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**Datasheet for the decision
of 3 August 2012**

Case Number: T 2122/08 - 3.5.05

Application Number: 03007771.3

Publication Number: 1341337

IPC: H04L5/14, H04L29/06, H04M11/06

Language of the proceedings: EN

Title of invention:
Activation of multiple xDSL modems with implicit channel probe

Applicant:
Panasonic System Networks Co., Ltd.

Headword:
Multi-carrier negotiations/PANASONIC

Relevant legal provisions:
EPC Art. 54, 56, 84, 123(2)

Keyword:
Added subject-matter - (no)
Claims - clarity - broad but not unclear phrase (yes)
Novelty - (yes)
Inventive step - (no) - juxtaposition

Decisions cited:
T 0238/88, T 0523/91, T 0461/05, T 0802/92

Catchword:



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Case Number: T 2122/08 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 3 August 2012

Appellant: Panasonic System Networks Co., Ltd.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 23 May 2008 refusing European patent application No. 03007771.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair: A. Ritzka
Members: K. Bengi-Akyuerek
F. Blumer

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division, posted on 23 May 2008, refusing European patent application No. 03007771.3, corresponding to a divisional application of the parent application No. 99914300.1 underlying the appeal case T 2125/08, on the grounds of lack of clarity (Article 84 EPC) and lack of novelty (Article 54 EPC), having regard to the disclosure of

D2: EP-A-0 820 168,

with respect to a main request, and on the ground of added subject-matter (Article 123(2) EPC) with regard to an auxiliary request.

II. Notice of appeal was received on 21 July 2008. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 15 September 2008. The appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of a main request or two auxiliary requests (i.e. first auxiliary request and second auxiliary request) submitted with the statement setting out the grounds of appeal. In addition, oral proceedings were requested as an auxiliary measure.

III. A summons to oral proceedings scheduled for 3 August 2012 was issued on 8 May 2012. In an annex to this summons pursuant to Article 15(1) RPBA, the board gave its preliminary opinion on the appeal. In particular, objections were raised under Articles 123(2), 84, 83, and 52(1) in conjunction with Articles 54 and 56 EPC,

in view of D2 and D5 (US-A-5 644 573).

- IV. With a letter of reply dated 2 July 2012, the appellant submitted four further auxiliary requests (i.e. third to sixth auxiliary request) and requested the grant of a patent based on the main request or one of the pending auxiliary requests (i.e. first and second auxiliary requests as submitted with the statement setting out the grounds of appeal; third to sixth auxiliary request as submitted with the letter of reply). It was also requested that the case be remitted to the first instance for further prosecution to take a decision on all requests and that three questions concerning the admissibility of amendments and remittal to the first instance be referred to the Enlarged Board of Appeals under Article 112 EPC if the board decided not to admit the amendments into the procedure. Furthermore, eight documents were additionally filed as evidence of the clarity of the claims, in reaction to the objection under Article 84 EPC, while two Wikipedia references were submitted in response to the objections raised under Articles 54 and 56 EPC.
- V. Oral proceedings were held as scheduled on 3 August 2012, during which the main request as well as the first, second, and sixth auxiliary requests were withdrawn. All the pending requests were admitted into the appeal proceedings and discussed. The appellant finally requested that the decision under appeal be set aside and that a patent be granted on the basis of any of the third, fourth or fifth auxiliary requests. The request under Article 112 EPC was withdrawn. At the end of the oral proceedings, the decision of the board was announced.

VI. Independent claim 1 of the third auxiliary request reads as follows:

"A first communication device connectable to a second communication device, comprising:

- a negotiation data transmitter being adapted to transmit first negotiation data to said second communication device by modulating carriers of a first family of carriers, whereby data transmitted on each modulated carrier of the first family of carriers are identical to data transmitted on each other modulated carrier of the first family of carriers and are transmitted with identical timing; and
- a negotiation data receiver being adapted to receive second negotiation data transmitted from said second communication device by modulating carriers of a second family of carriers, whereby data received on each modulated carrier of the second family of carriers are identical to data received on each other modulated carrier of the second family of carriers and are transmitted by said second communication device with identical timing;

wherein each carrier of said first and said second family of carriers has a different frequency, and wherein the frequencies of said first family of carriers and said frequencies of said second family of carriers belong to mutually different bands."

The further independent claim 8 of the third auxiliary request is directed towards a corresponding method.

Independent claim 1 of the fourth auxiliary request reads as follows:

"A first communication device connectable to a second communication device, comprising:

- a negotiation data transmitter being adapted to transmit first negotiation data to said second communication device by modulating a flag $7E_{16}$ on carriers of a first family of carriers, whereby data transmitted on each modulated carrier of the first family of carriers are identical to data transmitted on each other modulated carrier of the first family of carriers and are transmitted with identical timing; and
- a negotiation data receiver being adapted to receive second negotiation data transmitted from said second communication device by modulating a flag $7E_{16}$ on carriers of a second family of carriers, whereby data received on each modulated carrier of the second family of carriers are identical to data received on each other modulated carrier of the second family of carriers and are transmitted by said second communication device with identical timing;

wherein each carrier of said first and said second family of carriers has a different frequency, and wherein the frequencies of said first family of carriers and said frequencies of said second family of carriers belong to mutually different bands."

The further independent claim 8 of the fourth auxiliary request is directed towards a corresponding method.

Independent claim 1 of the fifth auxiliary request reads as follows:

"A first communication device connectable to a second communication device, comprising:

- a negotiation data transmitter being adapted to

transmit first negotiation data to said second communication device by modulating a flag $7E_{16}$ on carriers of a first family of carriers, whereby data transmitted on each modulated carrier of the first family of carriers are identical to data transmitted on each other modulated carrier of the first family of carriers; and

- a negotiation data receiver being adapted to receive second negotiation data transmitted from said second communication device by modulating a flag $7E_{16}$ on carriers of a second family of carriers, whereby data received on each modulated carrier of the second family of carriers are identical to data received on each other modulated carrier of the second family of carriers;

wherein each carrier of said first and said second family of carriers has a different frequency, and wherein the frequencies of said first family of carriers and said frequencies of said second family of carriers belong to mutually different bands."

The further independent claim 8 of the fifth auxiliary request is directed towards a corresponding method.

Reasons for the Decision

1. Admissibility of the appeal

The appeal complies with the provisions of Articles 106 to 108 EPC (cf. point II above) and is therefore admissible.

2. Line numbering of the application

Due to a mismatch between the line numbers appearing on

the left-hand side of each sheet of the application as filed and the actual (countable) line numbers, the left-hand line numbering is used henceforth when referring to the original description.

3. Third Auxiliary Request

This request differs from the main request underlying the appealed decision in that the definite article "the" before the term "data" is removed from the independent claims 1 and 8 as amended, respectively, in order to overcome the objection under Article 123(2) EPC raised by the board in its communication under Article 15(1) RPBA.

This amendment is based on page 34, lines 11-13 and page 35, lines 7-9 of the description as filed.

3.1 Article 84 EPC: Clarity

The board judges that claims 1 and 8 of this request meet the requirements of Article 84 EPC, the reasons being as follows:

- 3.1.1 The examining division held that the expression "whereby the data ... are transmitted with identical timing" was not clear since it could be construed in various ways and a skilled person could not decide which of the different possible interpretations fell within the scope of the claims and which did not. In particular, according to this expression, the data might be transmitted on each carrier (i) during an interval of equal durations or (ii) using a common clock frequency or (iii) such that data transmission starts at the same time. All these options were equally applicable to the

underlying data transmission system of the application.

- 3.1.2 The board holds that the phrase "with identical timing" is overly broad since the term "timing" is susceptible to different interpretations in the relevant art. In general, the word "timing" is typically understood by a skilled reader as any time-related information or relationship. However, when attempting to interpret the respective claims, the skilled reader would certainly take the underlying context of these claims and the whole application into account. In fact, the claims and the application deal with multi-carrier data transmissions between two communication devices. Based on this established context, the term "timing" could sensibly be understood *inter alia* as e.g. "transmission starting time", "transmission duration" or "transmission offset" by the skilled person in the field of data communications.

Considering the whole expression in question, i.e. "whereby data transmitted on each modulated carrier ... are identical to data transmitted on each other modulated carrier ... and are transmitted with identical timing", the reader skilled in the art may readily conclude that identical data are supposed to be transmitted with the same transmission-related time value or dependency for all carriers. As, conversely, the skilled reader could also deduce from this phrase that a redundant data transmission with distinct timings, i.e. transmissions without any time coordination, would definitely not fall within the scope of the respective claims, he would be able to establish the boundaries of the claimed subject-matter and to determine the scope of the claims without undue burden. In addition, the above phrase also does not contradict the technical teaching and the desired

effect as provided by the original disclosure, as the description and the drawings likewise do not provide any further information as to an exact definition or interpretation of the term "timing" (see e.g. page 34, lines 11-13 and page 35, lines 7-9 of the original description).

In conclusion, the skilled reader would indeed be aware of the many different interpretations which technically make sense and of the associated technical solutions which fall under the ambit of this expression due to its breadth.

Hence, claims 1 and 8 clearly define the matter for which protection is sought and therefore meet the requirements of Article 84 EPC.

- 3.1.3 According to the appellant, the skilled person would understand the phrase "with identical timing" as an instruction to coordinate data transmissions on the different carriers such that the data are transmitted in parallel, i.e. concurrently rather than serially, without requiring that the data be transmitted in perfect synchronism. Also, the appellant argued on the one hand that the term "timing" was broad enough to cover any time-related dependency rather than unclear (by referring to decisions T 238/88 and T 523/91) and on the other hand that "identical timing" could only mean "identical transmission starting time". In this regard, the appellant also conceded that the original application did not provide a definition of the term "identical timing" but argued that the related phrase was readily understood by the skilled person as simultaneous data transmission by referring to the documents from different technical fields submitted with the letter dated 2 July 2012 as evidence that the

respective phrase was clear (cf. point IV above).

However, the board does not regard these arguments as persuasive. Even if the interpretation of simultaneous data transmissions for "identical timing" based on the submitted documents were admitted as a possible construction, these documents do not limit the meaning of this term to this specific interpretation. Interpreting "timing" as "transmission starting time" is one but not the only technical option which would technically make sense in this context. In particular, the skilled reader would appreciate that "identical timing" also encompasses the case that the respective data could well be transmitted one-by-one over the different carriers, e.g. using an identical time offset or the same transmission duration (e.g. via predetermined time slots) between the carriers, regardless of whether perfect synchronism may be achieved or not.

3.2 Article 52(1) EPC: Novelty and inventive step

In the board's judgment, claims 1 and 8 of this request do not meet the requirements of Articles 52(1) and 56 EPC for the following reasons:

- 3.2.1 The board concurs with the appellant and the examining division in considering D2 as the closest prior art.
- 3.2.2 Document D2 is related to multiple-carrier communications in DSL systems and discloses, with regard to the terminology of claim 1, a first communication device (*viz.* "MDSL modem at the subscriber-end") which is connectable to a second communication device (*viz.* "MDSL modem at the central office") and adapted to transmit first negotiation data (*viz.* "line code

capability of the subscriber-end modem") via multiple carriers (*viz.* "probing tones") of a first family (*viz.* "upstream band") of carriers to said second communication device (see page 13, lines 8-9: "An MDSL modem at the subscriber-end sends probing tones in the upstream band ..." and page 13, lines 13-16).

Further, D2 also divulges that the first communication device is adapted to receive second negotiation data (*viz.* "line code capability of the central office end modem") transmitted from said second communication device via multiple carriers (*viz.* "probing tones") of a second family (*viz.* "downstream band") of carriers (see page 13, lines 9-11: "... the MDSL modem at the central office end responds with channel probing tones in the downstream band ..." and page 13, lines 13-16). In this context, each probing tone of the respective downstream and upstream bands has a different frequency while the frequencies of said bands belong to mutually different bands according to D2 (see e.g. page 7, lines 12-15; page 13, lines 35-36; Fig. 6f).

Moreover, according to the teaching of D2, the corresponding probing tones may be based on the standardised Discrete Multitone (DMT) modulation scheme (see e.g. page 13, lines 32-34 in conjunction with the right-hand side of Fig. 6f) for transmitting upstream or downstream DMT probing tones between the respective modems and can be generated by feeding specific vector signals into an inverse fast Fourier transform (IFFT) operation (see page 14, lines 21-23). D2 further teaches that the DMT standard relying on quadrature amplitude modulation is used to load a variable number of bits onto each carrier band and to modulate the coded bits via the IFFT operation (see page 3, lines 13-23). This implies that the first and second

negotiation information is exchanged by using modulated carriers in D2. Additionally, D2 teaches that DMT modulation typically involves transmitting the respective data bits over the available carriers in parallel (see e.g. page 17, lines 22-24), which means that the data are also transmitted with identical timing in the system of D2, using the broad interpretation of the term "identical timing" resulting from point 3.1.2 above.

- 3.2.3 Hence, the difference between the subject-matter of claim 1 and the disclosure of D2 is seen in that data transmitted on each modulated carrier are identical to data transmitted on each other modulated carrier of the first family of carriers and that data received on each modulated carrier are identical to data received on each other modulated carrier of the second family of carriers.

Therefore, the subject-matter of claim 1 is considered to be novel over the cited prior art (Article 54 EPC).

- 3.2.4 The original application is, however, silent as to the technical effect resulting from the above distinguishing feature. Nevertheless, the board agrees with the appellant in considering the achievable technical effect as being to ensure that, if one of the packet transmissions fails on one carrier, the data to be transmitted is still received on another available carrier.

- 3.2.5 Consequently, the objective problem to be solved by claim 1 is regarded as being how to ensure that any data sent from a sending device are still received by a receiving device in a multi-carrier transmission system even if some carriers are subject to signal

impairments.

- 3.2.6 Starting from the teaching of D2, which mentions that the physical throughput of the DSL system under consideration is limited by the receiver's ability to reliably distinguish the transmitted signal in the presence of noise and interference (see page 14, lines 55-56), the skilled person would be aware of the fact that some carriers are more detrimentally affected by noise and interference than others.

When confronted with the above objective problem, the skilled person in the field of data communications would therefore look for feasible ways of increasing the reliability of transmitting and receiving data in the event of such carrier-specific signal impairments. In this context, the skilled person would notice that the vulnerability of data transmissions to unpredictable signal impairments would be significantly lowered by redundant and thus fault-tolerant data transmissions, albeit at the cost of wasting bandwidth. Furthermore, under specific circumstances, e.g. in a communication initialisation phase, the skilled person would consider forfeiting the overall bandwidth efficiency for the benefit of safely transmitting relevant signalling information for such an initialisation process.

Consequently, using his common general knowledge, the skilled person would readily apply a redundant transmission scheme to the system in D2 in cases where highly relevant data are to be successfully sent and would envisage to send the same data, e.g. the line code capability information, on all the available carriers for a certain time period. To do so, the skilled person would have to only slightly adapt the

conventional DMT modulation scheme of D2 without encountering specific difficulties in the implementation process or unexpected technical effects, since sending the same data in parallel simply involves the copying of the relevant data to the respective senders which in turn emit the data at the different respective carrier frequencies to the receiving side.

Therefore, the person skilled in the art would arrive at the subject-matter of claim 1 in an obvious manner in order to solve the above-identified objective problem.

- 3.2.7 Since the subject-matter of method claim 8 corresponds to that of claim 1, the above reasoning applies *mutatis mutandis* to this claim.

In view of the above, the subject-matter of claims 1 and 8 does not involve an inventive step in view of D2 and the skilled person's common general knowledge (Article 56 EPC).

- 3.2.8 The board shares the view of the appellant that the mere fact of transmitting probing tones with phase alternations in D2 (see page 13, lines 8-12) would not necessarily mean that the individual carriers themselves are indeed phase modulated (as held by the examining division). In this context, phase alternations are in fact related to enforcing phase differences or reversals between different adjacent carriers, e.g. for distinguishing between different line codes (see page 13, lines 56-57), rather than performing phase modulations on a certain carrier.
- 3.2.9 The appellant further argued that the respective carriers used in D2 such as "probing tones" or

"signature tones" would not be modulated as claimed but only coded. Referring to page 14, lines 3-5 of D2, the "constant tones" were used as coding symbols sharing one frequency while being distinguishable only by their phasing according to D2, rather than transmitting all elements of a message over a certain modulated carrier as claimed.

The board notes that, firstly, document D2 clearly mentions that the exemplified Discrete Multitone (DMT) and CAP (Carrierless Amplitude/Phase) techniques are line codes which typically also represent standardised modulation schemes (see page 4, lines 17-18; page 4, lines 43-44; page 7, lines 48-49) and that the coded bits are modulated via an IFFT operation (see page 3, lines 21-23). Secondly, D2 discloses that e.g. "signature tones" (rather than "constant tones") generated by selected zero-phase vector signals are transmitted for negotiation purposes on the corresponding carriers (see page 14, lines 21-23 and lines 36-40). From this, it appears to be technically impossible, at least for the "signature tones", to distinguish the tones according to their phasing, as asserted, when only vector signals all having zero phases are used for their generation. This assessment of D2 is also not in contradiction to the specific embodiment referred to by the appellant according to which the phase of adjacent tones may be reversed by 180° for exemplarily distinguishing between two different line codes (cf. D2, page 13, lines 56 and 57), since such an implementation solely refers to two different line codes rather than many line code capability options to be exchanged for line code selection based on D2. Therefore, the appellant's argument in this respect is not convincing and thus the board maintains its view that D2 also anticipates the

use of modulated carriers for exchanging data between two devices.

- 3.2.10 Furthermore, according to the appellant, the object to be achieved by the invention is to provide a more reliable and faster negotiation procedure less susceptible to interference.

The board finds that such an objective problem including a "faster negotiation" cannot validly be established since, e.g. for the case that the respective data are transmitted with an identical time offset (which is encompassed by the term "identical timing" as set out in point 3.1.2 above), a fast negotiation procedure would not be attained due to the individual offset-dependent waiting times incurred for the respective carriers. Apart from this, the transmission of identical data with identical timing is not restricted to negotiation data but relates to any data to be transmitted according to the wording of the independent claims.

- 3.3 In conclusion, this request is not allowable under Article 56 EPC.

4. Fourth Auxiliary Request

This request differs from the third auxiliary request in that independent claims 1 and 8 as amended additionally include that a flag $7E_{16}$ is modulated on the respective carriers. This amendment is supported e.g. by page 33, lines 24-28 and page 34, lines 1-3 of the description as filed.

- 4.1 Article 123(2) EPC

The board concludes that claims 1 and 8 comply with the provision of Article 123(2) EPC, the reasons being as follows:

- 4.1.1 The examining division held that the added feature of "modulating a flag 7E₁₆" contravened Article 123(2) EPC, since the exchange of 7E₁₆ flags was taken out of the originally disclosed context according to which a handshaking procedure including the transmission of an FF₁₆ flag (i.e. a sequence of binary ones) took place beforehand.
- 4.1.2 In this respect, the board holds that independent claims 1 and 8 are primarily related to the procedure of exchanging negotiation data (cf. page 33, line 24 to page 34, line 3 of the description as filed) rather than the previous initialisation ("handshaking") process (cf. page 33, lines 19-24). According to the underlying embodiment, 7E₁₆ flags are particularly used as negotiation data in the form of modulation signals for modulating the upstream and downstream carriers, regardless of whether a prior transmission of the FF₁₆ flag is necessitated or not.

Therefore, the board does not see any reason why the use of this specific example violates Article 123(2) EPC.

4.2 Article 84 EPC: Clarity

The observations regarding the independent claims of the third auxiliary request given in point 3.1 above apply *mutatis mutandis* to claims 1 and 8 of this request.

Hence, the board judges that claims 1 and 8 are clear,

in compliance with Article 84 EPC.

4.3 Article 52(1) EPC: Novelty and inventive step

In the board's judgment, claims 1 and 8 of this request do not meet the requirements of Articles 52(1) and 56 EPC for the following reasons:

4.3.1 The observations regarding the independent claims of the third auxiliary request given in points 3.2.1 and 3.2.2 above apply *mutatis mutandis* to claims 1 and 8 of this request.

4.3.2 The added feature of using a flag 7E₁₆ for modulating the respective carriers is however not directly and unambiguously disclosed in D2. Hence, the difference between the subject-matter of claim 1 and the disclosure of D2 is seen in that

- (a) a flag 7E₁₆ on the carriers of the first and second family of carriers, respectively, is modulated,
- (b) data transmitted on each modulated carrier are identical to data transmitted on each other modulated carrier of the first family of carriers, and data received on each modulated carrier are identical to data received on each other modulated carrier of the second family of carriers (as stated in point 3.2.3 above).

Therefore, the subject-matter of claim 1 is considered to be novel over the cited prior art (Article 54 EPC).

4.3.3 The respective objective problems associated with the above distinguishing features (a) and (b) of claim 1 are regarded as being

- (A) how to provide an appropriate modulation signal for modulating the carriers;

(B) how to ensure that relevant data sent from a sending device is still received by a receiving device in a multi-carrier transmission system even if some carriers are subject to signal impairments.

4.3.4 These objective problems (A) and (B), however, represent independent and unrelated technical problems, since problem (A) relates to the selection of a suitable modulation signal whereas problem (B) relates to the reliable transmission of data.

4.3.5 As regards the distinguishing feature (a), the type and details of the specific modulation signal to be used is a common problem with which the skilled person in data communications could be faced and the selection thereof typically depends on the practical circumstances. In this context, the skilled person would understand that such a modulation signal should be suitable to be distinguishable from an unmodulated carrier. This in turn implies that a series of binary ones and zeros rather than just ones is to be employed. Hence, the person skilled in the art would readily select one (such as the above flag) of equally likely alternatives for modulating the respective carriers without exercising any inventive skills.

4.3.6 The reasoning with regard to the obviousness of the distinguishing feature of the third auxiliary request set out in point 3.2.6 above applies *mutatis mutandis* to feature (b) of this request.

4.3.7 The board finds that the distinguishing features (a) and (b) constitute a mere juxtaposition of well-known processes without producing any surprising synergetic effect since there is no combined technical effect different from the sum of the effects caused by the

individual features solving the different partial problems. As a result, the person skilled in the art would arrive at the subject-matter of claim 1 in an obvious manner in order to solve the aforementioned objective problems.

- 4.3.8 Since the subject-matter of method claim 8 corresponds to that of claim 1, the above reasoning applies *mutatis mutandis* to this claim.

In view of the above, claims 1 and 8 are not allowable for lack of inventive step in view of D2 and the skilled person's common general knowledge (Article 56 EPC).

- 4.3.9 The appellant argued in this respect that the modulation and transmission of a standardised and short flag such as the flag 7E₁₆ would further facilitate error correction and make negotiations more reliable.

However, such an effect can be derived neither from the description nor from the claims. This argument is therefore not convincing.

- 4.4 In conclusion, this request is not allowable under Article 56 EPC.

5. Fifth Auxiliary Request

This request differs from the fourth auxiliary request only in that the phrase "with identical timing" is removed from independent claims 1 and 8 as amended, respectively, and it is based on the auxiliary request underlying the appealed decision.

5.1 Article 123(2) EPC

In the board's judgment, claims 1 and 8 do not comply with the provision of Article 123(2) EPC.

- 5.1.1 The board agrees with the finding of the examining division that transmitting identical data on any or all carriers without "identical timing" is not directly and unambiguously disclosed in the original disclosure of both the original parent application and the present divisional application (cf. page 34, lines 11-13 and page 35, lines 7-9). Rather, the original description exclusively discloses sending "identical data with identical timing" and therefore the deletion of only "with identical timing" results in an intermediate generalisation of the original subject-matter.

Consequently, claims 1 and 8 contravene Article 123(2) EPC.

- 5.1.2 The appellant argued that the omission of "and are transmitted with identical timing" while maintaining the feature of transmitting and receiving identical data on each modulated carrier did not violate Article 123(2) EPC citing T 461/05 and T 802/92 according to which originally disclosed features of an embodiment may be omitted if such features are not necessary to carry out the particular embodiment of the invention or do not provide a technical contribution to the claimed subject-matter. In addition, the appellant assumed that, if the term "identical timing" was indeed unclear, as held by the examining division, this feature could thus not contribute to the technical teaching of the application and therefore would not add subject-matter.

5.1.3 From the single and isolated basis for the related feature of transmitting identical data with identical timing (cf. page 34, lines 11-13; page 35, lines 7-9), no useful information can be derived as to whether the feature "with identical timing" is in fact essential or provides a technical contribution to the subject-matter or not. Even if, for the sake of argument, this feature were to be considered as unclear, that would not necessarily mean that it was not essential. Rather, it would merely indicate that it could not be established whether it was technically relevant or not.

5.2 In conclusion, this request is not allowable under Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz

A. Ritzka

Decision electronically authenticated