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**Datasheet for the decision
of 22 July 2025**

Case Number: T 1091/23 - 3.5.05

Application Number: 18759228.2

Publication Number: 3537626

IPC: H04B7/06, H04L5/00, H04B7/0417

Language of the proceedings: EN

Title of invention:

Terminal device capability transmission method, device and system

Applicant:

Huawei Technologies Co., Ltd.d

Headword:

UE capability transmission/HUAWEI

Relevant legal provisions:

EPC Art. 54(1), 109, 123(2)

RPBA 2020 Art. 12(4), 12(6), 13(2)

Keyword:

Interlocutory revision - examining division should have rectified its decision (no)
Admittance of claim request filed on appeal - main request (no): should have been filed earlier + increased complexity
Novelty - auxiliary requests 1 and 2 (no)
Added subject-matter - auxiliary request 3 (yes)
Admittance of claim requests filed after Art. 15(1) RPBA communication - auxiliary requests 4 to 6 (no): no "exceptional circumstances"

Decisions cited:

T 1060/13, T 2271/18, T 2632/18, T 0682/22



Beschwerdekammern

Boards of Appeal

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Case Number: T 1091/23 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 22 July 2025

Appellant:
(Applicant)

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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 5 January 2023
refusing European patent application
No. 18759228.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: P. Tabery
F. Blumer

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse the present patent application. The examining division found that the claimed subject-matter of all claim requests lacked novelty (Article 54 EPC).
- II. The prior-art documents referred to by the examining division included:
- D1:** WO 2016/163841 A1 (published in Korean)
D1*: US 2018/115357 A1 (family member of D1, published in English).
- III. In its communication under Article 15(1) RPBA, the board provided its preliminary opinion on the appellant's **new main request** and **auxiliary requests 1 to 3**.
- IV. By letter dated and received on 1 July 2025, the appellant submitted counter-arguments on the pending claim requests and filed three additional auxiliary requests, i.e. **new auxiliary requests 4 to 6**.
- V. By another letter received on 2 July 2025 (but dated 30 June 2025), the appellant withdrew its initial request for oral proceedings and requested "a decision on the basis of the file as it stands".
- VI. The scheduled oral proceedings were then cancelled.
- VII. Claim 1 of the **main request** reads as follows (board's labelling):

"A terminal device capability reporting method, wherein the method comprises:

- (a) sending (S102) capability information of a terminal device to a network device, wherein the capability information indicates a channel state information, CSI, reporting capability of the terminal device, wherein
- (b) the capability information indicating a maximum quantity of ports of reference signals used for CSI measurement supported by the terminal device in each slot of time domain,
- (c) wherein the capability information comprises at least first capability information and second capability information; each piece of capability information corresponds to a type of CSI measurement, the first capability information and the second capability information corresponds to different types of CSI measurement; and
- (d) wherein the different types of CSI measurement comprises different types of bandwidth part, BWP, size."

Claim 1 of each of **auxiliary requests 1 and 2** differs from claim 1 of the main request in that it no longer includes features (c) and (d).

Claim 1 of **auxiliary request 3** differs from claim 1 of auxiliary requests 1 and 2 in that it further adds the following features (board's labelling):

- (e) "wherein the capability information comprises at least one piece of: first capability information and second capability information;
- (f) each piece of capability information corresponds to a type of CSI measurement, wherein the first capability information corresponds to a codebook

type I and the second capability information corresponds to a codebook type II".

Claim 1 of **auxiliary request 4** reads as follows (board's labelling):

"A terminal device capability reporting method, wherein the method comprises:

- A) generating (S101), by a terminal device or a chip in the terminal device, first capability information and second capability information for different bandwidth part, BWP, sizes; the first capability information and the second capability information respectively indicate CSI reporting capabilities of the terminal device, by indicating a maximum quantity of ports of reference signals used for CSI measurement supported by the terminal device in each slot of time domain, for different BWP, sizes;
- B) sending (S102), by the terminal device or the chip in the terminal device, the first capability information and second capability information to a network device; and
- C) receiving (S104), by the terminal device or the chip in the terminal device, information about CSI measurement related configuration from the network device."

Claim 1 of **auxiliary request 5** reads as follows:

"A terminal device capability reporting method, wherein the method comprises:

sending (S102) capability information of a terminal device to a network device, wherein the capability

information indicates a channel state information, CSI, reporting capability of the terminal device, wherein

the capability information comprises at least first capability information and second capability information; each piece of capability information corresponds to a type of CSI measurement, the first capability information and the second capability information corresponds to different types of CSI measurement;

wherein the first and second capability information respectively indicate a maximum quantity of ports of reference signals used for CSI measurement supported by the terminal device in each slot of time domain for the different types of CSI measurement; and

wherein the different types of CSI measurement comprise different types of bandwidth part, BWP, size."

Claim 1 of **auxiliary request 6** reads as follows:

"A terminal device capability reporting method, wherein the method comprises:

sending (S102) capability information of a terminal device to a network device, wherein the capability information indicates a channel state information, CSI, reporting capability of the terminal device, wherein

the capability information comprises at least first capability information and second capability information; each piece of capability information corresponds to a type of CSI measurement, the first capability information and the second capability information corresponds to different types of CSI measurement and the first capability information corresponds to a codebook type I and the second capability information corresponds to a codebook type II;

wherein the first and second capability information respectively indicate a maximum quantity of ports of reference signals used for CSI measurement supported by the terminal device in each slot of time domain for the different types of CSI measurement;

wherein different types of CSI measurement further comprise different types of bandwidth part, BWP, size."

Reasons for the Decision

1. The present application concerns the sending of terminal capability information by a terminal to a base station. The capability information relates to the channel state information (CSI) reporting capability of the terminal and may correspond to a particular codebook.

2. Main request

The claim set of the **main request** was filed for the first time with the statement of grounds of appeal.

- 2.1 Interlocutory revision (Article 109(1) EPC)

- 2.1.1 The appellant asked in its statement of grounds of appeal that the examining division "rectify its decision of the oral proceedings according to Article 109(1) EPC". Moreover, the new main request corresponded "mainly to the suggestions in section 4 of the summons to attend oral proceedings dated March 22, 2022/respectively the suggestions in section 4 of the communication of the examining division dated August 12, 2021".

- 2.1.2 In that regard, the board recalls that Article 109(1) EPC stipulates that, if the department whose decision is contested considers the appeal to be admissible and well founded, it **shall** rectify its decision. The main purpose of this provision is to shorten the appeal proceedings to the benefit of procedural expediency and economy and to avoid unnecessary workload for the Boards of Appeal in the interest of both the appellant and the EPO (see e.g. **T 1060/13**, Reasons 4.1). According to the established case law, interlocutory revision must be granted if the amendments **clearly overcome the grounds for refusal**, even if further objections arise and even if *previous* objections or statements were indicated by the first-instance department (see e.g. T 1060/13, Reasons 4.3; **T 682/22**, Reasons 2.4.1).
- 2.1.3 In the present case, despite the fact that the board may only speculate as to the actual reasons on the basis of which interlocutory revision of the appealed decision was not granted by the examining division since the latter is bound to silence as to its grounds pursuant to Article 109 (2) EPC ("without comment as to its merit"), the respective statements set out in the above-referenced previous communications of the examining division do not appear to be sufficient to justify that the sole ground for refusal (i.e. lack of novelty here) is indeed clearly overcome now by the amendments made to claim 1 of the new main request.
- 2.1.4 In view of the above, the board fails to see why the examining division should have granted interlocutory revision in this case.

- 2.2 Admittance of the main request (Article 12 RPBA)
- 2.2.1 Claim 1 of the main request includes added **features (c) and (d)** and was filed for the first time with the statement of grounds of appeal. Its admittance is therefore at the board's discretion under all relevant parts of Article 12 RPBA.
- 2.2.2 According to the appellant's own argumentation, the main request constitutes a reaction to statements provided in the examining division's annex to the summons to oral proceedings and in preceding communications (see point 2.1.1 above).
- 2.2.3 By submitting this claim request only *after* the examining division has refused the present application, the appellant effectively prevented that a reasoned decision on such a request could have been taken by the examining division. However, this runs counter to the main aim of *reviewing* decisions of the first-instance departments in appeal proceedings (cf. Article 12(2) RPBA). Thus, the appellant *should* indeed have filed this claim request already during the examination proceedings within the meaning of Article 12(6), second sentence, RPBA; for instance, in direct response to the above-referenced communications. However, for whatever reasons, the appellant did not do so.
- 2.2.4 Furthermore, admitting the new main request, including new features (c) and (d), would now either lead to an increased complexity (due to a fresh assessment of novelty and even inventive step, added subject-matter, clarity, etc.) or to a remittal which would in turn be contrary to procedural economy (see the criteria mentioned in Article 12(4), fifth sentence, RPBA).

2.2.5 The board is not convinced by the appellant's argument that the main request could not have been filed earlier, since the examining division "never gave a firm, positive indication that the combination of (i) a per-slot CSI-RS-port limit and (ii) two pieces of capability information would truly overcome its objections". This is because the examining division is not obliged to provide any indication as to how its objections may be overcome and thus such an indication cannot serve as a justification for belatedly filing further requests.

2.2.6 In view of the above, the board decides not to admit the main request into the appeal proceedings (cf. Article 12(4) and (6) RPBA).

3. Auxiliary requests 1 and 2

Claim 1 of both **auxiliary requests 1 and 2** are identical.

3.1 Novelty (Article 54 EPC)

3.1.1 It is common ground that document **D1*** discloses, in paragraph [0709], the transmission of "the total number (M) of CSI-RS resources" together with "the total number of CSI-RS ports which are maximally supported [...] for each CSI-RS resource", i.e. the UE is indicating the total number of CSI-RS ports maximally supported by the UE. Thus, the issue under dispute is the question whether the indication in document D1* is also relative to "each slot of time domain", as in feature (b).

3.1.2 The board is not convinced by the appellant's argument that document D1* does not disclose the claimed maximum

number of supported CSI-RS ports per time slot, since the total number $M \times K$ of supported "CSI-RS ports" indicated in document D1* could well span more than one slot.

- 3.1.3 Rather, the board holds that the correspondence of ports and slots is evident e.g. from Fig. 25 of D1*. There, it is shown that the "8-port CSI-RS pattern 0" is contained entirely within the *first* slot, whereas "8-port CSI-RS pattern 1" is contained entirely within the *second* slot, i.e. all 8 ports are used within each time slot.
- 3.1.4 Moreover, the board does not subscribe to the appellant's view that the claimed number of ports *per slot* was more granular than what is disclosed in document D1*. According to document D1*, the number of ports is provided *per CSI-RS resource*. However, as evident from Fig. 25 of D1*, a CSI-RS resource fits within a slot (i.e., in Fig. 25, each of the patterns is contained within a particular slot) and is thus *more* granular, contrary to the appellant's contention.
- 3.1.5 Moreover, document D1* discloses, in paragraph [0725], that "the base station determines a CSI-RS configuration to be transmitted to the UE based on the received UE capability signaling". This in turn corresponds to the objective technical problem of "enabl[ing] the network to configure CSI-RS resources that fully utilise (...) the UE's processing capacity within each slot" submitted by the appellant (see its letter of reply dated 1 July 2025, page 10, third full paragraph). In consequence, the allocation of CSI-RS patterns by the base station shown in Fig. 25 of D1* in fact mirrors what has been communicated by the UE.

- 3.1.6 Lastly, the board notes that the cited passages of document D1* do not describe how the network actually configures the CSI-RS resources, but neither does present claim 1. Therefore, it even could not be deduced from the claim wording that the alleged objective technical problem was solved by the claimed invention in a different way.
- 3.1.7 Therefore, the subject-matter of claim 1 is not novel over the disclosure of document D1*.
- 3.2 In view of the above, the board concurs with the examining division that auxiliary requests 1 and 2 are not allowable under Article 54 EPC.
- 4. Auxiliary request 3
 - 4.1 Added subject-matter (Article 123(2) EPC)
 - 4.1.1 Claim 1 of **auxiliary request 3** defines, in **feature (b)**, properties of "the capability information". In subsequent **feature (c)**, however, a "first" and a "second" capability information are introduced. This can reasonably be interpreted such that the property of "the capability information" defined in feature (b) is not a property of the "first" or the "second" capability information, but the property of *another*, unspecified piece of information comprised within "the capability information".
 - 4.1.2 The board does not subscribe to the appellant's argument that this was supported by the original disclosure which - according to the appellant - "establishes the concept of multiple, type-specific capability vectors". Rather, the board holds that the wording of claim 1 is such that it comprises the

interpretation provided in point 4.1.1 above, which goes beyond such a concept and thus extends beyond the content of the application as originally filed.

4.2 Thus, auxiliary request 3 is not allowable under Article 123(2) EPC.

5. Auxiliary requests 4 to 6

5.1 Admittance (Article 13(2) RPBA)

5.1.1 Auxiliary requests 4 to 6 were filed *after* the notification of the board's communication under Article 15(1) RPBA. Admittance of those claim requests are thus governed by Article 13(2) RPBA.

5.1.2 As to the content of the late-filed claim requests, the claims of **auxiliary request 4** are based on those of the main request and differ in that the wording has been amended to comply with Article 123(2) EPC. Moreover, claim 1 of this request recites an explicit step of "generating", which incorporates aspects previously scattered across the different features of claim 1 of the main request, and includes a "receiving" step.

Claim 1 of **auxiliary request 5** differs from claim 1 of auxiliary request 4 in that it omits the "generating" and the "receiving" steps (which are however already known from document D1*).

Unlike auxiliary requests 4 and 5, which are based on the (non-admitted) main request, **auxiliary request 6** is based on auxiliary request 3 (considered in the decision under appeal as "auxiliary request 2").

- 5.1.3 The board notes upfront that the fact that the board has formulated in its communication under Article 15(1) RPBA objections against the main request does not give the appellant a "carte blanche" for filing new auxiliary requests overcoming these objections. Rather, the board formulated these objections in order to provide guidance to the appellant in case the appellant managed to convince the board, during the arranged oral proceedings, to eventually admit the main request into the appeal proceedings (see **T 2271/18**, Reasons 3.3; **T 2632/18**, Reasons 4.3).
- 5.1.4 More specifically, as to **auxiliary requests 4 and 5**, these claim requests constitute a belated - albeit indirect - response to the examining division's negative opinion expressed already in its annex to the summons to oral proceedings dated 22 March 2022. Furthermore, as to the merits of **auxiliary request 6**, the board additionally notes in a *prima facie* manner that the passages of document D1* cited by the examining division (notably paragraph [0747]) disclose transmitting information about a UE's codebook capabilities, albeit not explicitly in combination with the "information on the total number (K) of CSI-RS ports maximally supported for each CSI-RS resource" indicated in paragraph [0709] of document D1*. Nevertheless, the board understands that the latter is "corresponding to" the current "codebook" employed by the base station. This applies to the currently used "BWP size" analogously. Accordingly, the "sending" of "the first capability information" aspect of claim 1 is already known from document D1* (see point 3.1 above). Thus, the subject-matter of present claim 1 appears to differ from the disclosure of document D1* only in that the latter discloses sending a *single* capability information, while claim 1 mandates *two* distinct

capability information items, corresponding to a different "codebook type" and different "BWP size". However, such a difference cannot be inventive, since it evidently constitutes a routine measure for the skilled person to decide at which point in time parameters are calculated and transmitted for providing beforehand the "quantity of ports" applicable to a different CSI measurement.

5.1.5 Hence, the board cannot see any "cogent reasons" justifying "exceptional circumstances" within the meaning of Article 13(2) RPBA.

5.2 As a consequence, the board decides not to admit auxiliary requests 4 to 6 into the appeal proceedings (Article 13(2) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated