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**Datasheet for the decision
of 16 April 2007**

Case Number: T 0274/07 - 3.5.03

Application Number: 05255356.7

Publication Number: 1638240

IPC: H04L 1/18

Language of the proceedings: EN

Title of invention:

Selecting a subset of automatic request retransmission processes

Applicant:

LUCENT TECHNOLOGIES INC.

Opponent:

-

Headword:

Automatic request retransmission processes/LUCENT

Relevant legal provisions:

EPC Art. 108, 113(1)

EPC R. 86(4), 30

RPBA Art. 10a(3)

Keyword:

"Unsearched subject-matter lacking unity (yes)"

Decisions cited:

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Catchword:

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Case Number: T 0274/07 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 16 April 2007

Appellant: LUCENT TECHNOLOGIES INC.
600 Mountain Avenue
Murray Hill
New Jersey 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 7XB (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 4 October 2006
refusing European application No. 05255356.7
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. S. Clelland
Members: A. Ritzka
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division dated 4 October 2006, refusing European patent application No. 05 255 356.7 for the reason that amended claim 1 did not comply with Rule 86(4) EPC because it related to unsearched subject-matter which did not combine with that of originally filed claim 1 to form a single general inventive concept.
- II. Notice of appeal was filed on 1 December 2006 and the appeal fee paid. The statement of grounds of appeal was filed on 5 February 2007. The appellant requested that the appealed decision be set aside and that a patent be granted. No further requests were made.

The grounds of appeal refer to a set of claims submitted with a letter of 11 April 2006 in response to a communication of 19 December 2005. In that communication the examining division stated that a wrong set of claims had apparently originally been filed and drew the applicant's attention to the requirements of Rules 27(1) and 86(4) EPC, and Article 123(2) EPC. The appellant stated that the grounds of appeal were substantially as set out in that letter and that they were repeated for completeness. The remainder of the grounds of appeal repeat in substance the contents of the abovementioned letter; no reference is made to the decision of the examining division.

At point 1.3 of the reasons for the decision under appeal the examining division comments on the applicant's statement in its letter of 11 April 2006 as follows:

"1.3 The Applicant states that both set of claims set forth block sizes associated with messages or data packets and then performs actions based upon the block sizes. However, the feature of "block size" cannot be considered as a special technical feature and the mentioned actions are directed to solve different problems (see reasons given under 1.2). [...]"

III. Claim 1 as originally filed reads as follows:

"A method of wireless telecommunication of a message having a block size, the method comprising:
determining a number of retransmissions of the message based upon the block size."

Claim 1 as filed with the letter of 11 April 2006 reads as follows:

"A method of wireless telecommunication according to an automatic repeat request protocol supporting a plurality of processes, CHARACTERIZED BY:
selecting a subset of the plurality of processes based on a block size of at least one data packet (261, 262), the subset comprising less than all of the plurality of processes."

Reasons for the Decision

1. *Admissibility of the appeal*

The question of admissibility arises because the grounds of appeal are said by the appellant to repeat the content of the letter of 11 April 2006 in response to the communication of 19 December 2005, i.e. they do not refer to the reasons for refusal given in the decision under appeal. Thus, it appears to be questionable whether the appeal complies with the provisions of Article 108 EPC, third sentence.

However, in both its letter of 11 April 2006 and in the grounds of appeal the applicant/ appellant refers to "item 1" of the communication of 19 December 2005, which the board understands as a reference to Rule 86(4) EPC and the requirement of unity. This passage as repeated in the grounds of appeal can be considered as applying to the appealed decision and thus as adequately substantiated grounds of appeal which dispute the reasons for the decision.

Thus, the appeal complies with the provisions of Article 108 EPC and is admissible.

2. *The right to be heard*

- 2.1 The decision of the examining division was issued without giving the applicant an opportunity of making appropriate observations on the fresh objections arising from the newly filed claims. However, the appellant does not allege any violation of its right to be heard, as it did not file any request in this

respect. This fact, and the content of the statement of grounds, show that the applicant had no further comments to present after knowing the examining division's grounds for refusal. Thus although the procedure adopted could be viewed as questionable, on the facts of the present case it appears that the missing step had no practical effect either on the exercise of the appellant's right to be heard or on the course of the proceedings.

2.2 Pursuant to Article 108 EPC and Article 10a RPBoA the statement of grounds of appeal are the basis of the appeal proceedings and they should contain the complete party's case, all the facts, arguments and evidence relied on and all requests made. The appellant however merely stated that the grounds of appeal were substantially as set out in its letter of 11 April 2006 and simply repeated the content of that letter without adding any new arguments. Given the absence of any new facts or arguments and of a request for oral proceedings, the board considers that in accordance with Article 113(1) EPC and Article 10a(3) RPBoA it is in a position to decide the case on the substantive issues without further communication.

3. *Rule 86(4)*

The originally filed claim 1 was directed to a method of wireless telecommunication of a message having a block size, the method comprising: determining a number of retransmissions of the message based upon the block size. Claim 1 was the only independent claim of the original claim set. Thus, all of the claims contained

the feature of determining a number of retransmissions of the message based upon the block size.

Present claim 1 is directed to a method of wireless telecommunication according to an automatic repeat request protocol supporting a plurality of processes, characterized by: selecting a subset of the plurality of processes based on a block size of at least one data packet, the subset comprising less than all of the plurality of processes. Claim 1 is the only independent claim of the present claim set. Thus, all of the claims contain the feature of selecting a subset of the plurality of processes based on a block size of at least one data packet, the subset comprising less than all of the plurality of processes.

None of the claims of the present claim set include the feature of determining a number of retransmissions of the message based upon the block size. As the search was based on the original claim set, all of the present claims relate to unsearched subject-matter.

According to Rule 86(4) EPC amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept.

The claim sets define two groups of possible inventions. The examining division stated in the decision under appeal:

"1.2 [...]The two groups mentioned above could be implemented independently of each other and share

neither a single general inventive concept, nor special technical features, Rule 30 EPC.

Both groups only share the technical feature of a message (original claim 1)/a data packet (amended claim 1) having a block size. However, this feature is well known in the prior art [...] and cannot be considered as a special technical feature. Therefore, the contributions over the prior art of the two groups of claims are different.

Originally filed claim 1 deals with the problem of limiting the maximum delay in a retransmission process for some special services. The claimed solution is to determine a number of retransmissions of the message based upon the block size.

Amended claim 1 solves the problem of reducing the effective minimum rate (and therefore interference) by supporting a plurality of processes in an automatic repeat request protocol and selecting a subset of the plurality of processes based on a block size of at least one data packet.

Neither the objective problem nor the solutions underlying the two claims are linked by a general inventive concept. Hence both claims do not meet the requirements of unity of invention as defined by Article 82 EPC."

The board agrees with the examining division's evaluation. Thus, the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland