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D E C I S I O N
of 21 December 2005

Case Number: T 0835/03 - 3.5.03

Application Number: 01302481.5

Publication Number: 1187364

IPC: H04B 7/06

Language of the proceedings: EN

Title of invention:

Pilot signal transmission in a multi-transmit antenna wireless communication system

Applicant:

LUCENT TECHNOLOGIES INC.

Opponent:

-

Headword:

Pilot signal transmission/LUCENT

Relevant legal provisions:

EPC Art. 84
RPBA R. 11(3)

Keyword:

"Clarity - (no)"

Decisions cited:

G 0010/93

Catchword:

-



Case Number: T 0835/03 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 21 December 2005

Appellant: LUCENT TECHNOLOGIES INC.
600 Mountain Avenue
Murray Hill, NJ 07974-0636 (US)

Representative: Sarup, David Alexander
Lucent Technologies NS UK Limited
5 Mornington Road
Woodford Green, Essex IG8 0TU (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 21 March 2003
refusing European application No. 01302481.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: D. H. Rees
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. This is an appeal from the decision of the examining division, dispatched on 21 March 2003, to refuse the European patent application number 01 302 481.5, publication number 1 187 364. The reason given for the refusal was that the subject-matter of all the claims did not involve an inventive step with regard to the teaching of documents

D1: "3GPP RAN S1.14 V2.0.0 (1999-04), ULTRA FDD; Physical layer procedures," April 1999, retrieved from www.3GPP.org on 06 December 2001; and

D2: US 5 652 764 A.

The examining division also gave its view that the independent claims did not satisfy Article 84 taken in combination with Rules 29(1) and (3) EPC in that they did not contain all the technical features essential to the invention.

II. Notice of appeal was filed and the fee paid on 21 May 2003. A statement setting out the grounds of the appeal was filed on 18 July 2003.

III. The board issued, of its own motion, a summons to attend oral proceedings to be held on 21 December 2005. In the accompanying communication the board expressed doubt as to whether the application satisfied Article 83 EPC, i.e. disclosed the invention claimed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, and gave its preliminary opinion that the application failed to

satisfy the requirements of Article 84, the claims lacking clarity, and Articles 52(1), 54 and 56, the subject-matter of various claims apparently lacking novelty and/or an inventive step. With regard to the question of novelty, the board cited a further document from the European Search Report:

D3: EP 1 063 790 A.

This document was relevant to novelty under the provisions of Articles 54(3) and (4) for all the designated contracting states with the exception of Turkey.

Finally an objection under Rule 29(4) EPC was raised against claim 6.

IV. In a submission on 16 November 2005 the appellant's representative informed the board that he would not attend the oral proceedings. It was requested that the oral proceedings be cancelled and that the procedure be continued in writing. If this were not possible a written decision "based on the papers" was requested. A new set of claims 1 to 4 was submitted to replace the previous set of claims.

V. The single independent claim 1 of the only request reads as follows:

"A communication method, characterized by the steps of: encoding a pilot signal using a plurality of codes to produce a plurality of encoded pilot signals, the plurality of codes having at least a first and a second code where each of the plurality of codes are different,

and the plurality of encoded pilot signals having at least a first and a second encoded pilot signal; time division multiplexing the first and second encoded pilot signals with data; and transmitting each of the first and second encoded pilot signals on a different antenna substantially simultaneously with said data."

VI. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of

claims 1 to 4 dated and received on 16 November 2005.

VII. Oral proceedings took place as scheduled on 21 December 2005, the board having informed the appellant that the request to cancel them could not be granted. The appellant was not represented at the oral proceedings, during which the board deliberated and the chairman announced the decision taken.

Reasons for the Decision

1. 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 (G 10/93 OJ 1995, 172, in particular Point 4). 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. A summons was therefore issued. The appellant gave no reasons to

support the request to cancel the oral proceedings scheduled by the board and to continue the procedure in writing. The board considered that, despite the appellant's announced intention not to attend, the twin requirements of fairness and procedural economy were still best served by holding the oral proceedings as scheduled. The mere choice by the appellant not to attend was not sufficient reason to delay the board's decision. As made clear in the Rules of Procedure of the Boards of Appeal, Article 11(3), a party duly summoned to oral proceedings and not attending may be treated as relying only on its written case. The board considered that Article 113(1) EPC had been satisfied. The requests that the oral proceedings be cancelled and that the procedure be continued in writing were therefore refused.

2. The appellant has not explicitly specified the further text of the application on the basis of which grant of a patent is requested, despite the observation in the communication accompanying the summons to oral proceedings that the absence of a defined text in the statement of grounds of the appeal resulted in the requirements of Article 10a(2) of the Rules of Procedure of the Boards of Appeal not being satisfied. The board presumes that description and drawings are intended to be as refused, i.e.

description

pages 2 and 3 as originally filed, and
pages 1 and 1a filed on 14 November 2002;

drawing sheets 1 and 2 as originally filed.

3. In the new formulation of claim 1 the appellant has specified time division multiplexing (TDM) first and second encoded pilot signals with data, and transmitting each of the first and second encoded pilot signals on a different antenna "substantially simultaneously with said data". It is not clear what is intended by this last phrase. Since the encoded pilot signals are time division multiplexed with the data, it would appear implicit that the data and pilot signals are transmitted in a time division multiplexed manner, which is not the meaning the board would normally ascribe to "substantially simultaneously". It seems unlikely, but possible, that the phrase was added as an expression encompassing TDM, in which case it is also not clear whether the claimed subject-matter is supposed to be restricted to TDM transmission, or to encompass some unidentified wider concept. Alternatively, it is possible that the "substantially simultaneously" was intended to refer to the pilot codes alone, i.e. transmitting the first and second encoded pilot signals substantially simultaneously on different antennas. This would appear to be a feature described in the application. However, on such an interpretation it is unclear to what the phrase "with said data" is intended to refer. Given that the claim has at least two interpretations, and that neither is apparently very likely or clear in itself, the board must conclude that the claim is unclear, in violation of Article 84 EPC.
4. For this reason alone the appellant's only request is not allowable and the appeal must be dismissed. It is not necessary for the board to decide on the variety of other potential objections mentioned in the

communication accompanying the summons to oral proceedings. However the board notes that with the exception to the objection raised in the communication to the then claim 6, which has now been deleted, they all appear *prima facie* still to apply to the amended application.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland