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**Datasheet for the decision
of 2 October 2014**

Case Number: T 2191/12 - 3.5.05

Application Number: 09177680.7

Publication Number: 2161887

IPC: H04L12/56, H04W88/02

Language of the proceedings: EN

Title of invention:

Method and system for recovering from DRX timing de-
synchronization in LTE-Active

Applicant:

BlackBerry Limited

Headword:

Discontinuous reception in LTE

Relevant legal provisions:

EPC Art. 76(1), 123(2)

Keyword:

Divisional application - added subject-matter (no) -
after amendment
Amendments - added subject-matter (no)

Decisions cited:

Catchword:



**Beschwerdekammern
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Case Number: T 2191/12 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 2 October 2014

Appellant: BlackBerry Limited
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Representative: Moore, Barry
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 25 May 2012
refusing European patent application
No.09177680.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: P. Cretaine
G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division announced in oral proceedings held on 24 April 2012, with reasons dispatched on 25 May 2012, refusing European patent application No. 09 177 680.7 on the ground of added subject-matter (Article 123(2) EPC).

II. Notice of appeal was received on 24 July 2012. The appeal fee was paid on the same day. A statement setting out the grounds of appeal was received on 24 September 2012. The appellant (applicant) requested that the decision of the examining division be set aside and that a patent be granted on the basis of the claims of a main request or a first auxiliary request submitted with the statement setting out the grounds of appeal. The appellant provided arguments in support of the compliance of these requests with Article 123(2) EPC and further arguments with respect to inventive step (Article 56 EPC), having regard to the disclosure of the document:

D1: ETSI:"3GPP TS 25.304: User equipment procedures in idle mode and procedures for cell reselection in connected mode", [Online] 31 December 2006, retrieved from the internet: URL:<http://www.3gpp.org/ftp/Specs/html-info/25304.htm>[retrieved on 2007-06-15].

In addition, oral proceedings were requested as an auxiliary measure.

III. A summons to oral proceedings scheduled for 3 September 2014 was issued on 17 June 2014. In an annex to this summons pursuant to Article 15(1) RPBA the board gave its preliminary opinion on the appeal. In particular, the board indicated that the main and auxiliary

requests met the requirements of Article 123(2) EPC but failed to comply with Article 76(1) EPC. The board further indicated that it intended to remit the case to the department of first instance for further prosecution, should the objection under Article 76(1) EPC be overcome in the manner suggested by the board. The appellant was requested to indicate in that case whether it maintained its request for oral proceedings.

IV. With a letter of reply dated 27 June 2014, the appellant submitted amended claims according to a main request and an auxiliary request as suggested by the board, withdrew the request for oral proceedings and gave its consent to a remittal of the application without oral proceedings being held.

V. By communication dated 16 July 2014, the appellant was notified that the oral proceedings appointed for 3 September 2014 were cancelled.

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

"A method for Discontinuous Reception ('DRX') operation, comprising:
while a user equipment ('UE') is in Discontinuous Reception ('DRX') operation in an LTE_ACTIVE state, waking up a receiver of the UE;
checking if a current time is a preconfigured wake up time, the preconfigured wake up time corresponding to a radio frame number equal to a radio frame offset plus N times a DRX interval, wherein N is an integer greater than or equal to zero;
if the current time is the preconfigured wake up time, checking whether a Continuous Reception Command has been received at the UE."

Claim 1 of the auxiliary request reads as follows:

"A method for Discontinuous Reception ('DRX') operation, comprising:
waking up a receiver of the user equipment ('UE') from discontinuous reception ('DRX') in an LTE_ACTIVE state;
checking if a current time is a preconfigured wake up time, the preconfigured wake up time corresponding to a radio frame number equal to a radio frame offset plus N times a DRX interval, wherein N is an integer greater than or equal to zero;
if the current time is the preconfigured wake up time, checking whether a Continuous Reception Command has been received at the UE."

The main and auxiliary requests comprise further independent claims directed towards a corresponding user equipment (claim 5) and a corresponding enhanced nodeB (claim 6).

Reasons for the Decision

1. The appeal is admissible.
2. Article 123(2) EPC
 - 2.1 Main request

The board is satisfied that the three steps of method claim 1 are supported by the application documents as originally filed.

The first step of *waking up a receiver of a user equipment UE while the user equipment UE is in Discontinuous Reception DRX operation in an LTE ACTIVE state* is disclosed in paragraph [0081] and Figure 5b of the published application, the feature that the user equipment is in an LTE ACTIVE state being a prerequisite of the claimed method, as stated in the description as a whole, in particular in paragraphs [0001], [0007], and [0013] to [0016]. The board also notes that the wording "while a user equipment is in an active mode", which was objected to in the decision under appeal as being not supported, is not longer present in claim 1. Furthermore, the feature "waking up a receiver of the UE", which was considered in the decision under appeal as an essential feature, is now present in claim 1.

The second step of *checking if a current time is a preconfigured wake up time, the preconfigured wake up time corresponding to a radio frame number equal to a radio frame offset plus N times a DRX interval, wherein N is an integer greater than or equal to zero*, is disclosed in paragraphs [0072], [0082] and Figure 5b of the published application. The board further notes that this step is performed in claim 1 after the step of waking up the receiver, in accordance with the originally filed description (see Figure 5b), and that the objection raised in the decision under appeal with respect to the order of the two steps (see Reasons 1.3) has been overcome.

The third step of claim 1 is disclosed in paragraph [0082] and Figure 5b of the published application.

Claims 2 to 10 are identical to claims 2 to 10 on which the decision under appeal was based and for which no objections under Article 123(2) EPC had been raised.

For these reasons, the board judges that the main request meets the requirements of Article 123(2) EPC.

2.2 Auxiliary request

The claims of this request differ from the claims according to the main request only by a slightly different wording in claim 1. Therefore the board judges, for the same reasons as set out in point 2.1 above, that the auxiliary request meets the requirements of Article 123(2) EPC.

3. Article 76(1) EPC

It is clear from the description and claims of the parent application EP 1 959 615 A1 that the alleged invention pertains solely to a method and to systems in the context of a mobile user equipment which is in the LTE_ACTIVE state.

In that respect, paragraph [0001] of the published parent application clearly states that the disclosure relates to a LTE wireless communication system. No other wireless communication system is mentioned in the rest of the description. In the following paragraphs [0002] to [0006], it is acknowledged that DRX is used in LTE_ACTIVE state and the problem of DRX desynchronisation in that case is evoked. Paragraphs [0007] to [0016] then describe methods for coping with the DRX desynchronisation problem in LTE_ACTIVE state. In the further detailed description of the preferred embodiments, the LTE_ACTIVE state of

the UE is consistently mentioned, whereas the LTE_IDLE state of the UE is never cited (see in particular paragraphs [0028], [0029], [0037]). All of the originally filed independent claims 1, 16, 20 and 24 of the parent application are also directed to methods and systems operating in the context of the LTE_ACTIVE state of the UE.

The board is satisfied that independent claims 1 and 6 of the main and auxiliary requests refer to the LTE_ACTIVE state of the UE and thus that their subject-matter does not extend beyond the content of the parent application as filed (Article 76(1) EPC).

4. Article 56 EPC

In the decision under appeal, the question of inventive step was not decided upon, nor was any assessment of inventive step provided with respect to any prior-art document.

Although the examining division had raised an inventive step objection in its summons to oral proceedings, the independent claims which were at that time objected to comprised the feature of waking up the receiver at the UE at a preconfigured wake up time. This feature was also present in the independent claims of the originally filed present application. It has however been deleted from the present claims and replaced by the feature of waking up the receiver of the UE before checking whether the time is the preconfigured wake up time.

Following this substantial difference between the searched claims and the claims refused by the first instance on the one hand and the present claims on the

other, the board judges that it is not appropriate to take a final decision on the matter of inventive step.

5. Remittal to the department of first instance

Since, in addition, the appellant agreed to a remittal of the application (cf. point IV above), the board decides to remit the case to the department of first instance for further prosecution.

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 claims of the main and auxiliary requests filed with the letter dated 27 June 2014.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated