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**Datasheet for the decision  
of 14 December 2016**

**Case Number:** T 1291/13 - 3.5.03

**Application Number:** 07016645.9

**Publication Number:** 1892848

**IPC:** H04B7/005

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for uplink power control in communication system

**Applicant:**

Samsung Electronics Co., Ltd.

**Headword:**

Uplink power control/SAMSUNG

**Relevant legal provisions:**

EPC Art. 111(1)  
EPC R. 103(1)(a), 111(2)  
RPBA Art. 11

**Keyword:**

Reasoned decision (no)

Remittal (yes)

Substantial procedural violation and reimbursement of appeal  
fee (yes)

**Decisions cited:**

T 0070/02

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1291/13 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 14 December 2016**

**Appellant:** Samsung Electronics Co., Ltd.  
(Applicant) 129, Samsung-ro  
Yeongtong-gu  
Suwon-si, Gyeonggi-do, 443-742 (KR)

**Representative:** Jenkins, Richard Gavin  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 6 December 2012  
refusing European patent application No.  
07016645.9 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** F. van der Voort  
**Members:** T. Snell  
P. Guntz

## Summary of Facts and Submissions

- I. This appeal was lodged by the applicant against the decision of the examining division refusing European patent application No. 07016645.9 with publication number EP 1 892 848 A. The refusal was based on the grounds of lack of clarity and lack of novelty in respect of *inter alia* claim 1 of respectively a main request and two auxiliary requests.
- II. In the statement of grounds of appeal dated 16 April 2013, the appellant requests that the impugned decision be set aside and that a patent be granted on the basis of the claims of a main request or, alternatively, the claims of one of first to fourth auxiliary requests, all requests as filed together with the statement of grounds of appeal. By way of a further auxiliary request, the appellant requested that the decision be set aside and the case remitted to the examining division for the grant of a patent on the basis of the text proposed for grant in the communication under Rule 71(3) EPC dated 15 June 2012.
- III. Claim 1 of the main request reads as follows:
- "A method for uplink transmission power control by a base station in a communication system in which the base station and a subscriber station are adapted to communicate wirelessly with each other and the subscriber station is adapted to transmit data to the base station via a wireless uplink in Hybrid Automatic Repeat request, HARQ, bursts and in non-HARQ bursts, the method comprising the steps of:  
determining a relative power offset for adjusting an uplink transmission power of a HARQ burst among the HARQ bursts referencing to an uplink transmission power

of a non-HARQ burst among the non-HARQ bursts; and transmitting (106) the relative power offset to the subscriber station in an Uplink Channel Descriptor, UCD, message, wherein the relative power offset is contained in a format of Type, Length and Value, TLV, in the UCD message."

- IV. In view of the board's decision (see below), there is no need to recite the wording of claims of any of the auxiliary requests.

### **Reasons for the Decision**

1. *Main request - amendments*

Claim 1 is amended with respect to the version refused by the examining division only in that in the first paragraph after "non-HARQ bursts" the wording "at respective uplink transmission powers" has been deleted. As regards the matters discussed below, this amendment is however not relevant.

2. *Lack of a reasoned decision - Rule 111(2) EPC*

2.1 It is established case law that a decision, in order to be reasoned within the meaning of Rule 111(2) EPC, must contain at least some reasoning on crucial points of dispute, i.e. deal with at least the main counter-arguments presented by the applicant (cf. e.g. T 70/02, point 7 of the reasons).

2.2 With respect to claim 1 of the main request, the impugned decision is based on, on the one hand, lack of compliance with Article 84 EPC and Rules 43(1) and (3) EPC for the reason that claim 1 does not comprise a

feature "essential to the definition of the invention", and, on the other hand, lack of novelty of the subject-matter of claim 1 with respect to the disclosure of D1 (= EP 1 605 605 A).

2.3 With respect to the objection pursuant to Article 84 EPC, the reasoning consists merely of an assertion to the effect that it follows from the description at various cited passages that the additional feature of claim 3 is essential to the definition of the invention and that as claim 1 does not contain this feature, it does not meet the requirement following from Article 84 EPC taken in combination with Rule 43(1) and (3) EPC that any independent claim must contain all the technical features essential to the definition of the invention.

2.4 With respect to the objection of lack of novelty, the reasoning consists of reciting the wording of claim 1 together with a single global reference to paragraph 31 of D1, followed by a discussion which appears to concern the feature of claim 1 "determining a relative power offset . . . .", but does not refer to the final feature of claim 1, namely "transmitting (106) the relative power offset to the subscriber station in an Uplink Channel Descriptor, UCD, message, wherein the relative power offset is contained in a format of Type, Length and Value, TLV, in the UCD message".

2.5 In both cases, the applicant challenged this reasoning by providing detailed counter-arguments, cf. e.g. the letter dated 27 September 2011, last two paragraphs of page 1 and pages 2 and 3 (which is one of nine letters filed by the applicant during the substantive phase of the examination procedure). The decision however does not deal with crucial (and, on the face of it,

plausible) counter-arguments presented by the applicant. In this respect, the applicant, inter alia, gives reasons why in its opinion the additional feature of claim 3 need not be incorporated into claim 1 (cf. page 2, second paragraph of the applicant's letter) and argues, with respect to novelty, that there is no disclosure in D1 of the final feature of claim 1 (cf. page 1, last paragraph, and page 2, first paragraph of the applicant's letter).

2.6 The board concludes that the decision is not reasoned in the sense of Rule 111(2) EPC. This amounts to a substantial procedural violation requiring the decision to be set aside.

3. *Independent claims 5, 9 and 12*

The above points apply, mutatis mutandis, to the remaining independent claims 5, 9 and 12.

4. *Auxiliary requests*

As the decision has to be set aside on the basis of the main request, there is no need to consider any of the auxiliary requests.

5. *Remittal*

According to Article 11 RPBA, a board shall remit a case to the department of first instance if fundamental deficiencies are apparent in the first instance proceedings, unless special reasons present themselves for doing otherwise. Further, it is the established practice of the boards of appeal to remit a case where a substantial procedural violation has been committed. In the present case, the board sees no reason to depart

from this practice and sees no special reasons within the meaning of Article 11 RPBA. In this respect, even if the board were to rule finally on the specific issues of the lack of clarity and novelty on which the impugned decision is based, it would either have to remit the case in any event, in order that further issues of compliance with the EPC can be considered, in particular inventive step, or widen its own investigations to consider such other issues itself. The latter would however run contrary to the main purpose of appeal proceedings, which is to examine the correctness of the impugned decision.

As to the issues of clarity and novelty, the board considers that these matters should be reconsidered by the examining division, carefully taking into account the applicant's arguments, see, in particular, the letter dated 27 September 2011 and the statement of grounds of appeal.

The case is therefore remitted to the examining division for further prosecution (Article 111(1) EPC).

6. *Reimbursement of the appeal fee*

As the appeal is allowable by reason of a substantial procedural violation, in the absence of any indicators to the contrary, the board deems the reimbursement of the appeal fee to be equitable (Rule 103(1)(a) EPC).



## 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 request filed on 16 April 2013.
3. The appeal fee is reimbursed.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated