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**Datasheet for the decision
of 22 November 2013**

Case Number: T 2091/11 - 3.5.05

Application Number: 06827064.4

Publication Number: 1941642

IPC: H04L1/00

Language of the proceedings: EN

Title of invention:

A method and apparatus for setting reverse link CQI reporting modes in wireless communication system

Applicant:

QUALCOMM Incorporated

Headword:

Channel quality reporting/QUALCOMM

Relevant legal provisions:

EPC Art. 83, 84, 111(1)

Keyword:

Clarity - main request (yes)
Sufficiency of disclosure - main request (yes)
Remittal to the first instance for further prosecution - (yes)

Decisions cited:

G 0001/04

Catchword:



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Chambres de recours**

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Case Number: T 2091/11 - 3.5.05

**D E C I S I O N
of Technical Board of Appeal 3.5.05
of 22 November 2013**

Appellant: QUALCOMM Incorporated
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 8 February 2011
refusing European patent application
No. 06827064.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair: A. Ritzka
Members: K. Bengi-Akyuerek
F. Blumer

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, posted on 8 February 2011, to refuse European patent application No. 06827064.4 on the grounds of lack of clarity (Article 84 EPC) and insufficient disclosure (Article 83 EPC) with respect to a main request as well as second and third auxiliary requests.

Moreover, a late-filed new first auxiliary request was not admitted into the examination proceedings under Rule 116(1) EPC, since it was found that the amended description pages were not *prima facie* allowable under Article 123(2) EPC.

II. Notice of appeal was received on 18 April 2011. The appeal fee was paid on the same day. With the statement setting out the grounds of appeal, received on 20 June 2011, the appellant filed new claims together with an amended description page as a main request, amended description pages according to a first, second, and third auxiliary request, and amended claims according to a fourth and fifth auxiliary request. It requested that the decision of the examining division be set aside. In addition, oral proceedings were requested as a sixth auxiliary request in the event that "none of the previous requests can be allowed during written proceedings" (cf. statement setting out the grounds of appeal, last sentence).

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

"Method of setting Reverse Link Channel Quality Indicator (CQI) Reporting Modes in an access terminal in a wireless communication system, characterized by: determining a value for CQIReportingMode; and

setting reporting modes of the access terminal based on CQIReportingMode value."

The further independent claims 3 and 5 of the main request are directed to a corresponding computer program and apparatus, respectively.

Reasons for the Decision

1. Admissibility of the appeal

The appeal complies with the provisions of Articles 106 to 108 EPC (cf. point II above) and is therefore admissible.

2. MAIN REQUEST

This request basically corresponds to the main request underlying the appealed decision.

2.1 Article 84 EPC: Clarity

2.1.1 The examining division held that the application did not meet the requirements of Article 84 EPC, since the term "CQIReportingMode" used in claim 1 was vague and ambiguous and did not allow the skilled person to understand the limitations that this term introduced in the scope of the claims. This also applied to the terms "Single Code Word CQI Reporting Mode", "Multiple Code Word CQI Reporting Mode", and "Single Input and Single Output (SISO) CQI Reporting Mode" used in the dependent claims (cf. appealed decision, section 2.1, last paragraph).

2.1.2 The board cannot agree with this finding. It is established case law of the Boards of Appeal that the meaning of the features of a claim should be clear for the person skilled in the art from the wording of the claim alone (see e.g. G 1/04, OJ EPO 2006, 334, point 6.2). In this regard, it is worth noting that a patent application (and thus also its claims) is addressed to a skilled reader and that therefore its context has to be taken into account when assessing the clarity of its claims.

The present application is addressed to a skilled reader in the field of wireless communication systems (cf. paragraph [0002] of the application as filed). From the wording of the claims alone, the reader skilled in that field would understand that

- channel quality indicators (CQIs) related to the reverse link of a wireless communication system are to be reported by an access terminal (see preamble of claims 1, 3, and 5);
- the modes of the access terminal for such reporting are to be set in the access terminal (see preamble of claims 1, 3, and 5);
- the setting is done based on a particular value for the respective reporting mode, called "CQIReportingMode" (see characterising portion of claims 1, 3, and 5);
- the possible reporting modes are modes which are called "Single Code Word CQI Reporting Mode", "Multiple Code Word CQI Reporting Mode", and "Single Input and Single Output (SISO) CQI Reporting Mode" (see claims 2, 4, and 6).

The board takes the view that the objected term "CQIReportingMode" may only be interpreted by the skilled reader as a mode for reporting channel quality

information. That was also the interpretation "guessed" by the examining division in the first-instance proceedings (cf. appealed decision, page 9, lines 5-6; see also communication dated 14 May 2009, section 3, first paragraph and communication dated 2 August 2010, section I.2, first paragraph). But in the end, for whatever reasons, it was not taken into account in the clarity analysis. Hence, the board concludes that the expression "CQIReportingMode" is neither too vague and ambiguous nor renders the limitations of the claimed scope unclear.

2.1.3 Consequently, the subject-matter of the claims, i.e. the matter for which protection is sought, is considered to be sufficiently clear for assessing novelty and inventive step, as implicitly confirmed by the novelty analysis performed by the examining division (cf. communication dated 14 May 2009, section 3 and communication dated 2 August 2010, section I.2), and for establishing the scope of protection sought. For these reasons, the board holds that the present claims are clear within the meaning of Article 84 EPC.

2.2 Article 83 EPC

2.2.1 The examining division found that the application did not meet the requirements of Article 83 EPC either, since, as regards the term "CQIReportingMode" used in claim 1, it was not clear which parameters defined the respective mode and since neither from the description nor from the claims could the person skilled in the art derive the meaning of that term, as there was not enough information or even a single example given in the description. Thus, the person skilled in the art would not know how to implement such reporting (cf.

appealed decision, section 2.1, first paragraph). According to the decision under appeal, it was not clear in particular

- a) which parameter set a certain mode;
- b) whether the reporting mode referred to a protocol or robustness or a certain type of CQI;
- c) whether "Single Code Word CQI Reporting Mode" meant that the CQI report would fit in a single code word (e.g. a Reed-Solomon or LDP code word), or that it was sent once at the beginning of the transmission or once in a certain time period, or whether it referred to a single CQI type;
- d) whether "Multiple Code Word CQI Reporting Mode" was a collection of Single Code Word(s) CQI Reporting Modes or a collection of CQI types;
- e) what the difference between the respective modes was and how the "CQIReportingMode" should be switched between those modes.

In this respect, the priority document quoted in the application as filed (cf. paragraph [0001]) using the phrase "expressly incorporated herein by reference" could not be considered as part of the original disclosure and therefore could also not remedy the defect under Article 83 EPC (cf. appealed decision, pages 7 to 8).

- 2.2.2 The board first emphasises that, in the context of Article 83 EPC, it has to be generally established whether the person skilled in the relevant art is enabled by the application together with his common general knowledge to put the claimed invention into practice over the whole range claimed without undue burden. In the present case, however, the board finds that, from the original application, the skilled person in the field of wireless communication systems would

recognise that the access terminal generates and transmits a "CQIReport message 410" via one or more "data packets 412" to the access network and that the access terminal may support multiple reporting modes such as the "Single Code Word CQI Reporting Mode", "Multiple Code Word CQI Reporting Mode", and "Single Input Single Output (SISO) CQI Reporting Mode" (cf. paragraphs [0043] and [0044] in conjunction with Fig. 4 of the application as filed). Moreover, from his common general knowledge, the skilled person would know that

- a MIMO-capable wireless terminal typically supports either the SCW (single code word) or MCW (multiple code word) transmission mode;
- in the SCW mode, a single code is used (by one encoder) to encode the packets being transmitted over the multiple antennas;
- in the MCW mode, multiple codes are used (by multiple encoders) to encode the packets being transmitted in parallel over the multiple antennas.

2.2.3 Accordingly, the skilled person would deduce from the above that "Single Code Word CQI Reporting Mode" and "Multiple Code Word CQI Reporting Mode" relate to the SCW or MCW mode of MIMO antenna systems, while "Single Input Single Output (SISO) CQI Reporting Mode" relates to a SISO antenna system.

2.2.4 Concerning issues a) to e) raised in the decision under appeal (cf. point 2.2.1 above), the board merely notes that a patent application cannot be expected to furnish each and every well-known implementation measure, i.e. as an overly detailed recipe, to be employed by a skilled person in order to put the claimed invention into practice. Following such a logic would imply that, for example, when claiming a certain computer system,

the exact implementation in terms of which specific type of processor (e.g. ASIC, DSP, PLD, FPGA, etc.) is to be actually used therein would have to be generally (and unnecessarily) revealed in order to comply with Article 83 EPC. However, this cannot be the purpose of that provision. Rather, in order to meet the requirements of Article 83 EPC, it is sufficient that the skilled person derives from the application as a whole and his common general knowledge at least one way of carrying out the claimed invention without undue burden, which is the case here.

2.2.5 In view of the foregoing, the board concludes that the claimed invention is disclosed in a manner sufficiently clear and complete for it to be carried out by a skilled person in the sense of Article 83 EPC, irrespective of whether or not the cited priority document can be considered as part of the original disclosure.

2.3 In conclusion, the grounds for refusal (i.e. the objections under Articles 84 and 83 EPC) are considered to be overcome with regard to the main request. Consequently, the decision under appeal is to be set aside.

2.4 Article 52(1) EPC: Novelty and inventive step

In the appealed decision, the questions of novelty and inventive step were not decided upon, nor was any assessment of novelty and inventive step provided with respect to any prior-art document. Instead, even though a feature analysis in terms of a novelty assessment was apparently possible in the first-instance proceedings (cf. communication dated 14 May 2009, section 3 and communication dated 2 August 2010, section I.2), the

examining division eventually tried to prove that the underlying subject-matter was not clear and could not be put into practice by the skilled person.

The board is therefore not in a position to pass final judgment on the questions of novelty and inventive step. Accordingly, the board cannot accede to the appellant's request for allowing any of the main or auxiliary requests at this stage.

3. *Remittal to the department of first instance*

3.1 The sole grounds for refusal (i.e. lack of clarity and lack of sufficient disclosure under Articles 84 and 83 EPC) no longer apply in the present case. However, an assessment of novelty and inventive step of the claimed subject-matter was not carried out in the decision under appeal, nor does the board consider it appropriate to take a definitive decision on the matters of novelty and inventive step under the present circumstances (cf. point 2.4 above).

3.2 For these reasons, and in order not to deprive the appellant of an examination of the claims on file by two instances, the board decides to exercise its discretion to remit the case to the department of first instance for further prosecution (with regard to all other outstanding matters) under Article 111(1) EPC, on the basis of claims 1 to 6 of the main request submitted with the statement setting out the grounds of appeal. As the board is remitting the case on the basis of the main request to the examining division, it is neither necessary nor appropriate to consider the first to fifth auxiliary requests further.

4. *Request for oral proceedings*

Since the appellant's request that the decision under appeal be set aside is considered allowable (cf. point 2.3 above), the board sees no need to appoint oral proceedings which were only requested by the appellant on an auxiliary basis in the event that none of the previous requests could be allowed during written proceedings (cf. point II above).

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 claims 1 to 6, filed as main request with the statement setting out the grounds of appeal dated 20 June 2011.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated