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**Datasheet for the decision
of 25 June 2014**

Case Number: T 2204/10 - 3.5.03

Application Number: 01304867.3

Publication Number: 1164811

IPC: H04Q11/00, H04J14/02

Language of the proceedings: EN

Title of invention:

Control channel processor and switching mechanism

Applicant:

Alcatel-Lucent USA Inc.

Headword:

Optical transmission node/ALCATEL-LUCENT

Relevant legal provisions:

EPC R. 43(4)

RPBA Art. 15(3)

Keyword:

Oral proceedings held in absence of the appellant

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 2204/10 - 3.5.03

**D E C I S I O N
of Technical Board of Appeal 3.5.03
of 25 June 2014**

Appellant: Alcatel-Lucent USA Inc.
(applicant) 600-700 Mountain Avenue
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Representative: MERH-IP
Matias Erny Reichl Hoffmann
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Decision under appeal: Decision of the examining division of the
European Patent Office posted on 10 May 2010
refusing European patent application No.
01304867.3 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman F. van der Voort
Members: B. Noll
O. Loizou

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 01304867.3. The refusal was based on the grounds that the claimed subject-matter lacked an inventive step (Article 56 EPC) and that claim 15 lacked clarity (Article 84 EPC).
- II. With the statement of grounds of appeal the appellant filed a set of claims 1 to 15 of an auxiliary request. In a further letter the appellant conditionally requested oral proceedings.
- III. In a communication accompanying the summons to oral proceedings, the board gave a preliminary opinion in which it considered that claims 1 and 8 of both the main and the auxiliary request lacked clarity and support in the description (Article 84 EPC) (points 3.1, 3.2 and 4 of the board's communication), that the subject-matter of claims 1 and 8 of both requests lacked an inventive step (Article 56 EPC) (points 3.3 and 4 of the communication) and that the subject-matter of claim 15 of each request lacked novelty (Article 54 EPC) (point 5 of the communication). Further, the board raised an objection under Rule 43(2) EPC against claims 8 and 15 of both requests (points 7.2 and 8 of the communication) as well as an objection under Rule 43(4) EPC against claims 1 to 7 of both requests (points 7.1 and 8 of the communication). Point 7.1 of the communication reads as follows:

"It appears that claims 1 to 7, although using slightly different wording, comprise all features of claim 8 and are therefore dependent on claim 8. Hence, claims 1 to 7 do not comply with Rule 43(4) EPC."

- IV. With a letter dated 26 May 2014 the appellant filed, by way of replacement, claims 1 to 12 of a new main request and claims 1 to 12 of a new auxiliary request. Arguments in support of clarity and inventive step were provided. The appellant also addressed the board's objection under Rule 43(2) EPC.
- V. On 24 June 2014, i.e. the day before the scheduled oral proceedings, the appellant informed the Board by fax that "we will NOT attend the Oral Proceedings on June 25, 2014 and therefore request that Oral proceedings will be held by the Boards of Appeal without the representative of the Applicant."
- VI. Oral proceedings were accordingly held on 25 June 2014 in the absence of the appellant.

The board understood the appellant to be requesting that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 12 of a main request or, in the alternative, on the basis of claims 1 to 12 of an auxiliary request, both requests as filed with the letter dated 26 May 2014.

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

- VII. Claim 1 of the main request reads as follows:

"An optical transmission system (100) comprising a plurality of nodes (200-1, 200-4) interconnected to one another by optical transmission media (110, 120), characterized by each of said nodes comprising:

a receiver (210-1, 310-1) to receive a signal formed from a plurality of channels and for separating

(215-1, 315-1) in an optical domain the received signal into individual ones of the channels including a control channel providing a control channel signal containing a supervisory message;

a splitter (225, 325) to split in the optical domain the control channel signal into first and second control channel signals containing the supervisory message;

a controllable switch (240, 340) to route the first control channel signal to an output for transmission to a next node; and

a controller (250), responsive to content of the supervisory message contained in the second control channel signal being indicative of a transmission failure for invoking a predetermined protection switching procedure, and for generating a further supervisory message identifying the invoked protection switching procedure, and to cause the controllable switch to route the generated further supervisory message to said output for transmission to the next node after transmission of said first control signal.".

Claim 6 of the main request reads as follows:

"An optical transmission node comprising:

a receiver (210-1, 310-1) for receiving a signal formed from a plurality of channel signals from a transmission path (110) and separating in an optical domain the received signal into said channel signals including a control channel signal carrying a supervisory message;

an apparatus (225, 325) to separate in the optical domain the control channel signal into first and second control channel signals containing the supervisory message;

a routing apparatus (240, 340) to route the first control channel signal to an output for transmission to a next node; and

a controller (250) to process content of the supervisory message contained in the second control channel signal and, if said content is indicative of a transmission failure, to invoke a predetermined protection switching procedure and generate a further supervisory message indicating that the predetermined protection switching procedure has been invoked, and to route the generated further supervisory message to the output via the routing apparatus for transmission to the next node after transmission of said first control signal."

Claim 1 of the auxiliary request differs from claim 1 of the main request in that in the last paragraph, between "a controller (250)," and "responsive", the wording "to determine invocation of switching protection" is inserted.

Claim 6 of the auxiliary request differs from claim 6 of the main request in that in the last paragraph, between "a controller (250)" and "to process", the wording "adapted to determine invocation of switching protection responsive" is inserted and in that the wording "responsive to the content of the supervisory message" is inserted between "switching procedure" and "and generate".

Reasons for the Decision

1. Objection under Rule 43(4) EPC

Claims 1 to 5 of the main request, although using slightly different wording, comprise all features of

claim 6, but do not contain a reference to claim 6. Hence, claims 1 to 5 do not comply with the requirement of Rule 43(4) EPC.

A similar objection was raised in the communication accompanying the summons to oral proceedings in respect of the claims then on file (see point III above). The appellant did not, however, address the objection in its letter of reply dated 26 May 2014. Nor has it, as reasoned above, been overcome by the amendments made to the claims.

Since claims 1 to 5 of the main request do not comply with the requirement of Rule 43(4) EPC, the main request is not allowable.

For the same reason, claims 1 to 5 of the auxiliary request do not comply with the requirement of Rule 43(4) EPC. The auxiliary request is therefore not allowable either.

2. In accordance with Article 15(3) RPBA, the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of the appellant.

Since there was no allowable request on file and the board was in a position to give a decision at the oral proceedings, the appeal had to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated