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**Datasheet for the decision
of 9 May 2018**

Case Number: T 1537/12 - 3.5.05

Application Number: 08162615.2

Publication Number: 2028780

IPC: H04L1/18

Language of the proceedings: EN

Title of invention:

System and method for retransmissions in a discontinuous reception configured system

Applicant:

Google Technology Holdings LLC

Headword:

Discontinuous ACK-NACK reception/GOOGLE

Relevant legal provisions:

EPC Art. 123(2)
RPBA Art. 15(3)

Keyword:

Added subject-matter - (yes)
Oral proceedings - non-attendance of the party



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Case Number: T 1537/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 9 May 2018

Appellant: Google Technology Holdings LLC
(Applicant) 1600 Amphitheatre Parkway
Mountain View, CA 94043 (US)

Representative: Openshaw & Co.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 21 February
2012 refusing European patent application
No. 08162615.2 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 to refuse the present European patent application for lack of inventive step (Article 56 EPC), having regard to the disclosure of

D3: "DRx and VoIP", 3GPP TSG-RAN WG2 Meeting #59, R2-073208, pp. 1-3, 15 August 2007.
- II. With the statement setting out the grounds of appeal, the appellant requested that the examining division's decision be set aside and that a patent be granted either - as a main request - on the basis of the claims underlying the appealed decision or - as an auxiliary request - on the basis of an amended claim 1 as specified in the statement setting out the grounds of appeal and claims 2 to 7 of the main request. In addition, it requested oral proceedings as an auxiliary measure.
- III. In a communication annexed to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board gave its preliminary opinion on the appeal. In particular, it raised objections under Article 123(2) EPC and indicated that the subject-matter claimed did not appear to involve an inventive step (Article 56 EPC), mainly having regard to prior-art document D3.
- IV. In a letter of reply, the appellant informed the board that it would not be attending the scheduled oral proceedings. It did not submit any comments on the substance of the board's communication under Article 15(1) RPBA either.

- V. Oral proceedings were held as scheduled on 9 May 2018 in the absence of the appellant. The board established from the file that the appellant's final requests were those indicated in the statement setting out the grounds of appeal (see point II above).

After due deliberation on the basis of those final requests and the written submissions, the board's decision was announced at the end of the oral proceedings.

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

"A method at a wireless device (10) comprising:
 configuring the device (10) for discontinuous reception 'DRX' wherein for DRX the wireless device (10) has periods of on durations when a radio is on and periods when the radio is to be off;
 receiving a first transmission during an on duration;
 if the first transmission was not successfully received sending a negative acknowledgement 'NACK' and entering an additional on-duration wherein the additional on-duration is during a period when the radio is to be off and where the radio is on, the start of the additional on-duration based upon a hybrid automatic repeat request 'HARQ' round trip time 'RTT', the additional on-duration encompassing a plurality of retransmission opportunities;
 monitoring for an asynchronous retransmission during the additional on duration; and
 monitoring for dynamic allocations during he[sic] additional on-duration."

As to claim 1 of the **auxiliary request**, the statement setting out the grounds of appeal indicated that its

wording be changed as follows:

"...wherein the additional on-duration is during a period when the radio is to be off and [~~where the radio is on~~] is before a next nominal on-duration period, the start of the additional on-duration based upon a hybrid automatic repeat request 'HARQ' round trip time 'RTT',...".

Reasons for the Decision

1. *Non-attendance of the appellant at oral proceedings*
 - 1.1 The appellant decided not to attend the scheduled oral proceedings before the board (cf. point IV above). Pursuant to 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 any party duly summoned who may then be treated as relying only on its written case."
 - 1.2 In the present case, the appellant did not respond in substance to the objections raised in the board's communication under Article 15(1) RPBA. The board re-considered the claim requests on file and maintained the objections under Article 123(2) EPC it had raised in its communication (cf. point 2 below). So, in exercise of its discretion under Article 15(3) RPBA, the board took a decision at the end of the oral proceedings, in the absence of the duly summoned appellant.

2. *Added subject-matter (Article 123(2) EPC)*

2.1 Claim 1 of both the present main request and the auxiliary request evidently relate to the embodiment entitled "Additional Awake Periods for Retransmissions" described at page 28, line 4 to page 29, line 14 in conjunction with Figures 13 and 14 of the present application as originally filed. Claim 1 of both requests comprises the feature that "the additional on-duration encompass[es] a plurality of retransmission opportunities" (see point VI above), which was first introduced with the applicant's letter of 15 December 2009.

2.2 As regards that added feature, the present application as originally filed teaches that HARQ retransmissions, which arise only from a *certain* negatively acknowledged packet 240, are performed asynchronously any time during the additional on-period (cf. page 28, lines 15-20):

"... In this example, an original transmission using the semi-persistent resource takes place at 240 during an on period 242. The mobile device receives this and transmits a NACK (not shown). In order to allow for a retransmission, an additional on period 244 is established ..."

The board holds however that it cannot be concluded from this teaching that a plurality of retransmission opportunities, i.e. arising from *any* negatively acknowledged packet transmitted *any* time from *any* base station, may be received at the wireless device during that additional on-period, as the claim implies. Consequently, claim 1 amounts to an unallowable generalisation of the original application's content,

contrary to Article 123(2) EPC. This was not contested in any form by the appellant (see point IV above).

3. Hence, the present main and auxiliary requests are not allowable under Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated