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**Datasheet for the decision
of 28 November 2012**

Case Number: T 2218/10 - 3.5.03

Application Number: 97304245.0

Publication Number: 817521

IPC: H04Q 7/36

Language of the proceedings: EN

Title of invention:

Interference based dynamic channel assignment

Applicant:

Alcatel Lucent

Headword:

Channel assignment/ALCATEL LUCENT

Relevant legal provisions:

EPC Art. 54, 113(1)

EPC R. 115(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Oral proceedings held in absence of appellant"

"Novelty (all requests) - no"

Decisions cited:

-

Catchword:

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Case Number: T 2218/10 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 22 November 2012

Appellant: Alcatel Lucent
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Decision under appeal: Decision of the examining division of the
European Patent Office posted 18 June 2010
refusing European patent application
No. 97304245.0 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 97304245.0 (publication number EP 0 817 521 A).
- II. The reason given for the refusal was that the subject-matter of claim 1 lacked novelty having regard to the disclosure of
- D1: US 5 448 750 A.
- III. In the notice of appeal the appellant requested that the decision be set aside and a patent granted. In the statement of grounds of appeal the appellant stated that the claims currently on file were maintained as a primary request. Further, the appellant filed claims of first and second auxiliary requests and submitted arguments in support of claim 1 of each of the requests.
- IV. The appellant was summoned to oral proceedings. In a communication accompanying the summons the board raised, without prejudice to its final decision, an objection against claim 1 of each of the requests under Article 52(1) EPC in combination with Article 54 EPC (lack of novelty).
- V. In response to the board's communication the appellant informed the board that it did not intend to attend the oral proceedings. No substantive submissions in reply to the communication were filed.
- VI. From the appellant's written submissions the board understands the appellant to be requesting that the

decision under appeal be set aside and that a patent be granted on the basis of the claims on which the decision under appeal was based, i.e. claims 1 to 21 as filed with the letter dated 29 November 2006 (main request), or, in the alternative, on the basis of the claims of the first or the second auxiliary request, both sets of claims as filed with the statement of grounds of appeal.

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

"A method, in a wireless communication network, for dynamic channel assignment of a plurality of channels, the method comprising:

prioritizing a channel list and CHARACTERIZED IN THAT,

the channel list is distributed on a per cell and/or sector basis so that prioritization is independent of frequency usage information from other cells and/or sectors, and in the step of prioritizing said channel list, the priority is assigned as a function of long term interference variations;

prioritizing a selected subset of said prioritized channel list; and

dynamically assigning said plurality of channels from said selected subset."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that, after "long term interference variations", the following wording is inserted:

", the long term interference variations being based on system characteristics".

Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that, after "said prioritized channel list", the following wording is inserted:

", the priority of the selected subset being assigned as a function of short term interference variations, the short term interference variations being based on instantaneous interference measurements".

Reasons for the Decision

1. *Procedural matters*

1.1 The board considered it to be expedient to hold oral proceedings for reasons of procedural economy (Article 116(1) EPC). The appellant, which was duly summoned, had informed the board that it did not intend to attend the oral proceedings and, indeed, was absent. The oral proceedings were therefore held in the absence of the appellant (Rule 115(2) EPC, Article 15(3) RPBA).

1.2 The present decision is based on an objection under Article 52(1) EPC in combination with Article 54 EPC which had already been raised in the board's communication. The appellant was given the opportunity to present its comments on this objection but chose not to comment in writing. Further, in deciding not to attend the oral proceedings, the appellant chose not to make use of the opportunity to comment on the objection at the oral proceedings. Instead, it chose to rely on the arguments as set out in the statement of grounds of

appeal, which the board duly considered below. Under these circumstances, the board was in a position to give a decision which complied with Article 113(1) EPC.

2. *Novelty*

2.1 The board has reconsidered its preliminary opinion as set out in the communication accompanying the summons, but sees no reason to alter its view that the subject-matter of claim 1 of each of the requests lacks novelty having regard to the disclosure of D1.

2.2 More specifically, D1 discloses, using the language of claim 1, a method of dynamically assigning, i.e. allocating, a plurality of channels in a wireless communication network (col. 1, lines 7 to 13, and Figs 1 and 2b), which includes the steps of:

- prioritizing, i.e. ranking, a channel list, in which the channel list is distributed on a per cell basis so that prioritization is independent of frequency usage information from other cells (col. 6, lines 3 to 6 and 23 to 36, and Figs 1 and 2b) ("*LIST 1*");
- prioritizing a selected subset of the prioritized channel list (col. 6, lines 36 to 45, and Fig. 2b ("*LIST 2*")); and
- dynamically assigning the plurality of channels from the selected subset (col. 6, lines 5 to 25, and col. 7, lines 46 to 54).

Further, in the mobile radio system of D1, the ranking of the channels is in accordance with "success at earlier connections" (col. 6, lines 29 to 33), in which "success" means, for example, that "a channel could be allocated and used for the entire call" (col. 6, lines

34 to 36). Since, depending on the call length, a usage of a channel for an entire call is dependent on, *inter alia*, long term interference variations, such as variations determined by variations in terrain features as the mobile station moves, it is implicit that, in the step of prioritizing the channels in the channel list, the priority is assigned, *inter alia*, as a function of long term interference variations. Further, D1 discloses that the channel rank may be increased if the quality is above a quality limit for a specific time period (col. 8, lines 22 to 26). This also implies that, depending on the time period length, long term interference variations are taken into account, as in the case of updating the priority lists by employing a moving average (col. 9, lines 8 to 10). Similarly, repeatedly testing the channels in the list against predefined criteria, e.g. a predefined minimum C/I level, and subsequently ranking the channels in the list on the basis of these test results imply that **both** long term **and** short term interference variations are taken into account (col. 7, line 66, to col. 8, line 7, and col. 8, lines 29 to 48).

Consequently, D1 discloses all features of claim 1 of the main request.

- 2.3 As concerns the added wording in claim 1 of the first auxiliary request (see point VII above), the board notes that variations in terrain features are referred to in the application in suit as an example of variations in system characteristics (page 3, lines 32 to 35, of the application as published). Since D1 is concerned with a cellular **mobile** radio telephone system, it is implicit that the long term interference

variations are based on system characteristics, such as variations in terrain features as the mobile moves.

- 2.4 As concerns the added wording in claim 1 of the second auxiliary request (see point VII above), the board notes that D1 further discloses that the priority of the selected subset may be assigned as a function of the instantaneous C/I value of a channel and, hence, as a function of short term interference variations based on instantaneous interference measurements (D1, col. 8, lines 49 to 66).
- 2.5 The board therefore concludes that the subject-matter of claim 1 of each one of the main request and first and second auxiliary requests is not novel having regard to the disclosure of D1 (Articles 52(1) and 54 EPC).
3. There being no allowable request, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

A. S. Clelland