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**Datasheet for the decision  
of 24 June 2008**

**Case Number:** T 1699/07 - 3.5.03

**Application Number:** 03011221.3

**Publication Number:** 1339174

**IPC:** H04B 1/707

**Language of the proceedings:** EN

**Title of invention:**

Code division multiple access communication system

**Applicant:**

InterDigital Technology Corporation

**Opponent:**

-

**Headword:**

Code division multiple access communication system/  
INTERDIGITAL

**Relevant legal provisions:**

EPC Art. 84, 111(1)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

-

**Decisions cited:**

-

**Catchword:**

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Case Number: T 1699/07 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 24 June 2008

**Appellant:** InterDigital Technology Corporation  
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**Decision under appeal:** Decision of the examining division of the  
European Patent Office posted 23 April 2007  
refusing European application No. 03011221.3  
pursuant to Article 97(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 examining division refusing European patent application No. 03011221.3 (publication number EP 1 339 174 A), which, according to the request for grant, is a divisional application based on European patent application No. 98912922.6.
- II. The reason given for the refusal was that the claims did not comply with the requirements of Article 84 EPC due to a lack of support.

More specifically, the complete reasons for the decision, i.e. points 4 to 7, read as follows:

- "4. Some of the embodiment [*sic*] described in the description do not relate directly to the invention as claimed. Wordings like "in the exemplary embodiment of the present invention" or the like do therefore lead to an inconsistency between the claims and the description (Guidelines C-III, 4.3 (iii)). Examples in the description which are not covered by the claims may be allowed only if they are presented not as embodiments of the invention but as background art or examples which are useful for understanding the invention.
5. Although the Applicant has removed some of these inconsistencies many still remain throughout the application.
6. This objection also extends to the statement of invention. Contrary to what the Applicant asserts

in the Letter of reply dated 14.07.2006, the part on page 6, line 28 - page 8, line 22 does not merely put the claimed invention in context. The wording "The present invention is embodied in a multiple access, spread-spectrum communication system ..." on page 6, line 27 ff. is vague enough to allow the interpretation that at least part of what follows is implicitly part of the invention. The wording "... the present invention includes [sic] a code sequence generator. ..." on page 8, line 11 is an explicit statement that is in direct contradiction with the claims that do not comprise a code sequence generator.

7. The inconsistencies between the description and the claims therefore throw doubt on the extent of protection and therefore render the claims unsupported under Article 84 EPC, second sentence."

III. In the notice of appeal the appellant requested that the decision be set aside and that oral proceedings be scheduled. In a subsequent letter the latter request was explicitly reformulated as an auxiliary request for the case that the decision was not to be set aside.

IV. With the statement of grounds of appeal the appellant filed amended description pages and an additional description page 6a. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the "enclosed new parts of the specification, together with the remaining application documents as previously pending".

V. The present application documents thus consist of the following parts:

description:

pages 13-15, 32, 33, 37-39, 42, 44, 47, 57, 65, 67, 69-71, 74, 79, 81, 82, 89, 99, and 100 as originally filed;

pages 1-5, 7, 12, 22, 34, 55, 72, 88, and 93 as filed with the letter dated 14 July 2006 (NB: description page 9 is deleted); and

pages 6, 6a, 8, 10, 11, 16-21, 23-31, 35, 36, 40, 41, 43, 45, 46, 48-54, 56, 58-64, 66, 68, 73, 75-78, 80, 83-87, 90-92, 94-98, and 101 as filed with the statement of grounds of appeal; and

claims 1 to 4 and drawing sheets 1/37 to 37/37 as originally filed.

VI. The claims read as follows:

"1. A multiple access spread-spectrum communication system for dynamically changing a transmission rate of an information signal received from a remote processing unit (RPU) over a telecommunication line and transmitted to a subscriber through a first spread-spectrum message channel of a plurality of spread spectrum message channels, the system comprising  
a) a base station, connected to the RPU, which identifies an information signal rate of the respective information signal and provides a modify signal responsive to the information signal rate; comprising:

a system channel controller which assigns the information signal and the modify signal to respectively different ones of the plurality of spread-spectrum message channels;

first information channel mode modification means connected to the system channel controller and responsive to the modify signal for switching the respective information signal from the first spread-spectrum message channel supporting a first information channel rate to one other pre-determined spread-spectrum message channel, the one other pre-determined spread-spectrum message channel having a different information channel rate supporting the identified information signal rate; and

b) a subscriber unit comprising:

a first despreading means for recovering the respective information signal and modify signal from the first spread spectrum message channel;

second information channel mode modification means responsive to the modify signal for reassigning the first despreading means to a second despreading means which supports the different information channel rate, the second despreading means corresponding to the second spread spectrum message channel.

2. A bearer channel modification system according to claim 1 wherein the system channel controller further includes: means for synchronizing a first message boundary of the first spread spectrum channel to a second message boundary of the second spread spectrum channel on a subepoch [*sic*] boundary; means for sending the information signal through the first spread spectrum message channel prior to the sub-epoch boundary and for sending the information signal through

the second spread spectrum message channel to the substantial exclusion of the first spread spectrum message channel subsequent to the sub-epoch boundary.

3. A method of bearer channel modification by a base station for dynamically changing a transmission rate of an information signal received by a base station from a remote processing unit (RPU) over a first telecommunication line and transmitted by the base station to a subscriber through a first spread-spectrum message channel of a plurality of spread spectrum message channels comprising the steps of:

- a) determining, in the base station, an information signal rate of the information signal received by the base station,
- c) [*sic*] forming, by the base station and the RPU responsive to the determined information signal rate, a second telecommunication line supporting a different information signal rate between the base station and the RPU,
- d) assigning a transcoding means in the base station for transcoding the information signal in the first spread spectrum message channel from the information rate to the different information signal rate in the second telecommunication line,
- e) notifying the RPU to begin transmission in both the first and second telecommunication links concurrently, and to switch reception from the first telecommunication line to the second telecommunication line. [*sic*]
- f) activating the transcoding means for transmitting a transcoded information signal to the SU [*sic*] on the first spread spectrum message channel,

g) negotiating between the base station and SU, a time to switch from the first spread spectrum message channel to a second spread spectrum channel synchronously, the second spread spectrum channel supporting the different information signal rate, and  
h) switching, by the base station and the SU, the first spread spectrum message channel to the second spread spectrum message channel at the negotiated time.

4. The method of bearer channel modification as recited in claim 3, further comprising the step i) removing, by the RPU and the base station, the first telecommunication line, and wherein the step h) further includes the steps of:

h1) synchronizing a first message boundary of the first spread spectrum channel to a second message boundary of the second spread spectrum channel on a subepoch [sic] boundary, and

h2) modifying the first spread spectrum message channel to be the second spread spectrum message channel on the sub-epoch boundary such that the second spread spectrum message channel exists to the substantial exclusion of the first spread spectrum message channel subsequent to the sub-epoch boundary [sic]"

## **Reasons for the Decision**

1. *Article 84 EPC - lack of support*

1.1 In the board's view, the amendments to the description filed with the statement of grounds of appeal overcome the objections set out in the impugned decision:



- 1.2 Point 4 of the reasons for the decision (see point II above) starts with a general statement that some of the embodiments described in the description do not directly relate to the invention as claimed.

The board does not see the relevance of this statement in relation to the objection of lack of support under Article 84 EPC, since the presence in the description of an embodiment which does not directly relate to the claimed subject-matter does not *per se* result in a lack of support under Article 84 EPC.

Further, the statement is merely an assertion without any reference to specific parts of the description. The subsequent conclusion that "Wordings like "in the exemplary embodiment of the present invention" or the like do therefore lead to an inconsistency between the claims and the description" (underlining by the board) is consequently a further unreasoned assertion.

At point 5 (see point II above) the examining division states that some of the inconsistencies (NB: here in plural) have been removed by the applicant. Hence, even if there were one or more inconsistencies, some of them have admittedly been overcome, whilst the remaining one(s) is/are not specified.

- 1.3 At point 6 (see point II above) the examining division does refer to specific passages of the description. However, these passages have been amended on filing of the statement of grounds of appeal as follows:

"The present invention is embodied in a multiple access, spread-spectrum communication system ..."

is replaced by (see present page 6a, lines 1 and 2):

"An exemplary arrangement is embodied in a multiple access, spread-spectrum communication system ..."; and

"To generate large families of nearly mutually orthogonal codes used by the CDMA modems, the present invention includes a code sequence generator."

is replaced by (see present page 8, lines 10 and 11):

"To generate large families of nearly mutually orthogonal codes used by the CDMA modems, a code sequence generator is included."

Further, the board notes that the description includes the following passage (see page 6, lines 21 to 25):

"The present invention provides a multiple access spread-spectrum communication system for dynamically changing a transmission rate of an information signal according to claim 1. In a further aspect of the invention, there is provided a method of bearer channel modification by a base station for dynamically changing a transmission rate according to claim 3."

Further, at page 6, it is stated that, to the extent that described arrangements extend beyond the scope of the claims, these arrangements are to be considered as supplementary background information and "do not constitute definitions of the invention *per se*".

In the board's view, a skilled reader would understand from these passages that the arrangements described do not necessarily constitute embodiments of the claimed invention and that the matter for which protection is sought is defined by the claims.

Consequently, the "direct contradiction" referred to by the examining division at the end of point 6 of the reasons has been removed, i.e. it is now clear that the code sequence generator need not be part of the claimed multiple access spread-spectrum system, which is in accordance with the claims, since none of the system claims define a code sequence generator (see point VI above).

1.4 The sole, reasoned objection raised by the examining division at point 6 has therefore been overcome. Consequently, the conclusion arrived at by the examining division at point 7 of the reasons that the claims are not supported by the description is no longer justified.

1.5 The board therefore concludes that the decision is to be set aside.

## 2. *Remittal*

2.1 Since the decision under appeal only dealt with lack of support of the claims, it is considered appropriate, in accordance with Article 111(1) EPC, to remit the case to the first instance for further prosecution of the application.

- 2.2 In relation to the further prosecution, it appears, in particular, to be necessary, having regard to the requirement of Article 84 EPC according to which the claims shall be clear, to examine whether or not the claims include antecedents for "the respective information signal" (claim 1, feature (a)) and "the information rate" (claim 3, feature (d)). The board also notes that claim 2 is directed to a "bearer channel modification system according to claim 1", whereas claim 1 is directed to a "multiple access spread-spectrum communication system" and does not define a bearer channel. Further, in claim 3, a step b) appears to be missing. In order to comply with the requirements of Article 84 EPC, it also appears to be necessary that in the description the wordings "of one embodiment" at page 34, line 17, "of the exemplary embodiment" at page 55, line 14, and "of the present embodiment" at page 55, line 27 are deleted.
3. The board notes that the decision under appeal does not specify the application documents decided upon. Under "FACTS AND SUBMISSIONS" it is merely stated that "With a letter of reply dated 14.07.2006 the Applicant filed new description pages". However, the facts and submissions must clearly indicate what is the subject of the application and show on which documents the decision is based (cf. Guidelines, E-X, 4.3). In the present case, it would therefore have been appropriate to specify the description pages on which the decision was based.
4. Since the decision is to be set aside, there is no need to hold oral proceedings, as conditionally requested by the appellant.

**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