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Datasheet for the decision
of 9 November 2007

Case Number:	T 1264/06 - 3.5.03
Application Number:	99307822.9
Publication Number:	0994634
IPC:	H04Q 7/38
Language of the proceedings:	EN

Title of invention:
Methods and apparatus for retransmission based access priority
in a communications system

Applicant:
Lucent Technologies Inc.

Opponent:
-

Headword:
Retransmission based access priority/LUCENT

Relevant legal provisions:
EPC Art. 54, 84, 113(1), 123(2)
EPC R. 71(2)

Keyword:
"Novelty - main request (no)"
"Clarity - auxiliary requests (no)"
"Added subject-matter - auxiliary requests (yes)"
"Oral proceedings held in absence of appellant"

Decisions cited:
-

Catchword:
-

Case Number: T 1264/06 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 9 November 2007

Appellant: Lucent Technologies Inc.
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Decision under appeal: **Decision of the examining division of the European Patent Office posted 21 March 2006 refusing European application No. 99307822.9 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
                 M.-B. Tardo-Dino

Summary of Facts and Submissions

I.   This appeal is against the decision of the examining
        division refusing European patent application
        No. 99307822.9 (publication number EP 0 994 634 A).

II.   One of the reasons for the refusal was that the
        subject-matter of independent claim 1 was not new in
        the sense of Article 54(1) and (2) EPC having regard to
        the disclosure of:

        D2:   US 4 534 061 A.

        Further, it was held that the subject-matter of
        independent claims 14 and 18 was not new having regard
        to the disclosure of:

        D1:   US 5 729 542 A.

III.   In the notice of appeal the appellant requested that
        the decision be set aside and a patent granted. With
        the statement of grounds of appeal the appellant filed
        a set of claims by way of an auxiliary request and
        submitted arguments in support, whilst the claims on
        which the impugned decision was based were maintained
        by way of a main request.

IV.   The appellant was summoned to oral proceedings. In a
        communication accompanying the summons, the board
        raised, without prejudice to its final decision,
        objections under Articles 84 and 123(2) EPC, as well as
        under Article 52(1) in combination with Article 54 EPC,
        in respect of various independent claims of both
        requests.

V.   In response to the board's communication the appellant
        filed by way of a main, a first auxiliary and a second
        auxiliary request, three sets of claims which replaced
        the sets of claims previously on file. Further, the
        appellant informed the board that it did not intend to
        attend the oral proceedings.

VI.   Oral proceedings were held on 9 November 2007 in the
        absence of the appellant. At the end of the oral
        proceedings and after deliberation, the board's
        decision was announced.

VII.   Claim 1 of the main request reads as follows:

        "A method of access priority control in a remote
        terminal (2, 4) of a wireless communications system,
        CHARACTERIZED BY the steps of:
            assigning an access priority attribute to a first
        access request signal for transmission to a base
        station (6) in the wireless communications system, the
        access priority attribute being assigned from among a
        plurality of access priority attributes respectively
        associated with pre-established access priority
        classes; and
            assigning to a subsequent access request signal
        for transmission an access priority attribute having a
        higher priority than a priority associated with the
        access priority attribute assigned to the first access
        request signal, if at least the first access request
        signal is not received by the base station."

        Claim 1 of the first auxiliary request reads as
        follows:

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"A method of access priority control in a remote
terminal (2, 4) of a wireless communications system,
CHARACTERIZED BY the step of:

assigning an access packet priority attribute and
an access service priority attribute to each access
request signal for transmission to a base station (6)
in the wireless communications system, the access
packet priority attribute being assigned from among a
plurality of access packet priority attributes
respectively associated with pre-established access
packet priority classes and the access service priority
attribute being assigned from among a plurality of
access service priority attributes respectively
associated with pre-established access service priority
classes,

wherein if a given access request signal for
transmission is not received by the base station, a
subsequent access request signal for transmission is
assigned an access packet priority attribute having a
priority greater than or equal to a priority associated
with the access packet priority attribute assigned to
the given access request signal, based at least in part
on the access service priority attribute."

Claim 1 of the second auxiliary request reads as
follows:

"A method of access priority control in a remote
terminal (2, 4) of a wireless communications system,
CHARACTERIZED BY the step of:

assigning an access packet priority attribute and
an access service priority attribute to a first access
request signal for transmission to a base station (6)

in the wireless communications system, the access packet priority attribute being assigned from among a plurality of access packet priority attributes respectively associated with pre-established access packet priority classes and the access service priority attribute being assigned from among a plurality of access service priority attributes respectively associated with pre-established access service priority classes;

monitoring for receipt of an acknowledgement signal from the base station indicating receipt of the first access request signal;

incrementing a variable indicative of a number of access request transmission attempts made to the base station when the monitoring step indicates that a preceding access request has not been received by the base station; and

assigning to a subsequent access request signal for transmission an access packet priority attribute having a higher priority than a priority associated with the access packet priority attribute assigned to a preceding access request signal, if at least the preceding access request signal is not received by the base station and the access request transmission attempt variable is at least equal to a value associated with the access service priority attribute."

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 did not intend
to attend the oral proceedings and, indeed, was absent.
The oral proceedings were therefore 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 and
        Article 52(1) EPC in combination with Article 54 EPC
        were raised in respect of the independent claims of
        both the main and the auxiliary request as pending at
        the time. The appellant was also 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 in respect of the claim 1 of each of
        the requests as filed in reply to the board's
        communication. 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 these
        objections but, instead, chose to rely on the arguments
        as set out in the written submissions, which the board
        duly considered below.

1.3   In view of the above and the reasons set out below, the
        board was in a position to give at the oral proceedings
        a decision which complied with the requirements of
        Article 113(1) EPC.

2.   *Main request*

2.1   Apart from a reference sign having been moved, claim 1
        of the main request is identical to claim 1 of the

previous main request, i.e. as was considered by the
examining division.

2.2   The subject-matter of claim 1 of the main request lacks
       novelty having regard to the disclosure of D2 for the
       following reasons:

2.3   D2 discloses a method of access priority control
       (col. 3, lines 3 to 8) in a remote terminal (e.g. a
       calling station 10_1, see Fig. 1) of a wireless
       communications system. The method (see Fig. 7, step 216)
       includes the step of assigning an access priority
       attribute, i.e. a "second priority", to a first control
       channel access request signal, i.e. a control packet,
       for transmission to a base station 30 (the called
       station) in the wireless communications system, by
       encoding the control packet using one bit at a
       predetermined location, in which the access priority
       attribute is assigned from among a plurality of access
       priority attributes respectively associated with pre-
       established access priority classes, see col. 8, lines
       32 to 45. The method further includes the step of
       assigning to a subsequent access request signal for
       transmission an access priority attribute, i.e. a
       "first priority", having a higher priority than the
       priority associated with the access priority attribute
       assigned to the first access request signal, if no
       response is received, e.g. if the first access request
       signal is not received by the base station, and, hence,
       a retransmission is necessary, see col. 8, lines 39 to
       42, col. 9, lines 54 to 57, and Fig. 7.

2.4   The appellant argued that D2 only disclosed a higher
       priority for packets retransmitted by a single user and

did not disclose an access priority attribute that was assigned from among a plurality of access priority attributes respectively associated with pre-established access priority classes and that resulted in priority differentiation among different users. Nor did D2 disclose that service providers could provide different service classes to customers. Further, contrary to D2, the access priority attributes referred to in the claim were associated with pre-established access priority classes and not necessarily with attributes of the control packets.

The board does not find these arguments convincing. A priority attribute assigned to the access request signal as referred to in present claim 1 encompasses the specific solution disclosed in D2 of including one or more dedicated bits in the control packet which define the priority of the control packet, see D2, col. 8, lines 32 to 45. These bits are associated with pre-established access priority classes, which are referred to in D2 as "first" and "second" priorities. Further, a differentiation among different users is achieved in the method of D2 in that a user who has made an unsuccessful attempt to access the control channel is given a higher priority than a user who attempts to access the control channel for the first time, see D2, col. 3, lines 57 to 61, col. 5, lines 32 to 35, and col. 8, lines 32 to 45.

The board further notes that claim 1 is only concerned with access priority and does not refer to service providers providing different service classes to customers, i.e. service priority.

2.5   The board therefore concludes that the subject-matter
        of claim 1 of the main request lacks novelty having
        regard to the disclosure of D2 (Articles 52(1) and 54
        EPC) and, consequently, that the main request is not
        allowable.

3.   *First auxiliary request*

3.1   Claim 1 of the first auxiliary request does not comply
        with the requirements of Articles 84 and 123(2) EPC for
        the following reasons:

3.2   In claim 1 it is unclear to which feature the final
        wording "based at least in part on the access service
        priority attribute" relates. It could, for example,
        relate to whether or not an access packet priority
        attribute is assigned to the subsequent access request
        signal or to whether the assigned priority is greater
        than or equal to the priority associated with the
        access packet priority attribute assigned to the given
        access request signal. Hence, claim 1 is unclear.

3.3   The appellant argued that the additional features of
        claim 1 of the first auxiliary request were disclosed
        in the application as originally filed at page 22,
        line 15, to page 23, line 19 (see paragraphs [0054] and
        [0055] of the application as published), the relevant
        parts of which read as follows:

        "Note that an access service priority (ASP) class may
        also be defined in addition to the APP *[board's note:
        access packet priority]* feature. Those requests with
        highest ASP, say class 0, will automatically increase
        their failed access requests' APP with each reattempt.

Those with lower ASPs adjust the APP of their failed
attempts less aggressively. For example, ASP class 1
may increase the APP of an access request only after it
fails twice."; and

"If ASP is used, then parameters ASP and S_j are also
transmitted by the base station and received and stored
by the remote terminal. S_j represents the number of
retransmissions required for class j before the APP of
the access requests, from that class j, will be
updated. Thus, while K_i relates to the APP priority
class and *[sic]* S_j relates to the ASP priority class.
For example, for ASP = 0, 1, 2; S_0 = 1, S_1 = 3, S_2 = 5."

3.4   In the board's view, however, the claim covers an
       embodiment in which for a given, e.g. lowest, access
       service priority attribute no adjustment of the APP is
       made at all. The above parts of the description
       disclose however that an adjustment is always made, the
       amount of which is determined by the ASP. Nor could a
       basis for this embodiment be found in any of the other
       parts of the application as originally filed.

3.5   Further, as described in paragraphs [0054] to [0056] of
       the application as published, whether or not the
       priority of the subsequent access request signal is set
       to be greater than or equal to the access packet
       priority (APP) of the given access request signal is
       solely determined by the access service priority
       attribute S_j, see also Fig. 10, steps 1022 and 1028. The
       wording of present claim 1 is however broader ("based
       at least in part on the access service priority
       attribute" (board's emphasis)).

3.6   Claim 1 of the first auxiliary request is thus based on
        an undisclosed intermediate generalization and does not
        therefore comply with the requirements of
        Article 123(2) EPC.

3.7   For the sake of argument, if it were assumed that
        claim 1 complied with Articles 84 and 123(2) EPC and
        that, in line with the appellant's interpretation, the
        access service priority attribute determined the
        priority of the access packet priority attribute
        assigned to the subsequent access request signal, the
        board notes that at the priority date of the
        application in suit, the use of different Quality of
        Service (QoS) grades or priorities for data traffic of
        different classes of users, e.g. depending on their
        billing levels, was well-known, see, e.g., D1, col. 1,
        lines 30 to 40, and the present application as
        published, paragraph [0010]. D1, like D2, is concerned
        with a method of access priority control in a remote
        terminal of a wireless communication system, see the
        abstract. Hence, if a person skilled in the art,
        starting out from D2, were faced with the problem of
        expanding the priority scheme disclosed in D2 in order
        to take into account different pre-established user
        classes, it would have been obvious to him/her to
        accordingly set the priority bits in the control packet
        (see point 2.3 above) additionally on the basis of the
        user class, thereby assigning both an access packet
        priority attribute and an access service priority
        attribute to the control packet. In doing so, the
        skilled person would thereby have arrived at the
        claimed subject-matter without inventive skill. The
        subject-matter of claim 1 would therefore not involve
        an inventive step (Articles 52(1) and 56 EPC).

3.8   For the above reasons, the first auxiliary request is
        not allowable.

4.   *Second auxiliary request*

4.1   Claim 1 of the second auxiliary request does not comply
        with the requirements of Articles 84 and 123(2) EPC for
        the following reasons:

4.2   Claim 1 includes the feature that "the access request
        transmission attempt variable is *at least* equal to a
        value associated with the access service priority
        attribute" (board's emphasis). The expression "at least
        equal to" is ambiguous, since it could mean "greater
        than or equal to", "smaller than or equal to" or
        "greater or smaller than or equal to". Claim 1 is
        therefore not clear.

4.3   The appellant argued that the additional features of
        claim 1 of the second auxiliary request were disclosed
        in the application as originally filed at page 22,
        line 15, to page 23, line 19 (see paragraphs [0054] and
        [0055] of the application as published) and in claims 6
        and 7.

        However, whereas claims 6 and 7 as originally filed
        indeed provide a basis for the monitoring and
        incrementing steps, a basis for the last feature of
        claim 1 concerning the comparison of the access request
        transmission attempt variable with a value associated
        with the access service priority attribute can not be
        found in the application documents as originally filed.
        More specifically, the access request transmission

attempt variable, which according to claim 1 is
indicative of a number of access request transmission
attempts made to the base station, is referred to in
the description as variable no_tx (see paragraph
[0057]). This variable is compared to K_i, which is the
maximum number of retransmission attempts for each APP
class (see col. 17, lines 39, 40, 48 and 49, Fig. 10,
and claim 8 of the application as published). According
to claim 1, however, this variable is compared to "a
value associated with the access service priority
attribute". In relation to access service priority, the
description only refers to parameters ASP, S_j and a
variable adj (see col. 17, lines 43 to 45 and col. 18,
lines 17 and 18), none of which is compared to the
variable no_tx, see also Fig. 10, step 1022, which
shows that adj is only compared to S_j. Nor do the claims
as originally filed provide a basis for the claimed
comparison.

4.4   Claim 1 of the second auxiliary request does not
        therefore comply with Article 123(2) EPC.

4.5   For the above reasons, the second auxiliary request is
        not allowable.

5.   It follows that none of the requests on file can be
        allowed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano   A. S. Clelland

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