

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 2 February 2007**

Case Number: T 0351/04 - 3.5.03

Application Number: 01305473.9

Publication Number: 1211820

IPC: H04B 7/06

Language of the proceedings: EN

Title of invention:

Method for simultaneously conveying information to multiple
mobiles over multiple antennas

Applicant:

LUCENT TECHNOLOGIES INC.

Opponent:

-

Headword:

Method for simultaneously conveying information/LUCENT

Relevant legal provisions:

EPC Art. 123(2)

EPC R. 71(2)

Keyword:

"Added subject-matter - main and auxiliary requests (yes)"
"Oral proceedings held in absence of appellant"

Decisions cited:

-

Catchword:

-



Case Number: T 0351/04 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 2 February 2007

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

Representative: Sarup, David Alexander
Lucent Technologies EUR-IP UK Ltd.
Unit 18, Core 3
Workzone
Innova Business Park
Electric Avenue
Enfield, EN3 7XU (GB)

Decision under appeal: Decision of the examining division of the
European Patent Office posted 24 October 2003
refusing European application No. 01305473.9
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
R. Moufang

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division refusing European patent application No. 01305473.9 (publication number EP 1 211 820 A).
- II. With the statement of grounds of appeal the appellant filed a new set of claims. Further, the appellant submitted arguments in support of the appeal.
- III. In a communication accompanying a summons to oral proceedings the board gave a preliminary opinion in which objections under Articles 84 and 123(2) EPC were raised.
- IV. In response to the board's communication, the appellant submitted, by way of an auxiliary request, a further set of claims for consideration by the board. Arguments in support of this request were also submitted. The appellant further informed the board that it would not attend the oral proceedings.
- V. Oral proceedings were held on 2 February 2007 in the absence of the appellant. The board understood from the appellant's written submissions that the appellant requested that the impugned decision be set aside and a patent be granted on the basis of the claims of the main request or, failing that, on the basis of the claims of the auxiliary request. After deliberation, 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 for conveying information in a communication network, the method CHARACTERIZED BY THE STEP OF:

conveying information to a subscriber over a communication channel using an antenna under the control of a scheduling algorithm that uses channel condition information to determine when the information is to be conveyed;

where the scheduling algorithm allows the antenna to operate in a first mode or a second mode;

wherein the first mode the antenna is pre-assigned to a subscriber and is caused to convey information to that subscriber; and

in the second mode the antenna is either assigned to one of the subscribers who selected the antenna and is caused to convey information to that subscriber or the antenna is assigned to one of the subscribers from all the subscriber units being served and is caused to convey information to that subscriber."

Claim 1 of the auxiliary request reads as follows:

"A method of conveying information in a communication network, the method Characterized By the steps of:

providing an array of N antennas whereby certain of the antennas are under the control of a scheduling algorithm where N is an integer equal to 2 or greater;

assigning each of the antennas under the control of the scheduling algorithm to at least one subscriber of the communication network based on channel condition information received by the scheduling algorithm;

wherein the scheduling algorithm allows an assigned one of the antennas to operate in a first mode or a second mode,

in the first mode, the assigned one of the antennas is pre-assigned to a subscriber and is caused to convey information to that subscriber,

in the second mode, the assigned one of the antennas is either assigned to

one of the subscribers who selected the antenna by providing channel condition information for the antenna or a subset of antennas including the antenna, or one of the subscribers from all the subscribers being served, and

the antenna is caused to convey information to the assigned subscriber; and

conveying information over a communication channel of the assigned antenna to the assigned subscriber at a particular time based on the channel condition information received by the scheduling algorithm."

Reasons for the Decision

1. Procedural matters

- 1.1 The board considered it to be expedient to hold oral proceedings for reasons of procedural economy (Article 116(1) EPC). The appellant, which was duly summoned, had informed the board that it would not attend the oral proceedings. The oral proceedings were thus held in the absence of the appellant (Rule 71(2) EPC).

1.2 In the communication accompanying the summons, objections under Articles 84 and 123(2) EPC were raised in respect of claim 1 of the main request. The appellant was thereby informed that at the oral proceedings it would be necessary to discuss these objections and, consequently, could reasonably have expected the board to consider at the oral proceedings these objections not only in respect of the main request but also, if the main request failed, in respect of the auxiliary request. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment at the oral proceedings on any of these objections but, instead, chose to rely on the arguments as set out in the written submissions, which the board duly considered below.

Under these circumstances the board is satisfied that Article 113(1) EPC has been complied with.

2. *Main request*

2.1 The amendments made in claim 1 of the main request do not comply with the requirements of Article 123(2) EPC for the following reasons:

2.2 Claim 1 defines a method which includes only one actual method step, namely that of conveying information to a subscriber. Further, according to the claimed method, use is made of an antenna. The antenna is not further specified and may therefore be a single antenna rather than, e.g., part of an antenna array including a plurality of antennas.

2.3 Claim 1 as originally filed however defines two further method steps, namely the step of providing an array of N antennas, of which a certain number is under the control of a scheduling algorithm, and the step of assigning these antennas to one or more subscribers based on channel condition information received by the scheduling algorithm. The description and drawings as originally filed are drafted accordingly; the three method steps are illustrated in Fig. 1 (steps 100, 102 and 104) and are respectively described in the corresponding paragraphs [0014], [0018] and [0021] of the description (reference is made to the application as published). Further, the use of an antenna array including a plurality of antennas is explicitly mentioned throughout the description, see paragraphs [0001], [0006], [0007] and [0011], respectively concerning the field of the invention, the technical problem to be solved, the summary of the invention, and the detailed description.

2.4 The board is therefore not able to find in the application as originally filed a basis for the features of claim 1 as referred to at point 2.2 above. Nor did the appellant indicate on which passages of the application as originally filed the amendments were based.

2.5 It follows that the subject-matter of claim 1 of the main request extends beyond the content of the application as filed and, hence, contravenes Article 123(2) EPC. The main request is therefore not allowable.

3. *Auxiliary request*

3.1 The amendments made in claim 1 of the auxiliary request do not comply with the requirements of Article 123(2) EPC for the following reasons:

3.2 Claim 1 includes the feature of "assigning each of the antennas under the control of the scheduling algorithm to at least one subscriber". Claim 1 as originally filed also includes this feature. In the board's view, this feature implies that the number of antennas which are under the control of the scheduling algorithm and are assigned is at least two. This is in line with the description, according to which the number of antennas in the set of antennas under the control of the scheduling algorithm may vary from 2 to N (see paragraph [0012]).

Present claim 1 further includes the wording "wherein the scheduling algorithm allows an assigned one of the antennas to operate in a first mode or a second mode" (underlining by the board). In accordance with this wording, the claim subsequently refers to "the assigned one of the antennas" in relation to each of these first and second modes. In the board's view, the two modes of operation are thereby specified only for a single antenna of the antennas which are under the control of the scheduling algorithm, i.e. without specifying the operation mode(s) of the remaining one(s) of the antennas which are under the control of the scheduling algorithm.

- 3.3 In the application as originally filed it is however stated that "The scheduling algorithm allows each antenna under its control to operate in two modes" and "In step 102, each antenna under the control of the scheduling algorithm is assigned to at least one subscriber." (see paragraphs [0008] and [0018], respectively, underlining by the board). The board notes that claims 3 to 5 as originally filed, which relate to the first and second modes of operation, were drafted accordingly.
- 3.4 Since claim 1 does not specify the modes of operation in respect of all of the antennas which are under the control of the scheduling algorithm, the claim is based on a generalisation of the originally disclosed and claimed subject-matter and, hence, includes subject-matter which is not directly and unambiguously derivable from the content of the application as filed.
- 3.5 The board further notes that in the application as originally filed two algorithms, i.e. a first and a second "approach", are described in relation to the second mode of operation. For each approach the scheduling algorithm receives channel condition information from the subscribers (see paragraph [0019], col. 7, lines 10 to 17 and paragraph [0022], col. 8, lines 6 to 18). These two algorithms correspond to the two alternatives as defined in claim 1 in relation to the second mode.
- 3.6 The board notes however that in claim 1 reference is made to the provision of channel condition information by a subscriber only in relation to the first alternative. Since the application as originally filed

does not otherwise refer to the above-mentioned two algorithms or approaches, the second alternative (i.e. "or one of the subscribers from all the subscribers being served") as defined in claim 1 in isolation does not comply with Article 123(2) EPC.

3.7 The appellant argued that the first and second modes as defined in claim 1 were described at paragraphs [0014], [0018], [0019], [0021] and [0022] of the original description.

The board notes that paragraphs [0014] and [0018] relate to steps 100 and 102 (see Fig. 1), i.e. the step of providing the antenna array and the step of assigning the antennas which are under control of the scheduling algorithm, respectively. These steps correspond to the features as defined in the 2nd and 3rd paragraphs of claim 1 (see point VI above). To the extent that paragraphs [0018] and [0021] relate to a mode of operation, the board notes that reference is made to the first mode only. Paragraph [0021] further relates to the separate step of conveying information, i.e. step 104 (see Fig. 1), which is defined in the last paragraph of claim 1. Finally, for the reasons set out at points 3.3, 3.4 and 3.6 above, paragraphs [0019] and [0022] do not provide a basis for the modes of operation as defined in claim 1 either.

It follows that none of the paragraphs of the description which the appellant referred to provides a basis for the amendments. Nor is the board able to find a basis in any of the other parts of the application as originally filed.

3.8 Claim 1 of the auxiliary request does not therefore comply with Article 123(2) EPC and, consequently, the auxiliary request is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland