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**D E C I S I O N**  
**of 7 September 2005**

**Case Number:** T 1109/02 - 3.5.03

**Application Number:** 95301379.4

**Publication Number:** 675616

**IPC:** H04L 12/46

**Language of the proceedings:** EN

**Title of invention:**

Local area network

**Applicant:**

AT&T Corp.

**Opponent:**

-

**Headword:**

Local Area Network/AT&T

**Relevant legal provisions:**

EPC Art. 116(1), 113(1), 54(2)

EPC R. 68(1), 71(2)

RPBA (version of 8 June 2000) Art. 4(3) and (4), 11(2)

**Keyword:**

"Novelty (no)"

"Request for telephone discussion denied"

"Oral proceedings held in the absence of the appellant -  
opportunity to present comments (yes)"

**Decisions cited:**

T 1059/04, G 0010/93, T 0915/02

**Catchword:**

It is important that the same case is presented to all of the board's members. The board therefore refused the request for a telephone discussion with a single member of the board.



Case Number: T 1109/02 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 7 September 2005

**Appellant:** AT&T Corp.  
32 Avenue of the Americas  
New York  
NY 10013-2412 (US)

**Representative:** Williams, David John  
Page White & Farrer  
54 Doughty Street  
London WC1N 2LS (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 31 May 2002  
refusing European application No. 95301379.4  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** D. H. Rees  
**Members:** A. Ritzka  
M.-B. Tardo-Dino

## Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division dated 31 May 2002, refusing European patent application No. 95301379.4 for the reasons that the subject-matter of independent claim 1 did not involve an inventive step having regard to the disclosure of WO 92/21191 A (D1) and that the subject-matter of independent claim 3 did not comply with Articles 84 and 123(2) EPC.

Notice of appeal was filed and the appeal fee paid on 15 July 2002. With the statement of grounds of appeal filed on 27 September 2002 the appellant submitted an amended set of claims consisting of claims 1 and 2 on which the decision had been based and an amended independent claim 3. The appellant requested that the application be referred back to the department of first instance to proceed to allowance. The board interprets this as a request that the decision be cancelled in its entirety and that a patent be granted. An auxiliary request was made for oral proceedings.

- II. The board issued an invitation to oral proceedings accompanied by a communication. In the communication it expressed the preliminary view that the subject-matter of claim 1 did not appear novel in view of the disclosure of D1.

As regards claim 3, the board took the view that claim 3 was mainly based on the second embodiment described in the application, which had been the subject-matter of claims 5 to 8 as originally filed. According to the search report only the parts of the

application relating to the invention mentioned in claims 1 to 4 as originally filed had been searched. Thus present claim 3 related to unsearched subject-matter. Claim 3 was therefore apparently inconsistent with Rule 86(4) EPC. Further, the board took the view that claim 3 was directed to a communication system comprising an integrated circuit. This integrated circuit was defined in terms of the architectures in which it might be operated. However these architectures did not actually define features of the integrated circuit. Thus, it was not clear what was claimed. Consequently claim 3 did not comply with Article 84 EPC for lack of clarity. Additionally the board took the view that claim 3 included an integrated circuit being connected to a switching matrix. The switching matrix being only disclosed as a feature in the first embodiment and the integrated circuit being only disclosed as a feature in the second embodiment no basis for the combination of both could be found in the disclosure. Thus, claim 3 did not appear to fulfil the requirements of Article 123(2) EPC.

III. In a letter dated 10 August 2005, in response to the communication, a new set of claims consisting of amended claims 1 and 2 was submitted. Claim 3 had been deleted. The main amendment of the claims was to add reference signs. The appellant maintained its requests. The appellant's submission further included arguments for the allowability of the new set of claims and a request for a telephone discussion with a member of the boards of appeal prior to the oral proceedings.

IV. The board understands the appellant's request to be that the decision under appeal be set aside and that a patent be granted on the basis of the following documents:

**Claims:** 1-2 as filed with letter of 10 August 2005

**Description:** pages 1, 3-5as originally filed  
pages 2 as filed with letter of  
8 December 2000

**Drawing:** sheets 1-2 as originally filed

Claim 1 reads as follows:

"1. A local area communication system comprising:

a plurality of repeaters (49,51,53,55,57,59), each repeater being associated with a respective single user station (61,63,65,67,69,71), each of said repeaters (49,51,53,55,57,59) being assigned to a specific location of a hard-wired switching matrix (47);

a plurality of network bus segments (41,43,45), each network bus segment being connected to said switching matrix (47), said switching matrix (47) for connecting two or more of said repeaters (49,51,53,55,57,59) to a single network bus segment (41,43,45), said switching matrix (47) being incapable of transferring packets from one of said network bus segments (41,43,45) to another network bus segment (41,43,45); and

a multiport bridge router (73) connecting said plurality of network bus segments (41,43,45), said multiport bridge router (73) for transferring packets from one of said network bus segments (41,43,45) to another network bus segment (41,43,45), said multiport bridge router (73) for examining a destination address of each packet transmitted on each network bus segment (41,43,45) and determining a destination address of a user station (61,63,65,67,69,71) on a network bus segment (41,43,45)."

- V. Oral proceedings took place as scheduled on 7 September 2005, the board having been informed by telephone shortly before the proceedings were due to begin that nobody would appear for the appellant. After deliberation on the basis of the submissions and requests of 10 August 2005 the chairman announced the decision.

**Reasons for the decision:**

1. *Request for a preliminary telephone discussion*

The request as drafted, i.e. asking for a telephone discussion with a member of the boards of appeal with a view to ensuring the proceedings are handled in an efficient way is not allowable for the following reasons.

Even though according to decision G 10/93 the boards of appeal have a larger power in the *ex-parte* appeal proceedings than in *inter partes* cases and can for instance consider new grounds, this does not change the nature of proceedings which are primarily in writing and which must result in a decision taken by the board as a whole.

The rules of procedure of the boards of appeal (RPBA) provide that certain steps in the proceedings may be taken by the rapporteur. However, where this is the case the rapporteur always acts in a manner allowing the other members of the board to come to an informed opinion on the action. It follows that the rapporteur should not be privy to evidence or arguments not available to the other members. This is the case for communications to the parties in preparation of oral proceedings according to Article 4(3), 4(4) and 11(2) of RPBA in the version of 8 June 2000 applicable to the present case (corresponding to Article 4(2) and 11(1) of RPBA in the version applicable from 1 May 2003 which contain no substantial changes as far as this matter is concerned).

Particularly for preparation of oral proceedings it is the duty of the whole board to identify the relevant points to be discussed, even if the rapporteur who has carried out a preliminary study has a leading role and the board takes a position in respect to his or her suggestions. The parties' attention is drawn to matters that will be discussed by a communication of the board pursuant to Article 11(2) of RPBA in the version applicable to the present case (corresponding to Article 11(1) of RPBA in the current version).

Equally, a decision of a board of appeal is made by the board as a whole; every member evaluates independently the facts and submissions and votes for a decision. The decision is taken according to the majority of the votes. It is therefore important that the same case is presented to all of the board's members. If one of the board's members discussed substantive aspects of the case with the appellant by telephone, this would not be true and would conflict with Article 21 EPC, Articles 4(3) and (4), 11(2) and 14 RPBA and the principle of collective decision making. The board therefore refused the request for a telephone discussion with a member of the boards of appeal.

2. *Oral proceedings*

The appellant informed the board at short notice, i.e. only on the day of the oral proceedings, that it would not be represented at the hearing instead of informing the board in advance as the parties usually do. The board decided to continue oral proceedings in the absence of the appellant pursuant to Rule 71(2) EPC for the following reasons.

As pointed out by this board in a different composition in the decision T 1059/04, the function of a board of appeal is to reach a decision on the issues presented to it, not to act as an alternative examining division (cf. G 10/93, OJ 1995 172, in particular point 4).

Oral proceedings are considered to be an effective way to proceed in cases ripe for decision, because the appellant is given the opportunity to present its



comments, in accordance with Article 113(1) EPC, and a decision based on the requests discussed can be taken and announced at their end.

The need for procedural economy dictates that the board should reach its decision as quickly as possible while giving the appellant a fair chance to argue its case. In the present appeal the holding of oral proceedings was considered by the board to meet both of these requirements. The duly summoned appellant chose not to attend the hearing. The board considered that the twin requirements of fairness and procedural economy were still best served by holding the oral proceedings as scheduled. Neither the mere choice by the appellant not to attend nor the fact that his request for a telephone discussion before holding oral proceedings had been refused were sufficient reasons to delay the board's decision.

The fact that no telephone discussion with a member of the boards of appeal had taken place before oral proceedings is in full compliance with the applicable Articles of the RPBA for the reasons mentioned above (see point 1). In any case, the board is not obliged to deviate from the normal procedural steps (see T 915/02 point 3.3 not published). Thus, this fact could not lead the appellant to expect only a positive decision from the board. If the appellant had attended the oral proceedings, it would have had an opportunity to present its comments. The board considered therefore that Article 113(1) EPC had been satisfied.

### 3. *Novelty*

#### 3.1 Claim interpretation

Claim 1 refers to a plurality of repeaters as well as to a hard-wired switching matrix. While these terms would be known to the person skilled in the art, they do not have a precise, commonly agreed definition. For the purposes of assessing the novelty of the claimed subject-matter it is necessary to consider how they are in fact used in the description.

##### 3.1.1 Repeater

Column 1, lines 29 to 32 of the present application discloses that a repeater rectifies various forms of signal degradation which may have occurred during transmission and then broadcasts the information to users. In the context of e.g. figure 3 of the application, a repeater such as 59 is thus an element which receives a signal and transmits a rectified version of that signal.

##### 3.1.2 Hard wired switching matrix

Column 3, lines 16 to 19 of the present application discloses that the switching matrix is hard-wired, i.e., it serves to connect multiple users to an assigned bus. The switching matrix does not, however, move packets or signals from one bus to another. According to column 3, lines 46 to 51, the switching matrix may link individual users to whichever buses (segments) are least utilized, thereby providing for dynamic network load balancing among segments.

Column 4, lines 4 to 6, further discloses that, should a particular bus (segment) fail, the switching matrix may reroute traffic to other buses. Thus a hard-wired switching matrix according to the definition given in the description provides for a connection between multiple users and an assigned bus or bus segment, does not move data from one bus or bus segment to another and can be dynamically adjusted according to network loading and/or the condition of the bus segments.

### 3.2 Prior art

D1, page 6, lines 21 to 27 discloses a communication system including Ethernet sections. Ethernet is a local area network standard. Thus, D1 discloses a local area communication system.

D1, page 6, lines 25 to page 7, line 5 referring to figure 4 discloses a plurality of transceivers 4012, 4022, 4032, 4042 each of them being a media device interface which can be a 10BASE2 interface or a 10BASE5 interface, i.e. a digital interface (see, D1, page 7, lines 2 to 5). Thus, a transceiver receives data from a station and transmits it on to a multiplexer and vice versa. It is common knowledge that a transceiver when receiving digital data detects the data's value, i.e. 0 or 1, generates a signal corresponding to the detected information and transmits the signal. Thus, a degraded signal is necessarily rectified and the transceiver performs the functionality of a repeater according to the definition given in the present application (see point 3.1.1 above). Hence D1 discloses a plurality of repeaters.

Each transceiver, i.e. repeater, is associated with a single user station 1010, 1020, 1030, 1040 (see D1, page 6, lines 25 to 32 referring to figure 4).

Each station is connected to one of 8 Ethernet sections via a transceiver and a multiplexer (see D1, page 6, lines 25 to 32 referring to figure 4: transceivers 1010, 1020, 1030, 1040; multiplexors 4015, 4025, 4035, 4045; Ethernet sections 4008). The multiplexers are set by a microprocessor to connect to one of the 8 Ethernet sections via one of the lines of bus 4010 and a repeater/decoder (see figure 4) according to a communication history (see page 3, line 32 to page 4, line 10). The communication history is determined by means of the repeater/decoder, a microprocessor and a program executed by the microprocessor (see page 8, lines 29 to 33). The repeater/decoder decodes the source system address and destination system address for every transmitted data packet and provides the microprocessor with them via a control bus (see page 7, lines 21 to 23). Each multiplexer is set to connect to one of the networks in accordance with the communication history by means of the microprocessor, another program executed by the microprocessor and a port interface (see page 9, lines 1 to 5). Thus, multiplexers 4015, 4025, 4035, 4045, lines of bus 4010, repeater/decoder 4100, control bus 4800, microprocessor 4710 and port interface 4250 together satisfy the requirements of a hard-wired switching matrix according to the definition provided by the present application (see point 3.1.2 above).

Accordingly, D1, page 6, lines 25 to 32 discloses that the transceivers, i.e. repeaters, are each connected to a multiplexer, i.e. to a specific location of a hard-wired switching matrix.

D1, page 6, lines 25 to 32 further discloses 8 Ethernet sections, i.e. a plurality of network bus segments being connected to a multiplexer. Since the multiplexer contributes to the functionality of said switching matrix they are connected to said switching matrix.

D1, page 7, lines 6 to 8 referring to page 1, line 23 to page 2, line 10 discloses that bridge circuits selectively forward packets from one Ethernet section to another Ethernet section, each station being assigned to a single network. The stations being connected via transceiver 4012 etc., multiplexer 4015 etc., line of bus 4010 and repeater/decoder 4100 to Ethernet section 4008, this reads as said switching matrix for connecting two or more repeaters to a single network bus segment, said switching matrix being incapable of transferring packets from one of said network bus segments to another network bus segment.

D1, page 7, lines 6 to 8 referring to page 1, line 23 to page 2, line 10 discloses that bridge circuits selectively forward packets from one Ethernet section to another Ethernet section. These bridge circuits correspond to a multiport bridge router connecting said plurality of network bus segments, said multiport bridge router for transferring packets from one of said network bus segments to another network bus segment.

The bridge circuits, i.e. said multiport bridge router, are provided to detect a packet sent by a station on one network and forward the packet to another network, at times when the packet has a destination address residing on the other network (see D1, page 2, lines 4 to 7), i.e. said multiport bridge router is arranged for examining a destination address of each packet transmitted on each network segment and determining a destination address of a user station on a network bus segment.

3.3 Accordingly, the subject-matter of claim 1 lacks novelty.

3.4 The arguments raised by the appellant are not considered by the board to be persuasive. The appellant stated that D1 disclosed transceivers instead of repeaters as claimed and that the functionality of transceivers was different from the functionality of repeaters. Considering the transmission of analogue data a transceiver may only receive and transmit data. However, D1 discloses the transmission of digital data. As set out under point 3.2 above receiving and transmitting digital data always includes detecting the information of the received signal, generating an output signal corresponding to this information and sending the output signal, which is therefore automatically rectified. Thus, a transceiver used in digital data transmission performs a repeater functionality.

The appellant further stated that according to D1 the functionality of the switching matrix was only performed by the multiplexers, because signal

lines 4010 and repeaters/decoders 4100 did not perform any switching functionality. The board notes that although the pure switching is performed by the multiplexers, the multiplexers are set to connect one of the Ethernet sections by means of the lines of bus 4010, repeater/decoder 4100, control bus 4800, microprocessor 4710 and port interface 4250. For the switching matrix functionality the setting means are as important as the switching means.

3.5 Thus claim 1 of the only text submitted by the appellant does not comply with Article 54(2) EPC.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

D. H. Rees