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**Datasheet for the decision
of 8 May 2013**

Case Number: T 1188/12 - 3.5.03
Application Number: 07009970.0
Publication Number: 1814241
IPC: H04W 52/50, H04B 1/707
Language of the proceedings: EN

Title of invention:

Device and method for communication between base station and subscriber unit in CDMA communication system

Applicant:

InterDigital Technology Corporation

Headword:

Short codes III/INTERDIGITAL

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

"Extension beyond the content of the application as filed - all requests (yes)"



Case Number: T 1188/12 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 8 May 2013

Appellant: InterDigital Technology Corporation
(applicant) 3411 Silverside Road, Concord Plaza
Suite 105
Hagley Building
Wilmington, DE 19810 (US)

Representative: Bohnenberger, Johannes
Meissner, Bolte & Partner GbR
Widenmayerstraße 48
D-80538 München (DE)

Decision under appeal: Decision of the examining division of the
European Patent Office posted 2 December 2011
refusing European patent application
No. 07009970.0 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: F. van der Voort
Members: B. Noll
R. Moufang

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application no. 07009970.0 (publication number EP 1814241 A2) which was filed as a divisional application relating to earlier European patent application no. 04010946.4, itself a divisional application of European patent application no. 00111007.1, which is a divisional application of European patent application no. 97930175.1.

The application was refused by the examining division on the grounds that the subject-matter of the claims of a main request and an auxiliary request extended beyond the content of the application as filed (Article 123(2) EPC) and that the claims of both requests did not meet the requirement of Article 84 EPC due to a lack of clarity.

II. With the statement of grounds of appeal the appellant filed new sets of claims as a main request and an auxiliary request. It was requested that the decision under appeal be set aside and that a patent be granted.

III. In a communication accompanying the summons to oral proceedings the board drew the appellant's attention to issues which might be discussed in the oral proceedings, concerning, *inter alia*, added subject-matter (Article 123(2) EPC) and clarity of the claims (Article 84 EPC).

IV. With a letter dated 5 April 2013 the appellant filed, by way of replacement, amended sets of claims as a main request and an auxiliary request.

V. Oral proceedings were held on 8 May 2013.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 and 2 of the main request or, in the alternative, claims 1 and 2 of the auxiliary request, both requests as filed with the letter dated 5 April 2013.

At the end of the oral proceedings, after deliberation, the board's decision was announced.

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

"A wireless code division multiple access subscriber unit, wherein when a communication link is desired with a base station, the subscriber unit starts transmitting a short code at a power level and increases the transmission power level while retransmitting the short code until the subscriber unit receives an acknowledgement by a base station that the short code has been detected by the base station; the subscriber unit being characterized in that:
the short codes being much smaller than 30 million chips and the short codes being periodically updated."

Claim 1 of the auxiliary request differs from claim 1 of the main request in that the characterizing portion reads as follows:

"the short codes being much smaller than an access code and the short codes being periodically updated; wherein the access code is a known spreading code transmitted during initiation of communications".

Reasons for the Decision

1. *Claim 1 of the main request - basis in the application documents as filed (Article 123(2) EPC)*

1.1 The feature "the short codes being periodically updated" is not clearly and unambiguously disclosed in this general form in the application as filed. The appellant argued that the last sentence of paragraph [0050] (reference is made to the application as published) provided a basis for this feature.

However, read in the context of paragraph [0050] as a whole, this sentence only expresses the benefit of having interference averaged over the entire spectrum as a result of selecting and updating short codes according to a specific procedure which is described in paragraph [0050] as follows:

"Although the same short code may be reused by the subscriber unit 16, in the preferred embodiment of the present invention the short codes are dynamically selected and updated in accordance with the following procedure. Referring to Figure 8, the period of the short code is equal to one symbol length and the start of each period is aligned with a symbol boundary. The short codes are generated from a regular length spreading code. A symbol length portion from the beginning of the spreading code is stored and used as the short code for the next 3 milliseconds. Every 3 milliseconds, a new symbol length portion of the spreading code replaces the old short code. Since the spreading code period is an integer multiple

of 3 milliseconds, the same short codes are repeated once every period of the spreading code. Periodic updating of the short code averages the interference created by the short code over the entire spectrum."

Hence, paragraph [0050] discloses a specific procedure for selecting and updating the short code and it is this specific procedure which, as indicated by the last sentence in the paragraph, leads to the effect that the interference created by the short code is averaged over the entire spectrum.

1.2 The appellant further argued that updating the short code had the general advantage of reducing interference for different codes which undergo different reflections. Hence, the skilled person would have recognized that such updating was not restricted to the specific embodiment as described in paragraph [0050]. Further, in the application as filed, there was no statement whatsoever that the use of dynamically selected and updated short codes was restricted to specific embodiments.

1.3 The board does not agree. There is no indication in the application as filed that the general advantage indicated by the appellant, i.e. reducing interference, could also be achieved with short codes which are selected and updated in a way other than the specific procedure described in paragraph [0050]. The board also notes that the application does not disclose any alternative to the procedure of periodically updating the short code according to paragraph [0050]. Hence, the appellant's argument is not convincing.

1.4 Claim 1 thus fails to meet the requirement of Article 123(2) EPC. The main request is therefore not allowable.

2. *Claim 1 of the auxiliary request - basis in the application documents as filed (Article 123(2) EPC)*

Claim 1 of the auxiliary request includes the same feature in the same general form as referred to in point 1.1 above. Therefore, claim 1 of the auxiliary request fails to meet the requirement of Article 123(2) EPC for the same reason as set out in point 1 above. The auxiliary request is therefore not allowable.

3. Since none of the requests on file is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

F. van der Voort