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**Datasheet for the decision
of 20 February 2012**

Case Number: T 1016/09 - 3.5.03

Application Number: 05251290.2

Publication Number: 1575315

IPC: H04Q 7/28

Language of the proceedings: EN

Title of invention:

Method and apparatus for providing a low-latency, high-accuracy indication-to-speak

Applicant:

LUCENT TECHNOLOGIES INC.

Headword:

Push to talk/LUCENT

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Added subject-matter - yes"

"Lack of support - yes"

Decisions cited:

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Catchword:

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Case Number: T 1016/09 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 20 February 2012

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 9 October 2008
refusing European patent application No.
05251290.2 pursuant to Article 97(2) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 05251290.2 on the ground that the subject-matter of claims 1 and 6 lacked novelty (Article 54 EPC).
- II. In the notice of appeal the appellant requested that the decision be set aside and that a patent be granted.
- III. Together with the statement of grounds of appeal received on 9 February 2009 a set of amended claims 1 to 8 was filed.
- IV. In a communication of 28 April 2011 the board gave its preliminary opinion that the application failed to satisfy various requirements of the EPC, inter alia that claims 1 and 6 added subject-matter (Article 123(2) EPC) and that claim 6 was not supported by the description (Article 84 EPC).
- V. With a response to the board's communication received on 19 August 2011, the appellant filed a revised set of claims 1 to 8.

Claim 1 reads as follows:

" A method of communication with a dormant mobile station, the method comprising:

 paging the dormant mobile station in response to receiving a request from a first mobile station to transmit a message to the dormant mobile station;

 receiving a page response signal from the dormant mobile station;

providing an indication-to-speak to the first mobile station in response to receiving a page-event indication from a mobility data network, the page-event indication being formed by the mobility data network based on the page response signal; and

establishing a connection with the dormant mobile station in response to receiving the page response signal, the indication-to-speak being provided to the first mobile station concurrently with establishing the connection."

Claim 6 reads as follows:

" A method of communicating with a first mobile station comprising:

delivering, from a second mobile station, a request to transmit a message to the first mobile station via a mobility data network; and

receiving, at the second mobile station, a page-event indication-to-speak from the mobility data network, the page-event indication-to-speak being formed by the mobility data network based on a page response signal received from the mobile station in response to the mobility data network paging the first mobile station, the page-event indication-to-speak being received concurrently with establishment of a connection between the first mobile station and the mobility data network.

VI. From the appellant's submissions the board understands that the appellant requests that the impugned decision be set aside and a patent be granted on the basis claims 1 to 8 as received on 19 August 2011. No request was made for oral proceedings.

Reasons for the decision

1. *Procedural matters*

The present decision is based on objections under Articles 123(2) and 84 EPC which had already been raised in the board's communication. The appellant had the opportunity to present its comments on these objections and filed a reply without however discussing all issues raised in the communication or overcoming all objections by amendment.

Under these circumstances, the board is in a position to give a decision which meets the requirement of Article 113(1) EPC.

2. *Claim 1 - added subject-matter (Article 56 EPC)*

The originally filed application does not provide a clear and unambiguous disclosure of the feature "the indication-to-speak being provided to the first mobile station concurrently with establishing the connection" in claim 1. This feature was present in claim 1 as filed with the statement of grounds and the objection raised in the board's communication.

The appellant is of the view that paragraphs [0070-0073] of the published application provide a basis for this feature. On page 2 of the appellant's response received on 19 August 2011 it is argued that "In the embodiment discussed in paragraph [0070], the mobile station 106 begins to establish a connection to its

radio network 114 in response to receiving the page response message. The mobility data network 118 also sends a page-event notification-to-speak to the presence server 124 in response to the page response message. The page-event notification-to-speak is then forwarded to the PoC server 112B, the PoC server 112A, and then to the mobile station 104. Once the page-event notification-to-speak is received at the mobile station 104, a user of the mobile station 104 may begin speaking and the speech can be buffered at the PoC server 112A. At this point, the mobile Station 106 has established an over-the-air connection and the PoC server 112A can forward the buffered speech to the mobile station 106."

However, the passage at paragraph [0070] only expresses that each of two different processes, namely on the one hand the mobile terminal 106 establishing a connection to its radio network and on the other hand providing an indication-to-speak to the first mobile station, is initiated in response to the page response message. Initiation of each of these processes by the page response message does not however necessarily require that these processes are actually carried out concurrently, although this might be the desired effect to be achieved. Since there is no clear and unambiguous disclosure in the application as filed, adding the feature of providing an indication-to-speak to the first mobile station concurrently with establishing the connection adds subject-matter and thus contravenes the provision of Article 123(2) EPC.

3. *Claim 6 - lack of support (Article 84 EPC)*

There is no basis in the originally filed application for the first feature of claim 6, i.e. delivering a request to transmit a message from the second to the first mobile station. According to the description relating to figures 2 and 4, a transmission request from "Mobile Station Sender A", which appears to correspond to the second station in claim 6, is delivered to "Mobile Data Network B". A page request is subsequently transmitted by "Mobile Data Network B" to "Mobile Station Receiver B". In the board's view this page request is not a request to transmit a message. Consequently, claim 6 lacks support (Article 84 EPC).

Although this objection was discussed in the board's communication the appellant did not submit any arguments in response other than an assertion that the claim was supported.

4. In view of the above, the board concludes that at least claim 1 adds subject-matter (Article 123(2) EPC) and claim 6 lacks support (Article 84 EPC). Consequently, the appellant's request is not allowable. There is accordingly no request on file on the basis of which the appeal could be allowed and the appeal must therefore be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

A. S. Clelland