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Datasheet for the decision
of 19 February 2019

Case Number:	T 2022/16 - 3.5.07
Application Number:	10013232.3
Publication Number:	2315357
IPC:	H03M7/00, H03M13/00, H04L1/00, H04L25/49, H04L27/04, H03M13/47, H03M13/29, H03M13/11
Language of the proceedings:	EN

Title of invention:
Multi-stage code generator and decoder for communication systems

Applicant:
QUALCOMM Incorporated

Headword:
Multi-stage coding II/QUALCOMM

Relevant legal provisions:
EPC Art. 108
EPC R. 99(2), 101(1)
RPBA Art. 12(2)

Keyword:
Admissibility of appeal - (no)

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This datasheet is not part of the Decision.
It can be changed at any time and without notice.

Decisions cited:

T 1187/04, T 0305/11, T 0395/13, T 0899/13

Beschwerdekammern

Boards of Appeal

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Case Number: T 2022/16 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 19 February 2019

Appellant: (Applicant)	QUALCOMM Incorporated 5775 Morehouse Drive San Diego, CA 92121 (US)
Representative:	Carstens, Dirk Wilhelm Wagner & Geyer Partnerschaft mbB Patent- und Rechtsanwälte Gewürzmühlstraße 5 80538 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 March 2016
refusing European patent application
No. 10013232.3 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman	R. Moufang
Members:	P. San-Bento Furtado
	R. de Man

Summary of Facts and Submissions

I.   The appeal lies from the decision of the Examining
       Division to refuse European patent application
       No. 10013232.3, filed as a divisional of European
       patent application 02794439.6.

II.   In the decision under appeal, the Examining Division
       considered that the subject-matter of the independent
       claims of a sole request extended beyond the content of
       the parent application (Article 76(1) EPC) and that the
       sole request did not fulfil the requirements of
       Article 84 EPC.

       In particular, the Examining Division found that the
       terms "dynamic encoder" and "static decoder" did not
       have a standard meaning, and the use of the generic
       expressions "static" and "dynamic" rendered all claims
       containing those wordings unclear. In claims 6, 14 and
       15 it was unclear what the condition of a "complete
       decoding process" was.

III.   In the statement of grounds of appeal, the then
       appellant, Digital Fountain, Inc., requested that the
       decision be set aside and that a patent be granted on
       the basis of a main request consisting of the set of
       claims considered in the decision under appeal and
       resubmitted with the grounds of appeal as annex A, or
       on the basis of either the first or second auxiliary
       request submitted with the grounds of appeal as
       annexes B and C.

IV.   With effect from 19 April 2018, the EPO registered a
       transfer of the application to QUALCOMM Incorporated,
       which thereby acquired the status of appellant.

V.   In a communication accompanying a summons to oral
          proceedings, the Board was of the preliminary view that
          the statement of grounds of appeal did not fulfil the
          requirements of Rule 99(2) EPC because it did not
          address the ground for refusal based on lack of clarity
          and that, consequently, the appeal had to be rejected
          as inadmissible under Rule 101(1) EPC.

          The Board was also of the preliminary view that in case
          of the appeal being considered admissible, none of the
          requests seemed allowable.

VI.   With a letter of reply, the appellant filed further
          requests corresponding to amended versions of the main
          request and first and second auxiliary requests as
          annexes A', B' and C'.

VII.   Oral proceedings were held on 18 February 2019 and
          continued the next day. At the end of the oral
          proceedings, the chairman pronounced the Board's
          decision.

VIII.   The appellant's final requests were that the decision
          under appeal be set aside and that a patent be granted
          on the basis of:
          -    the claims of the main request filed with the
               statement of grounds of appeal as annex A,
          -    the claims filed with the letter of 19 January 2019
               as annex A',
          -    the claims of the first auxiliary request filed
               with the statement of grounds of appeal as annex B,
          -    the claims filed with the letter of 19 January 2019
               as annex B',
          -    the claims of the second auxiliary request filed
               with the statement of grounds of appeal as annex C,
               or

-       the claims filed with the letter of 19 January 2019
        as annex C'.

IX.   Claim 1 of the main request (annex A) reads as follows:

"A method of encoding data for transmission from a
source to a destination over a communications channel,
the method comprising:
        generating a plurality of redundant symbols using a
            static encoder, the static encoder receiving a
            plurality of input symbols, the plurality of
            input symbols generated from data to be
            transmitted, the static encoder including a
            redundant symbol generator that generates the
            plurality of redundant symbols based on the input
            symbols; and
        generating a plurality of output symbols using a
            dynamic encoder, the dynamic encoder receiving
            the plurality of input symbols and the plurality
            of redundant symbols, the dynamic encoder
            including an output symbol generator that
            generates the plurality of output symbols from a
            combined set of symbols, the combined set
            comprising symbols including the input symbols
            and the redundant symbols, wherein values of
            output symbols depend on values of symbols in the
            combined set of symbols while the number of
            output symbols is independent of the number of
            symbols in the combined set of symbols."

Claim 6 of the main request reads as follows:

"A method of decoding output symbols transmitted over a
communications channel, the method comprising:
        receiving a plurality of encoded output symbols and
            corresponding keys from the communications
            channel, wherein a key is determinable from each

of the plurality of encoded output symbols and
the number of distinct keys is independent of the
number of input symbols to be recovered;
decoding at least some of the encoded output symbols
using a dynamic decoder and the corresponding
keys to recover a first set of input symbols and
at least some redundant symbols used in the
creation of a first subset of the encoded output
symbols;
determining whether the decoding process is complete;
and
if the decoding process is not complete, decoding at
least some of the encoded output symbols using a
static decoder to recover a second set of input
symbols used in the creation of a second subset
of the encoded output symbols that were not
decoded by the dynamic decoder, and wherein
the number of the encoded output symbols decoded is
dependent on a desired degree of accuracy to
which the static decoder and the dynamic decoder
can recover input symbols that were used to
generate the encoded output symbols."

X.   Claim 1 of the first auxiliary request (annex B)
        differs from that of the main request in that the claim
        part starting with "wherein values of output
        symbols ..." has been replaced with "wherein there is
        no upper or lower bound on the number of output
        symbols".

        Claim 6 of the first auxiliary request differs from
        that of the main request in that the text ", wherein a
        key is determinable [...] to be recovered" has been
        deleted.

XI.   Claim 1 of the second auxiliary request (annex C)
        differs from that of the main request in that the text
        "while the number of output symbols is independent of
        the number of symbols in the combined set of symbols"
        has been replaced with "while the number of possible
        output symbols is much larger than the number of
        symbols in the combined set of symbols".

        Claim 6 of the second auxiliary request differs from
        claim 6 of the main request in that the text "wherein a
        key is determinable [...] to be recovered" has been
        replaced with "wherein a key is determinable from each
        of the plurality of encoded output symbols and the
        number of possible output symbols is much larger than
        the number of input symbols to be recovered".

XII.   The other claims of the above requests are not relevant
        to this decision. The same holds true for the requests
        filed with the letter of 19 January 2019 in reply to
        the Board's communication.

XIII.   The appellant's arguments, where relevant to this
        decision, are addressed in detail below.

Reasons for the Decision

Admissibility of the appeal

1.   Under Article 108 EPC, third sentence, a statement of
        grounds of appeal shall be filed within four months of
        notification of the decision. According to
        Rule 99(2) EPC, in the statement of grounds of appeal
        the appellant shall indicate the reasons for setting
        aside the decision impugned, or the extent to which it
        is to be amended. If this requirement is not complied
        with before the expiry of the time limit for filing the

statement of grounds of appeal, the appeal is to be rejected as inadmissible (Rule 101(1) EPC).

The statement of grounds of appeal is to contain a party's complete case and to set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld (Article 12(2) RPBA). For the statement of grounds of appeal to comply with Rule 99(2) EPC, it has to address in sufficient detail each of the grounds for the decision. A ground can be addressed either by amending the claims and explaining why the ground for the decision no longer applies, or by giving arguments why the objection on which the ground was based is incorrect (see T 1187/04 of 6 December 2006, reasons 1.1 and 1.2; T 305/11 of 26 April 2016, reasons 1.1; and T 899/13 of 29 January 2014, reasons 2.1).

2.   The present application was refused for containing subject-matter extending beyond the content of the parent application as filed (Article 76(1) EPC) and for lack of clarity of the claims (Article 84 EPC). In the statement of grounds of appeal, the appellant addressed the objection under Article 76(1) EPC but did not provide any reasons with regard to lack of clarity.

2.1   The decision under appeal considered, under point 2 titled "Article 84 EPC", that the terms "dynamic encoder" and "static decoder" did not bear any standard meaning. The terms "static" and "dynamic" were generic terms and their use in the claims rendered the definition of the subject-matter claimed unclear, contrary to Article 84 EPC.

It was not clear either what the term "complete decoding process" used in independent claims 6, 14 and 15 meant. In particular, it was not apparent from

claim 6 whether "decoding at least some of the encoded output symbols [...]" qualified as a complete or an incomplete decoding process.

2.2   The claims of the main request filed with the grounds of appeal are the same as those considered in the decision under appeal, and therefore still use the terms "dynamic encoder", "static decoder" and "complete decoding process" in the same way. Claims 1 and 6 of either of the two auxiliary requests filed with the statement of grounds of appeal use those terms in essentially the same manner without additionally defining those features. Therefore, the ground of lack of clarity has not been overcome by amending the claims.

The statement of grounds of appeal does not explain why those terms should be considered to have a clear meaning in the context of the claims. It refers to "earlier responses" and, in particular, to the appellant's letter of 28 July 2014 allegedly addressing further objections. However, mere references to earlier submissions are usually considered insufficient to substantiate the appeal in accordance with Rule 99(2) EPC. Furthermore, those letters do not provide any reasoning with regard to the lack-of-clarity objections of the contested decision concerning the terms "dynamic", "static" and "complete decoding process".

2.3   In its letter of reply to the Board's communication, the appellant did not provide any arguments with regard to the admissibility of the appeal.

At the oral proceedings on appeal, the appellant contended that during a telephone conversation in advance of the oral proceedings before the Examining

Division, it had argued that "complete" was clear in the context of claim 6 as a whole. But the Examining Division had not dealt with those arguments. The decision under appeal merely repeated the reasoning of the communication accompanying the summons to oral proceedings. The Examining Division's reasoning was insufficient and the objection against the expression "complete decoding process" was objectively wrong.

The Board notes, however, that the applicant/appellant had never mentioned before that its arguments made in a telephone conversation, of which there is no record on file, had not been dealt with by the Examining Division. The appellant should therefore have dealt with all the grounds for refusal, even if the arguments in the decision under appeal merely repeated objections to which the appellant had already responded during the alleged telephone conversation.

The appellant's arguments that the reasoning in the decision under appeal was "insufficient" and "objectively wrong" are not convincing either. If the reasoning of the decision under appeal with regard to a particular ground is so deficient that it does not enable the appellant to file substantive arguments addressing the objection, the appellant may state so in the grounds of appeal and in that manner deal with the ground (see decision T 395/13 of 12 November 2014, reasons 1, for an example of insufficient reasoning of a decision under appeal). However, in the present case, it is clear from points 2.1 and 2.2 of the contested decision that lack of clarity is one of the grounds on which the refusal was based, and that lack of clarity was considered to be caused by the three features: "dynamic encoder", "static decoder" and "complete decoding process". The reasoning is intelligible and

could have been dealt with by the appellant in its statement of grounds of appeal. In any event, in its statement of grounds of appeal the appellant did not object to a lack of reasoning of the contested decision.

2.4   A further argument advanced by the appellant was that in the statement of grounds of appeal the clarity objections had been implicitly dealt with in the context of the reasoning concerning added subject-matter.

The statement of grounds of appeal describes how the dynamic and static encoding work, citing passages of the description, and argues that the claimed subject-matter is supported by the description and does not contravene Article 76(1) EPC. However, it does not explain why the use of the three above-mentioned expressions, especially the phrase "complete decoding process", is clear in the context of the claims.

2.5   The Board therefore judges that the statement of grounds of appeal does not fulfil the requirements of Rule 99(2) EPC and that, consequently, the appeal has to be rejected as inadmissible under Rule 101(1) EPC.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

I. Aperribay   R. Moufang

Decision electronically authenticated