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**Datasheet for the decision  
of 14 January 2009**

**Case Number:** T 0311/06 - 3.5.05

**Application Number:** 04255195.2

**Publication Number:** 1515475

**IPC:** H04L 1/18

**Language of the proceedings:** EN

**Title of invention:**  
Method of interlacing data frames

**Applicant:**  
Lucent Technologies Inc.

**Opponent:**  
-

**Headword:**  
Retransmission using idle resource/LUCENT

**Relevant legal provisions:**  
RPBA Art. 15(3)

**Relevant legal provisions (EPC 1973):**  
EPC Art. 84, 106, 107, 108

**Keyword:**  
Support by the description (no)

**Decisions cited:**  
J 0010/07

**Catchword:**  
-



Case Number: T 0311/06 - 3.5.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.05  
of 14 January 2009

**Appellant:** Lucent Technologies Inc.  
600 Mountain Avenue  
Murray Hill  
NJ 07974-0636 (US)

**Representative:** Sarup, David Alexander  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 11 October 2005  
refusing European application No. 04255195.2  
pursuant to Article 97(1) EPC 1973.

**Composition of the Board:**

**Chairman:** D. H. Rees  
**Members:** A. Ritzka  
F. Blumer

## Summary of Facts and Submissions

I. This appeal is against the decision of the examining division dispatched 11 October 2005, refusing European patent application No. 04 255 195.2 for the reason that claims 1, 2, 4, 5, 8 and 9 did not meet the requirements of Article 84 EPC 1973.

II. Notice of appeal was filed on 6 December 2005 with letter dated 30 November 2005. The appeal fee was paid on 6 December 2005. The statement setting out the grounds of appeal was submitted on 8 February 2006. The appellant requested that the appealed decision be set aside and that a patent be granted based on claims 1 to 10 of a replacement set of claims submitted with the statement setting out the grounds of appeal and intended to replace the claims on file.

III. On 17 October 2008 the board issued an invitation to oral proceedings scheduled to take place on 14 January 2009 accompanied by a communication. In the communication the board expressed the preliminary view that claims 1 and 2 did not appear to comply with the provisions of Article 84 EPC for lack of support by the description.

The receipt of the summons and the communication was acknowledged on 22 October 2008. No comments or amendments in response to the communication were received.

IV. Oral proceedings took place as scheduled on 14 January 2009. Neither the appellant nor its representative attended the hearing. The board

attempted to contact, but was unable to reach, the appellant's representative. After deliberation on the basis of the submissions and requests of 8 February 2006 the board announced its decision.

V. Claim 1 reads as follows:

" A method of wireless communication comprising:  
transmitting (20) at least one sub-frame of a second frame  
using (50) at least a first and a second wireless resource if an acknowledgement message associated with a first frame is received, and  
using (40) at least a second wireless resource if a non-acknowledgement message associated with the first frame is received."

Independent claim 2 of the main request is directed to a method of receiving a sub-frame of a second frame corresponding to the method of transmitting the sub-frame of the second frame of claim 1.

## **Reasons for the Decision**

### 1. *Admissibility*

The appeal complies with the provisions of Articles 106 to 108 EPC 1973, which are applicable according to J 0010/07, point 1 (see Fact and Submissions point II above). Therefore it is admissible.

2. *Non-attendance of oral proceedings*

Neither the appellant nor its representative attended the oral proceedings to which the appellant was duly summoned, see Facts and Submissions point III above.

Article 15(3) RPBA stipulates that the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

Thus, the board was in a position to take a decision at the end of the hearing.

3. *Article 84 EPC 1973*

3.1 Claim 1

The claimed method uses a first and a second wireless resource for transmitting a sub-frame of a second frame if an acknowledgement message associated with a first frame is received and a second wireless resource if a non-acknowledgment message associated with the first frame is received.

Claim 1 does not specify any detail of the transmission associated with the first frame. In particular, it is left open which wireless resource is used for the transmission associated with the first frame. The method of claim 1 therefore encompasses the use of any wireless resource, e.g. a wireless resource which is

different to the first and second wireless resource, for the transmission associated with the first frame.

According to the description as published, column 6, line 1 to column 7, line 14, the sub-frames of the first frame are transmitted using at least the first wireless resource and the sub-frames of the second frame are transmitted using at least the second wireless resource. If an acknowledgement message is received for the transmission associated with the first frame, no further sub-frames of the first frame need to be transmitted. The first wireless resource is then idle and is used in addition to the second wireless resource for transmissions associated with the second frame. If, by contrast, a non-acknowledgement message is received for the transmission associated with the first frame, further sub-frames of the first frame have to be transmitted using the first wireless resource, unless a timeout condition is fulfilled. In this case, the first wireless resource is not idle and only the second wireless resource is available and used for the transmission of the sub-frame of the second frame.

Although the description refers to two exemplary embodiments, see paragraphs [0015] and [0016] of the application as published, they do not appear to be alternatives to each other, since one of them is directed to a method from the transmitting perspective, the other one to the same method from the receiving perspective. Thus, no alternative to the method disclosed in column 6, line 1 to column 7, line 14 can be found in the application.

Claim 1 refers only to the transmission of a sub-frame of the second frame. Although the first wireless resource and the acknowledgement message and the non-acknowledgement message associated with the first frame are mentioned in claim 1, these features are vague and undefined. In particular, claim 1 does not specify that a sub-frame of the first frame is transmitted using the first wireless resource, that the acknowledgement message associated with the first frame acknowledges the receipt of the sub-frame of the first frame and the non-acknowledgement message associated with the first frame causes the transmission of a further sub-frame of the first frame, unless a timeout condition is fulfilled. Therefore, claim 1 encompasses alternative embodiments which do not fulfil these requirements.

By contrast, the description does not indicate any alternative embodiment to the method including these requirements.

Moreover, according to the description as published, column 3, lines 37 to 40, the method uses a retransmission scheme. The retransmission scheme, being essential to the claimed method, should be specified in the independent claims.

Thus, claim 1 is not supported by the description and, therefore, does not comply with the provisions of Article 84 EPC 1973.

### 3.2 Claim 2

The arguments set out in point 3.1 with respect to claim 1 apply to independent claim 2 *mutatis mutandis*.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

K. Götz

D. H. Rees