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**Datasheet for the decision  
of 7 December 2016**

**Case Number:** T 2051/12 - 3.5.03

**Application Number:** 05255758.4

**Publication Number:** 1638362

**IPC:** H04Q7/38, H04L1/18

**Language of the proceedings:** EN

**Title of invention:**

Hybrid automatic repeat request operation during soft hand offs  
in a wireless system

**Applicant:**

Alcatel-Lucent USA Inc.

**Headword:**

Automatic repeat request during soft hand-off/ALCATEL-LUCENT

**Relevant legal provisions:**

EPC Art. 111(1), 123(2)

**Keyword:**

Added subject-matter - no (after amendment)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 2051/12 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 7 December 2016**

**Appellant:** Alcatel-Lucent USA Inc.  
(Applicant) 600-700 Mountain Avenue  
Murray Hill, NJ 07974 (US)

**Representative:** Richardt Patentanwälte PartG mbB  
Wilhelmstraße 7  
65185 Wiesbaden (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 27 April 2012  
refusing European patent application  
No. 05255758.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** F. van der Voort  
**Members:** K. Schenkel  
P. Guntz

## **Summary of Facts and Submissions**

- I. This appeal is against the decision of the examining division refusing European patent application No. 05255758.4, publication number EP 1 638 362 A.
- II. The reason given for the refusal was that claims 1, 6 to 9 and 12 did not comply with Article 123(2) EPC.
- III. With the statement of grounds of appeal the appellant filed sets of claims of a main request and an auxiliary request, and submitted arguments in support.
- IV. In a communication accompanying a summons to oral proceedings, the board raised, without prejudice to its final decision, objections *inter alia* under Article 123(2) EPC in respect of claims 1, 6, 7 and 10 of the main request and claims 1, 5, 6, 8 and 10 of the auxiliary request.
- V. In response, the appellant filed with a letter dated 23 November 2016 an amended main request and an amended auxiliary request.
- VI. Oral proceedings were held on 7 December 2016.

At the oral proceedings, the board raised objections under Article 123(2) EPC in respect of both requests on file. The appellant then filed a new set of claims 1 to 4 of a main request and withdrew the auxiliary request.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of the main request as submitted during the oral proceedings.

At the end of the oral proceedings, the chairman announced the board's decision.

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

"A method for controlling a communications system (100) during a soft handoff, comprising:  
communicating (305) in a HARQ process a first packet of information by a mobile device (120) to a first and second base station (130) and receiving by the mobile device (120) an acknowledgment signal (310) from the first base station (130) and a negative acknowledgment signal (315) from the second base station (130),  
communicating (325) by the mobile device (120) to at least the second base station (130) that a next packet of information will be a new packet of information, wherein the communicating (325) that the next packet of information will be a new packet of information comprises transmitting by the mobile device (120) a signal to at least the second base station (130), the signal explicitly indicating that the HARQ process has completed and that the next packet of information will be a new packet of information,  
the method comprising processing by the mobile device (120) the received acknowledgment (310) and negative acknowledgment (315) signals, the transmitting of the signal being performed in case it is determined by the processing that the first packet of information was properly received by at least one of the first and second base station (130)."

### **Reasons for the Decision**

1. Article 123(2) EPC

In accordance with claim 1 as originally filed, claim 1 is directed to a method of controlling a communications system in which, *inter alia*, a first packet of information is communicated to a first and a second base station, an acknowledgment signal is received from the first base station and a negative acknowledgment signal is received from the second base station, and it is communicated to at least the second base station that a next packet of information is a new packet of information.

The remaining features of claim 1 are based on a first embodiment as described in paragraph [0024] of the application as published, with reference to Fig. 3 (cf. in particular, column 6, lines 9 to 12 ("*In a first embodiment, ..., the mobile device 120 sends information, such as a data packet over the data channel 270, to both base station A and base station B ...*"), lines 22 to 25 ("*... the mobile device 120 determines that the data packet was properly received by at least one of the base stations ...*"), and lines 30 to 33 ("*... the mobile device 120 may explicitly indicate that the HARQ process has completed and that the next packet of data will be a "new" packet of data*"), taking into account that the embodiment is disclosed with reference to the mobile device being in the soft hand-off (SHO) mode, cf. paragraphs [0022] and [0023], in particular column 5, lines 49 to 52 ("*The following description and drawings are presented with reference to the mobile device 120 entering and leaving the SHO mode of operation, and being in the SHO mode of operation.*") and column 6, lines 2 to 5 ("*In the flow diagram of Figure 3, it is assumed that a SHO is underway with respect to the mobile device 120 such that the mobile device 120 is communicating with both base station A and base station B.*").

Claims 2, 3 and 4 correspond to claims 2, 3 and 4 as originally filed.

2. The board also examined compliance of the claims with the requirements of Article 84 EPC and has no objection to raise under this provision.
3. The board therefore concludes that the new claims meet the requirements of Articles 84 and 123(2) EPC.
4. The decision is therefore to be set aside.
5. In view of the above and in accordance with Article 111(1) EPC, the board considers it appropriate to remit the case to the department of first instance for further prosecution of the application on the basis of claims 1 to 4 of the main request as submitted during the oral proceedings.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution on the basis of the set of claims of the main request as submitted during the oral proceedings.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated