be broadcast.

4.3 Claim 9 is directed to an apparatus for receiving a broadcast message and includes a page receive controller which includes features which correspond to the above-mentioned distinguishing features of the apparatus for transmitting a broadcast message according to claim 1.

4.4 The board notes that neither D3 nor D3a, each, like D2, also concerned with the GSM system, discloses the above-mentioned distinguishing features. More specifically, in D3, see page 207, reference is made to a paging and access grant channel (PAGCH) and, see page 426, in the context of receiving broadcast short messages reference is made to the cell broadcast channel (CBCH). D3a does not refer to a broadcasting of messages at all.

4.5 The board therefore concludes that the subject-matter of claims 1 and 9 of the new main request is novel having regard to each of the disclosures of D2, D3 and D3a.

5. For the above reasons, the decision under appeal is to be set aside.

6. *Remittal to the department of first instance*

6.1 The board notes that the decision under appeal does not contain any statement in relation to the opposition ground of inventive step (see point II above). If the subject-matter of claims 1 and 9 were to be held to meet the requirements of Articles 52(1), 54 and 56, it would also be necessary to consider whether or not the amendments made to claims 1 and 9 as granted require consequential amendments to the dependent claims of the new main request, i.e. claims 3 to 8 and 11 to 20 as granted, and to the description as granted.

6.2 In accordance with Article 111(1) EPC, the board therefore considers it appropriate to remit the case to the department of first instance to continue the examination of the opposition ground pursuant to Article 100(a) EPC.

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 on the basis of independent claims 1 and 9 of the new main request as filed at the oral proceedings.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland