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Datasheet for the decision of 24 April 2015

Case Number: T 1299/12 - 3.5.05

Application Number: 02079530.8

Publication Number: 1309137

IPC: H04L12/40

Language of the proceedings: EN

Title of invention:
Secondary station for use in a multiple access telecommunication network

Patent Proprietor:
Koninklijke Philips N.V.

Opponent:
SONY ERICSSON MOBILE COMMUNICATIONS AB

Headword:
Access channel control/PHILIPS

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:

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Case Number: T 1299/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 24 April 2015

Appellant: (Patent Proprietor)	Koninklijke Philips N.V. High Tech Campus 5 5656 AE Eindhoven (NL)
Representative:	Eisenführ Speiser Patentanwälte Rechtsanwälte PartGmbB Johannes-Brahms-Platz 1 20355 Hamburg (DE)
Respondent: (Opponent, opposition withdrawn)	SONY ERICSSON MOBILE COMMUNICATIONS AB Nya Vattentornet 221 88 Lund (SE)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 31 May 2012 revoking European patent No. 1309137 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chair	A. Ritzka
Members:	P. Cretaine
	D. Prietzel-Funk

Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division, dispatched on 31 May 2012, to revoke European patent No. 1 309 137. The opposition was based on the grounds of Articles 100(a), 100(b) and 100(c) EPC and the patent was revoked for lack of novelty (Article 54 EPC) of the subject-matter of claim 1 as granted, having regard to the disclosure of

D1: TIA/E1A/IS-95-A Mobile Station-Base Station Compatibility Standard for Dual-Mode Wideband Spread Spectrum Cellular System, May 1995.

Auxiliary requests I, Ia and II were not allowed because they did not meet the requirements of Article 54 EPC, having regard to the disclosure of D1, and auxiliary request III was not allowed because it did not meet the requirements of Article 56 EPC, having regard to the combination of D1 and

D3: EP 0 321 454.

Auxiliary request IV was not allowed for non-compliance with Article 83 EPC, auxiliary requests V and VI were not allowed for non-compliance with Article 123(2) EPC, and auxiliary request VII was not allowed for non-compliance with Articles 83 and 123(2) EPC.

Moreover, auxiliary request Ib, filed during the oral proceedings, was not admitted into the proceedings.

II. The patentee's notice of appeal was received on 8 June 2012 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 10 October 2012. The appellant

requested, as a main request, that the decision of the opposition division be set aside and that the patent be maintained as granted. Moreover, the appellant requested oral proceedings and, as further auxiliary requests, that the patent be maintained on the basis of the claims of one of auxiliary requests I, Ia, Ib and II to VII on which the decision was based.

III. The respondent (opponent) requested by letter dated 21 June 2012 that the appeal be dismissed and thereafter withdrew the opposition by letter dated 10 October 2012.

IV. A summons to oral proceedings scheduled to be held on 24 April 2015 was issued on 19 January 2014. In an annex to this summons, the board expressed its preliminary opinion that the main request was not allowable for lack of novelty (Article 54 EPC) in view of D1. Further, the board expressed doubts as to the admissibility of auxiliary requests I, Ia, Ib and II to VII since the appellant did not provide any argument in respect of these requests, although they had been denied by the Opposition Division for different reasons (Article 12(2) RPBA). The board however indicated that, in its view, the auxiliary requests did not meet all the requirements of the EPC, for the same reasons as stated in the decision under appeal, and having regard in particular to the disclosure of D1 and of D3.

V. By letter of response dated 24 March 2015, the appellant presented arguments in favour of the main request and auxiliary requests I to VII.

VI. Oral proceedings were held on 24 April 2015.
The appellant requested that the decision under appeal be set aside and that the patent be maintained on the

basis of the claims of auxiliary request I submitted with the letter dated 23 March 2012. The appellant withdrew the other requests on file.

VII. Claim 1 of auxiliary request I reads as follows:

"Secondary station (4,6,8,10,12) for use in a multiple access telecommunication network, said secondary station (4,6,8,10,12) comprising access request means (42,44,36) for transmitting an access request to a primary station (2), said secondary station (4,6,8,10,12) comprising indication receiving means (34) for receiving a channel indication from the primary station (2), the access request means (42,44,36) being arranged for transmitting the access request on at least one channel in dependence on the channel indication received by the secondary station (4,6,8,10,12), characterized in that the receiving means (34) are arranged for receiving a request message indication, said request message indication specifying an access request message or indicating the form of the access request message, and in that the access request means (42,44,36) are arranged for transmitting the access request message in dependence on the request message indication received;
wherein the channel indication specifies the at least one channel by specifying one of (i) a frequency of the at least one channel, (ii) a time slot in a frame, or (iii) a bit in an access time slot comprising a plurality of bit positions."

Reasons for the Decision

1. Admissibility of the appeal

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

2. Admissibility of auxiliary request I

The appellant did not provide any argument in respect of this request in the statement setting out the grounds of appeal. Nevertheless, the board decided to admit this request into the proceedings because the technical issues were substantially of the same nature as for the withdrawn main request.

3. Prior art

3.1 D1 was considered in the decision under appeal as anticipating all the features of claim 1 according to auxiliary request I.

D1 is a technical standard specifying compatibility requirements which should be fulfilled by a mobile station, i.e. a secondary station, and a base station, i.e. a primary station, in a Wideband Spread Spectrum Cellular system.

D1 discloses in particular the access protocol to be used between a mobile station and a base station. In that respect, the opposition division was of the opinion that D1 disclosed the sending from the base station to the mobile station of both a channel indication and a request message indication, as defined in claim 1 as granted. The parameters defined in D1 and identified by the opposition division as representing a channel indication were the parameters "PAM_SZ", "MAX_CAP_SZ", and "CDMA_FREQ". The parameters defined in D1 and identified by the opposition division as

representing a request message indication were the parameters "Mobile Country Code", "IMSI", and "PREF_MSID_TYPE".

3.2 Channel indication

3.2.1 CDMA_FREQ

D1 discloses that a Channel Assignment Message comprising the parameter CDMA_FREQ should be sent from the base station to the mobile station on a Paging Channel (see page 7-127 and Figure B-1). CDMA_FREQ indicates to the mobile station which CDMA channel it should use as a dedicated Traffic Channel for further communication with the base station. As is clear from Figure B-1, the mobile station receives a Channel Assignment Message after having sent an Origination Message on the Access Channel. This means that the access channel has been established before the mobile station has received the parameter CDMA_FREQ. This is supported by the passages on page 7-51 (section 7.6.2), page 6-28 (section 6.1.3.2.1) and page 2-38 (section 2.6.3.2) which describe how a mobile station first selects an Access Channel by power scanning and then is allocated a Traffic Channel by the Channel Assignment Message sent on the Paging Channel associated with the selected Access Channel. Even in the Mobile Station Idle State (see section 6.6.2), the parameter CDMA_FREQ sent in a Channel Assignment Message from the base station (see page 6-103, paragraph 6) is used at the mobile station only for the purpose of Paging Channel assignment and not for Access Channel assignment.

Therefore, in the board's judgment, the parameter CDMA_FREQ does not represent a channel indication

related to the access request transmitted by the mobile station.

3.2.2 PAM_SZ and MAX_CAP_SZ

Dl discloses that the base station transmits an Access Parameters Message to a mobile station comprising parameters that the mobile secondary station must use in the random access procedure (chapter 6.6.2.2.2). Among these parameters, the parameter MAX_CAP_SZ defining the maximum number of Access Channel frames in an Access channel message capsule, less 3, and the parameter PAM_SZ defining the number of frames in the Access Channel preamble, less 1, are mentioned (see pages 1-20 and 1-21). A mobile station receiving the Access Parameters Message uses these parameters to define an Access Channel Slot Structure (see section 6.7.1.1 and Figure 6.7.1.1-1).

Although the parameters PAM_SZ and MAX_CAP_SZ do not specify the access channel itself, i.e. the frequency, time slot in a frame, or bit in an access time slot allocated to the mobile station, they are used by the mobile station when transmitting its access request on a channel. Thus, PAM_SZ and MAX_CAP_SZ both fall under the definition of a channel indication given in claim 1.

3.3 Request message indication

Dl further discloses an Extended Systems Parameters Message sent by the base station and received by the mobile station (see section 7.7.2.3.2.13). This message contains parameters to be used by the mobile station when sending a request on the access channel:
- a Mobile Country Code,

- some digits of an IMSI to be used by the secondary station (see section 6.7.1.3.1.1),
- a PREF_MSID_TYPE parameter defining the type of MSID (mobile station identification number) that the mobile station should use in its access request message.

Although these parameters influence the length of the overall message sent from the mobile station to the base station on the access channel, they relate exclusively to the identification of the mobile station and do not control the format, i.e. the form, of the access request message itself and, a fortiori, do not specify it. Therefore, in the board's judgment, these parameters do not represent a request message indication as defined in claim 1. In D1, the length of the access request message itself is determined by its type and is not signalled by the base station. The message formats are all listed in section 6.7.1.3 and each has a predefined format, which is not controlled by the base station.

4. Novelty - Article 54 EPC

It follows from paragraph 2 above that the subject-matter of claim 1 differs substantially from the disclosure of D1 in that:

- the mobile station receives from the base station a channel indication specifying the access channel by specifying a frequency, a time slot in a frame, or bit in an access time slot, and that

- the mobile station receives from the base station a request message indication specifying the access request message or indicating its form.

The board therefore judges that the subject-matter of claim 1 is novel, having regard to the disclosure of D1.

5. Inventive step - Article 56 EPC

The technical effects of the differences mentioned in paragraph 3 above are that the access channel and the access request message are specified by the base station. The base station is therefore able to control the use of the shared access resources and thus avoid interferences and collisions between access requests from the different mobile stations.

The objective technical problem can thus be formulated as how to optimize the organization of the access channel resources in order to cope with heavy load conditions in the network.

The skilled person would not find in D1 any hint to solve the above-mentioned problem since the access channel contemplated in D1 is a slotted random access channel. Within such an access scheme, collisions between access requests from different mobile stations are dealt with by allowing random re-transmissions of the failed access requests. By contrast, having the base station itself organise the access channel aims at avoiding any collision and improves the efficiency of the access procedure under heavy load conditions, as convincingly argued by the appellant. The skilled person would thus not modify any of the parameters mentioned in paragraphs 2.2 and 2.3 above in order to provide the mobile stations with detailed instructions about how to use the shared channel.

For these reasons, the board judges that the subject-matter of claim 1 involves an inventive step, having regard to the disclosure of D1.

6. Conclusion

The grounds for opposition referred to in the notice of opposition do not prejudice the maintenance of the patent in amended form on the basis of the claims of auxiliary request I.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is maintained on the basis of claims 1 to 8 of auxiliary request I submitted with the letter dated 23 March 2012 and description and drawings as granted.

The Registrar: The Chair:

K. Götz-Wein A. Ritzka

Decision electronically authenticated